



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017426

In the matter between:

Pinnacle Technology Holdings Limited

Primary Acquiring Firm

and

Datacentrix Holdings Limited

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member) Andiswa Ndoni (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	30 October 2013
Order issued on	:	30 October 2013
Reasons issued	:	26 November 2013

DECISION

Conditional approval

[1] On 30 October 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Pinnacle Technology Holdings Limited of Datacentrix Holdings Limited.

[2] The reasons for conditionally approving the proposed transaction follow.

Parties to transaction

Acquiring firms

[1] The primary acquiring firm is Pinnacle Technology Holdings Limited ("Pinnacle"). Pinnacle is a public company listed on the Johannesburg Stock Exchange which is not controlled by any single shareholder. Although Pinnacle is an investment holding company, by means of its various operating

subsidiaries¹, it distributes information technology hardware and software related products and provides downstream value added services².

Target firm

[2] The primary target firm is Datacentrix Holdings Limited, a public company listed on the Johannesburg Stock Exchange which is also engaged in the information technology sector but largely in the downstream services market.

Proposed transaction and rationale

[3] Pinnacle had approached the Datacentrix Board of Directors to support its bid to make an offer to its shareholders but the board rejected the overture. Following the rejection by the Board, Pinnacle concluded off-market sales with two shareholders of Datacentrix to acquire 31.2% of the voting share capital of Datacentrix. Thereafter, it increased its total holding to 34.995% through purchases via the Johannesburg Stock Exchange.

[4] Post-merger, Pinnacle will hold a controlling interest in Datacentrix.³

[5] The acquiring firm is mostly engaged in hardware and software distribution. The transaction will increase its exposure to the more lucrative downstream value added services market.

Competition assessment

Horizontal assessment

[6] Pinnacle is primarily, although not solely, engaged in supplying hardware and software IT products on behalf of original equipment manufacturers ("OEM's") to customers in South Africa. Datacentrix is not a supplier, but is engaged in reselling and providing related services to customers downstream. In the

¹ Pinnacle Micro (Pty) Ltd, Infrasol (Pty) Ltd, Centrafin (Pty) Ltd, Axiz Workgroup (Pty) Ltd, Datanet Infrastructure Group (Pty) Ltd, Merqu Communications (Pty) Ltd and JAG Engineering (SA) (Pty) Ltd.

² These include hardware and software products, implementation solutions, structure finance solutions, IT consulting, project management, system integration, IT security, outsourcing and complementary products and services such as fire detection, fire prevention, audio visual technology, building management and access control.

³ At the hearing, we were informed that a shareholding of 34.9% would give Pinnacle an ability to cast a majority of the votes at a general meeting of the company given recent turnouts.

jargon of the industry, these related services, which assist the customer with utilising the infrastructure that they have purchased, are defined as infrastructure solutions and managed services. The proposed transaction results in a horizontal overlap in respect of these activities.

[7] Relating to the market for the supply of infrastructure solutions and managed services, Pinnacle submitted that it has an estimated market share of 0.46%, through its operating subsidiary Infrasol, whilst Datacentrix has an estimated market share of 6%. This will result in a post-merger market share of 6.46%. Datacentrix supplied its information separately to the Commission and verified the figure of 3% which another competitor had estimated.

[8] Irrespective of which market share estimation is used, based on the low market shares and presence of various other players in this market⁴, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

Vertical assessment

[9] The proposed transaction results in a vertical overlap as Pinnacle is an upstream supplier of hardware and software products to downstream resellers and system integrators such as Datacentrix, which in turn supplies such products and services directly to the end-user in the downstream market. Datacentrix has on certain occasions procured products from Pinnacle, however, such purchases constituted less than 10% of Datacentrix's total infrastructure spend last year.

[10] The Commission assessed whether the proposed transaction would result in input and/or customer foreclosure.

[11] Regarding potential input foreclosure, the Commission found that the proposed transaction was unlikely to raise any foreclosure concerns as there are various alternative upstream distributors of IT products in the market such as Tarsus, Mustek Group, Sahara Group, Datatec, First Distribution and international vendors who will be able to exert a competitive constraint on the merged entity.

