

CASE NO: 67/LM/JUL07

In the matter between:

POWER TECHNOLOGIES (PTY) LTD

Acquiring firm

And

IST GROUP (PTY) LTD

Target firm

Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member), and

Y Carrim (Tribunal Member)

Heard on : 22 August 2007

Order issued on : 22 August 2007

Reasons issued on : 02 October 2007

REASONS FOR DECISION

APPROVAL

[1] On 22 August 2007 the Tribunal unconditionally approved the merger between Power Technologies (Pty) Ltd and IST Group (Pty) Ltd.

THE PARTIES

[2] The primary acquiring firm; Power Technologies (Pty) Ltd ("Powertech") is a wholly-owned subsidiary of Allied Electronics Corporation Limited ("Altron") which has various subsidiaries. In the power electronics sector these subsidiaries include Aberdare Cables; ABB Powertech Transformers; Willard Batteries; Crabtree Electrical Accessories SA; Strike Technologies and Tridonic SA. In the telecommunications sector they include Rentech; Lambda Cables and Battery Technologies.

[3] The primary target firm is IST Group (Pty) Ltd ("IST Group/IST") which wholly owns IST Holdings (Pty) Ltd ("IST Holdings"). IST Holdings operates through seven divisions namely; IST Data, IST Energy, IST Otokon, IST Industrial, IST Telecoms, IST Nuclear, and IST Dynamics.

THE TRANSACTION

[4] In terms of the proposed transaction Powertech's plan is to purchase the entire issued share capital of IST Group provided that two of its divisions i.e. IST Dynamics and IST Nuclear are unbundled from IST Group. In this way Powertech will control IST Group and its five remaining divisions.

RATIONALE FOR THE TRANSACTION

[5] According to the parties the proposed transaction is a strategic fit to integrate their complementary product portfolio, skills and product offering in order to create a greater service business. IST Group shareholders intend to exit the business and they identify Powertech as having the capabilities to undertake and execute its core projects.

ACTIVITIES OF THE PARTIES

[6] Powertech is involved in the manufacture, supply and design of power electronics and telecommunications sectors products. In the electronics sector these include among other things; power transformers, lead acid batteries, switches and sockets, high voltage machines, accessories for the monitoring metering and protection of electrical power systems, magnetic and electronic lighting control gear, and lighting emergency gear. In the telecommunications sector, Powertech is active in the design, manufacture and supply of infrastructure and products such as: solar systems in the power telecommunications sites, high speed and telecommunications cables, DC power solutions, and accessories for copper and optical fibre infrastructure.

[7] The other subsidiaries in the Altron Group provide high technology telecommunications, multi-media systems and information technology infrastructure and telecommunications. Consequently, no overlap or vertical integration occurs in respect of the activities of the subsidiaries of the Altron Group.

[8] IST Group is active in the electronic and industrial sectors though its five divisions. IST Data provides telecom operational support solution, geographic information management solutions, and workforce management and mobility solutions. IST Telecom provides voice and data telecommunications technology, and includes products such as battery charging systems and plug power hydrogen fuel cell. IST Energy provides automation and protection products, systems and solutions, turbine control and turnkey substations for electrical power networks, with General Electric ("GE") protection relays, GE supervisory control; GE remote terminal units and GE range of fibre optic products, in the secondary plant segment. IST Otokon offers energy management and automated meter reading systems and demand-side management solutions, and IST Industrial offers engineering

contracting, design and supply of technologically advanced plants for the mining and commercial industries, mainly on water and air pollution reduction and prevention technologies.

[9] An overlap in the horizontal activities of the parties occurs in the supply of high voltage protection relay systems, supply of remote terminal units ("RTU's) and the supply of direct current (DC) power systems. There is also a vertical relationship between the merging parties in relation to the manufacture of electrical meters and the provision of turnkey solutions.

THE RELEVANT MARKET

Relevant Geographic Market

[10] Although the Commission expressed the view that there was no need to decide whether the geographic market for all the relevant markets are national or international, it proceeded with the national market definition for each of the markets. For purposes of our analysis we hold that the geographic market for all the relevant markets in this transaction is national.

