

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 94/LM/Aug08

In the matter between:

Industrial Electronic Investments Limited

Acquiring Firm

And

CIE Telecommunications (Pty) Ltd

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member),
and M Mokuena (Tribunal Member)

Heard on : 23 September 2008

Order Issued : 23 September 2008

Reasons Issued: 11 December 2008

Reasons for Decision

Approval

- [1] On 23 September 2008, the Tribunal unconditionally approved the merger between Industrial Electronic Investments Limited and CIE Telecommunications (Pty) Ltd. The reasons for approving the transaction follow.

The parties

- [2] The primary acquiring firm is Industrial Electronic Investments Limited ("IEI"), a wholly owned subsidiary of Venfin Technology (Pty) Ltd ("Venfin Technology"). In turn, Venfin Technology is wholly owned by Venfin Limited ("Venfin"). No firm or a group of firms directly control Venfin. Venfin controls various companies.¹

¹ The firms controlled by Venfin include Venfin Group Finance (Pty) Ltd (100%), RPII Holdings Limited (100%), Venfin Shareholding (Pty) Ltd (100%), Venfin Media Investments (Pty) Ltd (100%), Venfin Technology (Pty) Ltd (100%), Venfin Risk Services Investments (Pty) Ltd (100%) and InVenfin (Pty) Ltd.

- [3] Venfin Technology, which controls the primary acquiring firm, IEI, directly controls various firms.²
- [4] IEI in turn controls various firms.³
- [5] The companies in IEI that are relevant for the horizontal and vertical overlaps arising from the merger are Psitek (Pty) Ltd (“Psitek”) and CIV Fibre Network Solutions (Pty) Ltd (“CIV FNS”), respectively. CIV FNS controls Muvoni Weltex Network Technologies (Pty) Ltd (“Muvoni Weltex”) and Dark Fibre Africa (Pty) Ltd (“DFA”), controls Elprom (Pty) Ltd (“Elprom”).
- [6] The primary target firms are CIE Telecommunications (Pty) Ltd (“CIE Telecomms”) and CIV Power (Pty) Ltd, wholly owned subsidiaries of Community Investment Venture Holdings (Pty) Ltd (“CIV Holdings”). CIV Holdings is controlled by five shareholders namely New Gx Capital (Pty) Ltd (37.3%), Community Investment Holdings (Pty) Ltd (18.6%), CIE Group (Pty) Ltd (36.6%), Goldex 254 (Pty) Ltd (6%) and Rokit Advisors (Pty) Ltd (1.5%). CIV Holdings controls four companies namely CIE Telecomms, CIV (Pty) Ltd, CIV Fibre Network Solutions (Pty) Ltd (“CIV FNS”) and CIV Power (Pty) Ltd (“CIV Power”).
- [7] CIV FNS, CIE Telecomms and CIV Power are the subsidiaries in CIV Holdings that are relevant in this transaction. CIV Telecomms directly or indirectly control five firms.⁴
- [8] The relevant CIE Telecomms subsidiaries for the vertical and horizontal overlaps arising from this merger are MCT Telecommunications (Pty) Ltd (“MCT Telecomms”), Dartcom (Pty) Ltd (“Dartcom”), and CZE Manufacturing (“CZE Manufacturing”)

Description of the transaction

- [9] In terms of this transaction, IEI intends to acquire 30% of the issued share capital of CIE Telecomms and 30% in CIV Power. CIV Power will acquire the interests in Clearline, Ferrotech and Enervate at the same time that IEI

² These include Venfin Investments (Pty) Ltd (100%), Tracking and Signal Distribution Technologies (Pty) Ltd (100%), Business Venture Investments No. 1224 (Pty) Ltd (100%), Mos Holdings (Pty) Ltd (100%), and Seacom SA SPV (Pty) Ltd (100%).

³ IEI controls One Digital Media (Pty) Ltd (“ODM”) (35%), Newshelf

⁴ These are MCT Telecommunications (Pty) Ltd (77%), Dartcom (Pty) Ltd (100%), Dartcom International Limited (Pty) Ltd (100%), CZ Electronics (Pty) Ltd, and CZE Manufacturing (Pty) Ltd (29.65%). The remaining 58.8% in CZE Manufacturing is controlled by CZ Electronics.

acquires joint control of it.⁵ As a result of this transaction, IEI will also acquire joint control of CIE Telecomms and CIV Power by virtue of the minority protections afforded to the primary acquiring firm in terms of the shareholders agreement. The pre and post merger diagrams are attached hereto as annexure A and annexure B.

Rationale for the transaction

- [10] The acquiring group views this transaction as a sizeable investment opportunity for Venfin with various opportunities which are anticipated to provide attractive returns.⁶
- [11] An investment in CIE Telecomms by IEI would also eliminate potential conflict of interest in the DFA network roll-out as the acquiring group and target group's shareholding interests will be aligned as a result of this transaction.
- [12] The parties submitted that it is intended that Dartcom (Pty) Ltd ("Dartcom") and MCT Telecomms will be beneficiaries of the DFA network roll out, resulting in growth prospects which require capital. Venfin is considered the partner to provide capital requirements for the exponential growth envisaged in the 2009 financial year. In addition, the parties stated that CIE will be capitalised to cater for new investments and CIE Telecomms will access new and additional deal flow from Venfin.

