COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no: 23/LM/Mar05

In The Large Merger Between:

Community Investment Ventures Holdings (Pty) Ltd
Community Investment Ventures (Pty) Ltd **Acquiring Firms**

And

Community Investment Holdings (Pty) Ltd
CIE Group (Pty) Ltd **Target Firms**

Reasons for Decision

Approval

1. On 16 May 2005, the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Community Investment Ventures Holdings (Pty) Ltd /Community Investment Ventures (Pty) Ltd and Community Investment Holdings (Pty) Ltd / CIE Group (Pty) Ltd. The reasons for this decision follow.

The Transaction

The Parties

2. The parties to the transaction are Community Investment Ventures Holdings (Pty) Ltd ("CIV-Holdings), Community Investment Ventures (Pty) Ltd ("CIV"), Community Investment Holdings (Pty) Ltd ("CIH"), CIE Group (Pty) Ltd ("CIE").[1]

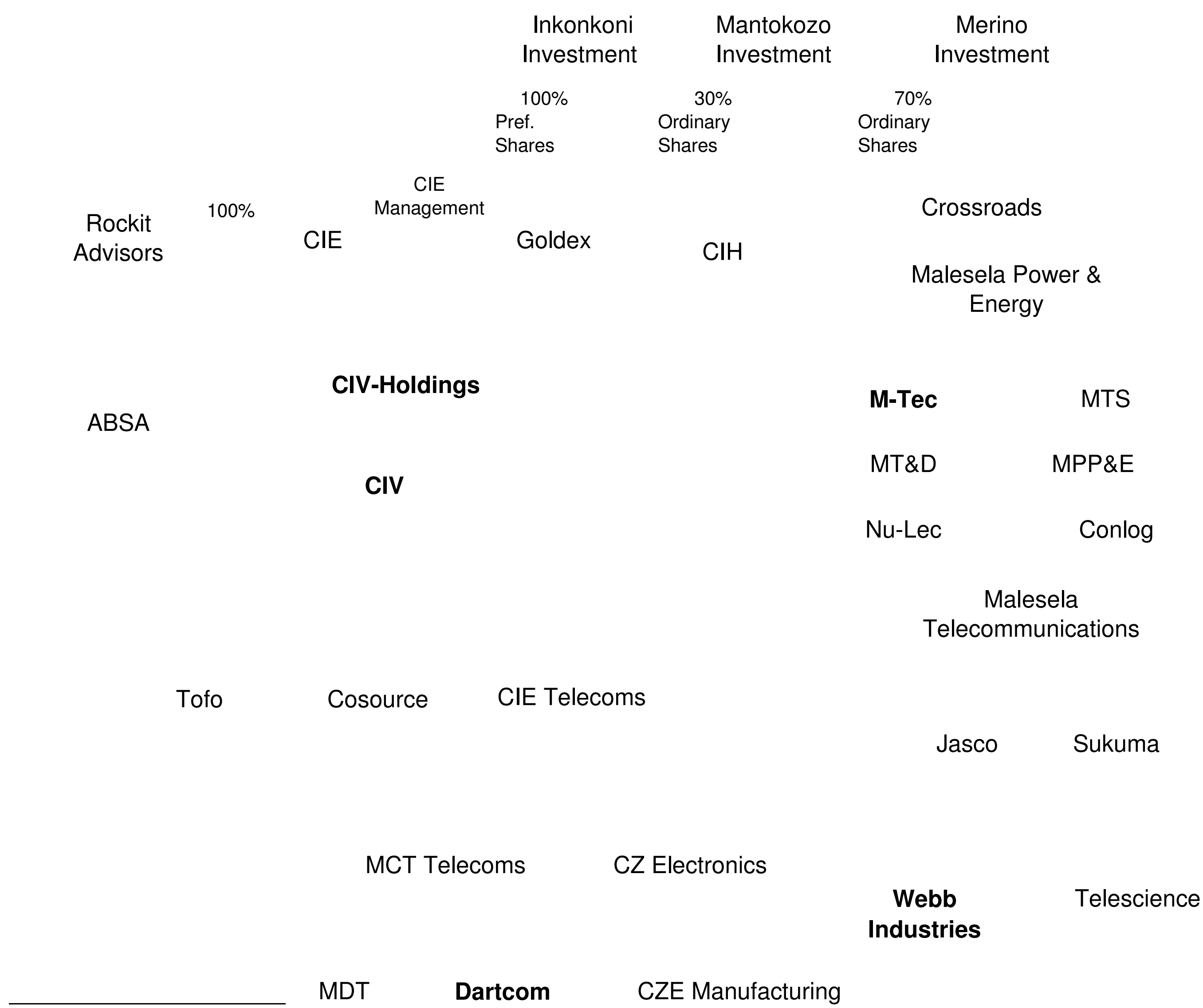
Structure of the transaction

3. CIV-Holdings and its subsidiary CIV are two special purpose vehicles established for the purpose of the transaction. The transaction constitutes two indivisible parts. Firstly, CIV will acquire the following investments from CIE and CIH:
   - 3.1. Tofo Public Cellular Payphones (Pty) Ltd ("Tofo");
   - 3.2. Cosource (Pty) Ltd;
   - 3.3. CIE Telecoms and its subsidiaries viz.
     - 3.3.1. MCT Telecommunications (Pty) Ltd and its subsidiaries Dartcom (Pty) Ltd and Mobile Data Telecommunication (Pty) Ltd;
     - 3.3.2. CZ Electronics (Pty) Ltd and its subsidiary CZ Electronics Manufacturing

1 For more detail on the shareholding of the parties, see Page 6-9 of the Commission's Report.

("CZE Manufacturing").

4. The second part of the transaction involves CIV-Holdings being acquired and jointly controlled by CIE, CIH, RockIT Advisors (Pty) Ltd and Goldex 254 (Pty) Ltd.[2]
5. ABSA Bank Ltd holds a number of preference shares in CIV, CIV-Holdings' wholly owned subsidiary. In terms of the CIV-Holdings Shareholders Agreement, ABSA and the shareholders of CIV-Holdings are afforded certain minority protections, the result of which is that ABSA, CIE, CIH, RockIT Advisors and Goldex will, post merger, exercise joint control over CIV and the investments transferred to it by CIE and CIH. In addition, CIV will sign a management agreement with RockIT Advisors in terms of which RockIT Advisors will manage the business of CIV. The post merger the structure of the merged entity will be as follows:



