



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM082Jun17

In the matter between

**ENX GROUP LIMITED**

Acquiring Firm

And

**EXTRACT GROUP LIMITED**

Target Firm

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Panel	: Andiswa Ndoni (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 16 August 2017
Order Issued on	: 16 August 2017
Reasons Issued on	: 04 September 2017

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### REASONS FOR DECISION

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#### APPROVAL

- [1] On 26 July 2017, the Competition Tribunal ("Tribunal") approved the acquisition by enX Group Limited (ENX) of eXtract Group Limited ("Extract") subject to conditions.
- [2] The reasons for the conditional approval follow.

## **PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES**

### *Primary Acquiring Firm*

[3] The primary acquiring firm is ENX, a public company listed on the Johannesburg Stock Exchange, not controlled by any one firm.<sup>1</sup> ENX controls a number of entities in South Africa<sup>2</sup> and, as a group, provides energy equipment, consumables, related components and support services to a wide range of economic sectors in South Africa and Sub-Saharan Africa. It services a wide range of customers and conducts its business under four primary business divisions.<sup>3</sup>

[4] In addition to controlling a number of entities in South Africa, pre-transaction, ENX holds a 20.88% share in the target firm, Extract.

### *Primary Target Firm*

[5] The primary target firm is Extract, a public company listed on the JSE and not controlled by any one firm. Extract controls a number of entities, most relevant to the current transaction is that of MCC Contracts (Pty) Ltd ("MCC").<sup>4</sup>

[6] MCC, being the only subsidiary of Extract's which is active in South Africa, provides open cast mining and plant rental services including drilling, blasting, load hauling and rehabilitation.

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<sup>1</sup> The Commission, in its report, lists the largest shareholders holding 5% or more of ENX's shareholding as at 31 August 2016 as Peregrine Holdings Limited (35.62%), Capleverage Pty Ltd (also known as Samvenice Trading) (23.43% and the AutoWorkers Providence fund (7.83%). In subsequent correspondence with the Tribunal, the Merging parties submitted that these percentages had changed by the time of the hearing.

<sup>2</sup> Relevant to the proposed transaction are: Eqstra Fleet Services (Pty) Ltd, Eqstra Investments (Pty) Ltd, Eqstra Flexi Feet (Pty) Ltd, Eqstra Corporation Limited and Eqstra Financial Services (Pty) Ltd.

<sup>3</sup> Namely: Fleet Management and Logistics, Industrial Equipment, Petrochemical, and Wood divisions.

<sup>4</sup> Other subsidiaries include Mutual Construction Co. Tvl (Pty) Ltd, MCC Equipment rental (Pty) Ltd, Eqstra East Africa Limited and PT MCC Extract Solutions.

## PROPOSED TRANSACTION AND RATIONALE

- [7] The proposed transaction comprises of six interrelated steps. Relevant to our decision is only the fact that, at one point in the proposed transaction, ENX will increase its shareholding from approximately 20% in the target firm to approximately 90%. Thereafter ENX will unbundle its 90% (comprising its original 20% as well as the newly acquired 70%) shareholding to its investors. Relying on figures submitted to the Tribunal, the merging parties submitted that post the completion of the transaction, no one firm will control more than 15% of the primary target firm.<sup>5</sup>
- [8] The condition imposed upon the merger, which was proposed to the Tribunal by the Competition Commission ("Commission") and accepted by the merging parties, requires that ENX unbundle its 90% shareholding in the target firm, within 30 days of its acquisition. At the hearing, the merging parties confirmed that they understand the condition to require the unbundling of all of the Extract shares controlled by ENX within 30 days of ENX acquiring control of Extract.<sup>6</sup>
- [9] In terms of the rationale, the primary target firm submitted that the proposed transaction formed part of a broader restructure of Extract's banking facilities in light of Extract's poor performance and hardships faced in in very difficult macro-economic conditions. The ultimate process of converting Extract's debt (owed to ENX through a number of loans) to equity and the subsequent unbundling of the shares would result in Extract being able to attract credible and experienced management talent to oversee repositioning, align Extract's long-term capital structure with the new strategy and create the necessary time for management to execute their repositioning plan and unlock value for shareholders.

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<sup>5</sup> The Merging parties submitted a circular which indicates that post restructuring, the following parties will control the highest shareholding in Extract, above 5%: K2015269141 (12.6%); Peregrine Group (8.5%) Samvenice Trading (6.4%) Protea Asset Management (6.4%).

<sup>6</sup> Tribunal Transcript of Proceedings 16 August 2017, page 7.

- [10] The primary acquiring firm submitted that converting the extract debt to equity and unbundling its extract shares would create certainty regarding its investment in Extract to unlock value for ENX shareholders.

#### **RELEVANT MARKET AND IMPACT ON COMPETITION**

- [11] The Commission, in its report, submitted that the proposed transaction would not result in any horizontal overlaps. The Commission did however find that the target firm had, in the last 12 months, provided information technology support services, maintenance work, spare parts, and fleet management services to the acquiring firm, indicating an existing vertical relationship between the two.
- [12] The Commission found it unnecessary to conduct a vertical assessment of the transaction owing to the fact that the proposed transaction would only entail a temporary acquisition of control, amounting to no more than 30 days. The Commission concluded that the proposed transaction is unlikely to change the structure of any market.
- [13] We concur with the Commission's finding. In light of the condition imposed, the transaction is unlikely to change the structure of any market and is unlikely to substantially prevent or lessen competition in the relevant markets in any way.

#### **PUBLIC INTEREST**

- [14] The merging parties confirmed that the proposed transaction will have no negative effects on employment. Particularly, no redundancies or retrenchments are envisaged as a result of the proposed transaction.<sup>7</sup>
- [15] No other public interest concerns arise from the proposed transaction.

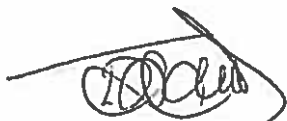
#### **CONCLUSION**

- [16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition,

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<sup>7</sup>See page 13 of Merger Record.

no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction subject to the conditions attached to the order.



**Ms Andiswa Ndoni**

**2017/09/04**

**Date**

**Prof Fiona Tregenna and Prof Imraan Valodia concurring**

Tribunal Researcher: Alistair Dey-van Heerden

For the merging parties: Rick van Rensberg of ENSAfrica

For the Commission: Simphiwe Gumede