



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM064Jul22

In the matter between:

**Reunert Applied Electronics Holdings (Pty) Ltd
and Reunert Limited**

Primary Acquiring Firms

and

Etion Create Proprietary Limited

Primary Target Firm

Panel : T Vilakazi (Presiding Member)
: Y Carrim (Tribunal Member)
: F Tregenna (Tribunal Member)
Heard on : 06 September 2022
Reasons issued on : 12 September 2022

REASONS FOR DECISION

Introduction

[1] On 06 September 2022, the Tribunal unconditionally approved the large merger in terms of which Reunert Applied Electronics Holdings (Pty) Ltd (“Reunert Applied Electronics”), together with Reunert Ltd (“Reunert”) intend to acquire the entire share capital of Etion Create (Pty) Ltd (“Create”) from Etion Ltd (“Seller”).

[2] Post-merger, Create will be a wholly owned subsidiary of Reunert Ltd.

Primary acquiring firm

[3] Reunert is a publicly listed company on the Johannesburg Stock Exchange and thus its shares are widely held, and Reunert is not directly or indirectly controlled by any single firm or individual.

[4] Reunert has several subsidiaries and divisions¹ active within South Africa and is the ultimate parent company of the Reunert Group. Reunert Applied Electronics also controls several subsidiaries. The subsidiaries and divisions within the Reunert Group which are relevant to the proposed transaction are Omnigo, Reutech Radar, Reutech Solutions and Reutech Communications.

[5] Reunert, Reunert Applied Electronics and all the subsidiaries within the Reunert Group (the “Acquiring Group”) form part of a multinational industrial group with a portfolio of businesses active in the electrical engineering, information communication technology (“ICT”) and applied electronics sectors.

Primary target firm

[6] Create is a company duly incorporated in accordance with the laws of the Republic of South Africa and is a wholly owned subsidiary of the Seller.

[7] Create does not control any company but is active in the electronic manufacturing services (“EMS”) space whereby it acts as an original equipment manufacturer (“OEM”) and an own design manufacturer (“ODM”); designs, manufactures and supports various electronic PC boards and sub-systems on behalf of its clients (i.e. full lifecycle services); and owns the corresponding intellectual property (“IP”) of the products it produces (unless retained by the client by agreement).

[8] Create as the OEM/ODM remains the design authority on all work done regardless of whether the IP is owned by the client or Create. This is different with pure EMS providers which are not OEM/ODM. Create designs electronic products and subsystems based on customers specifications and provides manufacturing services for these designs.

¹ Including Reunert Applied Electronics, Omnigo (Pty) Ltd (“Omnigo”), Reunert International Holdings (Pty) Ltd (“RIH”), Terra Firma Solutions (Pty) Ltd (“Terra Firma”), Reutech (Pty) Ltd (“Reutech”), Reutech Solutions (Pty) Ltd (“Reutech Solutions”) and others. Reunert’s divisions include Reutech Communications (Pty) Ltd (“Reutech Communications”) and Reutech Radar (Pty) Ltd (“Reutech Radar”).

Overlaps

- [9] There is a horizontal overlap as the Acquiring Group and Create are both active in EMS. The Acquiring Group is only active in the manufacturing services whilst the Target Firm is also active in OEM/ODM and further offers full lifecycle services.
- [10] The merging parties submitted that the Acquiring Group procured services such as design and repair work through Reutech Radar and Reutech Solutions, from Create in March 2021 and March 2022, respectively. The merging parties submit that these were once-off procurements from Create as they occurred only once in the last five years.

Competition Assessment

Relevant product market

- [11] The merging parties submitted that the relevant product market is the provision of EMS, noting that Reunert Applied Electronics (through Omnigo) is not an ODM/OEM, and that Create is.
- [12] In its investigation, the Commission found the Acquiring Group provides EMS through its subsidiary, Omnigo, and Create also provides EMS and covers the full lifecycle of services as it also does its own designs, for which it holds IP rights and can design according to OEM specifications. Without necessarily concluding on the definitive relevant product market, the Commission defined the product market in line with the approach taken by the European Commission (“EC”) in previous matters² involving EMS activities and assessed the effects of the transaction on the broad market for the provision of EMS.
- [13] Based on the above, the Tribunal assessed the impact of the proposed transaction on the market for the provision of EMS.

² *Jabil Circuit, Inc. and Contract Manufacturing Services International B.V.* (EC Case No. COMP/M.2968); *PCE Paragon Solutions Kft and Dell Products (Poland)* (EC Case No. COMP/M.5765); and *Foxteq Holdings Inc. and Sanmina SCI* (EC Case No. COMP/M.5140).