Horizontal Product Markets

[11] Three relevant product markets are identified for purposes of the horizontal effects of this transaction:

Protection Relay Systems

[12] The first relevant market is the supply of protection relay systems. Protection relay systems are used to calculate operating conditions on an electrical circuit and will trip the circuit breakers when a fault is found. Protection relay systems are manufactured for high voltage transmission networks and medium voltage and low voltage distribution networks which together form the transmission and distribution ("T&D") market.

[13] No overlap exists in the activities of the parties in protective relay systems for low voltage distribution networks. Furthermore, Powertech relays in Strike Technologies' operations are less complex and are used in small applications, whilst IST GE Multilink relays are more complex and used for large industrial applications. A narrow approach to the market definition shows that Powertech relays are appropriate for use at entry level markets, in particular for the mining industry. The protective relay systems of the merging parties are thus not substitutable.

[14] However if the market was defined as the market for protection relay systems, then the overlap arises in terms of this broad market definition only. The Commission nevertheless analyzed the effects on competition from a broader

market definition.

[15] From a supply side, T&D products such as protective relays, are supplied internationally, hence the merging parties' competitors are sometimes multinational companies. However, in order for those multinational companies to supply locally, they require a local presence so that they have the capability to provide the installation and support services necessary for such supply.

Remote Terminal Units

[16] The second relevant horizontal product market is the supply of remote terminal units ("RTUs"). This is a versatile device which is installed at a remote location that collects data, codes the data into a format that is transmittable, and transmits the data back to a central station, and is used across various applications. Accordingly, there is no need for differentiation for RTUs. ABB and Alstom confirmed that RTUs perform an essentially similar function and that adaptation of this product from one application to another is relatively easy.

[17] The players in the RTU product market are multi-national companies, which are active in South Africa, through partnerships with South African players. An example of this is Alco Motoma and IST which represent Motorola and General Electric.

Direct Current Power Systems

[18] The third relevant product market is the supply of Direct Current (DC) power systems in which IST Telekom is a new entrant. DC power systems are used in certain telecoms equipment and electronic equipment. Vodacom uses DC power systems called DC rectifier to provide the required -48 V DC power to its base transceiver stations. At the hearing the parties submitted that it is easy for a client, be it Eskom or Vodacom, to go to another vendor given that it is easy to replace one 48 Volt package with another.

[19] DC power systems are also used as back up to maintain continuous supply of electric power to connected equipment by supplying power from a separate source when utility power is unavailable. Eskom is a major utility of this product, and IST has traditionally acted as the supplier to Eskom, and also supplies other products to Eskom.

[20] The overlap in DC power systems is essentially in relation to the recent Vodacom tender in which both parties have been short listed.

Vertical Product Markets

[21] Two vertical markets are identified; namely the upstream market for the manufacture and supply of electricity meters, and the downstream market of turnkey solutions in which these meters are an input.

HORIZONTAL COMPETITIVE ASSESSMENT

[22] Each of the abovementioned products in the relevant market is dealt with below.

Protection Relay Systems

[23] In respect of the broad market of protection relay systems, estimated market shares are provided as follows:

	Estimated market share (%)
Siemens Power Division	18%
ABB	18%
Alstom Measurements	14%
Schweitzer Eng Labs	14%
Strike Technologies	10%
IST Energy	8%
Woodbeam	6%
Various Others	12%
TOTAL	100%

[24] IST's market share is 8% and Strike Technologies' is 10% which results in a combined market share of 18% post merger. The parties submitted that the market share accretion does not give rise to significant competition concerns and enables the merged entity to better compete with players such as Siemens and ABB which are large international competitors.

[25] The Tribunal however was concerned about Powertech's cross shareholding with ABB through a joint venture and whether or not this suggested a higher relative market shares for the merged entity than that projected by the Commission.

[26] At the hearing the parties clarified that the joint venture relationship between Powertech and ABB was solely in respect to transformers in the substation market where Powertech in the form of ABB Powertech competes. It was submitted that IST does not compete in this market and the joint venture was not relevant for purposes of this transaction.

Remote Terminal Units

[27] According to Powertech, in terms of the broad definition there is no overlap between the merging parties in the market for RTUs. In terms of a narrow market definition, it was submitted that a sister company to Altron, namely Altron Motorola uses RTUs for their police network for police secure communications, and that is where specifically, an overlap exists between Powertech and IST.

