

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM019May21

In the matter between:

Altron TMT SA Group (Pty) Ltd

Primary Acquiring Firm

And

Law Trusted Third Party Services (Pty) Ltd

Primary Target Firms

Panel : E Daniels (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: I Valodia (Tribunal Panel Member)
Heard on : 20 September 2021
Decided on : 20 September 2021

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).

Enver Daniels

Presiding Member
Mr Enver Daniels

20 September 2021

Date

Concurring: Ms Yasmin Carrim and Prof. Imraan Valodia



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 20 September 2021

To : Webber Wentzel Attorneys

Case Number: LM019May21

Altron TMT SA Group (Pty) Ltd And Law Trusted Third Party Services (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 **30 April 2021** 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
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Sunnyside
Pretoria 0132
Republic of South Africa
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The Registrar, Competition Tribunal



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM019MAY21

Altron TMT SA Group (Pty) Ltd (Primary Acquiring Firm)

and

Law Trusted Third Party Services (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 20 September 2021, the Competition Tribunal conditionally approved the large merger between Altron TMT SA Group (Pty) Ltd (“Altron TMT”) and Law Trusted Third Party Services (Pty) Ltd (“LawTrust”).
- [2] The proposed transaction involves Altron TMT acquiring 100% of the issued shares in LawTrust. Post-merger, Altron TMT will wholly own LawTrust.
- [3] Altron TMT is ultimately controlled by Allied Electronics Corporation Limited (“Altron”), a JSE listed company not controlled by any firm. The Altron Group¹ has investments in telecommunications, multi-media, and information technology. Of relevance in the current transaction are the Acquiring Group’s information technology (“IT”) security services.
- [4] Law Trust is a wholly owned subsidiary of Etion Limited (“Etion”), a JSE listed entity. LawTrust holds 50% shares in Electronic DNA Proprietary Limited (“eDNA”), which is a joint venture with DataCentrix Proprietary Limited (“DataCentrix”). LawTrust is a specialist cyber security solutions provider, whose main streams of business are:
 - 4.1. Public Key Infrastructure (“PKI”), a WebTrust certified Trust Centre in South Africa from which LawTrust issues various types of digital certificates.
 - 4.2. Digital signature solutions, in terms of which LawTrust issues Advanced Electronic Signatures. LawTrust is currently the only accredited provider of Advanced Electronic Signature certificates and Advanced Electronic Signatures. LawTrust offers a variety of electronic signature solutions, these include SigningHub, Bulk signing and Signing solutions;
 - 4.3. Biometrics software, in terms of which LawTrust develops a matching platform to support the onboarding and ID Proofing of customers for digital signature accounts.

¹ Refers to Altron TMT, its controllers, and subsidiaries.

Horizontal overlaps

- [5] The Competition Commission (the “Commission”) identified horizontal overlaps in the activities of the merging parties and assessed the impact of the proposed transaction on the following markets:
- (i) the broad national market for the provision of all IT security products and services;
 - (ii) the narrow national upstream market for the provision of PKI and digital certificates;
 - (iii) the narrow national downstream market for supply of digital signature solutions; and
 - (iv) the narrow national market for the supply of biometric solutions.
- [6] The Commission found that post-merger, the merged entity will have a low market share of less than 15% in the broad national market for the provision of all IT security products and services, and will continue to face competition from a number of suppliers of IT and security products and services.²
- [7] In the national upstream market for the provision of PKI and digital certificates, the Commission found that the merged entity will have a moderate market share of less than 25%, and customers will have access to supply from alternative providers in the market.³
- [8] However, in respect of Advanced Electronic Signature certificates (a specific type of digital certificates), LawTrust has a pre-merger monopoly position because the South African Post Office (“SAPO”) has not been operational and the South African Accreditation Authority (“SAAA”) has not accredited other players in the market. The Commission is of the view that the proposed merger does not change this position because LawTrust will remain the only supplier of Advanced Electronic Signature certificates after the merger, and until the SAAA has accredited another player. The Commission was concerned that in the absence of alternative suppliers in this market, LawTrust might be incentivised to price excessively post-merger. In order to address this concern, the merging parties agreed to a condition that any future price increases would be in line with consumer price inflation.
- [9] Further, the Commission concluded that the proposed transaction is unlikely to result in the merged firm having the ability to unilaterally increase prices in the upstream market for the provision of PKI and digital certificates due to the merging parties’ post-merger market shares being moderate; the existence of alternative suppliers for the supply of digital certificates that customers can switch to; and where customers do not have alternative suppliers, only LawTrust is active and the proposed merger does not alter this.

² Such as Accenture, DRS, Gijima, DataCentrix, and Ayo.

³ Such as TrustFactory and Gijima in the local market, and Entrust, Sectigo, Entersekt, Sectigo, Symantec, DigiCert, Global Sign, Verisign and Thawte in the global market.

