

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 47

29 JANUARY 2021

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****HENSOLDT OPTRONICS (PTY) LTD****AND****THE AIR TRAFFIC MANAGEMENT BUSINESS AND THE DEFENCE AND SECURITY  
BUSINESS OF TELLUMAT (PTY) LTD****CASE NUMBER: 2020JUL0011**

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:

1. On 03 July 2020, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Hensoldt Optronics (Pty) Ltd ("HOSA") intends to acquire the Air Traffic Management ("ATM") and the Defence and Security ("Defence") divisions of Tellumat (Pty) Ltd ("Tellumat"). Upon implementation of the proposed transaction, HOSA will exercise sole control over the ATM and Defence division of Tellumat as envisaged by section 12(2) of the Competition Act 89 of 1998, as amended ("Act").

**The parties and their activities**

2. The primary acquiring firm is HOSA, a company incorporated in accordance with the laws of the Republic of South Africa. HOSA does not directly or indirectly control any firms. HOSA and the firms directly and indirectly controlling it will hereinafter collectively be referred to as the Hensoldt Group.

3. The Hensoldt Group manufactures and sells sensor systems, including military radar, military communications, electronic warfare and optronics. Radar, identification and data products include high performance active electronically scanned array ("AESA") radars, identification friend or foe ("IFF") systems and airborne data links. In addition, it develops new products for data management, robotics and cyber security. Its workforce conducts business activities in the following areas: Space; Air; Land; Sea; Security; Cyber and Information Space. The Hensoldt Group also designs and manufactures surveillance systems/airborne gimbals, periscopes, helmet trackers for fighter aircraft, laser designators and rangefinders and has its own optics manufacturing and coating facility in Irene. Furthermore, they specialise in the design, development and support of electronic warfare, spectrum management and monitoring and integrated security solutions for land, sea and air applications.
  
4. The primary target firm is Tellumat in respect of its ATM and Defence divisions.
  
5. Tellumat operates its ATM division in the aerospace market. ATM provides a full-service offering ranging from project management, systems engineering, product upgrades, software development and installation to integration, commissioning and logistic and maintenance support. Tellumat's Defence division provides development, supply and support of systems and solutions for systems integrators and end users across the international aerospace and defence markets. It provides integrated secure IFF system products for land, sea or air defence radar and weapon systems; and perimeter security and management solutions which provide early warning systems of threats and intrusions in respect of linear assets such as railways, pipelines, utilities and communications infrastructure, critical infrastructure security perimeters (power stations, airports, military bases, mines and national borders), and power lines.

### **Competition assessment**

6. The Commission considered the activities of the merging parties and found that both the merging parties are involved in the provision of high technology military and commercial
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products and information technology and technical services. However, there is no overlap between the business operations of the merging parties in South Africa and accordingly they are not regarded as competitors in the South African market. Furthermore, the Commission found that in the international market, the business activities of the merging parties overlap, as the Hensoldt Group and the Defence business of Tellumat both manufacture and supply IFF and data-links products. HOSA does not provide IFF and data-links products in South Africa.

7. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

### **Public Interest**

#### *Effect of the merger on employment*

8. The proposed transaction is likely to have a negative impact on employment.

### **Conclusion**

9. The Commission therefore approves the proposed transaction with the conditions attached in **Annexure "A"**.

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**Annexure A****Hensoldt Optronics (Pty) Ltd****and****The Air Traffic Management business and the Defence and Security business of Tellumat (Pty) Ltd****CC Case Number: 2020Jul0011**

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

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

1.1.1. **“Acquiring Firm”** means Hensoldt Optronics (Pty) Ltd;

1.1.2. **“Affected Employees”** means employees employed at the Tellumat head office that are likely to be retrenched post-merger;

1.1.3. **“Approval Date”** means the date on which the Merger is approved by the Commission, as set out in the Commission’s clearance certificate (Notice CC 15);

1.1.4. **“Commission”** means the Competition Commission of South Africa;

1.1.5. **“Conditions”** means the conditions set out herein;

1.1.6. **“Days”** means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

1.1.7. **“DTIC”** means Department of Trade, Industry and Competition (South Africa);

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- 1.1.8. **“Hensoldt Group”** means HOSA and the firms that are directly and indirectly controlling it;
- 1.1.9. **“HOSA”** means Hensoldt Optronics (Pty) Ltd;
- 1.1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. **“Labour Relations Act”** means the Labour Relations Act, 66 of 1995 (as amended);
- 1.1.12. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.1.13. **“Merging Parties”** means HOSA and the ATM and Defence divisions operated by Tellumat;
- 1.1.14. **“Target Firm”** means, collectively, the ATM and Defence divisions operated by Tellumat (Pty) Ltd;
- 1.1.15. **“Tellumat”** means Tellumat (Pty) Ltd; and
- 1.1.16. **“Tribunal”** means the Competition Tribunal of South Africa.

## 2. RECORDAL

- 2.1. On 03 July 2020, the Merging Parties notified an intermediate Merger to the Commission wherein HOSA intends to acquire control over the Target Firm. Following its investigation of the Merger, the Commission concluded that the Merger is unlikely to substantially prevent or lessen competition in any relevant market.
- 2.2. HOSA intends to acquire the Target Firm, being divisions of Tellumat, an entity which has been performing poorly for a few years. The Merging Parties submit that, following
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implementation of the proposed transaction, Tellumat, may have to retrench all of the remaining employees at its Head Office.

2.3. In order to address the employment concerns identified by the Commission, the Merger is approved subject to these Conditions, which Tellumat and HOSA have agreed to.

### **3. CONDITIONS**

3.1. Tellumat shall use its best endeavours to avoid retrenchments of the Affected Employees and in the event that retrenchments are effected, these should not exceed Affected Employees within a period of 12 months from the Implementation Date.

3.2. The condition in clause 3.1. above is also applicable in the interim period between Approval Date and Implementation Date.

3.3. The Hensoldt Group will give first preference to the Affected Employees should suitable positions become available within HOSA or any of the subsidiaries within the Hensoldt Group in South Africa over the course of the 12 months following the Implementation Date.

3.4. For the sake of clarity, retrenched employees do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

### **4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

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- 4.2. Tellumat shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to the Affected Employees and their employee representatives in South Africa. Tellumat shall provide HOSA with a copy of such notification, as well as all relevant details of the Affected Employees, including their names, contact details, qualifications and positions held at Tellumat.
- 4.3. As proof of compliance thereof, a director of Tellumat shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the Affected Employees and employee representatives of Tellumat.
- 4.4. The Acquiring Firm shall submit an affidavit within 20 Days after the anniversary of the Implementation Date to the Commission and the DTIC, confirming compliance with clause 3.3 of the Conditions. This affidavit must be deposited to by a director of the Acquiring Firm.
- 4.5. Tellumat shall submit an affidavit within 20 Days after the anniversary of the Implementation Date to the Commission and the DTIC, confirming compliance with clause 3.1 of the Conditions. This affidavit must be deposited to by a director of Tellumat.

## 5. GENERAL

- 5.1. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 5.2. The Merging Parties or Tellumat may at any time, on good cause shown, apply to the Commission for the Condition to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Condition, the Merging Parties and/or Tellumat shall apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.
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All correspondence in relation to these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).

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