

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 26/LM/Mar06

In the large merger between:

Fujitsu Siemens Computers (Holding) BV

and

Siemens Services Newco (Pty) Ltd

Reasons for Decision

APPROVAL

1. On 16 May 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between Fujitsu Siemens Computers (Holding) B.V and Siemens IT Services Newco (Proprietary) Limited. The reasons appear below.

THE PARTIES

2. The acquiring firm is Fujitsu Siemens Computers (Holding) B.V. ("FSC") which has its registered offices in the Netherlands.¹ FSC is jointly controlled by Siemens Aktiengesellschaft (Germany) ("Siemens"), and Fujitsu Limited ("Fujitsu") in equal proportions.²
3. FSC wholly owns Fujitsu Siemens Computer (Proprietary) Limited ("Fujitsu Siemens SA") which has its registered offices in Midrand, South Africa.
4. Siemens and Fujitsu control various firms in South Africa.³ The Siemens subsidiaries operate directly under the control of Siemens in Germany. Fujitsu subsidiaries operate directly under the control of Fujitsu in Japan.

¹ Its principal place of business is Het Kwatdrant 1,3606 AZ Maarsen, Netherlands.

² Siemens and Fujitsu jointly control FSC each owning 50% of the issued share capital in FSC. Siemens is a Germany company and Fujitsu is a Japanese company.

³ The comprehensive list of all the firms controlled by Siemens and Fujitsu in South Africa is attached as annexure A and B to the CC4(1) filed by FSC. See pages 15-19 of the record.

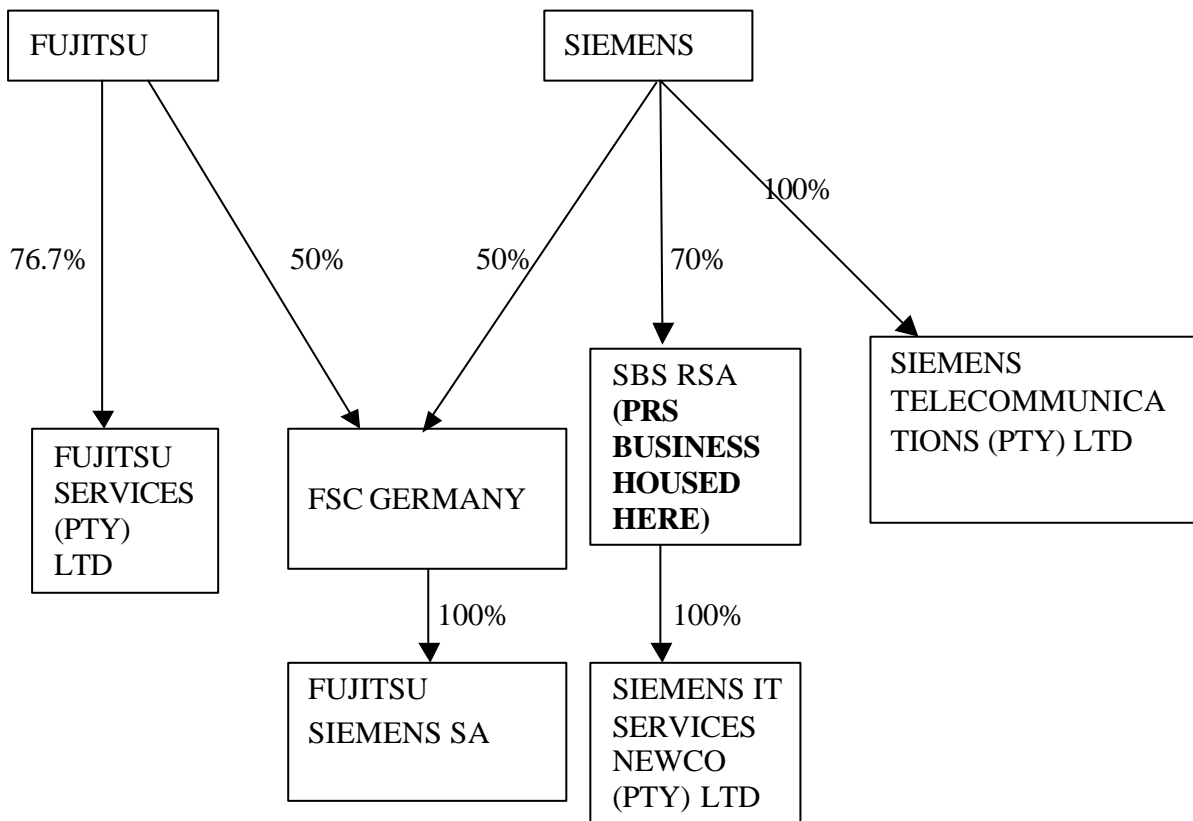
One of Siemens' subsidiaries is Siemens Business Services ("SBS Germany") and it owns 70% of the issued shares in of Siemens Business Services (Proprietary) Limited ("SBS RSA"). SBS RSA houses the business of Product Related Services to be transferred to Siemens IT Services Newco (Pty) Ltd ("Newco").

