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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 25/LM/Apr11

In the matter between:

Reunert Limited	Acquiring Firm
And	
ECN Telecommunications (Pty) Ltd	Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	08 June 2011
Order issued on	:	08 June 2011
Reasons issued on	:	05 July 2011

Reasons for Decision

Approval

1] On 8 June 2011 the Competition Tribunal ("Tribunal") approved the proposed merger between Reunert Limited and ECN Telecommunications (Pty) Ltd. The Tribunal's reasons for approving the transaction are set out below.

Parties to the transaction

2] The primary acquiring firm is Reunert Limited ("Reunert"), a public company incorporated in terms of the laws of the Republic of South Africa and listed on the Johannesburg Stock Exchange ("JSE"). Reunert, being a public company is not controlled by a single entity or shareholder but its major shareholders include Public Investment Corporation, Stanlib Asset Management, Old Mutual Investment Group and Investec Asset Management.[1] Reunert operates through more than 15 subsidiaries which it directly and indirectly controls.

1 http://www.reunert.co.za/inv_shareanalysis.htm

3] The primary target firm is ECN Telecommunications (Pty) Ltd [2] ("ECN"), a private company incorporated in accordance with the laws of the Republic of South Africa. ECN is not controlled by a single firm and nor does it directly or indirectly control any other firm.

4] In terms of the proposed transaction, particularly the Sale of Business Agreement, Reunert intends to acquire the business of ENC in its entirety as a going concern thereby gaining control of ENC.

Rationale for the proposed transaction

5] Reunert states that it is imperative for its subsidiary, Nashua Mobile, to have access to the network of a fixed line service provider such as ECN to enable it to provide fixed line voice services to its clients in future due to the imminent demise of the Least Cost Routing[3] ("LCR") market.[4]

6] Nashua Mobile is currently not well positioned to move its existing customers from LCR to Voice over Internet Protocol ("VoIP") and as part of the rationale for the proposed transaction ECN is to afford Nashua Mobile the platform necessary to make this shift.

7] ECN's rationale for the proposed transaction is that it is perfectly positioned in order to take advantage of the technological shift from LCR to VoIP but however requires substantial investment and infrastructure in order to take full advantage of the above opportunity. ECN's future growth is constrained by *inter alia* its present shareholders' limited ability to fund its further expansion.

8] Further, the anticipated investment in ECN's business will enable it to extend its network infrastructure and its association with Nashua Mobile will most likely enable ECN to expand its footprint in South Africa.

Activities of the merging parties

9] The acquiring group is comprised of companies focused on electronics and electrical engineering providing *inter alia* the design, development, manufacture, installation and maintenance of insulated power cables; the manufacture of copper and optical fibre telecommunication cabling for public network operators; the supply of office equipment systems such as copiers, printers, scanners and faxes in southern Africa; and the supply of Very High Frequency ("VHF") and Ultra High Frequency ("UHF") tactical communications equipment in South Africa.

10] Of more relevance to the proposed transaction, however, is that Nashua Mobile, which is part of the acquiring group, is a mobile telecommunication service provider, a retailer of telecommunications hardware (including mobile phones and related accessories) as well as internet access hardware and related systems support. Further, that Nashua Communications is also a company involved in the distribution of enterprise telecommunication solutions, with a focus on voice

2 http://www.ecntelecoms.com/index.php/about/
3 In voice telecommunication, LCR is the process of selecting the path of outbound communications traffic based on cost. Within a telecoms carrier, an LCR team might periodically (monthly, weekly or even daily) choose between routes from several or even hundreds of carriers for destinations across the world. This function might also be automated by a device or software program known as a "Least Cost Router."
4 The shrinking of the LCR market is linked to the shrinking in interconnection rates and this was confirmed by the Independent Communications Authority of South Africa ("ICASA").

communication, and the provision of related services, including private automatic branch exchange (“PABX”) and voice networks.

11] The primary target firm is active in the provision of inbound and outbound voice call services; least cost routing (LCR); value added voice services; network services; data services; ancillary services and wholesale services.[5] ECN makes the abovementioned services available to other licensed operators to carry their fixed voice traffic on its network on their behalf.[6]

Competitive assessment

12] The proposed transaction presents both horizontal and vertical dimensions. The horizontal dimension presents itself in the market for the provision of fixed voice services as both ECN and Nashua Mobile are active in this market. A further horizontal relationship arises in that both ECN and Reunert Defence Logistics (Pty) Ltd provide network services.

