



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM170Nov16

In the matter between

**EOH MTHOMBO (PTY) LTD**

Acquiring Firm

And

**CORNASTONE ENTERPRISE SYSTEMS (PTY) LTD**

Target Firm

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Panel	: Ms Andiswa Ndoni (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Prof Imraan Valodia (Tribunal Member)
Heard on	: 08 February 2017
Order Issued on	: 08 February 2017
Reasons Issued on	: 22 February 2017

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### NON- CONFIDENTIAL REASONS FOR DECISION

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#### Approval

- [1] On 08 February 2017, the Competition Tribunal ("Tribunal") approved the large merger between EOH Mthombo (Pty) Ltd ("EOH") and Cornastone Enterprise Systems (Pty) Ltd ("Cornastone").
- [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. EOH Holdings controls a number of firms in South Africa.
- [4] EOH implements enterprise solutions and has a wide range of information technology services, software, industrial technologies and business outsourcing solutions, providing these services across a number of sectors of the economy.

### ***Primary Target Firms***

- [5] The primary target firm is Cornastone, a company incorporated in accordance with the laws of the Republic of South Africa controlled by three primary shareholders.<sup>1</sup> Cornastone wholly owns and controls four subsidiaries, Cornastone Enterprise Management Systems (Pty) Ltd, Cornastone Enterprise Services (Pty) Ltd, Cornastone Managed Services (Pty) Ltd and Cornastone Telecommunications (Pty) Ltd.
- [6] Cornastone and its subsidiaries provide a range of services and products to the IT market, mostly on a specialised basis to, primarily, telecommunications network operators.

## **Proposed transaction and rationale**

- [7] In terms of the proposed transaction, EOH will purchase a 100% of the shares of Cornastone. Post-transaction EOH will exercise sole control over the firm.

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<sup>1</sup> The three primary shareholders of Cornastone pre-merger are Mr Lufuno Nevhatalu, Mr Manuel Teixeira and Mr Mark Jones.

- [8] In terms of the rationale, EOH submits that Cornastone presents a solid business investment, providing additional product and service offerings with a strong management team to its existing portfolio.
- [9] Cornastone submits that the transaction represents an opportunity for Cornastone's investors to recoup their investments and that the transaction will provide Cornastone 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**

- [10] The Commission found that the proposed transaction would result in horizontal overlaps in the broad national market for IT services, the national market for IT project implementation services, IT operational outsourcing services, IT consulting services, IT hardware solutions and the IT market for software solutions. Pre-merger, both parties are active in the above-listed markets.
- [11] In its report, the Commission, using a combination of data submitted by the merging parties and the BMI-T report, found that EOH would not, in any of the markets assessed, have a post-merger market share of greater than [10%],<sup>2</sup> nor would market share accretion exceed [1%].<sup>3</sup> The Commission submits that in all the relevant markets, there are at least 50 competitors able to constrain EOH's actions.
- [12] The Commission, noting that EOH has recently been involved in a number of intermediate and large merger applications, investigated the implications of these mergers on EOH's market power. It found that there are currently over

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<sup>2</sup> The Merging parties have claimed the market share and accretion figures as confidential and such have thus been rounded off to differing factors in the public reasons.

<sup>3</sup> The Commission presented the following analysis:

Broad National Market for IT Services- total market share [(5%)], accretion [(1%)]; National Market for IT Project Implementation Services - total market share [(10%)], accretion [(1%)]; National Market for IT Operational Outsourcing Services- total market share [(5%)], accretion [(1%)]; National Market for IT Consulting Services- total market share [(5%)], accretion [(1%)]; National Market for IT Hardware Solutions- total market share [(10%)], accretion [(1%)]; and IT Market for Software Solutions - total market share [(10%)], accretion [(1%)].

50 competitors in the industry able to constrain EOH's actions and that EOH is unlikely to be acquiring a unique position that cannot be mimicked by rivals. The Commission thus concluded that the 'creeping mergers' by EOH are unlikely to raise any competition concerns in the present transaction.

- [13] Owing to the low post-transaction market share and market share accretion as well as the constraints on EOH's behavior post-transaction presented by strong competition in the market, the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets in South Africa.

### **Public interest**

- [14] The merging parties submitted, which was confirmed by the Commission, that the proposed transaction will not have a negative effect on employment because there was no rationalisation planned.<sup>3</sup>

- [15] The proposed transaction further raised no other public interest concerns.

### **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, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



**Ms Andiswa Ndoni**

**22 February 2017**  
**Date**

**Mr Enver Daniels and Prof Imraan Valodia concurring**

Tribunal Researcher: Alistair Dey-van Heerden  
For the merging parties: Lee Christie of EOH  
For the Commission: Grashum Mutizwa

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<sup>3</sup> Page 61 of the Merger record and page 17 of the Tribunal's Transcript.