- The target firm is Siemens IT Services Newco (Pty) Ltd ("Newco"). Newco is currently a shelf company, which is a wholly owned subsidiary of Siemens Business Services (Proprietary) Limited ("SBS RSA").

THE MERGER TRANSACTION

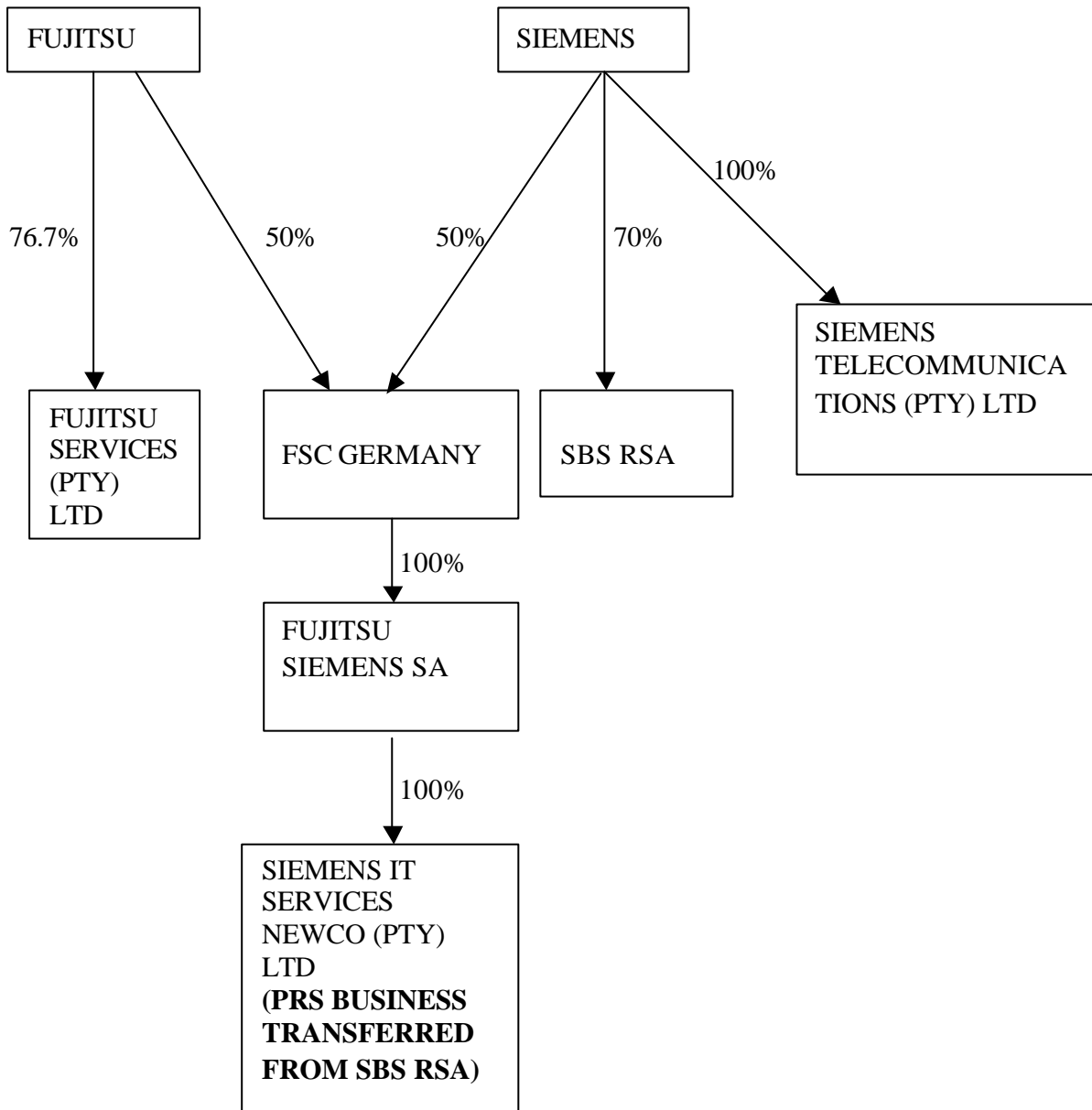
- The shareholding of the parties to the transaction pre and post merger is as follows:⁴