2 See page 790 of the record.

Rationale for the transaction

6. According to the parties, CIE and CIH have entered into the transaction in order to comply with BEE requirements. The parties anticipate the transaction to provide a platform for becoming more meaningful participants in the ICT sector.[3]

The Parties' Activities

7. CIV-Holdings, CIV and Goldex are newly established companies and therefore did not conduct any activities pre-merger. CIE is an investment holding company and is structured across two main strategic portfolios, being telecommunications and information technology (IT) applications. The telecommunications portfolio is operated through CIE Telecoms and its subsidiaries, CZ Electronics, MCT Telecoms and Dartcom, while the IT applications are conducted through Cosource, Tofo and NetraLink (Pty) Ltd.[4] As will shown below, only Dartcom is relevant for our analysis. Dartcom is a specialist assembler and distributor of fibre optic communications components, radio frequency sub-systems and accessories.

8. CIH is an investment holding company and comprises of three main portfolios viz.
    8.1. Community Logistics & Transport,
    8.2. Malesela Power & Energy and
    8.3. Malesela Telecommunications.

9. The Community Logistics and Transport portfolio comprises Crossroads Distribution (Pty) Ltd, a logistics company. A number of firms constitute the Malesela Power & Energy and the Malesela Telecommunications portfolios of CIH, however only Malesela Taihan Electrical Cable ("M-Tec") and Jasco Electronics Holding Ltd ("Jasco") are relevant for our purposes.[5]

10. M-Tec manufactures power and telecommunications cables as well as non-ferrous power cables, overhead conductors, bare copper wire, strip products and optical cables. Jasco operates via three divisions viz. telecommunications, security and manufacturing. It consists of two main businesses namely Telesciences and Webb Industries. However, Webb Industries is the only firm relevant for the purpose of the analysis. Webb Industries is involved in the design, manufacturing and supply of telecoms products, two-way radio markets, GSM markets, other wireless access product markets and the establishment of communication hi-sites throughout South Africa.

