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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM188Jan17

In the matter between:

Dimension Data Proprietary Limited	Primary Acquiring Firm
and	
The Consumer Facing Internet Access and Ancillary Services Business of Mweb Connect Proprietary Limited	Primary Target Firm

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Panel	: A Ndoni (Presiding Member)
	: I Valodia (Tribunal Member)
	: F Tregenna (Tribunal Member)
Heard on	: 17 May 2017
Order Issued on	: 17 May 2017
Reasons Issued on	: 31 May 2017

Reasons for Decision

Approval

[1] On 17 May 2017, the Competition Tribunal ("Tribunal") conditionally approved the merger between Dimension Data Proprietary Limited ("**DD**") and The Consumer Facing Internet Access and Ancillary Services Business of Mweb Connect Proprietary Limited ("**MWEB ISP**").[1]

[1] Please find attached a copy of the conditions to approval marked as Annexure A.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm DD is wholly-owned by Dimension Data Middle East and Africa Proprietary Limited which is in turn controlled by Dimension Data Holdings Plc which is in turn controlled by Nippon Telegraph and Telephone Corporation. Dimension Data controls The Internet Solutions Security Proprietary Limited ("**IS**").

[4] In South Africa the Dimension Data group operates through a variety of subsidiaries and divisions that specialize in IT communications services. They provide solutions to clients for their IT and communications infrastructures. DD is predominantly involved in the provision of services to corporate enterprises.

Primary target firm

[5] The primary target firm, MWEB ISP is controlled by Mweb Connect Proprietary Limited ("**MWEB**"). MWEB is controlled by Huntley Holdings Proprietary Limited which is controlled by MultiChoice Investment Proprietary Limited and ultimately controlled by Naspers Limited.

[6] The MWEB ISP business is involved in the provision of retail services to consumers for internet access over fixed lines, internet access via community Wi-FI hotpots, internet access via mobile phones, website hosting and mail, software, hardware, gaming and voice over internet protocol.

Proposed transaction and rationale

[7] The proposed transaction involves DD acquiring MWEB ISP. DD will, post-transaction, control the consumer facing internet access and ancillary services business of MWEB.

[8] DD submitted that its rationale for the transaction is to grow the consumer segment of its IS Business through the acquisition of MWEBS consumer business. MWEB has

submitted that the services offered by MWEB ISP is not core to its business offering and has therefore taken the decision to dispose of it.

Impact on competition

[9] The Competition Commission ("the Commission") identified horizontal overlaps in the following markets;

a. a national market for the retail of fixed line internet access to the consumer segment;
b. a national market for the provision of Wi-Fi internet access via public hotspots;
c. a national market for the retail of internet access via mobile data packages;
d. a national market for the provision of hosting services to consumers and SME's and;
e. a national market for the provision of fixed voice services.

[10] Save for the national market for the provision of Wi-Fi internet access via public hotspots the commission found that in all the other identified markets the market share accretion would be less than 1%. In the national market for the provision of Wi-Fi internet access via public hotspots the Commission's investigation revealed that MWEB ISP is a customer of VAST and does not own any Wi-Fi infrastructure of the network and as such the market structure would not be altered by the proposed transaction. In all the identified markets the Commission noted that the merged entity would continue to be constrained by other players.

[11] The Commission identified vertical relationships between the merged entity as DD procures certain managed services from MWEB ISP and MWEB ISP leases antennas and data centers from DD and procures broadband internet access services on a wholesale basis. The Commission evaluated the vertical overlaps and determined that the merged entity would not have the ability to foreclose downstream players.

[12] During its investigation, the Commission received a concern from a third party in relation to a trend where property developers would only allow a single access network operator to deploy its infrastructure on a premises and that providers have opted to contract into exclusive agreements to ensure that their infrastructure is deployed. The Commission's investigation revealed that the concern is not merger specific as MWEB ISP does not provide such services to the business market.

[13] The Commission is therefore of the view that the proposed transaction would not result in a substantial lessening of competition.

[14] We concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and would not lead to foreclosure concerns.

Public interest

[15] The Commission's investigation revealed that the proposed transaction would result in a negative effect on employment. This is dealt with in two categories; the first is merger-specific retrenchments as a result of duplications. The second is retrenchments as a result of restructuring processes.

[16] In terms of the first category, the merging parties intended to retrench 29 employees as a result of the merger. The Commission indicated that 4 of the employees held a matric qualification and would unlikely be able to secure new employment as a result of economic conditions. The Commission proposed a condition on the merging parties to restrict the number of retrenched employees to 25 skilled employees while continuing to employ the 4 employees for a period of 1 year post the approval of this transaction.

[17] In terms of the second category, the Commission found that plans of a restructuring process occurred prior to the contemplation of the merger and would therefore not be merger specific. DD, on review of the restructuring process intended to revise and accelerate it as it viewed market conditions to be different. When questioned by the Commission, during its investigation, of the potential that the revised plan may be merger specific DD abandoned the revised plan citing that MWEB was better at assessing the market conditions as it was a market player. In order for certainty the Commission proposed that a condition be included in the order which would prohibit DD from accelerating any retrenchments to a time earlier than MWEB had contemplated.

[18] We are of the view that employment concerns have been mitigated by the proposed conditions which have been made an order to the approval of this merger.

Conclusion

[19] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or result in foreclosure concerns. In addition, public interest issues which arise from the proposed transactions have been mitigated by the imposition of conditions to the merger. Accordingly, we approve the proposed transaction conditionally

Prof Imraan Valodia 31 May 2017
DATE

Ms Andiswa Ndoni and Prof Fiona Tregenna concurring

Tribunal Researcher:	Aneesa Ravat
For the merging parties:	Shaun Van der Meulen and Werner Rysbergen of Webber Wentzel.
For the Commission:	Billy Mabatamela and Lindiwe Khumalo