PRE MERGER



⁴ At the hearing the merging parties were asked to give the Tribunal an organogram relating to the shareholding in the various companies taking part or related to companies taking part in the merger transaction. The parties submitted to the Tribunal 2 diagrams which are used in these reasons.

POST MERGER



7. The proposed transaction forms part of a transaction in terms of which FSC will acquire the Product Related Services business (“PRS business”) of Siemens Business Services GmbH & Co. OHG (Germany) (“SBS Germany”) which is housed in a number of Siemens subsidiaries in various parts of the world, including South Africa.
8. The South African leg of the transaction involves the acquisition of 100% of the issued shares in Newco by FSC.

9. Prior to FSC acquiring the issued shares in Newco, SBS RSA will transfer its PRS business (“the transferred business”) to Newco. FSC will, either directly or through affiliated undertakings, subsequently acquire the issued shares in Newco.⁵

RATIONALE FOR THE TRANSACTION

10. The parties have submitted that the proposed transaction forms part of a transaction which is motivated by Siemens’s decision to focus its business activities on its core business being the production and sale of capital goods and accordingly divest the PRS business of SBS Germany worldwide.
11. FSC intends to enlarge its service offering to its customers in the field of IT services worldwide.

THE MERGING PARTIES’ ACTIVITIES

PRS Business “the transferred firm”

12. The business being transferred by SBS RSA to Newco entails the exclusive provision of IT Hardware maintenance. This IT hardware maintenance entails preventive and remedial services that physically repair IT hardware either onsite or at a centralised repair depot. It includes telephone technical troubleshooting and assistance for set up and all fee based hardware warranty upgrades.
13. To a very limited extent, the transferred firm also provides certain other IT services which are normally provided by other business units within Siemens, on an ad hoc basis to its IT hardware customers that request such services. These might include software maintenance and support, consulting, development and integration, IT management services, business management services.⁶

FSC (“Acquiring firm”)

14. The acquiring firm, FSC, does not conduct any business of its own in South Africa. However, it wholly owns Fujitsu Siemens SA. The latter primarily sells IT hardware and software products.
15. To a limited extent, Fujitsu Siemens SA also offers IT hardware maintenance services, but only in the context of the maintenance contracts

⁵ On page 188 of the record FSC had undertaken to purchase 70% of the issued shares in Newco and 30% to be bought by a BEE partner. At the time of the signature of the Agreement for the sale and purchase of the business known and recorded as the PRS business, this Carve out structure was still under discussion

⁶ See footnote on page 55 of the record.

that it concludes with customers that purchase IT hardware products from Fujitsu Siemens SA.

16. Fujitsu Siemens SA does not provide the actual IT hardware maintenance services itself, but uses external service providers on a regular basis to provide the actual service.

Siemens

17. Siemens jointly controls FSC with Fujitsu. Siemens conducts business in South Africa predominantly via a number of subsidiaries.⁷ These subsidiaries provide a wide range of products in the business areas of information and communication, automation and control, power, transportation, medical, lighting, building technologies, finance and real estates.

18. One of Siemens' subsidiaries, Siemens Technologies (Pty) Ltd provides IT hardware maintenance services in South Africa.

Fujitsu

19. Fujitsu does not conduct any business in South Africa but has a number of subsidiaries.⁸ These subsidiaries mainly design and build and provide IT solutions and services. They also provide:

- 19.1. an end-to-end IT service to business and government including retail solutions. Retail solutions include solutions aimed at exploiting multi channel retailing, managing in-store systems, integrating supply chains and optimising retail infrastructure;
- 19.2. infrastructure management (including data centre services, end-user services, enterprise management, internet managed services, managed services, integrated document and content management, open VME enterprise systems and sun solutions);
- 19.3. IT consulting (including enterprise content management, knowledge management strategy, Microsoft consulting and information security);
- 19.4. system integration (including application managed services, application portfolio management, business integration services and legacy migration);
- 19.5. solutions for financial services (consulting and IT infrastructure services to enable financial services organisations to reduce cost, make productivity improvements, and improve business processes). Only one

⁷ See page 15 of the record for a comprehensive list of these subsidiaries.

