



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 88/LM/Oct11

In the matter between:

**HITACHI DATA SYSTEMS EUROPE
HOLDINGS BV**

PRIMARY ACQUIRING FIRM

And

SHODEN DATA SYSTEMS (PTY) LTD

PRIMARY TARGET FIRM

Panel : Norman Manoim (Presiding Member)
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 14 December 2011
Order issued on : 14 December 2011
Reasons issued on : 18 January 2012

REASONS FOR DECISION

Approval

[1] On 14 December 2011 the Competition Tribunal (“Tribunal”) approved the large merger between Hitachi Data Systems Europe Holdings BV and Shoden Data Systems (Pty) Ltd. The reasons for approving the proposed transaction follow below.

Parties to the transaction

[2] The primary acquiring firm is Hitachi Data Systems Europe Holdings BV (“HDSEH”), a private company incorporated in the Netherlands and a wholly owned subsidiary of Hitachi Data Systems Corporation (“HDS”). HDS is a private company incorporated in the United States of America and wholly owned by Hitachi Limited (“Hitachi”). Hitachi is a public company that is not controlled by any single shareholder.

[3] The primary target firm is Shoden Data Systems (Pty) Ltd (“SDS”), a private company incorporated in terms of the company laws of the Republic of South Africa. SDS does not directly or indirectly control any firm based in South Africa.

Transaction and rationale

[4] The proposed transaction will be implemented in terms of a suite of transactional agreements. In terms of the Share Sale Agreement, Opiconsivia Trading 209 (Pty) Ltd (“Bidco”) will acquire 100% of the issued share capital in SDS. Through implementation of the proposed transaction SDS will become a wholly owned subsidiary of Bidco. 87.45% of the share capital in Bidco will be held by Opiconsivia Trading 210 (Pty) Ltd (“Holdco”), a wholly owned subsidiary of HDSEH.

[5] HDSEH wants to sell its products directly into South Africa rather than indirectly through a single partner and is of the view that the acquisition of SDS is the best way to achieve this objective. The acquisition of SDS also provides a foundation for HDSEH to expand its business operations.

[6] The sellers of the primary target firm wish to realise their investment.

Activities of merging parties

[7] Of relevance to the competition assessment of this transaction is that HDS is active in the manufacturing and supply of a range of data storage systems and software. HDS supplies its IT products through its selling arm HDSEH. It does not sell products directly into South Africa but supplies

data storage equipment and software through SDS, its sole value added reseller in South Africa.

[8] SDS, through its strategic partnerships with global technology firms such as HDS, operates in the broad information, communications and technology (ICT) market. SDS does not manufacture any products; it focuses on the sale and distribution of storage solutions and also supplies server solutions and information technology services (mainly storage and server administrator services) to customers located throughout South Africa and several other African countries.

Competition assessment

[9] There is no horizontal overlap between the activities of the merging parties.

[10] As stated above, the primary acquiring firm and its subsidiaries are active in the upstream market for the production and supply of data storage solutions and software. SDS distributes data storage and server solutions. The proposed transaction therefore involves the acquisition by a component manufacturer of its sole value added reseller in South Africa and thus constitutes a vertical merger.

[11] The Competition Commission (“Commission”) concluded that the vertical integration that arises due to SDS reselling or distributing Hitachi products is unlikely to result in any foreclosure concerns in relation to either upstream original component manufacturers or downstream resellers of the relevant IT products. From a potential input foreclosure perspective the Commission’s market investigation confirmed that SDS is the sole reseller of Hitachi products in South Africa. Furthermore, there are alternative upstream suppliers of storage solutions and software including EMC Corporation, IBM and Hewlett-Packard. There are also a number of other participants in the downstream distribution market including Dimension Data, BCX, Datacentrix, Bytes and TCM.

[12] We agree with the Commission's above vertical assessment of the proposed transaction.

Public interest

[13] The proposed transaction will have no adverse effects on employment¹ and does not raise any other public interest concerns.

Conclusion

[14] We approve the proposed transaction without conditions.

ANDREAS WESSELS

18 January 2012
DATE

Norman Manoim and Yasmin Carrim concurring

Tribunal researcher: Thabo Ngilande
For the merging parties: Bowman Gilfillan
For the Commission: Lerato Monareng

¹ See pages 11, 53 and 76 of the record.