3 Page 789 of the record.

4 NetraLink is a subsidiary of CIE Telecoms and will remain with CIE post merger.

5 See the page 8-11 of the Commission's Report for more detail on the subsidiaries of CIH.

11. The Commission found that the activities of CIH's two subsidiaries viz. M-Tec and Jasco, overlapped with the activities of CIE's subsidiary, Dartcom.

Impact on competition

Horizontal analysis

12. The Commission found overlaps in the following markets:
    12.1. Market for Wireless Connectivity
    12.2. Market for Fibre Optic Cables
    12.3. Market for the manufacturing of Masts
13. The Commission's Report provided the following market shares for the above markets:

Market shares in the national market for wireless connectivity

Players	Market share
Dartcom	20%
Andrew Corporation	20%
Siemens	11%
Ericsson	11%
Webb Industries	5%
RFS	5%
Comscope	5%
NK Cables	5%
Cisco	5%
Alvarion	5%
Alcatel	5%
Leonie	2%
Rosenburger	1%
Total	100%

Source: the merging parties

Market shares in the international market for fibre optic cables

Players	Market share
M-Tec	55%
Aberdare	19%
ATC	17%
Perelli	2%
Samsung	2%
Tank Industries	2%
Dynamic Cables	2%
Dartcom	1%
Total	100%

Source: the merging parties

Market shares in the international market for infrastructure hardware

Players	Market share
Siemens	51%
Ericsson	10%
Alcatel	10%
Plessey	9%
Andrew Satcom	6%
Webb Industries	3.5%
Kathrein	2.6%
Radio Frequency Systems	2.6%
Sectional Poles	2.6%
Dorbyl	2.6%
Dartcom	0.2%
Total	100%

Source: the merging parties

14. The post merger market shares in the above markets will be 25%, 56% and 3.7% respectively.

15. The Commission was of the view that even though in the first two markets above, the post merger market shares of the merging firms would be high, no significant competition concerns would likely arise due to the following factors:
    15.1. Barriers to entry are low with room for new entrants to expand their markets. Products are easily transportable, compatible and interoperable across brands
    15.2. The geographic markets are international and even though exclusive agreements between suppliers and value-added distributors (VAD) occur, VAD's may enter into as many exclusive agreements as they like. Furthermore, VAD's commonly second source[6] and suppliers are allowed to terminate exclusive arrangements on relatively short notice.
    15.3. Since customers are brand-driven and VAD's source as many brands as possible, customers liberally negotiate preferred terms and conditions, settlements and discounts. Accordingly, the Commission is of the view that customers exercise countervailing power.

16. In the market for the supply of masts, the Commission found that the increment in Webb Industries market share will be less than 1% and is therefore insignificant.

17. Without making a definitive finding on the relevant markets, we agree with the Commission that the horizontal overlaps do not raise any competition concerns.

Vertical analysis

18. The Commission also identified two sets of vertical relationships, which prevailed, viz.
    18.1. In the market for the supply of wireless connectivity, Dartcom and Webb Industries source from each other;
    18.2. In the market for fibre optic cables, M-Tec is a manufacturer of fibre optic cables and

6 According to the Commission, this is a common practice arrangement by which VAD's arrange for an alternative source should the original supplier not perform or deliver on time.

Dartcom is a reseller (Value added distributor).

19. The Commission, however, was of the view that the vertical relationships raised no concerns. The Commission found that Dartcom and Webb Industries source less than 1% of their total supplies of wireless cables and connectors from each other. The low percentage therefore negates sound rationale for foreclosure. In the market for fibre optic cables, Dartcom has approximately 1% of the local market and therefore is not significant enough to result in foreclosure. The Commission concluded that the vertical relationships would unlikely prevent or lessen competition in a significant way. We agree with the Commission's analysis.

Public Interest

20. According to the parties, the transaction will have no adverse effect on employment due to the fact that the businesses will continue to operate post merger as they did before. The parties submit that the merger increases the ability of small businesses or firms controlled by or owned by historically disadvantaged persons to become competitive.[7]

Conclusion

21. Having regard to the above, we conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

D Lewis | **<u>23June 2005</u>** **Date**

Concurring: N Manoim and Y Carrim

For the merging parties: J Katz (Webber Wentzel Bowens)

For the Commission: O Strydom (Mergers and Acquisitions)

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7 Section 12A (3)(c).