

SOUTH AFRICA / JUDGMENT

Reunert Ltd v Siemens Enterprise Communications (Pty) Ltd (60/LM/Aug09) [2010] ZACT 17; [2010] 1 CPLR 162 (CT) (2 March 2010) [2010] ZACT 17

COURT

Competition Tribunal

BEFORE

N Manoim, A Wessels, A Ndoni

CASE / FILE NUMBER

60/LM/Aug09

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 60/LM/Aug09

In the matter between:

Reunert Ltd Acquiring Firm

And

Siemens Enterprise Communications (Pty) Ltd Target Firm

Panel : N Manoim (Presiding Member) A Wessels (Tribunal Member)

A Ndoni (Tribunal Member)

Heard on : 28/10/2009

Order issued on : 29/10/2009

Reasons

issued on : 02/03/2010

Reasons

for Decision

APPROVAL

- [1] On 28 October 2009 the Competition Tribunal unconditionally approved the merger between Reunert Ltd and Siemens Enterprise Communication (Pty) Ltd. The reasons follow below.

THE TRANSACTION

- [2] Reunert Ltd currently has 40% shareholding in Siemens. This transaction entails an acquisition by Reunert of the remaining 60% shares in Siemens from Siemens AG, which jointly controls Siemens. On completion of the transaction, Reunert will solely control Siemens.

THE RATIONALE

- [3] Reunert submitted that it is exercising its pre-emptive right to purchase the 60% shareholding as provided for in the shareholders agreement with Siemens. Siemens AG submitted that it is no longer able to procure technology and products for Siemens as it wants to realise profits in other businesses, hence the decision to sell Siemens.

THE PARTIES AND THEIR ACTIVITIES

- [4] The primary acquiring firm is Reunert Ltd ("Reunert"), a public company listed on the JSE Securities Exchange ("JSE").

Reunert's major shareholders are as follows:

Old Mutual Investment Group SA ("Old Mutual") 14%

Public Investment Commissioners SA ("Public Investment") 10%

Investec Asset Management 7%

Polaris Capital (Pty) Ltd 7%

- [5] Reunert has direct and indirect controlling interest in several firms.¹ Reunert's subsidiary relevant for this transaction is Nashua Electronics (Pty) Ltd ("Nashua Electronics"). Reunert is active in the provision of multifunctional electronic devices and electrical engineering. Nashua Electronics imports and distributes

Private Branch Exchange Systems ("PABX Systems") from Panasonic, Futronic and Akai in Southern Africa.

- [6] The primary target firm is Siemens Enterprise Communications (Pty) Ltd ("SEC"), a company incorporated in accordance with the company laws of the Republic of South Africa. SEC is jointly controlled by Siemens AG and the Gauze Group. SEC is active in the distribution of enterprise telecommunication solutions of voice communications and related services in South Africa. It distributes PABX Systems on behalf of Siemens AG and the Gauze Group.

THE RELEVANT MARKET AND THE IMPACT ON COMPETITION

- [7] The activities of the merging parties overlap in respect of the distribution of PABX Systems. There is also a vertical relationship

in the activities of the merging parties as Nashua Electronics sources PABX products from the target firm.

- [8] The PABX System is a private telephone exchange which ties together telephone, fax and data system in a company and connects these to the public network. The PABX system largely provides integrated applications such as inter alia, voice mail and voice recording functions, systems and voice network management, telephone call cost management, video recording and least cost routing and contact centres.
- [9] The parties contend that the market for PABX Systems can be further segmented depending on the size of the system, i.e. between systems of less than 128 Ports and those greater than 128 Ports. The speed or capacity of each device defines the communication between the server and client and consequently sets out how data is communicated over the network. The PABX System of less to medium capacity (less than 128 Ports) is mainly utilised by small enterprises while the large capacity (greater than 128) PABX System relates more to large enterprises.
- [10] Reunert, through Nashua Electronics, distributes PABX Systems of a small to medium capacity of less than 128 Ports. SEC distributes PABX Systems of a large capacity of greater than 128 Ports.
- [11] In its assessment of the relevant product market, the Commission investigated whether or not the two types of PABX Systems fall within the same market. Customers of the merging parties such as Gracan Communications and Tongaat Hullett informed the Commission that PABX Systems are considered to have the same features and facilities, with the only difference being the capacity that generally has to be determined by the requirements of a particular customer.
- [12] The European Union ("EU") previously assessed a merger dealing with PABX Systems.² In that transaction, the merging parties submitted to the EU that small and large PABX Systems belong to the same product market, as their function is the same regardless of the size and customers seek solutions which may include both small and large PABX Systems. The EU however found it not necessary to further delineate the relevant product market because in all alternative market definitions,

effective competition would not be significantly impeded.

- [13] The Commission submitted at the hearing that it made a distinction between the products only to highlight that the market looks at the PABX Systems as such.³ The Commission therefore decided not to segment the market between large and small systems.

- [14] For purposes of the present transaction, we will leave the definition of the relevant product market open as there are a number of alternative firms competing with the merged entity. The geographic market for PABX Systems is defined by the Commission as national.⁴
- [15] The merging parties' combined post-merger market share in the PABX Systems is approximately 18%. The merging parties face competition from firms such as LG/Marconi (Telkom) with 28%, Samsung with 23%, Aristel with 12%, Phillips with 7% and others.⁵
- [16] The Commission's investigation found that the PABX market is highly fragmented with a large number of competing firms and that there very little differentiation between the products. Further, the Commission also found that customers in this market have buyer power. In this regard, customers such Edcon and ABSA bank, Mediclinic, Gracan, Panasonic Business Solutions and Tongaat Hullett submitted that they get to choose what they want, are the ultimate deciders who determine prices for PABX packages and that they negotiate better deals depending on volume and size of the deal.
- [17] In addition, none of the competitors contacted by the Commission raised concerns regarding the merger. There was only one concern raised by a customer, namely Gracan. Gracan's concern was that as Reunert already owns Siemens, Nashua Mobile and Panasonic, it can manipulate the pricing and distribution of the PABX Systems. Gracan, however, confirmed that there are many alternative players in the market which it can turn to in the event that the merged entity increases prices.
- [18] As indicated above, there is a vertical relationship between the merging parties as Nashua Office automation, a subsidiary of Nashua Electronics, has, through its distributors, sourced PABX products from SEC. The purchase by Nashua Office Automation represents a very negligible 0.1% of the entire PABX Systems distribution business of SEC. This figure is insignificant to result in any foreclosure concerns in the national market for the distribution of PABX Systems.
- [19] In light of the above, we find that the transaction would not substantially prevent or lessen competition in the market for distribution of PABX Systems.

CONCLUSION

- [20] There are no significant public interest issues and we accordingly approve the transaction.

02/03/2010

Norman Manoim DATE

A Wessels and A Ndoni concurring.

Tribunal Researcher: I Selaledi

For the merging parties: Cliffe Dekker Hofmeyr Inc

For the Commission: L Madihlaba

1 Refer to form CC(1) for the names of these firms.

2 In the merger between Flextronics and Network Services/Telaris Sodra, case no: COMP/M. 2654.

3 This was also confirmed by Mr. Raymond Padayachee, Chief Executive Officer of SEC.

4 As defined in the merger between Vox Telecom Ltd and STWS Ltd, Commission case no: 2007Oct3312.

5 Such as Alcatel-Lucent (3%), Aastra-Ericsson (2%), Nortel (2%) as well as many others.

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