COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 120/LM/Nov07

In the matter between:

Diamond II Acquisition Corp	Acquiring Firm
And	
3Com Corporation	Target Firm

Panel	: D Lewis (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)
Heard On	: 19 December 2007
Decided on	: 19 December 2007
Reasons Issued on	: 22 January 2008

Reasons for Decision

Approval

[1] On 19 December 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Diamond II Acquisition Corp and 3Com Corporation unconditionally. The reasons appear below.

Parties

[2] The acquiring firm is Diamond II Acquisition Corp ("Diamond") a company incorporated in the State of Delaware, United States of America. Diamond is wholly owned by Diamond II Holdings LLC ("Diamond Holdings") a limited liability company organised under the laws of the State of Delaware. In turn Diamond Holdings is controlled by Bain Capital Investors LLC ("Bain Capital"). Both Diamond Holdings and Diamond II are special purpose vehicles established for the purposes of this transaction.[1]

[1] Bain Capital has an excess of two hundred and forty companies worldwide. In South Africa it controls Samsonite(international manufacturer and distributor of luggage), FCI(which produces electrical connectors which are used in the automotive and communications sectors), Sigma Coatings(which offers a comprehensive range of products for heavy duty coatings and marine applications), Bombardier(which designs and manufactures motorised recreational vehicles) and Edcon. Bain acquired 86.8% of Edcon and the Tribunal approved the transaction in May 2007.

[3] The target firm is 3Com Corporation ("3Com"), a corporation incorporated in the State of Delaware. 3Com is a company listed in NASDAQ Global Select Market ("NASDAQ exchange"), thus it is not owned by any firm.[2] 3Com has a subsidiary H3C Technologies in South Africa.

Transaction

[4] In terms of the proposed transaction Diamond proposes to acquire the majority of the issued share capital of 3Com through the merger of Diamond 3Com. Post-merger, Diamond will have a majority shareholding of 83.5% in 3Com.

Rationale

[5] Diamond, is a newly formed Delaware corporation with no prior operations and no assets. It was established for the purpose of the proposed transaction and enabling its direct and indirect shareholders to acquire a controlling interest in 3Com. 3Com's rationale for entering into the transaction is to enable its shareholders to realise a premium of their shares of common stock based on the closing price of those shares on 27 September 2007.

Parties' Activities

[6] Diamond Holdings and Diamond are both special purpose vehicles established specifically for the purpose of acquiring interest in 3Com. As a result these entities do not currently have any activities, or provide any products or services. Bain Capital on the hand is a world wide fund management group that manages private equity, venture capital and hedge and yields funds.[3]

[7] 3Com is a global provider of enterprise and small business networking solutions that help organisations achieve their businesses and networking requirements. It provides integrated, secure converged network solutions for businesses of all types and sizes. These include wireless access products, standalone and stackable switches, powerful core switches, interoperability-tested routers, standards-based convergence applications and internet protocol telephony.

Competition Analysis

[2] 3Com has the following shareholders owning more than 1% shares: Citadel Limited Partnership 9.8%, Barclays Global Investors, N.A and Eric A Benhamou 1.2%. 3Com also has one subsidiary being, H3C Technologies (South Africa) (Pty) Ltd and the other subsidiary is incorporated in the UK being 3Com (UK).

[3] For the other activities which Bain Capital is involved in through its subsidiaries see pages 4-5 of the Commission's recommendations.

[8] There is no overlap in the activities of the merging parties as the acquiring firm is not involved in the activities where the primary target firm is involved. An analysis of the vertical integration by the Commission revealed that the proposed transaction will result in minimal vertical relationship between the merging firms in that 3Com purchases very small quantities of products produced by FCI in other parts of the world. We agree with the Commission that this transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public Interest Issues

[9]. There are no public interest issues.

Conclusion

[10]. Based on the above, we find that the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

______________________ **22 January 2008**

Y Carrim **Date**

Tribunal Member

D Lewis and M Mokuena concurring.

Tribunal Researcher	: J Ngobeni
For the merging parties	: Webber Wentzel Bowens
For the Commission	: David Masilela