⁸ See page 18 for a comprehensive list of Fujitsu's subsidiaries in South Africa.

of Fujitsu's subsidiaries in South Africa, Fujitsu Services (Pty) Ltd also provides IT hardware maintenance services in South Africa.

Newco ("the Primary target firm")

20. Newco is a shelf company that has not traded or conducted any business in South Africa. It has been specially created for the purposes of this transaction.

THE RELEVANT PRODUCT MARKETS

21. The merging parties have submitted that the market in which they compete can be defined broadly and narrowly. The broad market relates to the provision of IT services. Whereas the narrow market relates to the actual provision of IT hardware maintenance. The parties further submitted that IT services ("the broad market") are divided into the following:

- 21.1 IT hardware maintenance;
- 21.2 software maintenance and support;
- 21.3 consulting;
- 21.4 Development and Integration;
- 21.5 IT management services; and
- 21.6 Business management services.

22. The transferred firm provides IT hardware maintenance services almost exclusively. The firms that form part of the acquiring firm in South Africa are involved in the provision of the services listed above, except the provision of Business management services. Thus, they also provide IT hardware maintenance services though it is to a limited extent.

23. There is therefore an overlap between the services supplied by the transferred firm and those supplied by the firms that make up the acquiring firm in relation to the provision of IT hardware maintenance services.

24. The Commission has analysed the product market by categorising them into horizontal and vertical markets. The horizontal product overlap is between the services provided by the PRS SBS RSA ("alternatively Newco") and those supplied by the firms that make up the acquiring firm in relation to the provision of IT hardware maintenance services. The vertical relationship exists between PRS Business ("the transferred firm") and Fujitsu Siemens South Africa in that the transferred firm purchases IT hardware from Fujitsu Siemens SA.

25. The Commission defines the markets implicated as national since the market participants in this market operate on a nationwide basis and the condition of competition applying to the products concerned are the same for all traders in the national geographic market.

26. We can find no reason not to accept the Commission's definition of the relevant product and geographic market, and in this respect we observe that there is no material disagreement between its views on the subject and that of the merging parties.

EFFECT ON COMPETITION

Horizontal Issues

27. The parties have provided the following table showing the market participants and the estimated shares they hold in the narrow market (Table 1) and in the broad market (Table 2) for IT hardware maintenance services in South Africa for the year ended 2004.⁹

28. Table 1 below shows that post merger, the merging parties will have a combined market share of 6% in the narrow market for IT hardware maintenance services. This market share is substantially low and is unlikely to raise serious competition concerns. Moreover, companies like Hewlett Packard, Ericson, Alcatel and Business Connexion will continue to compete and have a larger market share than the merging parties post merger.

Table 1: Market Shares in the market for IT hardware maintenance services in the narrow geographic market

Market Participant	Estimated market share(%)
IBM	3.5
Fujitsu Siemens SA	1.6
Hewlett-Packard	7.3
T-systems	0.1
SBS PRS ("the transferred firm")	3.9
BT	0.2
Xerox	2.6
Dell Inc	1.8

⁹ The data in Table 1 and 2 are figures for 2004 and are based on the Gartner report, August 2005. Gartner (www.gartner.com) is a leading provider of research and analysis about the global information technology industry. See page 72 of the record for a copy of the Gartner Report with regards to the IT industry in South Africa.

Unlsys	0.8
Ericson	10.1
Sun Microsystems	0.9
Cisco Systems	1.2
NCR	1.4
Alcatel	10.1
Lucent Technologies	0.6
Siemens Communications and Enterprise	0.5
Nortel	0.3
Dimension Data	2.7
Business Connexion	8.3
Arrivia.kom	0.5
Gijima Ast	4.6
Gateway	0.2
CNT	0.3
Huawei	0.5
ZTE Corporation	0.5
Others	33.9
Total	100

29. Table 2 below shows that post merger, the merging parties will have a combined market share of 5%. This percentage is low and does not raise serious competition concerns. Moreover, there are companies that have bigger market shares and will continue to compete with the merging parties post-merger and these include, Business Connexion, Ericson, Dimension Data, Arivia.kom and Gijima Ast.

