



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM053May17

In the matter between:

Fidelity Security Services (Pty) Ltd

Primary Acquiring Firm

and

**Analytical Risk Management t/a 2RM Security
(In Business Rescue) and other entities affiliated**

To 2RM

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 04 October 2017
Order Issued on	: 05 October 2017
Reasons Issued on	: 18 October 2017
Non-Confidential Reasons Issued on	: 06 November 2017

Reasons for Decision (Non-Confidential)

Approval

- [1] On 05 October 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Fidelity Security Services (Pty) Ltd ("Fidelity") and Analytic Risk Management t/a 2RM Security (in business rescue) and other entities affiliated to 2RM ("2RM").
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Fidelity, a firm incorporated in accordance with the laws of the Republic of South Africa. Fidelity is a wholly owned subsidiary of Fidelity Security Group (Pty) Ltd ("Fidelity Group"). Fidelity Group is not controlled by any single firm.¹
- [4] The Fidelity Group is an integrated security solutions provider. Its key areas of business include the provision of the following services and products:
- alarm monitoring and armed response services;
 - cash solutions which entail cash-in-transit services ("CIT services"), cash handling devices and cash processing services (collectively referred to as cash management solutions);
 - guarding, which includes the deployment of security officers that are trained in all aspects of security discipline, integrated technology solutions including alarm systems and panic buttons, as well as closed circuit television ("CCTV");and
 - electronic solutions which entail the provision of products and services which provide innovative technological solutions to give clients the ability to protect their customers and assets.

Primary target firm

- [5] The primary target firm is 2RM, a firm incorporated in accordance with the laws of the Republic of South Africa. 2RM is controlled by two individuals namely, Jasper Johannes Prinsloo and Skumbuzo Siza Mhlanga.
- [6] 2RM is active in the private security sector, and is primarily active in the provision of guarding services which comprises armed and unarmed guarding, corporate guarding central control and command centre, commercial guarding, armed escorts, equestrian security, special events, residential security, crime prevention, aviation security, mining security, industrial security and air support, technology surveillance and technical security solutions.

¹ For details of the shareholders of Fidelity, see the Commission's Recommendation *inter alia* page 8.

Proposed transaction and rationale

- [7] The business rescue practitioner approached Fidelity as a suitable third-party investor that could be instrumental in its business rescue plan. Fidelity did not seek the transaction but sees it as an opportunity to grow its guarding business. Fidelity has the capability to inject the requisite capital and business knowledge into 2RM to ensure that the business remains operational.
- [8] 2RM submitted that the business rescue practitioner approached Fidelity as part of its business rescue strategy plan to avoid 2RM's liquidation and restore it to financial health, in view of saving all of the jobs of 2RM's employees (approximately 1 500 employees)².
- [9] The proposed transaction is a business rescue transaction whereby Fidelity intends to acquire all of the issued share capital of 2RM. Upon implementation of the transaction, Fidelity will control 2RM. The transaction is structured in such a way that 2RM will be able to continue with operations involving essential expenses and running costs in respect of its operations, in particular the payment of employees' salaries.

Impact on competition

Market Analysis

- [10] The Competition Commission ("Commission") found that there are horizontal overlaps arising in the following markets:
- The regional markets for the provision of guarding services; and
 - The regional markets for technology and electronics services.
- [11] It should be noted that the markets for the provision of guarding services and the provision of technology and electronics services are intertwined as guards monitor activities on the technology and electronics provided by security companies.
- [12] In both the abovementioned markets the Commission found that the activities of the merging parties overlap in eight provinces namely, the Western Cape, the Eastern Cape, the Northern Cape, Kwa-Zulu Natal, Gauteng, Limpopo, Mpumalanga, and the Free State. The Commission found that the merged entity will have market shares of

² The Commission's Recommendation at page 7 indicates that there are 1 495 employees whereas the Commission stated at the hearing that there are 1 509 employees – Transcript page 2, line 17.

below 12% in each of these provinces in respect of these markets and thus concluded there is unlikely to be a substantial prevention or lessening of competition therein.

Unilateral Effects

- [13] The Commission found that there are low barriers to entry into the market for the provision of guarding services. The Commission consulted other players in the market such as G4S and BlackRox who confirmed that barriers to entry in this market are low. The Commission also considered the view of PSIRA³ and its 2015/2016 Annual Report which indicates that there are currently over 100 000 guards who are unemployed, indicating that a new entrant is unlikely to face the task of training new employees. The Commission also consulted customers such as [REDACTED] and found that customers have a degree of countervailing power in this market due to the number of alternative suppliers and the ability to effortlessly switch suppliers.
- [14] The Commission found that there are low barriers to entry into the market for technology and electronics services based on consultations with competitors such as Chubb, Stallion and Blue Security who all consider barriers to entry into this market to be low. Further, customers possess a degree of countervailing power due to the number of alternative firms and the ease of switching between them. The merged entity will not have the market power to unilaterally increase prices post-merger in all the relevant markets.
- [15] Having regard to the above, it is concluded that unilateral effects are unlikely to arise in this market post-merger.

