

SOUTH AFRICA / JUDGMENT

Telkom SA SOC Ltd v Trudon (Pty) Ltd (LM056Jun19) [2019] ZACT 49 (22 July 2019) [2019] ZACT 49

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Imraan Valodia

CASE / FILE NUMBER

LM056Jun19

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competition tribunal

SOUTH AFRICA

Case No: LM056Jun19

In the matter between:

Telkom SA sac Ltd Primary Acquiring Firm

and

Trudon (Pty) Ltd Primary Target Firm

Panel: Norman Manoim (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Imraan Valodia (Tribunal Member)

Heard on: 10 July 2019

Order Issued on: 10 July 2019

Reasons

Issued on: 22 July 2019

Reasons

for Decision

Approval

[1] On 10 July 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Telkom SA SOC Ltd ("Telkom") and Trudon (Pty) Ltd ("Trudon").

[2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Telkom, a public company incorporated in accordance with the laws of South Africa and listed on the Johannesburg Stock Exchange ("JSE"). Telkom is not directly or indirectly controlled by any single firm or shareholder.

[4] Telkom controls the following firms, Business Connexion Group Ltd, Gyro Group (Pty) Ltd, Gyro Properties (Pty) Ltd, Swiftnet (Pty)

Ltd and Trudon, the primary target firm in the proposed transaction.

[5] Telkom is a telecommunications service provider. It provides, inter alia, fixed and mobile telecommunication services, internet services and information communications technology ("ICT") solutions through its various divisions and subsidiaries.

[6] Telkom and all the firms controlled by it are, hereafter, collectively referred to as the Acquiring Group.

Primary target firm

[7] The primary target firm is Trudon, a private company incorporated in accordance with the laws of South Africa. Trudon is jointly controlled by Telkom, which currently holds 64.9% of the shares, and Trumancon Holdings (Pty) Ltd ("Trumancon"), which holds the remaining 35.1% of the shares.[1]

[8] Trudon and all the firms controlled by it are, hereafter, collectively referred to as the Target Group.

[9] As mentioned above, the Target Group is a subsidiary of the Acquiring Group and is operated as a division of the Acquiring Group.

The Target Group is a local advertising and marketing firm that provides both print services and digital solutions to local businesses under the brand name "Yellow Pages".

[10] Trudon's service offering includes the production of the Yellow Pages and White Pages directories, which are distributed on a regional and national basis. Its digital offerings include the provision of the online business directory in the form of the Yellow Pages and White Pages over the internet, the provision of website production and hosting, and the provision of social media advertising and search optimisation on Facebook, Google and LinkedIn platforms.[2]

Proposed transaction and rationale

[11] The Acquiring Group intends to acquire the remaining 35.1% of the issued share capital of the Target Group, as well as certain intellectual property rights, which are currently exclusively licensed to Trudon.[3] Post implementation, the Target Group will be a wholly owned subsidiary of the Acquiring Group.

[12] Telkom is of the view that the proposed transaction will provide it with the opportunity to fully align Trudon's strategy with that of the Acquiring Group's. Specifically, it will allow Telkom to fully leverage Trudon's assets as an accelerator to execute the envisaged Small and Medium Business ("SMB") investment strategy.[4]

[13] The offer made by Telkom to Trumancon, a consortium of private equity investors, coincides with the typical investment life cycle

and requirement for private equity investors to periodically realise the value built up in investments.

Impact on competition

[14] The Commission considered the activities of the merging parties and found that there is no horizontal overlap as the activities of the Target Group are attributable to the Acquiring Group. The Acquiring Group already controls the Target Group and the proposed transaction involves a change from joint to sole control.

[15] Accordingly, the Commission found that the proposed transaction is unlikely to change the structure of any market or lead to the accretion of any market shares.

[16] The Commission did, however, identify a vertical relationship between the merging parties as the Target Group provides directory

and digital advertising solutions to the Acquiring Group. Notwithstanding this overlap, the Commission was of the view that the

proposed transaction does not change the landscape of competitive dynamics given that the Acquiring Group already controls the Target Group, pre-merger.

[17] Accordingly, the Commission concluded that the proposed transaction is unlikely to raise any foreclosure concerns and, in turn, unlikely to result in a substantial lessening or prevention of competition in any market.

Public interest analysis

- [18] The merging parties provided the Commission with an unequivocal undertaking that the proposed transaction will not result in any merger specific retrenchments.[5]
- [19] Furthermore, the Commission noted that as there is no horizontal overlap between the activities of the of the merging parties, the proposed transaction is unlikely to result in job duplications that may result in retrenchments.
- [20] In view of the above, the Commission concluded that the proposed transaction is unlikely to result in any employment concerns or any other public interest concerns.

Conclusion

- [21] In light of the foregoing, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Further, the proposed transaction raised no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.

Mr. Norman Manoim

Ms Yasmin Carrim and Prof Imraan Valodia concurring

22 July 2019

DATE

Case Manager: Helena Graham

For the merging parties: Werner Rysbergen of Webber Wentzel

For the Commission: Thabiso Poswa and Wiri Gumbie

- [1] Trudon controls the following firms, Leads Machine (Pty) Ltd, Kompare (Pty) Ltd, Connecto Labs (Pty) Ltd and TDS Directory

Operations Namibia (Pty) Ltd.

- [2] See p44 of the Record.

- [3] See p40 of the Record.

- [4] Following the Government's intention of promoting Small, Medium and Micro Enterprises ("SMME").

- [5] See p10 of the Record.

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