

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 14/LM/Jan08

In the matter between:

Neotel (Pty) Ltd Acquiring firm

And

Transtel Telecoms Business Target firm

Panel : N Manoim (Presiding Member); M Holden (Tribunal Member) and Y Carrim (Tribunal Member)

Heard on : 19 March 2008

Decided on : 19 March 2008

Reasons Issued : 14 May 2008

Reasons

Approval

[1] On 19 March 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Neotel (Pty) Ltd and Transtel Telecoms Business unconditionally. The reasons appear below.

Parties

[2] The acquiring firm is Amsbury Trading (Pty) Ltd ("Amsbury"), a wholly owned subsidiary of Neotel (Pty) Ltd ("Neotel").¹ Neotel is jointly controlled by Sepco Communication (Pty) (Ltd) ("Sepco")² with 51% and Transpoint ("Transpoint")³ with 30% while the balances of shares are owned by Nexus Connexions ("Nexus").

¹ Neotel also wholly owns Airview Trading (Pty) Ltd.

² VSNL SNOSPV Pte Ltd ("VSNL") controls 40% of Sepco, VSNL is a company registered in Singapore but wholly owned by an Indian Company: Videsh Sanchar Nigram Ltd ("Videsh Sanchar"). CommuniTel Telecommunications (Pty) (Ltd ("CommuniTel") holds 24% and Two Telecom Consortium (Pty) (Ltd ("Two Telecom Consortium") holds 24% and the balance of the shares (8%) are held by Tata Africa ("Tata Africa"). Sepco does not control any other firms.

³ Eskom Holdings Ltd ("Eskom") and Transtel each hold 50% of Transpoint.

[3] The target firm is Transtel Business a division of Transnet Ltd (Transnet"). Transnet is wholly owned by the South African government and is controlled by the Ministry of Public Enterprises.

Transaction

[4] In terms of the proposed transaction, Armsbury will acquire from Transnet the business of Transtel Telecoms as a going concern. The Transtel Business is presently conducted as a division of Transnet for the provision of voice, data and network telecommunications services.

Parties Activities

[5] Amsbury is a special purpose vehicle to be utilised for the purposes of this transaction and as such it has no activities. Neotel has been licensed as the second national fixed line telecommunications operator in South Africa with the specific purpose of creating competition to Telkom SA Ltd ("Telkom") in the fixed line business. Neotel is currently offering wholesale international voice, IP Transit Services and has recently launched a suite enterprise voice and data services.

[6] The Transtel Business is the telecommunications business division of Transnet Ltd. Transnet Ltd was set up by legislation. In terms of the South African Transport Services Act 9 of 1989, Transnet Ltd was granted a statutory dispensation to own and operate telecommunications both nationally and internationally both for its own and related telecommunications requirements.⁴ In addition Transnet, together with Eskom was granted a shareholding in the second national operator⁵ by s32B (2) of the Telecommunications Act 103 of 1996 as amended ("Telecommunications Act").

Rationale

[7] For Neotel the acquisition presents an opportunity to expedite its entry into the telecommunications market and expand its broader enterprise service.

[8] For Transnet, the sale represents a restructuring process whereby all non core business units, divisions or subsidiaries are closed down, sold or transferred back to the relevant Government Department. The transaction is also the result of the Government

⁴ Through this statutory dispensation the Transtel Business was formed within Transnet. Transtel has developed an extensive integrated infrastructure on national level, which supports the provision of electronic communication services to the aviation, Port, Rail and Logistics divisions within the Transnet Group.

⁵ Neotel prior to it being granted a licence from ICASA.

policy, which envisaged that some or all of Transtel's assets may be made available to the newly licensed competitor to Telkom.⁶

Market Definition

[9] According to the Commission there is an overlap in the activities of the merging parties in the provision of Electronic Communications Network Services ("ECNS")⁷ and Electronic Communications Services ("ECS")⁸ as both services are offered by Neotel and Transtel. The merging parties identified the following distinct markets: wholesale versus retail markets; markets for fixed line services versus markets for mobile services; markets for voice services versus markets for data, and lastly at customer level residential customers versus business customers. According to the parties there is no overlap in the activities of the merging parties as neither of the merging parties offer mobile services, nor does either presently offer services to residential customers. However there was an overlap between the parties in the ECNS and ECS markets. ECNS and ECS are licence categories found in the ECA and do not necessarily correspond to relevant markets for competition law analysis. Each of the two categories could also conceivably contain more than one possible relevant market or segment of a market.

[10] In its analysis the Commission found that there are at least nine relevant markets implicated in this transaction namely: the operation of national trunk network; the provision of national leased line services; the provision of international fixed leased line services; voice connectivity; interconnection services; international wireless/satellite links; national wireless links (such as microwave); local access links such as (Metro Ethernet); enterprise solutions (managed network services) including VPN and other Value Added Network services (VANS). With regard to local access (Metro Ethernet) market the Commission's analysis revealed that the merging parties have Metro Ethernet networks in many cities around the country, although Transtel's infrastructure is more limited than Neotel's outside Johannesburg. In the wireless long distance market, the Commission's investigation found that Neotel does not have any satellite connectivity capability currently.

[11] The Commission defined the geographic market as national.

