

SOUTH AFRICA / JUDGMENT

Reunert ICT Holdings (Pty) Ltd v IQ Business (Pty) Ltd (LM001Apr23) [2023] ZACT 64; [2023] 3 CPLR 43 (CT) (9 June 2023) [2023] ZACT 64

COURT

Competition Tribunal

BEFORE

Jerome Wilson, Fiona Tregenna, Thando Vilakazi

CASE / FILE NUMBER

LM001Apr23

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM001Apr23

In the matter between:

Reunert ICT Holdings (Pty) Ltd Acquiring Firm

and

IQ Business (Pty) Ltd Target Firm

Panel: Jerome Wilson SC (Presiding Member)

Prof. Fiona Tregenna (Tribunal Panel Member)

Dr Thando Vilakazi (Tribunal Panel Member)

Heard on: 08

June 2023

Order issued on: 08 June 2023

Reasons

issued on: 09 June 2023

REASONS

FOR DECISION

Approval

- [1] On 08 June 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Reunert ICT Holdings (Pty) Ltd (“Reunert ICT”) and IQ Business (Pty) Ltd (“IQ Business”). Post-merger, Reunert ICT will control IQ Business.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Reunert ICT, a wholly owned subsidiary of Reunert Limited (Reunert). Reunert is a public entity listed on the Johannesburg Stock Exchange and it is not controlled by any firm. Reunert, and all the companies controlled by it, are referred to below as the “Reunert Group”.
- [3] Reunert manages a portfolio of businesses in various sectors, including Electrical Engineering, Information Communications and Technology (ICT), Applied Electronics and other related fields.
- [4] Of relevance to this transaction are Reunert’s activities in the ICT sector, specifically in relation to IT consulting services and IT software development services. “IT consulting services” refers to advisory and implementation services aimed at helping clients to utilise information technology and digital assets to achieve their business goals. “IT software development services” refers to the development of software products to meet clients’ needs, including web applications, mobile applications and/or ecommerce platforms.
- [5] Reunert’s IT consulting and IT software development services are conducted through Plus1x Solutions (Pty) Ltd (“+OneX”). +OneX assists businesses with identifying data sets, methods of analysis and technologies to reduce the cost of developing and operating new data products and services.

Primary target firm

- [6] The primary target firm is IQ Business. IQ Business is not controlled by any individual shareholder.
- [7] IQ Business controls the following firms in South Africa: IQ Business Insights (Pty) Ltd, Nudge Now (Pty) Ltd and Tamirox (Pty) Ltd.
- [8] IQ Business is an independent management consulting firm. Its main activity is the provision of business solutions through IT consulting and IT software development services. IQ Business also offers management consulting services to businesses to improve the effectiveness of their business strategies, organisational performance and operational processes.

Proposed transaction and rationale

Transaction

- [9] In terms of the Sale of Shares and Claims Agreement, Reunert ICT is acquiring 74.2% of the total issued ordinary shares and “B” ordinary shares of IQ Business. The remaining shares in IQ Business will be held by [shareholder names listed] [....].

Rationale

- [10] According to Reunert ICT, the acquisition of IQ Business will provide the Reunert Group’s ICT segment with additional scale and increase its earnings from this segment. In combination with Reunert ICT’s +OneX, this merger will expand the Reunert Group’s offerings as an independent management & technology consultancy and solutions & systems integrator in the

South African market.

- [11] According to Reunert, this additional scale will enable it to compete successfully against the likes of PWC, Deloitte, KPMG, EY, and other integrated ICT and consulting firms. In addition, the acquisition will add technology and management consulting capability, as well as complementary services such as data management capability, software development and data services, to Reunert ICT’s existing offerings in the ICT segment.
- [12] The Competition Commission (“Commission”) found that the offerings of IQ Business are largely complementary to those of Reunert ICT, and that the proposed transaction is likely to enhance the offerings of Reunert ICT.
- [13] From the sellers’ perspective, two private equity fund shareholders (Capitalworks Fund II SPV Partnership and the South African Investment Partnership III), have identified the transaction as an attractive opportunity to exit IQ Business.

Relationship between the parties

- [14] The Commission found that there is a horizontal overlap in the activities of the merging parties as Reunert ICT and IQ Business are both broadly active in the provision of IT consulting and IT software development services in South Africa.
- [15] The Commission also noted that the Reunert Group (through +OneX) facilitated a marketing campaign via Meta for IQ Business in February 2023 for approximately R20 000. Given the de minimis value of this campaign, and its finding (discussed below) that the merging parties are very small players in the industry, the Commission found that the merger is unlikely to raise any vertical foreclosure concerns and therefore did not assess this aspect further.