- [10] In the narrow national downstream market for the supply of digital signature solutions, the Commission received conflicting views regarding the availability of alternative digital signature solutions. However, the Commission ultimately found that the other local suppliers such as EOH and PBSA, and international suppliers such as DocuSign, Adobe Sign, PandaDoc and HelloSign may be able to constrain the merged entity post merger.
- [11] In respect of Advanced Electronic Signature certificates, the Commission noted that the merger does not alter the merged entity's ability and incentive to engage in exclusionary conduct as LawTrust is the only supplier of Advanced Electronic Signature solutions pre- and post-merger. However, according to the Commission, this is not merger specific.
- [12] The Commission also found that the merger does not raise any concerns in the narrow national market for the supply of biometric solutions, as the merging parties are insignificant players in the market with a market share of less than 15%, and there are several firms in the market which supply biometric solutions.⁴
- [13] During the hearing, the merging parties put on record that whilst they agree with the manner in which the Commission defined the relevant markets, they do not agree with the market shares as the Commission did not take into account the market shares of international players in its calculations. The Commission acknowledged that it faced difficulties in obtaining market shares from various international players and that it is possible that the market shares may be overstated in some of the relevant markets. However, the Commission submitted that the reduced market shares would not have altered the theories of harm that formed part of the Commission's analysis.

Vertical overlaps

- [14] The Commission identified a vertical overlap in relation to PKI and digital certificates solutions (upstream market) and digital signature solutions (downstream market), as both LawTrust, and the Acquiring Group supply PKI and digital certificates in the upstream market while both firms also supply digital signature solutions at the downstream level of the value chain.
- [15] The Commission found that while the merged entity may not have the ability to foreclose rivals in the downstream market from accessing PKI and digital certificates, the merged entity may have an incentive to do so as this would enable the merged entity to expand its own downstream digital signature solutions.
- [16] The Commission found that as a result of LawTrust's monopoly in respect of Advanced Electronic Signature certificates, the merged entity will likely have the ability and incentive to foreclose its downstream rivals. However, the conditions imposed address this concern by requiring the merging parties to supply Advanced Electronic Signature Certificates to all South African entities that

⁴ Such as EOH, Managed Integrity Evaluation (Pty) Ltd and Xpert Decision System (Pty) Ltd, Idemia, NEC, and Ideco.

require these products, including the merging parties' downstream rivals, on fair, reasonable and non-discriminatory commercial and pricing terms.

- [17] The Commission also found that the merged entity lacks the ability to foreclose rival digital signature solutions providers from accessing Altron Group as a customer. However, it may have the incentive to do so due to the merged entity having its own digital signature solution which competes with others in the market and it would be contrary to the rationale of expanding LawTrust's business if the Altron Group resells digital signature solutions of other providers.

Barriers to entry

- [18] The Commission considered barriers to entry in the two markets where the merging parties have high market shares, namely the PKIs and digital certificates market and the digital signature solutions market.
- [19] The Commission found that barriers to entry in both markets are high. This is due to, *inter alia*, legislative requirements, and significant capital and operating costs.

Coordination

- [20] As a result of this proposed transaction, the Altron Group and DataCentrix, who are competitors in the markets for ICT and IT solutions, will now have direct links to each other via the eDNA joint venture. The structural link introduced by the merger between DataCentrix and Altron Group may now make it easier for Altron Group and DataCentrix to coordinate on competitively sensitive information such as coordinating pricing and marketing policies, or to exchange sensitive information on these matters. The Acquiring Group's and DataCentrix's incentives to compete might also be reduced. The conditions imposed include a provision to prevent cross directorship; and a provision to ensure that competitively sensitive information in relation to the ICT solutions markets and related markets is not discussed, disclosed nor shared by the merging parties.
- [21] Accordingly, we conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.

Public interest

- [22] The merger parties made an unequivocal undertaking that there shall be no retrenchments as a result of the proposed transaction.
- [23] The Department of Home Affairs ("DHA") submitted to the Commission, during the merger investigation, that conditions to the merger must require LawTrust to deliver a custom written source code in respect of a specific project of the DHA. The Merging Parties confirmed during the hearing that LawTrust has transferred the source code to the DHA as requested.

[24] The Tribunal approved the merger subject to conditions, attached as “*Annexure A*”.

