

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5380

4 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

**AFRICAN BUSINESS EXPANSION AND CONSULTING PROPRIETARY LIMITED
("ABEC")**

AND

**DIMENSION DATA ADVANCED INFRASTRUCTURE PROPRIETARY LIMITED
("DIMENSION DATA").**

CASE NUMBER: 2023OCT0064

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 abovementioned firms subject to conditions set out below:

1. On 27 October 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby African Business Expansion and Consulting Proprietary Limited ("ABEC") intends to acquire 100% of the shares in Dimension Data Advanced Infrastructure Proprietary Limited ("Dimension Data"). Post-merger, ABEC will have sole control over Dimension Data ("proposed transaction").

Parties

2. The primary acquiring firm is ABEC, a company incorporated under the laws of the Republic of South Africa. ABEC is controlled by the following shareholders Conrad Johann Kock (52%), Devon Carl Naude (16%), Paul Jean Ellis Cole (16%) and Marius Gerneke (16%). The shareholders of ABEC do not control any other firms. ABEC all the firms controlling it and all the firms controlled by those firms are hereinafter referred to as the "Acquiring Group".
3. The Acquiring Group has no shareholding held by historically disadvantaged persons ("HDPs").

4. The primary target firm is Dimension Data, a company incorporated under the laws of the Republic of South Africa. Dimension Data is controlled by Dimension Data Investments South Africa Proprietary Limited ("DDISA"). DDISA is ultimately controlled by Nippon Telegraph and Telephone Corporation ("NTT"). NTT is listed on the Tokyo Stock Exchange and its shares are widely held and not controlled by a single shareholder. NTT and DDISA controls a number of firms in South Africa. Dimension Data does not control any firms. Dimension Data all the firms controlling it and all the firms controlled by those firms are hereinafter referred to as the "Target Firm".
5. The Target Firm, Dimension Data does not have any shareholding by HDPs. DDISA, the ultimate controller has a 24.77% shareholding by HDPs based on its Broad Based Black Economic Empowerment ("B-BBEE") certificate dated 6 September 2023 and expiring on 5 September 2024. Therefore, DDISA's HDPs shareholding can be attributed to Dimension Data as it is wholly owned and controlled by DDISA. Therefore, the Target Firm has a 24.77% shareholding held by HDPs.

Activities

6. The Acquiring Firm does not have any trading activities and is controlled by management of the Target Firm. Furthermore, the Acquiring Group does not control any firms in South Africa.
7. The Target Firm is a facilities, network infrastructure and IT hardware systems services provider with a national footprint in South Africa. The Target Firm's service offering includes the provision of data centre infrastructure, integrated security, communication cabling, facilities services and managed and support services solutions.

Relationship between the parties

8. As such, there is no horizontal or vertical overlap arising as a result of the proposed transaction. Based on this, the Commission is of the view that there are no competition concerns likely to arise post-merger. In light of the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public interest

Employment

9. The Acquiring Group is currently not operational and there are no employees at ABEC.
10. The Commission engaged with the employee representatives of the employees of the Target Firm, and they did not raise any concerns. In light of the above, the Commission concluded that the merger is unlikely to raise any employment concerns.

The effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market

11. The Commission found that the merger results in a dilution in HDP ownership. The parties have tendered ESOP and HDP transaction remedies to make good the dilution. In addition, the parties have tendered further remedies that benefit HDPS.
12. The Commission therefore approves the merger subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A**AFRICAN BUSINESS EXPANSIONS AND CONSULTING (PTY) LTD****AND****DIMENSION DATA ADVANCED INFRASTRUCTURE (PTY) LTD****CASE NUMBER: 2023OCT0064**

CONDITIONS

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **“Acquiring Firm”** means African Business Expansions and Consulting (Pty) Ltd;
- 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.3 **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **“ESOP Establishment Period”** means 24 (twenty-four) months from the Implementation Date;
- 1.9 **“HDPs”** means historically disadvantaged persons as contemplated in section 3(2) of the Act;

- 1.10 **“HDP Transaction”** means the Acquiring Firm’s commitment to introduce an HDP shareholder/ HDP shareholders as contemplated in section 3(2) of the Act, that will hold not less than 20% share capital in the Acquiring Firm.
- 1.11 **“Implementation Date”** means the date, occurring after the last condition precedent to the Merger is fulfilled or waived, as the case may be, on which the Merger is implemented in accordance with its terms;
- 1.12 **“Merger”** means the proposed acquisition of the Target Firm by the Acquiring Firm as notified to the Commission under Case No. 2023OCT0064;
- 1.13 **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.14 **“South Africa”** means the Republic of South Africa;
- 1.15 **“Target Firm”** means Dimension Data Advanced Infrastructure (Pty) Ltd;
- 1.16 **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.17 **“Qualifying Workers”** means Workers employed by the Target Firm and with 2 years or more tenure at the Target Firm; and
- 1.18 **“Worker”** means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESOP AND HDP OWNERSHIP

- 2.1. Within 24 (twenty-four) months of the Implementation Date, the Merging Parties shall:
- 2.1.1. establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold 5% of the issued shares in the Target Firm, in accordance with the design principles set out in Annexure B; and
- 2.1.2. implement an HDP ownership transaction pursuant to which one or more HDP shareholder shall hold at least 20% of the issued shares in the Acquiring Firm.