[28] The Commission's analysis of the relative market shares of the merging

parties' show that IST (GE product) has 80%, and Alcom (Motorola product) has 10% of the market. The combined market share would be 90%. Such a large market share required further scrutiny. The parties submitted that the market for RTUs is a bidding market and that IST has only one customer which is Eskom. In addition they averred that they compete with players such as Alstom, Siemens and ABB.

[29] The parties further submitted that contracts awarded in this market are normally for large projects of varying monetary value, and there is infrequent call for tender. Furthermore, the parties submitted that RTUs are found across the range of utilities and generally the main customers are inter alia; Eskom in respect to their distribution and transmission; the City of Tswane, and various others which all use RTUs to operate their networks. According to the parties, the high market shares are as a result of IST having won a large tender put out by Eskom, which is a fiercely fought tender, normally three to five years long, which was renewed in 2003.

[30] Without making any finding on whether or not this market is a bidding market, we are satisfied that the merged entity will face sufficient competition from a number of credible players in this market such as Siemens, Alstom and ABB who are equally well placed to win tenders put out by large customers such as Eskom.¹ Moreover, customers in this market are generally large utilities which have significant countervailing power.

DC Power Systems

[31] As mentioned earlier, IST Telecom is a new entrant which has not gained any market share. Accordingly no meaningful competition assessment of this transaction in this market can be made. At the hearing the parties averred that the product will continue to be available post- merger and that there are strong competitors in this market including SAAB Grintek which has a very strong presence in this market and has been there for many years; Emerson and Contra Kitting.

VERTICAL COMPETITION ASSESSMENT

[32] We now move on to the vertical competition aspects of this transaction. The markets identified are the upstream market for the supply of electricity meters, and the downstream market for the provision turnkey energy management solutions.

[33] Powertech is primarily engaged in the manufacturing and supply of electricity meters specifically for primary plant and telecoms infrastructure. Some electricity meters are used to record power usage in commercial and industrial (C&I) premises, while others are used for residences. The Commission's investigation revealed that

¹ Even if this were a bidding market it would not be exempt from anti-trust scrutiny by the Tribunal. See in this regard the Tribunal's approach in *Murray & Roberts Limited and The Cementation Company (Africa) Limited* 02/LM/JAN O4 and *Murray & Roberts Limited/Concor Limited* 101/LM/OCT05.

Powertech through Strike Technologies, is involved in the supply of meters, and operates predominantly in the C&I field which constitutes 20% of the entire metering market. Powertech's key customers are major utilities such as Eskom, Telkom, Transnet and municipalities.

[34] The downstream market entails the provision of turnkey energy management solutions. IST primarily competes in this market. The key customers for turnkey projects are local municipalities and power entities, such as Eskom, which consume electricity power for their manufacturing processes, and which are located throughout South Africa. The turnkey projects essentially involve the implementation and continued management of infrastructure which influences the quantity or patterns of use of energy consumed by consumers.

[35] A few competitors of IST expressed the concern that the merger will provide IST Group with exclusive access to the only upstream manufacturing source of >50MVA power transformers supplied by Powertech.

[36] At the hearing, Mr Claussen from Powertech testified that Powertech makes transformers across the entire voltage spectrum, and that although Powertech is the only local manufacturing facility for transformers above >50MVA, it faces competition from various international players such WEG and Alstom which make transformers up about 120 MVA, Alstom offshore which makes transformers up to 800MVA and two Japanese players which make transformers up to 1000 MVA, all of which supply transformers into the South African market.² Furthermore, no input foreclosure concerns could arise because IST does not operate in the turnkey market for large transformers, as its turnkey operations involve sub-stations which generally use transformers that are less than 50MVA.

[37] Given the above, we find that the transaction is not likely to substantially lessen or prevent competition in all the relevant markets.

CONCLUSION

[38] There are no public interest issues and we accordingly approve the merger without conditions.

02 October 2007

Y Carrim

Date

Tribunal Member

D Lewis and N Manoim **concur** the judgment of Y Carrim

² See page 15 para 5 of transcript

Tribunal Researcher: L Xaba

For the merging parties : Webber Wentzel Bowens

For the Commission : M Ngobese and S. Nunkoo
(Mergers and Acquisitions)