Mr Enver Daniels

20 September 2021

Date

Ms Yasmin Carrim and Prof. Imraan Valodi concurring

Tribunal Case Manager: Camilla Mathonsi and Duduetsang Mogapi
For the Merging Parties: Daryl Dingley, Clare-Alice Vertue and Lebohang
Makhubedu of Webber Wentzel
For the Commission: Beverley Chomela and Grashum Mutizwa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM019MAY21

In the large merger between:

Altron TMT SA Group (Pty) Ltd

Primary Acquiring Firm

And

Law Trusted Third Party Services (Pty) Ltd

Primary Target Firm

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

- 1.1. **“Advanced Electronic Signature Certificate”** means a digital signing certificate that is issued by a firm which has been accredited by SAAA in terms of the ECT Act;
- 1.2. **“Altron Group”** means Altron TMT SA Group Proprietary Limited, Altron TMT Holdings Proprietary Limited, Altron Finance Proprietary Limited and Allied Electronics Corporation Limited Bytes Conference Centre Proprietary Limited, iS Partners Proprietary Limited, Arrow Altech Holdings Proprietary Limited, Altron Nexus Proprietary Limited, Gydan Investments (RF) Proprietary Limited, Altron TMT Proprietary Limited, Genbiz Trading 1001 Proprietary Limited t/a Xerox Eastern Cape, CS Computer Services Holdings Limited, Netstar Proprietary Limited, Bytes Systems Integration Proprietary Limited, Bytes Healthcare Solutions Proprietary Limited, Altech UEC South Africa Proprietary Limited, and all the firms directly and indirectly controlled by them;
- 1.3. **"Approval Date"** means the date the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.4. **“Base Price”** means the more competitive 2019 prices charged by LawTrust for Advanced Electronic Signature Certificates;

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- 1.5. **“Certificate Authority”** means a trusted entity that operates PKI to issue Digital Certificates, by binding the identity of a user or system to a public key with Digital Signature; scheduling the expiry date for certificates; and ensuring certificates are revoked when necessary by publishing a certificate revocation list;
- 1.6. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.7. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- 1.8. **“Competitively Sensitive Information”** includes, but is not limited to, any and all such information relating to:
 - 1.8.1. pricing – including but not limited to pricing of specific products, prices/discounts offered to specific customers and planned price reductions or increases in ICT solutions markets and related markets;
 - 1.8.2. margin information by product or customers in ICT solutions markets and related markets;
 - 1.8.3. cost information for particular products offered in ICT solutions markets and related markets;
 - 1.8.4. information on specific customers and customer strategy; and
 - 1.8.5. business plans, advertising strategies and marketing strategies on ICT solutions markets and related markets.
- 1.9. **“Conditions”** mean these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
- 1.10. **“Consumer Price Index”** means the annual Consumer Price Index of the preceding year (beginning with the year preceding the Implementation Date);
- 1.11. **“Days”** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

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- 1.12. **“DataCentrix”** means DataCentrix Proprietary Limited;
- 1.13. **“Digital Certificate”** means data files used to establish the identity of people, firms and electronic assets on network and allow for secure, encrypted transactions. Digital Certificates are issued by Certificate Authorities using PKI;
- 1.14. **“Digital Signature Solutions”** means electronic signature software or products which originates from, and or rely on Digital Certificates;
- 1.15. **“Downstream Rivals”** means firms that supply Digital Signature Solutions in South Africa in competition with LawTrust;
- 1.16. **“ECT Act”** means the Electronic Communications and Transactions Act No. 25 of 2002;
- 1.17. **“ICT solutions markets”** means products and services in the Information and Communication Technology sector, where both Altron Group and DataCentrix conduct themselves as Information and Communication Technology Service Providers and System Integrators by offering the same and/or similar Information and Communication Technology solutions to the market;
- 1.18. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.19. **“EDNA Joint Venture”** means Electronic DNA Proprietary Limited joint venture between LawTrust and DataCentrix;
- 1.20. **“LawTrust”** means Law Trusted Third Party Services Proprietary Limited;
- 1.21. **“Merger”** means the acquisition of LawTrust by the Altron Group;
- 1.22. **“Merging Parties”** mean the Altron Group and LawTrust;
- 1.23. **“PKI”** means Public Key Infrastructure, which refers to a combination of components such as hardware, software products, policies, procedures, and entities needed to safely distribute, verify and revoke digital certificates. Public Key Infrastructure is a

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system for publishing the public keys used in public cryptography;

- 1.24. **“Reference Price”** means R933.72 for a three-year supply of Advanced Electronic Signatures Certificates excluding the token and token software, or R1 726.71 for a three-year supply of Advanced Electronic Signature Certificates including the token and token software (these being the prices that applied in 2019 and adjusted to account for CPI in 2019 and 2020);
- 1.25. **“SAAA”** means the office of the South African Accreditation Authority that is established in terms of Chapter 6 of the ECT Act, which is also a division of the Department of Communications and Digital Services;
- 1.26. **“The Target Firm”** means Law Trusted Third Party Services Proprietary Ltd;
- 1.27. **“Tribunal”** means the Competition Tribunal of South Africa a statutory body established in terms of section 26 of the Competition Act;

2. Conditions to the approval of the Merger

2.1. Cross directorships

- 2.1.1. For as long as Merging Parties can appoint or nominate directors to the board of eDNA Joint Venture, they shall ensure that their nominees:
 - 2.1.1.1. are not employed in an operational role by or serve on, or are nominated and/or appointed on any board of the holding companies and/or affiliate companies of Altron Group that are active in ICT solutions markets with the exception of the Altron Security business division.