3. INITIATIVES TO PROMOTE HDP PARTICIPATION IN THE SUPPLY CHAIN

- 3.1. The Merging Parties shall ensure that post-merger the Target Firm :
- 3.1.1. will continue with its current enterprise and supplier development initiatives, conducted pre-Merger (currently in the amount of R875 000 per annum) and that the Merger will not give rise to any negative change in relation to the manner in which the Target Firm conducts these initiatives; and

- 3.1.2. will allocate an additional R250 000 per annum over the next 24 months to various enterprise and supplier development initiatives to the benefit of Black woman-owned firms and small to medium and micro enterprises (SMMEs).

4. MONITORING

- 4.1. Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 4.2. By no later than 24 (twenty-four) months of the Implementation Date, the Merging Parties shall submit a compliance report to the Commission confirming that:
 - 4.2.1. the ESOP referred to in Clause **Error! Reference source not found.** above has subscribed to 5% of the issued shares of the Target Firm; and
 - 4.2.2. the Acquiring Firm has implemented an HDP ownership transaction as required under Clause 2.1.2.
- 4.3. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall set out :
 - 4.3.1. the structure of the HDP Transaction;
 - 4.3.2. the identities of the HDP shareholder/s;
 - 4.3.3. evidence that the prospective participants to the HDP Transaction are HDPs.
 - 4.3.4. the proportion of shareholding in the Acquiring firm that each prospective HDP shareholder(s) will receive; and
 - 4.3.5. confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 4.4. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval, which if details are in compliance with the conditions in clause 2.1.2 and 4.3 will be approved by the Commission within 30 Days of written notification, or such other period as may be agreed in writing.
- 4.5. The compliance report shall be accompanied by a copy of the trust deed for the registration of the ESOP and an affidavit from a director of the Merging Parties confirming the accuracy of the information contained in the report.
- 4.6. The Merging Parties shall submit a report on each anniversary of the Implementation Date, setting its compliance with Clause 3 of the Conditions. This report shall be

accompanied by an affidavit, attested to by a director of the Merging Parties, confirming the accuracy of the report.

- 4.7. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

- 5.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. GENERAL

- 7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and minstry@thedtic.gov.za

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

ANNEXURE B - CONFIDENTIAL

Design Principle	Applicable Criteria
Structure	<ul style="list-style-type: none"> ○ Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units. ○ The structure will be funded by the Target Firm (or one of its affiliates) with the ESOP subscribing for the shares in the Target Firm at a price equal to the value of 5% of the issued shares in the Target Firm.
Cost to Workers and participating HDPs	<ul style="list-style-type: none"> ○ Qualifying Workers will not be required to pay anything to participate in the ESOP. ○ The notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration costs, rental, fees of third party service providers such as auditors) and taxes. ○ The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to workers and must not impact any dividend flows due to workers. ○ Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.
Governance	<ul style="list-style-type: none"> ○ Qualifying Workers shall be entitled to appoint at least 50% of the trustees of the ESOP trust and the Merging Parties shall be entitled to appoint the remaining trustees. Decisions will be taken by a majority of trustees and in the event of any deadlock, the trust deed for the ESOP will contain appropriate deadlock breaking mechanisms.
Duration	<ul style="list-style-type: none"> ○ ESOP- will endure until terminated by the Trustees
Participants	<ul style="list-style-type: none"> ○ ESOP – All Workers with minimum requirements of 2 years or more tenure at the Target Firm
Demographics	<ul style="list-style-type: none"> ○ Currently, the Target Firm has 187 of Qualifying employees of which: <ul style="list-style-type: none"> ○ 145 are black ○ 47 are female ○ 52 are youth
Participation Benefits	<ul style="list-style-type: none"> ○ All Qualifying Workers will be entitled to dividends based on the number of units held by them in the ESOP. Units will be allocated to Qualifying Participants in accordance with the scheme rules. ○ Beneficiaries (i.e. Qualifying Workers) will cease to participate in the ESOP and forfeit their units if they cease to be Employees of the Target Firm for any reason.