

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case Number: 30/LM/May01

In the large merger between

Comparex Holdings Limited

and

Persetel Q Data Africa (Pty) Ltd

Reasons for Competition Tribunal's Decision

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 11 July 2001 approving without conditions the merger between Comparex Holdings Ltd ("Comparex") and Persetel Q Data Africa (Pty) Ltd ("PQ Africa"). The reasons for our decision to approve the merger are set out below.

The Parties

2. The parties to this transaction are Comparex, the acquiring firm, and PQ Africa, the target firm. Comparex currently holds 50% minus one of the ordinary shares in P Q Africa. Comparex further holds 21 651 723 preference shares in P Q Africa, as a result its total shareholding in PQ Africa currently stands at 57,2%.
3. Comparex is a JSE-listed public company whose main operations in South Africa are conducted by Comparex International (Pty) Ltd (Comparex International) and PQ Africa, the target firm in this transaction. According to the parties, in the previous financial year the turnover of PQ Africa constituted 96% of the total turnover of Comparex.
4. Prior to 1997, Comparex held all the shares in PQ Africa. During 1997 Comparex underwent a restructuring process and effectively entered into a joint venture with Real Africa Holdings (RAH) and National Information Technology Consortium (NITAC). RAH is an empowerment

company listed on the JSE whilst NITAC is a consortium of historically disadvantaged persons or companies with interests in the information technology business. RAH and NITAC combined to form Perasetel Data Africa Holdings (PQAH) and, through PQAH, acquired a 50% plus one ordinary shareholding in PQ Africa. In terms of the latest addendum to PQ Africa's shareholders' agreement, PQAH has an option to exchange its shares in PQ Africa, on a one-to-one basis, for shares in Comparex. PQAH has the right to exercise this option by no later than 31 October 2002; Comparex may exercise the option anytime before 30 November 2002.

5. Comparex anticipates that it will exercise the exchange option before 30 November 2002 and wishes to obtain our approval beforehand, hence this decision. In the view of Comparex the exercise of the exchange option will give PQAH's shareholders the opportunity to realize the value of their shareholding in PQ Africa by holding shares in a listed entity (Comparex), which shares are more easily tradeable than those in an unlisted entity such as PQ Africa.
6. Comparex International provides a variety of services through its division Nanoteq and its associates Perago Financial Systems Enablers (Pty) Ltd (Perago) and Mosaic Software (Mosaic). Nanoteq is a division of Comparex International Trading (Pty) Ltd, a wholly owned subsidiary of Comparex International whilst Mosaic is a South African branch and external company of Mosaic Software Holdings Limited, a company registered in the United Kingdom.
7. Nanoteq specializes in the protection of electronic information and has particular expertise in the area of encryption. Nanoteq provides this service to both the corporate world and the government.
8. Perago is involved in the development of innovative payment systems. It provides consultancy services in the field of inter-bank settlement systems and national clearing systems which facilitates the payment of monies owed between banks as a result of the day-to-day transactions by the banks' customers.
9. Mosaic specializes in the provision of electronic funds transfer products and services to the private sector. For example, it provides the technology making possible the transfer money from a customer's account to that of the merchant pursuant to a credit card payment by the customer.
10. PQ Africa, on the other hand, provides a variety of consultancy services focusing on information communications technology competency.

11. Firstly, PQ Africa supplies integrated technology solutions and a variety of professional services to its customers in both the private and public sectors. This part of its business is focused on several areas of information communications technology competency. Services offered include systems integration, outsourcing, package implementation and project management.
12. It also supplies a range of servers and network systems. The network systems connect the servers and all supporting hardware and software. Further, through a business partnership with the EMC Corporation, PQ Africa sells and installs storage facilities for digital data.
13. Finally, PQ Africa provides a variety of e-business solutions including connectivity, web hosting and design, secure transaction management and electronic claims processing. It also provides services in the field of electronic payment systems, call center services and digital authentication.

Evaluating the Merger

14. Based on the above information supplied to us by the parties, we find no overlap between the products/services provided by the merging parties.
15. This is hardly surprising. Comparex previously wholly owned PQ Africa and its decision to dilute its interest in 1997 was a business decision to add value to the company through the introduction of empowerment shareholders. Yet notwithstanding the fact that the empowerment shareholders held the majority of the ordinary shares de facto control remained with Comparex. Comparex was able to do so via a variety of mechanisms, including,
 - a. Clauses in the shareholders agreement which required their assent on a variety of important operational decisions in order for them to be effective;
 - b. The fact that the empowerment shareholders did not appoint their full complement of directors meant that Comparex nominees constituted the majority of the board; and
 - c. The fact that the PQ Africa C.E.O. reported directly to the Comparex C.E.O.
16. Thus Comparex was in a position to ensure that the companies ran in a complementary rather than a competitive manner. Although the merging parties had contemplated arguing that the transaction did not constitute a merger, because there had been no change in control,

they had for practical reasons abandoned this point and we were not asked to consider it.

17. Post merger if the option is exercised the empowerment firms will receive approximately 16% of the equity in Comparex. This equity even if held collectively would not make them the largest shareholder (Old Mutual with about 22% post merger is) so there are no control consequences for Comparex as a result of the transaction.¹
18. As a result we find that the merger is not likely to prevent or lessen competition in any market.

Public Interest

19. The parties informed us that no employment losses would result from the merger. They impressed upon us that this transaction was no more than a reacquisition of shares by Comparex and that no changes would result to the operations of PQ Africa. The employees of the two companies have no trade union representation and, according to the Commission, made no submissions regarding the merger. In the case of the employees of PQ Africa, a notice of the merger was served on the employee forum which represents their interests. Notice of the merger was served directly to the employees of Comparex.

NM Manoim

Date

Concurring: S. Zilwa; P Maponya

¹ We were advised at the hearing that the empowerment shareholders would unbundle these shares to their constituent shareholders so they would be considered as passive investors in Comparex. Furthermore, it would appear from the parties' submission to the Commission that upon the exercise of the exchange option, Comparex is entitled to immediately purchase back from the empowerment shareholders, at the then prevailing market price, all the shares received by them pursuant to the option.