The parties' activities

Primary acquiring Group

- [13] Venfin and its subsidiaries primarily carry out finance and investment activities. Venfin has various investments principally in the telecommunications technology, security, and media and sports sectors. However, for the purposes

⁵ See parties' supplementary submissions pages 2-3.

⁶ Some of the opportunities include the following:

- a) Venfin is of the view that two of the target firms (namely Clearline (Pty) Ltd ("Clearline") and Ferro Resonant Technologies (Pty) Ltd ("Ferrotech") have been and continue to be beneficiaries of Eskom's related supply constraints and envisages that part of the proceeds will be used to bolster these types of offerings in future;
- b) CZ Electronics (Pty) Ltd ("CZ Electronics") recently developed a digital wireless product which has been commissioned by Telkom to ultimately replace the older analogue technology. This new product is envisaged to be a strong revenue source and hence the roll out of manufacturing and after sales service infrastructure;
- c) The acquiring group intends to provide capital for the roll out of the Dark Fibre Africa (Pty) Ltd ("DFA") network, a strong potential growth business; and
- d) An investment in CIE Telecomms by IEI would also eliminate potential conflict of interest in the DFA network roll-out as the acquiring group and target group's shareholding interests will be aligned as a result of this transaction.

of assessing this transaction, only the relevant subsidiaries' activities are described below:

Psietek

- [14] The company sells products in the fixed line cellular telecommunication products and solution for world's emerging economic regions. The product brands for the company include Adondo, Jembi, Tici-B supervised pay phones, focus range of wireless interface products and the new VendingReady value added service portal.

Elprom

- [15] The company is a contract manufacturer and manufactures approximately 50% of Psietek product requirements. The balance of Elprom's manufacturing is used for third party contract manufacturing.

Plessey

- [16] Venfin currently holds a non-controlling interest in Dimension Data Plc ("Didata") and Plessey is a wholly owned subsidiary of Didata. Plessey offers a broad range of end-to-end integrated communications solutions such as site-build and infrastructure establishment solutions that include towers and masts, civil works and equipment shelters. Through its optical solutions, Plessey specialises in the deployment of fibre optical cable for transmission backbone and metro networks. The company also offers microwave transmission solutions, including the supply, installation and commissioning of point-to-point as well as point-to-multipoint services.
- [17] By partnering with world-leading wireless and satellite vendors, Plessey gives clients access to a wide range of applications and technologies, including WiMAX and broadband satellite services.

The primary target firm

CIE Telecomms

- [18] CIE Telecomms is an investment holding company and does not trade. Its subsidiaries sell products and services throughout South Africa. Insofar as this transaction goes, only the activities of the relevant subsidiaries in CIE Telecomms will be identified although appreciation is given that CIE Telecomms carries out other activities other than the ones noted hereunder:

MCT Telecomms

- [19] The company is structured through three separate divisions providing a number of telecommunication products such as audio visual, operation support systems (“OSS”) and cable managed services (“CMS”) and last mile technologies.

CZE Manufacturing

- [20] The company is the main focus of the development and manufacture of niche telecommunication products with a strategic thrust towards the rural and remote areas. CZE Manufacturing manufactures and distributes products like IAP (providing wireless internet and phone access), Limax (a long range microwave system which transmits wideband data over any distance), Ditek (a telephone line extension product, a lower power radio device for digital point-to-point and point-to-multipoint telephony and Ethernet connections), and Metallic Smart Jack (a remote test device located at the customer’s premises and used to perform basic tests to check cable integrity up to customers’ premises).

Dartcom

- [21] The company is a specialist distributor of telecommunication equipment which is supplied to network operators, Original Equipment Manufacturers suppliers and network integrators. Dartcom is the official distributor in South Africa and selected African countries for Huber+Suhner AG, a global manufacturer of communications cables (such as RF cables), connectors and components. Dartcom also represents several overseas companies with strategic and complementary products to Huber+Suhner, operating as a value addition distributor (VAD), principally transferring technology via license agreements. Dartcom has absorbed this technology into its own facilities for purposes of assembly, manufacture, testing, product support and quality management.

CIV Power

- [22] CIV Power is an investment holding company created for the purposes of this transaction and does not trade and it will hold no investments other than Clearline, Ferrotech, and Enevate. CIV Power currently holds a 51% interest in a single firm, namely Energy Insight (Pty) Ltd.

Ferrotech

- [23] The firm is a specialist supplier of voltage stabilisers and conditioning units towards the telecommunications and industrial sectors. When it was founded, its objective was to develop and market power conditioning technology to enable its customers to overcome problems associated with poor power quality and irregular power supply. The product portfolio includes voltage stabilisers, surge & lightning protector, transformers, power factor correction, power filtration, and DC power supplies.