Market Shares

⁶ See section 32B of the Telecommunications Act as amended and Ministerial Policy Directives dated 26 July 2001.

⁷ ECNS involves the self-provision of an electronic communications network for one's own purpose and/or the making of that service available to third parties whether by sale or otherwise

⁸ ECS is the conveyance of signals on a network.

[12] In the market for the operation of national trunk network Telkom has approximately 99% estimated market share, Transtel has 1% and Neotel has less than 1% market share. In the market for the provision of national leased line services Telkom has approximately 99% estimated market share, Transtel less than 1% and Neotel also has less than 1% market share. In the provision of international leased line services Telkom has plus or minus 99% estimated market share, Transtel has less than 1% and Neotel also has less than 1% market share.

[13] The merging parties submit that in the enterprise solutions market Telkom has 20% estimated market share, Internet Solutions has 20% market share, Business Connexion Group has 15% market share, MTN Network Solutions has 10% market share, Verizon has 10% market share and Neotel has less than 1% market share. In the narrow VPN segment of the enterprise solutions market, Telkom has an estimated 30%, Transtel 1% and Neotel less than 1%. These figures were provided to the Commission by the merging parties. We make no conclusive findings on the accuracy of the figures provided to us but for purposes of this decision concern ourselves with only the relative market shares of Neotel and Transtel. Both Neotel and Transtel are relatively new entrants in the VPN segment. Until the de-regulation of the VANS (ECS) segment of the industry, Transtel, as a private telecommunications network (PTN) was precluded from selling its services to third parties. Since the de-regulation it has established a small presence in the VPN market.⁹

Competition analysis

[14] As can be seen from above the merging parties combined market share post merger will be not be more than 3% in any of the relevant markets identified by the Commission. The Commission was of the view that despite the fact that the barriers to entry were high in the telecommunications industry, this transaction was unlikely to impact adversely on competition any significant way and was likely to be pro-competitive.

Third Party Concerns

[15] Some concerns were raised by third parties. These third parties were invited to amplify their submissions at the hearing, but declined, choosing to rely on their written submissions. Sentech Ltd ("Sentech") expressed a concern that the acquisition of Transtel enables Neotel to access existing corporate customers within the Transnet group. According to Sentech, Transtel has rolled out a reliable network on which to provide VSAT services.

⁹ In this regard see our decision in Telkom SA Ltd and Business Connexion Group Ltd Tribunal Case No: 51/LM/Jun06

Sentech was of the view that it would have been better if the State had allowed State Owned Enterprises to compete for the acquisition of Transtel business. They argue that the acquisition will drastically stifle Sentech's ability to compete.¹⁰

[16] Verizon Business raised a concern that with Neotel entering the Value Added Network Services ("VANS") markets, its non-vertically integrated managed network services or VANS competitors, such as Verizon, will not be able to compete on equal footing. They would like an assurance that the upstream and downstream operations of Neotel be separated in order to ensure a level playing field for competition.¹¹

[17] The merging parties countered the Verizon concern by asserting that their licence permits them to be in the VANS market. Neotel's strategy was to enter the VANS market irrespective of this transaction and it was already present in it.¹² The Commission analysed these concerns and found that the vertical integration by Neotel was inevitable, and would have taken place with or without the transaction. Neotel is a new entrant is licensed to provide all of the services that Telkom can, including infrastructure, wholesale and retail, voice, data and managed network services. It is in the process of rolling out its network. Neotel was already present in the downstream vertical markets such as VANS to a small extent at the time of this merger and this transaction would merely increase its presence in these segments. Furthermore the transaction would enable Neotel to access existing corporate customers within the Transnet group and will allow Neotel to build economies of scale more quickly. In this sense, and contrary to Sentech's contention, the transaction was pro-competitive and would increase its ability to compete with Telkom, which was what was intended by ICASA and government when it granted it the license to Neotel.

[18] The Commission submitted that Sentech's concern about Transtel's long distance wireless links is also unfounded since the assets that are being acquired by Neotel from Transtel and which were used to service Transtel pre merger, are still going to be used to service Transtel post merger.¹³ The Commission also submitted that Neotel is not currently in the international links market because it does not have international links.

[19] Sentech's concern about whether or not state-owned enterprises ought to have been permitted to bid for Transtel's assets is a matter of government policy and not relevant to

¹⁰ See Sentech's submissions on page 827 of the record.

¹¹ See Verizon Business's submissions on page 1198 of the record.

¹² See page pages 9-10 of the transcript. See also Neotel's submissions at the hearing.

¹³ According to the Commission, Neotel is not allowed by regulation to use these assets to render services to customers other than Transtel. The Commission however submitted that some of the assets, such as international satellite connectivity, have been used to service customers other than Transtel. See page 5 lines 16-18.

these proceedings. In light of the above, we agree with the Commission that the proposed transaction is unlikely to substantially lessen or prevent competition in any market.

Conclusion

[20] Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally. There are no public interest issues

Y Carrim

Tribunal Member

N Manoim and M Holden concurring

Tribunal Researcher : J Ngobeni.

For the merging parties : Routledge Modise Attorneys

For the Commission : Grashum Mutizwa

14 May 2008

Date