13] In relation to the provision of network services however, the parties indicated that ECN provides network services between networks[7] and Reunert provides network services within a specific enterprise.[8] The Competition Commission (“the Commission”) therefore accepted that there is no overlap between the activities of the parties in this market.

14] The vertical dimension arises as a result of the merging parties having recently concluded a Wholesale Supply Agreement in terms of which ECN will route Nashua Mobile’s calls to their required destinations through ECN’s fixed voice network. ECN has similar agreements with other firms in the market. It is important to note that the parties have not generated any revenue from this Wholesale Supply Agreement as yet.

15] The Commission concurred with the parties’ submissions that they are both active in the national market for the provision of fixed voice services and that these services can be provided using different technologies namely; traditional voice, VoIP and LCR. Reunert provides fixed voice services using LCR technology while ECN provides fixed voice services using LCR and VoIP. Other competitors in the market such as Telkom and Neotel also use traditional voice technology.

16] In its assessment the Commission relied upon the views of competitors and customers[9] of the merging parties to conclude that the above technologies are functionally substitutable with each other because they can all be used to make calls from a fixed location to a mobile network (handset). In the past the Commission had found that despite the functional similarity of the three technologies, there was a separate market for the provision of fixed voice

5 Services not directly rendered to an end user.

6 ECN also currently provides wholesale services to Nashua Mobile and this is discussed in the competition assessment below.

7 This for example is when ECN connects its network to that of Vodacom thereby enabling ECN subscribers to make calls to Vodacom subscribers and *vice versa* as a result of the interconnection of networks.

8 An example of this is where all the fixed line telephones of a particular enterprise at single location are connected via a local area network to the main switchboard. This allows all the enterprise’s employees to from their desk phones to the company switchboard through a PABX.

9 *Inter Alia* Discovery, iConnect, Vox Telecoms, Huge Telecoms and Neotel.

services through LCR[10] due to LCR technology being significantly cheaper than traditional voice and VoIP technology. However given the recent decline in interconnection rates from a pricing perspective all three technologies namely LCR, VoIP and traditional voice are now substitutable for the provision of fixed-to-mobile voice services.

17] The Tribunal was satisfied with the Commission's assessment and the conclusion that traditional voice, VoIP and LCR offer similar services in that they are used to make calls from a fixed location to a mobile handset and are therefore functionally substitutable for each other.

18] There are numerous participants in the fixed voice market including Telkom, Neotel, MTN Business, Vodacom Business, Vox, Autopage, Internet Solutions Huge Telecoms, Telemasters Nashua and ECN therefore indicating a fairly fragmented market.

19] The Commission found that the combined post merger market share of the merging parties also remains significantly low. In the VoIP market, ECN has a low market share and there a number of participants who provide the same services.

20] The Commission is therefore of the view that, as a whole, the proposed transaction is unlikely to result in any input or customer foreclosure as ECN's market share remains low and further that its competitors would serve as alternatives for customers should any input or customer foreclosure strategy or anti-competitive behaviour be engaged in by the merging parties.

21] Customers and competitors of the merging parties that were contacted by the Commission did not raise any competition concerns with regards to the proposed transaction and its possible effect on the market.

Public interest

22] ICASA has indicated that they do not object to the proposed transaction.

23] The merging parties confirmed that no job losses or retrenchments are anticipated as a result of the proposed transaction and added that should the merger not proceed, Nashua Mobile would most likely experience job losses due to the demise of the LCR business in South Africa.

Conclusion

24] In accordance with the Commission's assessment, the proposed transaction is unlikely to substantially prevent or lessen competition, as the combined post merger market share of the merged entity is low, the market share accretion is minimal and the market is significantly fragmented with numerous participants.

25] Given that no competition or public interest issues arise the Tribunal approves the proposed transaction without any conditions.

____________________ 05 July 2011

10 Refer to Competition Commission case number: 2007Oct3312

Y Carrim **DATE**

N Manoim and A Wessels concurring

Tribunal Researcher:	Songezo Ralarala
For the merging parties:	Scarlate Masiye of Cliffe Dekker Attorneys for the Merging Parties.
For the Commission:	Nompucuko Nontombana and Alex Constantinou (on behalf of Themba Mahlangu)