

**NOTICE 207 OF 2015****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****COMPUGROUP MEDICAL SOUTH AFRICA (PTY) LTD****AND****MEDICAL EDI SERVICES (PTY) LTD****2014Oct0553**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is CGM SA, a firm incorporated according to the laws of the Republic of South Africa. CGM SA is 100% owned and controlled by Compugroup Medical AG ("Compugroup Medical"), a company registered in Germany. Compugroup Medical does not control any other firms in South Africa. CGM SA is a provider of healthcare information technology for electronic medical records, pathology and communications systems with its main customers being medical practitioners.

The primary target firm is Medical EDI Services (Pty) Ltd ("Medical EDI"), a firm incorporated in accordance with the laws of the Republic of South Africa. Medical EDI is jointly controlled by its individual shareholders. Medical EDI does not control any firms. It is a medical information technology company, and is involved in the development, marketing, licensing and support of PMA systems and switching services for medical professionals.

Medical EDI's Claims Processing System ("CPS Product") PMA software is front-end software which is utilised in private medical practices throughout South Africa. The CPS product is used to record patient demographics and enable the billing of patients.

In terms of the Sale of Shares Agreement, CGM SA will acquire control of Medical EDI. The proposed transaction will result in CGM SA acquiring sole control over Medical EDI.

The Commission finds that the activities of the merging parties overlap horizontally in two narrow markets within the PMA market, namely:

- The national market for the supply of clinical notes software; and
- The national market for the supply of billing and administration software.

The merger would also result in a potential vertical integration, in the switching services market. The potential vertical overlap arises in that currently, CGM SA switches through a competitor of Medical EDI and post-merger, could possibly switch through Medical EDI which has its own switching service.

The Commission finds that post-merger, the estimated market shares and market share accretion of the merged entity is low to raise any substantial competition concerns in both the national market for the supply of clinical notes products and the national market for the supply of billing and administration products. Customers of the merging parties have not raised any concerns about the proposed transaction. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the clinical notes market as the merged entity will continue to face competition from firms such as e-MD Technologies (Pty) Ltd ("e-MD"), Practivent Technologies (Pty) Ltd trading as Health Focus ("Health Focus") and Med-e-Mass (Pty) Ltd ("Med-e-Mass").

The proposed transaction does not result in any foreclosure concerns. Medical EDI does not currently have any agreements with any other PMA provider. The Commission also found that in the event that CGM SA chooses to switch through Medical EDI, other competitors will not be foreclosed of a significant customer.

Some concerns were received from competitors of the merging parties, regarding the possibility that the merged entity will adopt an aggressive sales strategy post-merger. In addition, they submit that the bundled offering consisting of clinical notes, billing and switching sold as a set is likely to foreclose competitors who are not able to offer a similar bundle.

The Commission found that the merger does not increase the merged entity's market share in any considerable manner, and is therefore not likely to significantly alter the current conditions in the market.

The merging parties indicated that the proposed merger is likely to result in approximately eight employees from Medical EDI being retrenched. The merging parties submit that the reason for these retrenchments is mainly because of the anticipated duplications, however the Commission is of the view that no rational process was followed to determine these retrenchments. Some of the employees likely to be affected are not highly skilled.

The Commission therefore finds that the proposed transaction raises public interest concerns. The Commission imposes a condition that limits the effect on employment to eight employees only. A copy of the conditions is attached as Annexure A.

The proposed transaction does not raise any other public interest concerns.

The Commission therefore approves the proposed merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

**Annexure A****Compugroup Medical South Africa (Pty) Ltd****And****Medical EDI Services (Pty) Ltd****CC Case Number: 2014Oct0553**

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**Conditions****1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Compugroup Medical South Africa (Pty) Ltd;
- 1.2 **"Affected Employees"** means any 8 employees in the support role function with at least a matric qualification as identified by the Merging Parties;
- 1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Conditions"** means these conditions;
- 1.6 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.7 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.8 **"Merger"** means the Acquiring Firm's acquisition of control over Medical EDI Services (Pty) Ltd
- 1.9 **"Merged Entity"** means the combined business activities of Compugroup Medical South Africa (Pty) Ltd and Medical EDI Services (Pty) Ltd upon approval and/or implementation of the Merger
- 1.10 **"Merging Parties"** means Compugroup Medical South Africa (Pty) Ltd and Medical EDI Services (Pty) Ltd,
- 1.11 **"Target Firm"** means Medical EDI Services (Pty) Ltd

**2. Recordal**

- 2.1 The Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the supply of clinical notes software, the supply of billing and administration software for practitioners and the switching services market. The estimated market shares of the merging parties remain low and there are alternative players that compete with the Merging Parties, who will be in a position to constrain the Merged Entity post-merger.
- 2.2 However, the Merger is likely to have a negative impact on employment since it could possibly result in job losses of up to 8 employees within the Target firm, due to a duplication of positions within the Target Firm and the Acquiring Firm. The Merging Parties have submitted that the 8 employees likely to be affected are skilled and semi-skilled employees in support roles at the Target Firm.
- 2.3 The Merging Parties have not been able to identify the specific employees that will be affected, however, the Merging Parties have indicated that the likely retrenchment of the abovementioned 8 employees is an indication of the "worst case scenario" resulting from the anticipated duplications.
- 2.4 In order to limit the impact and number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

### **3. Conditions to the approval of the Merger**

- 3.1. With the exception for the Affected Employees, the Merging Parties and their respective direct and indirect subsidiaries shall not retrench any employees as a result of this Merger.
- 3.2. The Conditions in paragraph 3.1 above are subject to the consultation requirements of section 189 of the Labour Relations Act.
- 3.3. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

#### **4. Monitoring of compliance with the conditions**

- 4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within 7 days of the Approval Date.
- 4.2. As proof of compliance thereof, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.
- 4.4. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 4.5. All correspondence in relation to these Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
- 4.6. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

#### **5. Duration of the Condition**

- 5.1. The Conditions shall remain in effect for a period of two (2) years from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

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