Table 2: market Shares in the market for IT hardware maintenance services in the broad geographic market

Market Participant	Estimated Market Share (%)
Business Connexion	15.7
Fujitsu Siemens SA	1.6
Hewlett-Packard	2.1
T-Systems	3.2
SBS PRS (“the transferred firm”)	0.6
BT	0.6
Xerox	0.6
Dell Inc	0.3
Unlsys	0.4

Ericson	5.0
Sun Microsystems	0.2
Cisco Systems	0.3
NCR	0.4
Alcatel	4.8
Lucent Technologies	0.3
Siemens Communications and Enterprise	2.9
Computer Science Corporation	2.7
Dimension Data	7.7
EDS	2.3
Arriva.kom	7.8
Gijima Ast	5.8
Accenture	1.6
Oracle Corp	0.8
Cap Gemini	0.6
Marconi Corporation	0.5
Atos Origin	0.4
Sage	0.4
Deloitte	0.3
Software AG	0.2
BEA Systems	0.2
First Data	0.2
Others	24.1
Total	100

30. From the two tables above it is clear that the merger raises no serious horizontal concerns because the parties' post merger market shares are low and many other competitors will remain active post merger.

Vertical Issues

31. The vertical integration issues arise from the fact that the transferred firm provides IT hardware maintenance services to Fujitsu Siemens SA and certain of Fujitsu Siemens SA's competitors in South Africa, and the fact that Fujitsu Siemens SA sells IT hardware spare parts to the transferred firm and certain of its competitors.

32. The parties have submitted that the vertical integration will not raise serious competition concerns for the following reasons:

32.1. Fujitsu Siemens SA has a relatively small share of IT hardware equipment sales in South Africa (less than 5%).¹⁰ Any refusal by Newco

¹⁰ Fujitsu Siemens SA had sales of IT hardware equipment of approximately R314 141 800.00 for the financial year 2004/2005. According to figures published by the Industrial Development Corporation

to supply spare parts to other IT hardware maintenance service providers after implementation of the transaction will not raise competition concerns. According to the Commission and the parties Newco will have every incentive to continue supplying third party IT hardware maintenance service providers with spare parts to ensure that purchasers of Fujitsu SA's IT hardware equipment are able to access IT hardware maintenance services for such equipment in a competitive market.

32.2. Given that the transferred firm has a small market share of around 3.9% in the market of IT hardware maintenance services, Newco will not have the ability or incentive to engage in input foreclosure in relation to the provision of IT hardware maintenance services to competitors of Fujitsu Siemens SA.

32.3. Fujitsu Siemens estimates, it has significantly less than 1% share of the upstream market in which it is a purchaser of IT hardware maintenance services in South Africa. Any strategy by Fujitsu Siemens SA to source IT hardware maintenance services from only Newco post merger will not raise customer foreclosure concerns in relation to Newco's rivals in the market for the provision of IT hardware maintenance services.

33. It seems the impact of the vertical integration is minimised by the low market shares of the merging parties. We find that the merger raises no vertical concerns.

PUBLIC INTEREST

34. The parties and the Commission have submitted that FSC and its controlling firms, Siemens and Fujitsu do not directly conduct any business in South Africa save for their subsidiaries in the republic.

35. Since there is no trade union at the Product Related Service Business ("PRS business"), a copy of the merger notice was served on the employee representative, Mr Coenraad Groenewald. The Commission indicated that it conversed with Mr Groenewald on two occasions. Mr Groenewald is said to have indicated that the employees at PRS business have no intention to oppose the merger transaction but were only concerned about conditions of service, severance packages and such like labour related concerns. The Commission requested Mr Groenewald to articulate the employees' concerns in writing. To date the letter from Mr Groenewald has not yet been received by the Commission.

("IDC"), total IT hardware equipment sales (across all product categories) in south Africa for this period amounted to R7 139 587 000.00, which gives Fujitsu Siemens SA a market share of approximately 4.4%.

36. According to the parties the transaction has no effect on employment.¹¹

CONCLUSION

37. We conclude that the merger will not lead to a substantial lessening or prevention of competition. In addition the merger raises no public interest concerns that would not justify the approval of the merger.

Norman Manoim

25 May 2006
Date

Concurring: Merle Holden and Urmila Bhoola

For the merging parties:	Desmond Rudman and Calvin Maile, Werksmans Attorneys
For the Commission:	Tshepo Letsiala, Mergers and Acquisitions

¹¹ See page 65 of the record where the parties have submitted that there will be no retrenchments as a result of the proposed transaction and the employment conditions of the employees of the parties will not be adversely affected as a result of the proposed transaction. The transferred firm has 60 employees all of which are either skilled or highly skilled.