CIV FNS

- [24] CIV FNS is a holding company that controls Muvoni Weltex and DFA. Muvoni Weltex is a specialist mechanical trenching and fibre installation company, which utilises latest mechanical trenching technologies and equipment to lay down cables and utilities in metropolitan areas or directly into tarred surfaces and next to highways. DFA was established to build a carrier neutral, dark fibre infrastructure for the transmission of metro and long haul telecommunications traffic. DFA is responsible for financing and construction of this infrastructure and reselling discrete fibre cables to individual operators of telecommunications services on a rental basis. These operators are then responsible for “lighting” the fibre for onward selling the capacity to customers.

Relevant Market

- [25] As the activities of the merging parties overlap with regard to CZE Manufacturing and Elprom, the Commission and the parties submitted that the relevant horizontal product market is the market for the provision of electro technical manufacturing services on a contract basis. The Commission further acknowledged that the relevant market is a very specialised area primarily typified by engineering contract manufacturers supplying products and services to third parties in the power, automotive, defence industrial, aerospace, medical and communications industries at both local and international industries
- [26] Both the Commission and the parties averred that there is vertical integration in six areas because the acquiring group and CIV Holdings jointly control CIV FNS and its subsidiaries DFA and Muvoni Weltex. DFA is a customer or potential of the two target firms, MCT Telecomms (for OSS and CMS) and Dartcom (for fibre optic products). Psitek is also a potential customer of CZE Manufacturing in respect of electro technical contract manufacturing services. The markets where there is vertical integration are:

- a. Electro-technical contract manufacturing;
- b. OSS and CMS;
- c. Fibre optic Product market;
- d. Power systems product market; and
- e. Voltage stabilisers and controlling units market

[27] The Commission and the parties submitted that the market for contract manufacturing is national and that the contract manufacturers normally service customers in their region for proximity purposes. With regards to the vertical markets identified above, the Commission was in agreement with the parties that the geographic markets are national.

Competition analysis

[28] The Commission calculated the market shares of the parties based on the revenues derived in 2007 as well as the capacities of such companies to provide relevant products and services.

Table 1: Horizontal market: Parties' current estimated market shares

Competitor	Estimated Market share (%)
CZE Manufacturing	5.9
Elprom	12.1
Omnigo	17.2
Project Concern	18.3
Tellumat	9.8
PEM	10.6
Conlog	9.3
Microtronix Manufacturing	16.8

Source: Commission

[29] The above table shows that the merging parties, CZE Manufacturing and Elprom, will have a combined post-merger market share of 18%. In addition, there are a number of credible contract manufacturers who are credible alternatives to the merged entity. The merged entity is therefore unlikely to exercise market power in the contract manufacturing field.

Table 1: Vertical markets: Market shares in the relevant vertical markets

Competitor	Estimated Market share (%)
Voltage stabilizers and controlling units	

Ferrotech	30
Emerson	30
Diesel Electric	20
Various smaller competitors	20
RF Products	
Dartcom	50
Andrews Corporation	40
Webb Industries	10
Fibre Optic Products	
Dartcom	5
CBI (ATC)	40
M-Tec	50
Dynamic Cables	5
Power System Products	
Dartcom	2
First National Batteries	30
Battery Technologies	20
SAAB Grintek	28
Contract Kitting	20

RF Products, Voltage stabilisers and conditioning units, fibre optic product and power systems products

[30] The vertical relationship in respect of the above products emanates from the fact that Ferrotech supplies Plessey with various products which include voltage stabilizers and conditioning units; and Dartcom supplies Plessey with RF Products, fibre optic products and power systems products. The parties submitted that Ferrotech will continue to supply Plessey and other customers. Should Ferrotech stop supplying other customers, there are other viable companies who could supply the voltage stabilizers such as Emerson, Diesel Electric and various other smaller competitors. Notwithstanding the 50% market share of Dartcom in respect of RF Products, Dartcom directly competes with companies such as RF Solutions, Webb Industries and Andrews Corporation, which companies are the are local agents for three of the largest RF products manufacturers in the world. As a result, a foreclosure strategy is unlikely to be viable.

Electro-technical contract manufacturing

[31] Psietek makes use of contract manufacturing provided by Elprom and Elprom is owned and controlled by Psietek. The parties submitted that Psietek could utilise CZE Manufacturing's services post merger. However, that relationship is unlikely to result in foreclosure as Psietek does not currently utilise all of Elprom's output but only utilises half. In addition, there are credible contract manufacturers such as Project Concern, Tellumat and Microtronix

Manufacturing, who would impact the impact of the foreclosure and reduce the incentives to foreclose.

OSS and CMS

[32] The parties submitted that the target firms, particularly MCT Telecomms, and DFA are already vertically integrated by virtue of common shareholding from CIV Holdings. IEI is acquiring joint control in the target firms hence the transaction will not increase the level of vertical integration that already exists._

Public Interest

[33] There are no public interest issues.

Conclusion

[34] The merger is approved unconditionally.

Y Carrim

11 December 2008

DATE

N Manoim and M Mokuena concurring

Tribunal Researcher : R Kariga

For the merging parties: Cliffe Dekker Hofmeyr Attorneys

For the Commission : G Mutizwa (Mergers and Acquisitions)