



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM173Sep17**

In the large merger between:

**Dimension Data Protocol BV**

**Primary Acquiring Firm**

and

**Hatch Investments (Mauritius) Limited**

**Primary Target Firm**

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Panel	: Enver Daniels (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 4 October 2017
Order Issued on	: 5 October 2017
Reasons Issued on	: 30 October 2017

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### **Reasons for Decision**

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#### **Approval**

- [1] On 5 October 2017, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction between Dimension Data Protocol BV ("Dimension Data") and Hatch Investments (Mauritius) Limited ("Hatch").
- [2] The reasons for approving the proposed transaction follow.

## **Parties to the Proposed Transaction**

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is Dimension Data Protocol BV (“Dimension Data”), a firm incorporated in accordance with the laws of the Netherlands and controlled by Dimension Data Holdings.
- [4] Dimension Data is active in South Africa through a number of subsidiaries, including Dimension Data South Africa Holdings (Pty) Ltd and Dimension Data Middle East and Africa (Pty) Ltd, which are relevant for the purposes of the proposed transaction. Dimension Data has interests in a number of firms, including Britehouse Holdings (Pty) Ltd (“Britehouse”) and Hatch Investments (Mauritius) Limited.
- [5] Dimension Data is an Information Technology (“IT”) service provider which offers a wide range of IT and communication services including consulting, system integration, application development, maintenance and support, managed services, aggregation, outsourcing and hosting. Of relevance to the proposed transaction are the enterprise resource planning services and the digital services provided by Dimension Data in South Africa through Britehouse.

### *Primary Target Firms*

- [6] The primary target firm is Hatch Investments (Mauritius) Limited (“Hatch”), a firm incorporated in accordance with the laws of Mauritius and which is jointly owned and controlled by Dimension Data (as to 50%) and Adcorp Holdings Limited (“Adcorp”) (as to 50%).
- [7] Hatch operates in South Africa, through its subsidiary Nihilent Technologies Limited (“Nihilent”), a firm incorporated in India and registered as an external company in the Republic of South Africa.
- [8] Nihilent is a technology consulting and services company which provides enterprise consulting services in, into and from South Africa. These services comprise of enterprise transformation and change management, digital transformation services and enterprise IT services.

## **Proposed Transaction**

- [9] Dimension Data will acquire Adcorp’s 50% of the shares in Hatch and upon implementation of the merger Dimension Data will exercise sole control of Hatch.

## **Relevant Market and Impact on Competition**

[10] The Commission found a horizontal overlap between the activities of Dimension Data (through Britehouse) and Hatch (through Nihilent) as both Britehouse and Nihilent are active in the provision of enterprise resource planning services and digital transformation services. These services fall within the markets of consulting services and implementation services. As such the Commission considered the competition effects of the proposed transaction on the following markets:

[10.1] The market for the provision of consulting services and

[10.2] The market for the provision of implementation services

[11] In respect of the market for the provision of consulting services, the commission found that the merged entity will have a combined market share of approximately 0.4% with a market share accretion of around 0.1%. With regard to the market for the provision of implementation services the Commission found that the merged entity will have a combined market share of around 5.9% with a market share accretion of about 0.1%.

[12] The Commission is of the view that these market shares are minimal to confer power on the merged entity and as such concluded that the transaction is unlikely to substantially prevent or lessen competition in either of the relevant markets.

[13] Based on the above, we concurred with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

## **Public Interest**

[14] The Commission found that the proposed transaction is likely to raise public interest concerns. One of these concerns related to employment, arising from the fact that 69 of the 83 Nihilent employees in South Africa fall within the category of jobs that are duplicated by the proposed transaction.<sup>1</sup> In order to protect the employees of Nihilent and to ensure that no job losses will occur as a result of merger, the Commission imposed an employment condition which prohibits Dimension Data from retrenching any employees as a result of the merger for a two year period.

[15] A second concern related to the effect of the proposed transaction on the transfer of skills in the IT sector.<sup>2</sup> The Commission noted that Nihilent currently offers an internship programme in South Africa in IT and software testing. The Commission therefore raised

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<sup>1</sup> Transcripts 4 October 2017 at page 3.

<sup>2</sup> Transcripts 4 October 2017 at page 4.

concerns that, if Dimension Data, through Nihilent, does not continue to provide internship programmes the merger will negatively impact the skills levels and transfer of skills in the IT sector.<sup>3</sup> As such the Commission has imposed a condition which, *inter alia*, requires that Nihilent continues providing internship programmes in South Africa post-merger.

[16] The Commission also raised concerns that the proposed transaction may have a negative impact on BEE as the merger will result in a loss of about 28% of BEE shareholders in Hatch, post-merger.<sup>4</sup> However, after considering [REDACTED] [REDACTED] if the proposed transaction is not approved the Commission concluded that there is a significant countervailing public interest justification for approving the merger.<sup>5</sup>

### Conclusion

[17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no further public interest issues arise from the proposed transaction. Those public interest conditions that do arise are adequately safeguarded by the proposed conditions. Accordingly, we approve the proposed transaction with conditions marked as **Annexure "A"**.



**Mr Enver Daniels**

30 October 2017

**DATE**

**Mrs Medi Mokuena and Prof Fiona Tregenna concurring**

Tribunal Researcher:

Hayley Lyle

For the merging parties:

Tyron Fourie and Kelly Hutchesson of Eversheds for the acquiring firm and Anthony Norton and Nicola Ilgner of Nortons Inc for the selling firm.

For the Commission:

Zanele Hadebe and Seema Nunkoo

<sup>3</sup> This concern is bolstered by the fact that Nihilent in South Africa currently employ more foreign nationals as compared to South African citizens.

<sup>4</sup> Transcripts 4 October 2017 at page 5.

<sup>5</sup> The Economic Development Department was notified of the proposed transaction and filed an intention to participate in this matter. The EDD raised the same public interest concerns as the Commissions. The Commission is of the view that these concerns are addressed by the conditions imposed and the EDD has indicated that it is satisfied that the conditions satisfy their concerns.