



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM016Apr17**

In the matter between

**EOH INDUSTRIAL TECHNOLOGIES (PTY) LTD**

Acquiring Firm

And

**POWERTECH SYSTEM INTEGRATORS (PTY) LTD**

Target Firm

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Panel	: Yasmin Carrim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 26 July 2017
Order Issued on	: 26 July 2017
Reasons Issued on	: 23 August 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 EOH Industrial Technologies (Pty) Ltd ("EOH") of the business of Powertech System Integrators (Pty) Ltd ("Powertech").
- [2] The reasons for the approval follow.

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

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is EOH, a company incorporated in accordance with the laws of the Republic of South Africa. EOH is a wholly owned and controlled subsidiary of EOH Holdings Ltd (“EOH Holdings”), a company listed on the Johannesburg Securities Exchange. The shares in EOH Holdings are widely dispersed and as such no single shareholder controls EOH Holdings.
- [4] EOH Holdings controls in excess of 50 subsidiaries in South Africa. EOH Holdings and its subsidiaries will herein be referred to as the “Acquiring Group”.
- [5] EOH implements enterprise solutions and has a wide range of industry consulting, IT Services, software, IT infrastructure, industrial technologies and business process outsourcing solutions. Of relevance to the proposed transaction are the activities of the primary acquiring firm that relate to Engineering Information Systems and Energy Management. EOH does not control any firm.

### *Primary Target Firm*

- [6] The primary target firm is the business of Powertech, a company incorporated in accordance with the laws of the Republic of South Africa. Pre-merger Powertech is a wholly owned and controlled subsidiary of Powertech Technologies (Pty) Ltd which is in turn controlled by Allied Electronics Corporation Ltd, a firm listed on the Johannesburg Securities Exchange.
- [7] The businesses acquired in the transaction are three divisions of Powertech, namely: Engineering Information Systems (“EIS”), Power Infrastructure Management (“PIM”) and Energy Management (“EM”).<sup>1</sup>

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<sup>1</sup>Powertech Quadpro SA (Pty) Ltd, a subsidiary of Powertech, does not form part of the proposed transaction. This subsidiary has been excluded because it operated independently of the businesses that are being sold to EOH under the proposed transaction.

- [8] EIS provides systems and management solutions to enable its customers to plan, maintain and control critical infrastructure networks and enterprise assets. It focuses on the implementation and support of software solutions for customers who own and/or operate critical infrastructure networks, namely national and local electricity distribution grids, telecommunications networks, road and rail transport networks, water networks and gas and petroleum pipeline networks. Specifically, the EIS division provides software solutions relating to mobile workforce management, geographic information systems, enterprise asset management and advanced distribution management systems.
- [9] PIM focusses on the design, development, integration and support of secondary electrical plants in electrical substations. The division, in essence, controls and monitors the electrical networks of Eskom and municipalities.
- [10] EM provides solutions that focus on the management of energy supply and demand for mainly mining and large industrial sectors as well as Eskom and municipalities. In simpler terms, EM provides automated meter reading systems for the electricity and water supply industry.

## **PROPOSED TRANSACTION AND RATIONALE**

- [11] In terms of the Sale of Business Agreement, EOH will acquire the three divisions of Powertech as a going concern.
- [12] In terms of the rationale, the primary acquiring firm submitted that the proposed transaction presents a solid business investment for EOH whilst providing EOH with additional product and service offerings with a strong management team to its existing portfolio.
- [13] The primary target firm submitted that the proposed merger provides an opportunity for its shareholders and ultimate holding company to concentrate on and expand their business activities and investments in a different sector. The proposed merger will also provide Powertech and its employees with better

growth opportunities through access to resources, customer base and the shared services of a larger listed group.

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

[14] The Competition Commission ("Commission") identified a horizontal overlap between the activities of the merging parties in the broad national markets for the provision of engineering information systems, and the provision of energy management services. In its recommendations, the Commission assessed the effects of the transaction in the following markets:

- 15.1. Mobile workforce management software solutions in South Africa;
- 15.2. geographic information systems software solutions in south Africa; and
- 15.3. energy management in South Africa.

### *National market for the provision of Mobile Workforce Management Solutions*

[15] Mobile Workforce Management Solutions are used by the merging parties to manage geographically distributed assets and a mobile workforce for enterprises such as Eskom, Telkom, municipalities and providers of logistics services.<sup>2</sup>

[16] Based on Target Account Market research reported by Click Software, a prominent supplier of Mobile Workforce Management Solutions, the Commission found that the merged entity will have a national market share of less than 1% in the respective market and would face constraint from a number of parties.<sup>3</sup>

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<sup>2</sup>A competitor of Powertech submitted that mobile workforce management services are software solutions for field force task management. This means the automation of processes for the technical resources in the field. This entails monitoring and scheduling resources to optimise service levels and resource utilisation.

<sup>3</sup> Certain information has been claimed as confidential by the merging parties and thus exact percentages have been approximated.

[17] The Commission submitted that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of workforce management solutions. We see no reason to differ in our finding.