Relevant geographic market

- [14] The merging parties submitted that the relevant geographic market is at least national in scope and further submitted that imports are a significant feature of the market as customers can source competing products and services from international markets with relative ease.
- [15] The Commission found that the merging parties mainly serve local customers. However, some of the customers contacted by the Commission confirmed that EMS products can be imported. Although there is an indication that the geographic scope of the market may be wider, the Commission focused on the national market for the purpose of analysing the matter without concluding on the definitive relevant geographic market.
- [16] Based on the above, the Tribunal assessed the competition effects of the proposed transaction in the national market for the provision of EMS.
- [17] In this market, the merged entity will account for a small market share³ of approximately [REDACTED] for the provision of EMS with a small market share accretion of approximately [REDACTED].

Horizontal unilateral effects assessment

- [18] In its assessment, the Commission considered the market shares; closeness of competition between the parties; and competitive constraints posed by alternative suppliers.
- [19] The merged entity will continue to face competition from Microtronix, CZ Electronix, Jemstech and several other competitors. The customers of the merging parties also submitted that there are several alternative providers of EMS.
- [20] In addition, competitors and customers of the merging parties confirmed that competition from imports is a significant feature of the market, with some of the

³ Based on the annual revenues from EMS activities by the market participants.

competitors having lost customers to imports. It is likely that imports will continue to provide an import source of competitive discipline in the market.

[21] Therefore, the Tribunal concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Vertical effects assessment

[22] In its investigation, the Commission found that the value of each of the services procured by the Acquiring Group from the Target Firm constituted less than ■■■ of the sales of the design business of the Target Firm and less than ■■■ of the total sales of each service rendered by the Target Firm.

[23] The Commission was of the view that the proposed transaction is unlikely to raise any foreclosure concerns as the Acquiring Group does not ordinarily procure design and repair services from the Target Firm, nor does it have an incentive post-merger to stop procuring from third parties. Where the Acquiring Group has procured services from the Target Firm, the services were of a specialised, short-term nature (during a period of capacity constraints) relating to functions that the Acquiring Group would ordinarily perform in-house.

[24] Having considered the above in assessing the proposed transaction, the Tribunal concluded that it is unlikely that the merging parties would have the ability and incentive to engage in foreclosure and the proposed transaction will not result in a substantial prevention or lessening of competition in any relevant market.

Third party concerns

[25] One competitor of Omnigo and Create within the EMS market had concerns with the proposed transaction.

[26] The Tribunal was of the view that the competitor's concern was primarily commercial in nature related generally to competition from imports in the South African market. Therefore, the concern was not taken further.

Public Interest

Effect on employment

- [27] The merging parties submitted that the proposed transaction will not result in retrenchments.
- [28] The Commission further contacted the employee representatives of the merging parties, and they did not raise any concerns with the proposed transaction.
- [29] However, the Acquiring Group retrenched [REDACTED] financial year through formal consultation processes in terms of section 189 of the Labour Relations Act.⁴ The retrenchments occurred within [REDACTED]
[REDACTED]
[REDACTED]
- [30] The Commission assessed whether the retrenchments within the Acquiring Group were merger-specific and [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] the Commission could not find evidence that indicates a nexus between the proposed transaction and the retrenchments.
- [31] In addition, the retrenched employees account for [REDACTED] of the total workforce of the Acquiring Group and at least half of the retrenched employees possessed tertiary qualifications, and some were employed in managerial positions for an extended period of time, something which it found was likely to enhance their prospects of securing employment opportunities in future.
- [32] Accordingly, the Tribunal concluded that the proposed transaction does not raise employment concerns.

⁴ Act 66 of 1995 (as amended).

Effect on the spread of ownership

[33] The merging parties submitted that the Acquiring Group is currently owned as to 48.93% by historically disadvantaged persons (“HDPs”). The Seller, and by extension, Create, currently has 32.08% ownership by HDPs.

[34] Therefore, the proposed transaction will have a positive effect on the public interest through increasing ownership by HDPs.

Conclusion

[35] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Signed by: Thando Vilakazi
Signed at: 2022-09-13 07:18:58 +02:00
Reason: Witnessing Thando Vilakazi

Thando Vilakazi

Dr. Thando Vilakazi

12 September 2022

Date

Ms Yasmin Carrim and Prof. Fiona Tregenna concurring.

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Judd Lurie, Katherine McLean and Aneeqah Meyer
of Bowmans

For the Commission: Grashum Mutizwa and Rakgole Mokolo