



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM165Jan22

In the matter between:

Digital Titan (Pty) Ltd

Primary Acquiring Firm

And

TDE Investments (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Presiding Member)
: I Valodia (Tribunal Panel Member)
: T Vilakazi (Tribunal Panel Member)
Heard on : 20 July 2022
Decided on : 20 July 2022

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by: Yasmin Tayob Carrim
Signed at: 2022-07-20 11:28:15 +02:00
Reason: Witnessing Yasmin Tayob Carri

Yasmin Tayob Carrim
Yasmin Tayob Carrim

Presiding Member
Ms Yasmin Carrim

20 July 2022

Date

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 20 July 2022

To : Bowmans Gilfillan Attorneys

Case Number: LM165Jan22

Digital Titan (Pty) Ltd And TDE Investments (Pty) Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **11 January 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo Mputze

ANNEXURE A
DIGITAL TITAN (PTY) LTD
AND
TDE INVESTMENTS (PTY) LTD
CASE NUMBER: LM165Jan22

CONDITIONS

1. DEFINITIONS

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1 “**Acquiring Firm**” means Digital Titan (Pty) Ltd (registration number K2021131831), a newly incorporated private company incorporated in accordance with the laws of South Africa;
- 1.2 “**Approval Date**” means the date on which the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.3 “**B-BBEE**” means Broad-Based Black Economic Empowerment as contemplated in the B-BBEE Act;
- 1.4 “**B-BBEE Act**” means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 1.5 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6 “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Competition Commission issued in terms of section 21 of the Competition Act;
- 1.7 “**Competition Act**” means the Competition Act No. 89 of 1998, as amended;
- 1.8 “**Conditions**” means these conditions;
- 1.9 “**Days**” means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.10 “**Digital Titan**” means Digital Titan Proprietary Limited;

- 1.11 “**ESOP**” means an employee share ownership program contemplated in paragraph 3.2 of the Conditions;
- 1.12 “**Historically disadvantaged persons**” means persons as contemplated by the by Section 3(2) of the Competition Act;
- 1.13 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.14 “**Interconnection**” means the connections via a physical cable (also called cross-connects) between the IT equipment (servers and routers) of a data centre customer and the equipment of another customer of the data centre and “**Interconnect**” shall have the cognate meaning;
- 1.15 “**Intervenor**” means African Data Centres SA Development (Pty) Ltd (registration number: K2020656263), a private company incorporated in accordance with the laws of South Africa granted intervenor status by the Tribunal on 17 May 2022;
- 1.16 “**Internet Exchange Point**” or “**IXP**” means a piece of IT equipment (a network switch) through which companies that have registered autonomous networks such as Internet Service Providers (“ISPs”) and content delivery network providers connect with each other;
- 1.17 “**Merged Entity**” means TDE Investments subject to the control of Digital Realty following implementation of the Merger;
- 1.18 “**Merger**” means the acquisition of control, as defined in section 12 of the Competition Act, over the Target Firm by the Acquiring Firm;
- 1.19 “**Merger Parties**” means the Acquiring Firm and the Target Firm;
- 1.20 “**NAP Africa**” means the internet exchange owned, controlled and operated by NAP Africa Exchange (Pty) Ltd, a subsidiary of the Target Firm;
- 1.21 “**NAP Africa Condition**” means the condition set out in paragraph 2 of the Conditions;
- 1.22 “**Peering**” means a direct physical connection utilizing a fiber tether (cable) to an internet exchange point (IXP) that allows two networks to connect and exchange traffic directly from one Autonomous System Network (ASN) to another ASN and “**Peer**” shall have the cognate meaning;

