

SOUTH AFRICA / JUDGMENT

Africa data centres (Pty) Ltd vs Rental Enterprise Comprising the Sumrand data centre and the underlying land (LM169Mar20) [2020] ZACT 36 (29 April 2020)

[2020] ZACT 36

COURT

Competition Tribunal

BEFORE

Y Carrim, A Ndoni, F Tregenna

CASE / FILE NUMBER

LM169Mar20

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COMPETITION TRIBUNAL
OF SOUTH AFRICA

Case No: LM169Mar20

In the matter between

Africa Data Centres (Pty)
Ltd

Primary Acquiring Firm
And

Rental Enterprise
Comprising The Samrand
Data Primary

Target Firm
Centre and The Underlying
Land

Panel

: Ms Y Carrim (Presiding Member)

:

Ms A Ndoni (Tribunal Member)

:

Prof. F Tregenna (Tribunal Member)

Heard on

: 29 April 2020

Order Issued on : 29 April 2020

Reasons Issued on : 29 April 2020

REASONS FOR DECISION

Approval

- [1] On 29 April 2020, the Tribunal unconditionally approved the proposed transaction in terms of which Africa Data Centres (Pty) Ltd (“ADC SA”) is acquiring control over the Samrand Data Centre (“target enterprise”).
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm is ADC SA, which is controlled by Africa Data Centres Holdings Ltd (UK). ADC SA and its holding company are part of a larger group of companies which are ultimately controlled by Liquid Telecommunications (Jersey) Ltd (“Liquid Telecom Jersey”).
- [4] ADC SA provides data centre infrastructure services to customers in a carrier- neutral data centre.[1] This includes the provision of rack space and stable power and environmental conditions (cooling) and physical security but excludes the operation of computers in the data centre or the provision of cloud or IT services.
- [5] The target enterprise is owned by Standard Bank Properties (Pty) Ltd (“Standard Bank Properties”), which is in turn owned by Standard Bank SA. The Samrand data centre comprises of 5MW of IT load available in 4 data halls, total white space[2] of 6014m², and a rack space dependent on configuration.
- [6] The target enterprise’s only tenant is Standard Bank SA, which occupies data halls 2 and 3, and sub-leases data hall 1 to through a bare lease.[3] Data hall 4 is vacant.

Proposed transaction

- [7] ADC SA intends to acquire the target enterprise as well as its productive assets as a going concern. Post-merger, ADC SA will wholly own and control the target enterprise.

Impact on competition

- [8] The Competition Commission (Commission) identified a horizontal overlap in the activities of the merging parties because they are both active in the market for the provision of off-site or outsourced data services in SA. The Commission found that the merged entity will have an estimated market share of [<32%], with an accretion of [<18%]. The Commission is of the view that the proposed transaction is unlikely to result in a substantial prevention or

lessening of competition in the relevant market because the relevant market is characterised by excess capacity, and a high degree of competition with several large and well-funded competitors who are able to exert a competitive constraint on the merged entity

post-merger.

[9] The Commission also found that the transaction will not raise

competition concerns because other countervailing constraints also apply, such as alternative offerings (cloud services) and the

possibility of self-supply by large customers. The Commission also considered whether the tenants will be affected by the proposed

transaction post-merger. The Commission found that the tenants will not be affected because the lease agreements will be transferred to ADC SA on the same terms and conditions.

Vertical considerations

[10] The Commission found that the proposed transaction does not result in a vertical overlap. However, the Commission found that the proposed transaction presents a potential vertical overlap. This is because Liquid Telecoms SA currently supplies connectivity services to the customers of the target enterprise. The Commission therefore assessed

the possible foreclosure concerns likely to arise in the event that the merged entity requests its data centre customers to only use Liquid Telecoms for their connectivity services. The Commission concluded that the proposed transaction is unlikely to result in foreclosures because the merged entity will not have the ability to effect any foreclosure strategies. This is because there are numerous alternative data centres in which third-party connectivity providers can provide connectivity services to, and because there are number of connectivity providers that customers of other data centres can utilise for connectivity services. This position is bolstered by the fact that the Samrand data centre will continue to operate on a carrier-neutral basis.

[11] In light of the above, the Commission concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition. We found no reason to disagree with the Commission's findings.

Public interest

[12] The proposed transaction does not raise any public interest concerns.

Conclusion

[13] In view of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Signed by: Yasmin Tayob Carrim

Signed at: 2020-04-29 16:22:41

29 April 2020

Ms Yasmin Carrim

Date

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring.

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : D Arteiro and S Rodze of Werksmans

For the Commission

: B Mabatamela and T Mahlangu

- [1] Carrier neutral data centre is a data centre that allows interconnection between many colocation and interconnection providers (they're not tied to any service provider).
- [2] White space in data centres is the space allocated for IT equipment or the space where IT equipment is placed (includes servers, storage, network gear, racks, air-conditioning units and power distribution systems).
- [3] Bare lease is a rental of new or used equipment, with full lessee responsibility for operation, regular maintenance, insurance and consumables.

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