2.2. Confidential information

- 2.2.1. No Competitively Sensitive Information in relation to the ICT solutions markets and related markets will be discussed, disclosed nor shared in any form or means by the Merging Parties nominees on the board of eDNA Joint Venture.

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- 2.2.2. The nominees of the Merging Parties on the eDNA Joint Venture contemplated in 2.1.1 shall not disclose to nominees of DataCentrix any Competitively Sensitive Information.
- 2.2.3. The nominees of the Merging Parties contemplated in 2.1.1 shall be required to sign a Confidentiality Undertaking to ensure compliance with the abovementioned conditions.
- 2.2.4. Within 60 Days of the Implementation Date, the Merging Parties shall put in place, for the Commission's approval, an appropriate confidential and information exchange policy to ensure compliance with clause 2 of the Conditions.
- 2.2.5. Within 60 Days of receiving the confidential and information exchange policy prepared by the Merging Parties, the Commission shall provide any comments that it has thereon to the Merging Parties and the Merging Parties shall within 30 Days thereof seek to finalize the policy with the Commission.

2.3. Supply of Advanced Electronic Signature Certificates

- 2.3.1. From the Implementation Date, the Merging Parties shall supply Advanced Electronic Signature Certificates to all South African entities that require these products, including the Merging Parties' Downstream Rivals, on fair, reasonable and non-discriminatory commercial and pricing terms.
- 2.3.2. Within 10 Days from the Implementation Date, the Merging Parties shall publish the Reference Price on their website.
- 2.3.3. **Increases in pricing of Advanced Electronic Signature Certificates**
 - 2.3.3.1. In relation to the supply of Advanced Electronic Signature Certificates as contemplated in 2.3.1 and to the extent that the Merging Parties intend to increase the price of Advanced Electronic Signature Certificates, the Merging Parties shall limit

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such price increases to no more than a yearly price increase linked to the Consumer Price Index.

2.3.3.2. The Base Price upon which the Consumer Price Index increases are applied shall be the Reference Price.

3. Duration

3.1. The cross directorship and confidential information conditions in clause 2.1. and 2.2 above shall apply for as long as the Altron Group (and LawTrust) can appoint directors to the board of the eDNA Joint Venture.

3.2. The supply and pricing conditions in clause 2.3 above shall apply for a period of 3 (three) years or until the successful accreditation and operation of another firm by the SAAA, whichever occurs first.

4. Monitoring of compliance with the Conditions

4.1. As proof of compliance herewith, within 20 Days of the Implementation Date, the Merging Parties shall submit an affidavit listing the names of the persons nominated and/or appointed by the Acquiring Group to the board of directors of eDNA Joint Venture, their tenure, and the nature of their directorships. This affidavit shall also confirm that the nominees to the eDNA Joint Venture board meet the requirements set out in clause 2.1.1.

4.2. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

4.3. Within 20 Days of the Implementation Date, the Merging Parties shall provide the Commission with a copy of the Confidential Undertaking (s) referred to in clause 2.2.3 signed by each director of the Merging Parties and for subsequent Directors within 30 Days of appointment. The Altron Group shall ensure that the Confidentiality Undertaking shall form part of Directors' appointment letters and Employees' service agreements within 30 Days after the appointment of the Director(s) and Employee(s).

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- 4.4. For as long as these Conditions remain in place, the Altron Group shall annually, within 45 Days of each anniversary of the Implementation Date, submit to the Commission an affidavit from one of its directors confirming compliance with clause 2 of the Conditions, including compliance with the confidential and information exchange policy.
- 4.5. For as long as the Conditions in clause 2.3 remain in place, the Altron Group shall annually, within 45 Days of each anniversary of the Implementation Date, submit to the Commission an affidavit from one of its directors confirming compliance with clause 2.3 of the Conditions, including supporting documents in the form of a list of all the customers Altron Group sold Advanced Electronic Signature certificates to, the customer contact details, and the price charged by Altron Group.
- 4.6. Within 20 Days from Implementation Date, the Merging Parties shall provide the Commission with proof of implementing clause 2.3.2.

5. Apparent Breach

- 5.1. An apparent breach by the Merging Parties of any of the Conditions shall 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.

6. Variation of Conditions

- 6.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

7. General

- 7.1. The affidavits/reports and or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.