⁴ BCX, Gijima, Dimension Data and EOH.

Furthermore, the merged entity's estimated market share is low and it is therefore unlikely that Pinnacle will have the incentive to engage in input foreclosure and foreclose Datacentrix's downstream rivals.

- [12] Regarding potential customer foreclosure, even if Datacentrix were to procure all of its requirements from Pinnacle, the Commission found that Pinnacle's main competitors would continue to have access to a sufficient customer base in the market.

Concerns raised by third parties

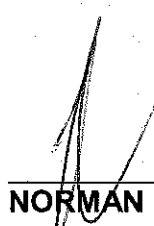
- [13] During its investigation of the proposed transaction, the Commission contacted various customers and competitors to ascertain whether they had any concerns with the proposed transaction. Only one competitor, namely BCX, raised a concern which related to the exchange of commercially sensitive and confidential information between the merging parties which may occur as a result of the proposed transaction. BCX is a systems integrator which offers customers a full range of IT solutions to end users which are procured from distributors and OEMs on a contractual basis.
- [14] The commercially sensitive information includes customer-specific information such as customer names and their respective contact details, product and service details, charged price and discounts given to the respective customer.
- [15] The Commission found that OEMs require their distributors to collate and provide the confidential information relating to their customers. As a distributor, Pinnacle is subject to the same obligations to its OEM suppliers. However now that it has moved more significantly into the downstream market by acquiring control of Datacentrix the latter's competitors were concerned that this commercially sensitive information could disadvantage them in competing with Datacentrix. The Commission therefore recommended that the transaction be approved subject to the condition which would prevent Datacentrix have access to this information acquired at the upstream level by Pinnacle. Pinnacle was amenable to the imposition of such a condition. We agreed with this condition and it was contained in our order conditionally approving the merger and is set out in Annexure A hereto, which was released on 30 October 2013.

Public interest

[16] The acquiring firm confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction.⁵ No other public interest issues arise as a result of this transaction.

CONCLUSION

[17] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market if the condition proposed is imposed to prevent the exchange of confidential information. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approved the proposed merger subject to the condition contained in Annexure A.


NORMAN MANOIM

26 November 2013
DATE

Takalani Madima and Andiswa Ndoni concurring

Tribunal Researcher: Nicola Ilgner
For the Commission: Zanele Hadebe and Seema Nunkoo
For the merging parties: Zoe Banchetti of Tugendhaft Wapnick Banchetti and Partners

⁵ See page 42 of the merger record.

ANNEXURE A

In the large merger involving:

Pinnacle Technology Holdings Limited / Datacentrix Holdings Limited

CT CASE NUMBER: 017426

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Commission"** means the Competition Commission of South Africa;
- 1.2. **"Commercially sensitive information"** means information belonging to the customers of Pinnacle and in the possession of Pinnacle which is not publicly available including but not limited to customer names, contact details, pricing and discounts offered to Pinnacle's customers;
- 1.3. **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.4. **"Conditions"** means these conditions;
- 1.5. **"Datacentrix"** means Datacentrix Holdings Limited, a company incorporated in accordance with the laws of the Republic of South Africa; and
- 1.6. **"Pinnacle"** means Pinnacle Technology Holdings Limited, a company incorporated in accordance with the laws of the Republic of South Africa.

2. Conditions to the approval of the merger

- 1.1 Pinnacle shall not disclose to Datacentrix any commercially sensitive information relating to its customers that compete with Datacentrix.
 - 1.2 These conditions shall apply for as long as Pinnacle has any form of control over Datacentrix, as contemplated in section 12 (2) of the Competition Act.
 - 1.3 Should Pinnacle dispose of its interest in Datacentrix and no longer have control (as defined in terms of section 12 (2) of the Competition Act), Pinnacle shall notify the Commission of the disposal within one month of concluding the final sale agreement and shall submit a signed copy thereof to the Commission.
 - 1.4 All documents or correspondences in relation to these conditions must be submitted to the following email address:
mergerconditions@compcom.co.za.
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