Conglomerate Effects

- [16] The Commission engaged with customers who indicated that the merged entity is unlikely to use a bundling strategy as customers tend to spread their risk by using different service providers, amongst other things. The Commission concluded that the proposed transaction is unlikely to enable the merged entity to engage in tying and bundling post-merger.

³ Private Security Industry Regulatory Authority.

Public interest

- [17] The Commission found that 2RM has been in financial distress and loss-making since [REDACTED] via its investigation and documents procured from 2RM's creditors. [REDACTED]
- [18] Taking into account 2RM's precarious financial position, the Commission concluded that the proposed transaction will have a positive effect on employment as all the employees of 2RM will continue to be employed by 2RM post-merger. As a result there will be no retrenchments stemming from this transaction.
- [19] It is documented that Fidelity undertook to retain the jobs of all the 2RM employees, but at the hearing the Tribunal sought a condition to the effect that there won't be any merger specific retrenchments of the 2RM employees for a period of two years.⁴ The merging parties accepted the condition and it is subject to that, that this transaction is approved.
- [20] There are no other public interest concerns that arise from the proposed transaction.

Conclusion

- [21] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Due to the public interest issues arising from the proposed transaction the above mentioned set of conditions have been imposed. Accordingly, we approve the proposed transaction subject to conditions. For convenience the set of conditions are attached, marked as "Annexure A".



Mr Enver Daniels

06 November 2017

DATE

Prof Fiona Tregenna and Mrs Medi Mokuena concurring

Case Manager: Kameel Pancham
For the merging parties: Natalie Von Ey and Albert Aukema from Cliffe Dekker Hofmeyr
For the Commission: Boitumelo Makgabo

⁴ Transcript page 5, lines 2 – 21 and page 6, lines 1 – 10.

ANNEXURE A

FIDELITY SECURITY SERVICES (PTY) LTD / ANALYTICAL RISK (PTY) LTD TRADING AS 2RM SECURITY AND A NUMBER OF ENTITIES AFFILIATED TO 2RM

CC CASE NUMBER: 2017Apr0057

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. "Acquiring Firm" means Fidelity Security Services (Pty) Ltd;
- 1.2. "Approval Date" means the date referred to in the Tribunal's merger clearance certificate (Form CT15);
- 1.3. "2RM" means Analytical Risk (Pty) Ltd trading as 2RM Security and a number of entities affiliated to 2RM;
- 1.4. "Commission" means the Competition Commission of South Africa;
- 1.5. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.6. "Competition Act" means the Competition Act 89 of 1998, as amended;
- 1.7. "Conditions" mean these conditions;
- 1.8. "Implementation Date" means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.9. "Merging Parties" mean Fidelity and 2RM;
- 1.10. "Proposed Transaction" means the acquisition of control over the 2RM business by the Acquiring Firm;
- 1.11. "Target Firm" means 2RM;
- 1.12. "Tribunal" means the Competition Tribunal of South Africa; and

1.13. "Tribunal Rules" mean the Rules for the Conduct of Proceedings in the Tribunal.

2. Recordal

2.1. On 28 April 2017, the Merging Parties filed a large merger transaction with the Commission. Following its investigation of the Merger, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the provision of guarding and technology and electronic markets in South Africa. The Commission found that post-merger the merged entity will be constrained by multiple competitors in the market.

2.2. The Merging Parties submitted that the Proposed Transaction will not result in any retrenchments. At the Tribunal's request, the Merging Parties have agreed to a condition forming part of the approval of the Proposed Transaction that there will be no retrenchments as a result of the merger for a period of 2 (two) years from the Implementation Date.

3. Conditions to the approval of the merger

3.1. The Merging Parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date.

3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

4. Monitoring of compliance with the Conditions

4.1. The Acquiring Firm shall:

4.1.1. Inform the Commission in writing of the Implementation Date within 5 (five) days of it becoming effective;

4.1.2. The Merging Parties shall circulate a copy of the employment Conditions to all their employees and registered trade unions and/or employee

representatives within 5 (five) business days of the Implementation Date.

- 4.1.3. As proof of compliance thereof, a senior official of the Acquiring Firm shall submit an affidavit attesting to the notification referred to in paragraph 4.1.2 above, and provide a copy of the notice to the Commission within 5 (five) business days of the circulation of the conditions.
- 4.2. The Acquiring Firm shall submit an affidavit within 5 (five) business days of each annual anniversary of the Implementation Date, confirming compliance with the Conditions for the duration of the Conditions. This affidavit shall be deposited to by a senior official of the Acquiring Firm.
- 4.3. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, this will be dealt with in terms of Rule 39 of Commission Rules read together with Rule 37 of the Tribunal Rules;
- 4.4. The Merging Parties may at any time, on good cause shown, approach the Commission for the conditions to be lifted, revised or amended.
- 4.5. All correspondence in relation to these Conditions should be forwarded to mergerconditions@compcom.co.za