- 1.23 “**POP**” means an artificial demarcation point or network interface point between communicating entities. A common example is an ISP point of presence, the local access point that allows users to connect to the Internet with their ISP;
- 1.24 “**Price List**” means the Target Firm’s price list, as updated from time-to-time in the ordinary course of business;
- 1.25 “**Remote Peering**” means peering at an Internet Exchange Point without having a physical presence in the Internet Exchange Point’s infrastructure;
- 1.26 “**South Africa**” means the Republic of South Africa;
- 1.27 “**Target Firm**” means TDE Investments (Pty) Ltd (registration number: K2019077650), a private company duly incorporated in accordance with the laws of South Africa;
- 1.28 “**Technical Requirements**” means the Target Firm’s technical requirements for Peering and/or Remote Peering as published and as updated from time-to-time in the ordinary course of business;
- 1.29 “**TDE Investments**” means TDE Investments Proprietary Limited;
- 1.30 “**Teraco**” means Teraco Data Environments Proprietary Limited, a subsidiary of TDE Investments;
- 1.31 “**Teraco Connect HoldCo**” means Teraco Connect HoldCo (RF) Proprietary Limited, a subsidiary of the Teraco Connect Trust;
- 1.32 “**Teraco Connect Trust**” means The Teraco Connect Trust (Master’s Reference No. 003384/2015(T), a B-BBEE Trust which operates for the benefit of Historically Disadvantaged Persons; and
- 1.33 “**Tribunal**” means the Competition Tribunal of South Africa.

2. **NAP AFRICA**

- 2.1 Subject to 2.2 and 2.3 below, and provided the Technical Requirements for Peering and Remote Peering, as applicable, are met, the Target Firm shall not:
 - 2.1.1 restrict or prevent any third-party provider of co-location data centres, including the Intervenor, from connecting to, and Peering at NAP Africa located at the Target Firm's data centres;
 - 2.1.2 restrict or prevent the customers of any third-party provider of co-location data centre services, including the Intervenor, from Remote Peering at NAP Africa, facilitated by the third-party provider of co-location data centres;
 - 2.1.3 restrict or prevent any third-party providers of co-location data centres, capable of Peering or facilitating Remote Peering at NAP Africa, from marketing these services to its customers and potential customers, provided that such marketing is reasonable and proportional and clearly states that the third-party provider of co-location data centres offers "Remote Peering at NAP Africa Internet Exchange"; or
 - 2.1.4 prevent a third-party provider of co-location data centres (as contemplated in 2.1.1) and/or a Remote Peering customer (as contemplated in 2.1.2) from connecting to and Peering or Remote Peering, as applicable, at NAP Africa.
- 2.2 In giving effect to 2.1 above, any such third-party provider, or customer, will, subject to availability of space and power and ordinary business requirements, be permitted to connect to, and Peer at NAP Africa on terms and conditions that are in accordance with the Target Firm's Price List and on the basis of its standard terms and conditions.
- 2.3 Subject to availability of space and power in the ordinary course and its ordinary business requirements, the Target Firm shall:
 - 2.3.1 permit third-party providers of co-location data centres wishing to deploy in the Target Firm's co-location data centres, to establish and maintain a POP where NAP Africa is located, in accordance with the Target Firm's Price List and on the basis of its standard terms and conditions, including permitting Peering at NAP Africa and Interconnection for the purpose of facilitating Remote Peering and Interconnection with the Target Firm's data centre customers; and

2.3.2 permit any such third-party provider of co-location data centres to Interconnect in accordance with the Target Firm's Price List then in effect and on the basis of its standard terms and conditions.

3. B-BBEE AND EMPLOYEE SHARE OWNERSHIP PROGRAM

3.1 **[CONFIDENTIAL]**

3.2 **[CONFIDENTIAL]**

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within five (5) Days of its occurrence.

4.2 The Merged Entity shall inform the Commission of the commencement date of the ESOP within 5 (five) Days of its occurrence.

4.3 For a period of 3 (three) years from the Implementation Date, the Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date, provide to the Commission a report detailing its compliance with the Conditions in paragraph 3.1 and 3.2 (and, in respect of the Condition in paragraph 3.2, demonstrating the manner in which the ESOP complies with the design principles set out in Annexure B hereto). This report shall be accompanied by an affidavit, attested to by a director and/or Chief Executive Officer of the Merged Entity in South Africa confirming the accuracy of the report.

4.4 Any person who believes that the Merger Parties have failed to comply with the Conditions may approach the Commission with their complaint.

4.5 The Commission may request any information from the Merger Parties which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.

5. DURATION

The NAP Africa Condition will endure for a period of five (5) years from the Implementation Date.

6. BREACH OF CONDITIONS

In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been an apparent breach of the Conditions, the matter will be dealt with in terms of Rule 39 of the Rules for the

Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

7. VARIATION

The Commission or the Merger Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be lifted, revised or amended on good cause shown.

8. GENERAL

All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

