

Involvement by Econex (now FTI Consulting) in Recent Mergers

Econex, as of 1 March 2019, has joined FTI Consulting. The team* continues their work on merger transactions and all other competition matters (including abuses of dominance and market inquiries). Specific to merger transactions, any potential merger has to be evaluated along two main dimensions, assessing the likelihood of unilateral and coordinated effects.¹ Economists play an important role in these assessments.

As an illustration of some of this work, the Competition Commission ('the Commission') has recently approved three of the transactions that Econex advised on. These transactions relate to three of the sectors in which Econex has a wealth of experience – healthcare, telecommunications, and energy. This article outlines these three mergers. In all cases Econex advised the merging parties on relevant economic aspects and assisted with their submissions to the Commission.

Mediclinic Southern African (Pty) Ltd (MCSA) v Intercare Group Hospital Holdings (Pty) Ltd (IGH)

Approved without conditions on 23 August 2018²

Econex was instructed by Cliffe Dekker Hofmeyr

Both merging parties provide services in the private hospital market. MCSA provides acute care private hospital services in 49 facilities nationally. These facilities offer general and specialised care across a range of disciplines. MCSA also

owns and manages two day hospitals in the Western Cape and Limpopo. A range of surgical disciplines providing procedures that do not require an overnight stay are accommodated at these day hospitals.

IGH operates four day clinics and four sub-acute facilities in Gauteng and the Western Cape. IGH day clinics accommodate day surgeries from various disciplines. IGH sub-acute and rehabilitation facilities provide inpatient care to patients who have suffered an adverse health event as a result of illness, injury or disease, who have a determined course of treatment, and who do not require invasive procedures.

Despite horizontal overlaps between the two parties in the provision of day hospital services, the Commission found no significant accretion in market share arising from the merger. Econex, now FTI consulting, assisted the merging parties specifically in analysing the vertical competition concerns. Subsequently, the Commission found very little likelihood of foreclosure in respect of rival sub-acute facilities to the merging parties. The existence of numerous competing sub-acute facilities precluded any foreclosure concerns. In

1. Unilateral effects, arise where, as a result of the merger, competition between the products of the merging firms is eliminated, allowing the merged entity to unilaterally exercise market power, for instance by profitably raising the price of one or both merging parties' products, thus harming competition. Coordinated effects arise where, under certain market conditions (market transparency, product homogeneity, etc.) the merger increases the probability that, post-merger, merging parties and their competitors will successfully be able to coordinate their behavior in an anti-competitive way, for example, by raising prices.

2. <http://www.compcom.co.za/wp-content/uploads/2018/01/Weekly-Media-Statement-23-August-2018-1.pdf>

addition, no mechanism whereby acute or day hospitals could foreclose sub-acute facilities exists, given the central role of doctors (as opposed to hospitals) in directing patients along the pathway of care.

SEACOM South Africa (Pty) Ltd. (SEACOM SA) v FibreCo Telecommunications Holdings (Pty) Ltd (FibreCo)

Approved without conditions on 19 February 2019³

Econex was instructed by DLA Piper

The merging parties to this transaction are active at various levels of the value chain, and the transaction had both horizontal and vertical aspects.

The SEACOM Group operates in the wholesale infrastructure and retail services of the telecommunications industry. With regard to the wholesale infrastructure level, the SEACOM Group provides last mile fibre connections to licensed and unlicensed business customers in Johannesburg and Cape Town. At the retail services level, the SEACOM Group provides enterprise services to business customers. The Group also offers fibre-to-the home (FTTH) and fibre-to-the (FTTB) business services to end user customers through Macrolan and SEACOM KZN. FibreCo is also active at the wholesale infrastructure, wholesale services and retail services level. With regard to wholesale infrastructure, FibreCo provides access to managed dark fibre or associated infrastructure to customers at the national and metropolitan levels. FibreCo also owns last mile (FTTB) dark fibre infrastructure, but has to date not leased any dark fibre to any customers.

3. <http://www.compcom.co.za/wp-content/uploads/2019/01/Weekly-Media-Statement-19-Feb-2019.pdf>

Econex, now FTI Consulting, assisted the merging parties in their submissions to the Commission. There were overlaps between the merging parties in the wholesale infrastructure, wholesale services and retail services markets. The economic analysis showed that strong competition in these markets, as well as minimal market share accretion, negated any vertical or horizontal concerns.

Macrovest Capital (Pty) Ltd (Macrovest) v MBT Petroleum (Pty) Ltd (MBT)

Approved without conditions on 8 March 2019⁴

Econex was instructed by Van Huyssteens Commercial Attorneys

Macrovest is an investment company and MBT is a non-refining wholesaler of petroleum products, marketing and distributing refined petroleum products to retail customers and commercial customers.

The analysis showed that the merging parties had no competitive overlap. The economic analysis in any event showed that the merging parties' market shares in all possible markets (retail and commercial; for diesel, petrol and paraffin, at national and local levels) were low and that the merger would not change competitive effects, for example through contractual arrangements and bargaining dynamics, in any way. The merger was approved by the Competition Commission without conditions.

*The Econex Team that contributed to these mergers: Nicola Theron, Helen Kean, Helanya Fourie, Willem van Lill, Albertus van Niekerk, Paula Armstrong, Elize Rich, Jonathan Jayes.

4. <http://www.compcom.co.za/wp-content/uploads/2019/01/Weekly-Media-Statement-08-March-Final.pdf>



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