Relevant markets

- [16] The merging parties submitted that there is a broad market for management consulting with several sub-segments, and that their activities overlap in relation to the provision of (i) IT consulting services and (ii) IT software development services.

[17] The Commission found that the parties are only active in the provision of IT consulting services and IT software development services, and that it is therefore not necessary to consider the broad management consulting services market. The Commission also noted that, in the IQ Business (Pty) Ltd/ Tamirox (Pty) Ltd merger,[1] the effects of the proposed transaction were assessed in the markets for

(i) IT consulting services and (ii) IT software development services.

[18] The Commission was of the view that it is not necessary to conclude on the relevant product markets in this case as the merger does not raise any competition concerns on any definition of the relevant market(s). However, for purposes of its analysis, the Commission assessed the effects of the proposed transaction in relation to the provision of (i) IT consulting services and (ii) IT software development services.

[19] As regards the relevant geographic markets, the merging parties submitted that they are national. The Commission agreed with this approach, stating that it was in line with the approach followed in the IQ Business/ Tamirox merger.

Competition assessment

IT consulting services

[20] Based on data published by Statista, the Commission found that Reunert ICT has a share (based on revenues) of approximately 0.3% and IQ Business has a share of approximately 20.5% in the provision of IT consulting services in South Africa, with the result that the post-merger share of the merged entity will be approximately 20.8%.

[21] The Commission also found that there are various other significant players providing IT consulting services in South Africa, including Allied Electronics, Adapt IT, EOH, BSG, Entelect, Alviva Holdings, PBT Group and others. In addition, the Commission found that large management consulting firms such as Bain, McKinsey, KPMG, EY, Deloitte and PWC also provide IT consulting services as part of their management consulting services.

[22] Having regard to the above, the Commission concluded that the merger is unlikely to result in competition concerns in the provision of IT consulting services.

IT software development services

[23] Based on the revenues of listed entities providing IT software development services, the Commission found that the merging parties have a share of less than 1% each in the provision of such services. The Commission noted that these shares are likely to be overstated as they do not include all players in the market, given the paucity of information that is available in that regard.

[24] The Commission also found that there are various other significant providers of IT software development services in South Africa, including Alviva Holdings, Allied Electronics Corporation, Adapt IT, PBT Group and EOH (amongst others).

- [25] Having regard to the above, the Commission concluded that the merger is unlikely to result in competition concerns in the provision of IT software development services in South Africa, as there are significant competitors who will continue to constrain the merging parties.
- [26] The Commission also contacted customers of the merging parties regarding the proposed transaction. These customers did not raise any concerns regarding the merger and listed various alternative suppliers from which they are able to obtain the services provided by the merging parties.
- [27] Based on the above, the Tribunal agrees with the Commission's conclusion that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market. Given the facts in this case, it is unnecessary for the Tribunal to conclude on the definition of the relevant market(s).

Public interest assessment

Effect on employment

- [28] The Commission noted that the merging parties have provided an unequivocal statement that the proposed transaction will not have a negative effect on employment as no retrenchments or redundancies are envisaged as a result of the proposed transaction.
- [29] The Commission also contacted the employee representatives of both merging parties who confirmed that the employees have been notified of the proposed transaction and have not raised any concerns in relation to it.

Effect on the spread of ownership

- [30] The Commission found that Reunert has an HDP ownership of 52.14% while IQ Business has an HDP ownership of [...] [%]. Post-merger, the HDP ownership of IQ Business will be 38.69% ($74.2\% \times 52.14\%$). As such, the Commission found that the HDP ownership in IQ Business will increase by [...] [%] as a result of the merger.
- [31] The Commission concluded, on this basis, that the proposed merger does not raise any concerns under section 12A(3)(e) of the Competition Act.
- [32] The Commission also found that the proposed transaction does not raise any other public interest concerns.
- [33] Based on the above facts, the Tribunal agrees with the Commission's conclusion that the proposed transaction does not raise any public interest concerns.

Conclusion

- [34] For the reasons set out above, the Tribunal approves the proposed transaction unconditionally.

Signed by:Jerome Wilson

Signed at:2023-07-27 12:02:13 +02:00

Reason:Witnessing Jerome Wilson

Date: 09 June 2023

Jerome Wilson SC

Concurring: Prof. Fiona Tregenna and Dr Thando Vilakazi

Tribunal case manager: Baneng Naape

For the merging parties: Ahmore Burger-Smidt of Werksmans Attorneys

For the Commission: Raksha

Darji and Wiri Gumbie

[1] Tribunal case number: LM013Apr21.

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