*National market for the provision Geographical Information Systems Solutions*

[18] Geographic information system software solutions are designed to capture, store, manipulate, analyse, manage and present spatial or geographical data.<sup>4</sup> The market for its provision is fragmented and represents a wide sphere of participants including software resellers, implementation agencies, cartographers, data managers, big data providers, global positioning systems, track and trace systems for logistics providers, and geographical systems used in defense and the military. The business focus of both the merging parties is on customers who own and operate critical infrastructure networks, specifically in the energy and telecommunications industries.

[19] In its report, the Commission indicated that the merged entity will have a national market share of less than 15% in the provision for geographical information systems solutions and would continue to face competition from a number of firms.<sup>5</sup> The Commission concluded that it is unlikely that the merger would substantially prevent or lessen competition in the market. We concur with these findings.

*National market for the provision of Energy Management*

[20] Energy management includes the reporting of energy utilisation of firms, enabling such firms to find optimum ways of managing energy consumption based on the solutions provided by firms such as the merging parties. The merging parties submit that energy management refers to the metering and

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<sup>4</sup> This is the data or information that identifies the geographic location of features and boundaries on earth, such as natural or constructed features, oceans, and more. Spatial data is usually stored as coordinates, and is data that can be mapped.

<sup>5</sup> Certain information has been claimed as confidential by the merging parties and thus exact percentages have been approximated.

measuring energy services to intensive users such as mines and independent power producers.

- [21] In assessing the current transactions, the Commission submitted that the merged entity will have a national market share of less than 5% in the respective market. This figure is based on a calculation which involved the National Energy Regulator South Africa's 2006 Electricity Supply statistics which shows the total number of electricity customers. The estimated growth over a ten-year period was then added onto the number of customers. Thereafter, the final estimated number of customers was multiplied by R25 per month.<sup>6</sup>
- [22] The Commission concluded that the proposed transaction is unlikely to substantially lessen competition in the market for the provision of energy management services. We see no reason to differ from this finding.

#### *Creeping effects*

- [23] The Commission noted that the acquiring group has been acquiring a number of firms in the IT services sector which may raise competition concerns. However, it found that the firms which have been purchased are relatively small. In addition, the purchased firms do not operate in the same IT services markets, such that these mergers would have a significant effect on the acquiring group's market power. The Commission thus concluded that the mergers by the acquiring group are unlikely to raise any competition concerns in the proposed transaction.
- [24] Therefore, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition within the relevant markets.
- [25] We concur with the Commission's findings, but note that the Commission would be well advised to examine EOH's broader activities in related IT markets for any future merger assessments.

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<sup>6</sup> Email from Lee Christie of EOH to the Commission, 04 May 2017, Merger Record page 301.

## **PUBLIC INTEREST**

- [26] The merging parties confirmed that the proposed transaction will have no negative effects on employment. Particularly, no rationalisation or retrenchments are envisaged as a result of the proposed transaction.<sup>7</sup> At the merger hearing Mr. Hennie Du Plessis, the CEO of Powertech confirmed that all of the permanent employees of Powertech, along with a number of contractors, would be transferred to EOH.<sup>8</sup>
- [27] The Tribunal had noted the merging parties' submissions in the joint competitiveness report that, in the lead up to the merger, 105 members of the staff of the businesses of Powertech had been retrenched. Alive to the possibility that such retrenchments may have been enacted to facilitate the proposed transaction, the Tribunal questioned the merging parties on the matter extensively at the merger hearing. The Tribunal also noted that the employee composition of the primary target firm, Powertech, could hardly be described as being generally representative of the demographics of South Africa. Mr Du Plessis indicated that the retrenchments were as a result of a desire to maintain the sustainability of the business of Powertech in difficult financial times.
- [28] The Tribunal accepts Mr Du Plessis version and is appreciative of his candid responses as well as his stated commitment to pursue a transformation agenda once situated within EOH.<sup>9</sup> Mr Christie of EOH had also stated that there would be no retrenchments as a result of the merger and committed the primary target firm to employ more people from "previously disadvantages (d) categories". The Tribunal has accepted the undertakings given.
- [29] No other public interest concerns arise from the proposed transaction. The Tribunal notes that the only public interest issue dealt with by the Competition

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<sup>7</sup>Joint Competitiveness Report submitted by the Merging Parties, Merger Record, page 71.

<sup>8</sup> Tribunal Transcript of Proceedings, page 15, lines 20-23.

<sup>9</sup> Tribunal Transcript of Proceedings, page 26, lines 16-19.

Commission relates to employment. The Competition Commission should in mergers matters consider all the public interest matters listed in the Act.

## CONCLUSION

[30] 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, no public interest issues, apart from those elaborated upon during the hearing, arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



**Mr Enver Daniels**

**23 August 2017**

**Date**

**Ms Yasmin Carrim and Prof Imraan Valodia concurring**

Tribunal Researcher: Alistair Dey-van Heerden

For the merging parties: Lee Christie of EOH

For the Commission: Nolubabalo Myoli assisted by Thabelo Masithulela