

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 21/LM/Mar06

In the Large Merger Between:

**Siemens Limited
Firm
And**

Acquiring

Marqott Holdings (Pty) Ltd

Target Firm

Reasons for Decision

Approval

1. On 17 May 2006, the Competition Tribunal unconditionally approved the proposed merger between Siemens Limited (“Siemens”) and Marqott Holdings (Pty) Ltd (“Marqott”).

The transaction

2. The parties to this merger are Siemens and Marqott. Siemens is a primary South African subsidiary of Siemens Aktiengesellschaft (“Siemens AG”), a firm incorporated in the Federal Republic of Germany.¹ Siemens AG shareholding is widely held with no party controlling it as such. Siemens AG controls a number of established subsidiaries worldwide as well as in South Africa. However, the only South African subsidiary relevant for our analysis is Siemens, being the only subsidiary through which Siemens AG carries on business in this country within the affected markets. Marqott is a South African private company which operates through its wholly owned subsidiary, Marqott (Pty) Ltd.²

3. Siemens AG, Siemens and the four (4) Marqott shareholders entered into a Memorandum of Understanding (“MOU”) in terms of which Siemens will acquire the entire ordinary share capital in Marqott. Post-merger, Siemens will exercise full control over the business of Marqott.³

Rationale for the transaction

¹ Siemens AG is a company listed on all Germany Exchanges, the Swiss Stock Exchange, the New York Stock Exchange and the London Stock Exchange.

² Marqott is owned and jointly controlled by four individuals, i.e., Rui F. Marques (CEO); Jorge M. Marques; Ray J. Neale; and Ken L. Vissian.

³ See pages 45, 555 – 582 of the merger record.

4. The merging parties' stated commercial rationale is linked to the historical background of the merging parties. We note that the relationship between the merging parties dates back from 1998 when Siemens elected to divest the medium-voltage ("MV") switchgear manufacturing portion of its business to Marqott. Siemens AG then licensed Marqott to manufacture and assemble Siemens' MV switchgear in South Africa. Since 1998, Siemens has not been active in the market for the supply of MV switchgear. Hence the affected markets in this transaction are the assembly and sourcing of MV switchgear equipment and the turnkey projects market, which are explained in great detail below.

5. From Siemens' perspective, by allowing it to re-enter the downstream market of the MV switchgear this would place Siemens in a comparable position relative to its global competitors who are vertically integrated in this regard. Siemens submit that it would - through the proposed transaction - be able to use Marqott's current manufacturing facilities, and combine this with new technology of its parent company to produce MV switchgear which conforms to the new Eskom technical standards, and thereby enable them to be an effective competitor. Siemens further submit that with the additional turnkey project capacity from Marqott, Siemens would be able to more flexible with manpower and thereby enable the merged entity to expand its capabilities across the entire range of turnkey projects.

6. Marqott seems attracted into this deal by two key features, viz., firstly, its need to comply with Eskom's new technical standards based on the European IEC specifications for its product purchases including MV switchgear.⁴ Secondly, Marqott's desire to have ongoing access to Siemens OEM technology (especially new technology developments for local manufacturing) once the ten-year licence agreement Marqott signed with Siemens AG in 1998 expires in 2008.⁵ The merging parties asserted that by commercially marrying Marqott into the well-established Siemens group, therefore Marqott will gain the opportunity to continue with the manufacture and supply of MV switchgear and thus enabling it to become a more effective competitor supported by a global player of Siemens calibre.⁶

The Relevant Market

7. is an operationally diversified technology solutions entity which operates under the auspices of Siemens AG, as mentioned above. In South Africa, Siemens is active in the following areas of business: information and communication; information technology; medical solutions; transportation systems; building technologies; logistics and assembly systems; industrial services; electronic modules and components; and power transmission and distribution. With regard to power transmission and distribution, Siemens provides control and instrumentation upgrades and servicing, through to the sub-stations,

4 We were advised that in August 2005, Eskom issued tenders which require tenderers to comply with the stipulated European IEC specifications for the manufacturing of MV switchgear. Marqott's present technology does not comply in this respect with the IEC requirements, and would therefore become obsolete. Nor does Marqott possess the technical capacity and/or resources to develop a new switchgear in conformity with the new IEC technical specifications. According to Marqott, failure to comply with the aforesaid new specifications would result in Marqott being taken off the list of those invited to tender for Eskom projects.

5 See pages 8 – 10 of the transcript dated 17 May 2006.

6 See pages 587 – 589 of the merger record.

transmission networks and even the metering and revenue collection services essential to an efficient, reliable and effective power grid. Siemens is a supplier of both high-voltage (“HV”) and medium-voltage (“MV”) equipment. We are told that Siemens does not manufacture HV and MV equipment locally. However, it sources the HV equipment from Siemens plants located elsewhere in the world, and the MV equipment from Marqott.

8. Marqott is involved in the manufacture, assembly and sourcing of electricity transmission and distribution (MV) switchgear under an exclusive license agreement entered with Siemens. Marqott is also involved in the provision of turnkey projects services whereby it undertakes the design, supply, installation, commissioning and maintenance of electricity sub-stations.

Product overlap

9. What one gathers from the above discussion is that in South Africa both parties are active in the broad market so-called the power “transmission and distribution” services.⁷ There are two markets here, the first is the manufacture of MV switchgear equipment and the second is the provision of turnkey projects. Both Siemens and Marqott are active in the market of turnkey projects. It is only in respect of turnkey projects that the real overlap exists. Siemens is not directly involved in the market for the manufacturing of MV switchgear in South Africa. Siemens’ parent company, Siemens AG, provides a licence to Marqott to manufacture and assemble the MV switchgear products locally. Therefore, Siemens locally does not supply the MV switchgear products, but sources them from Marqott if they have a customer for such products. In a sense, the proposed merger will result in pure vertical integration which may be classified as a pro-competitive one in that Siemens will simply take its licence back from Marqott and re-integrate Marqott’s operations into Siemens as they had existed previously.

Geographic market

10. The merging parties contended that the affected geographic markets are global for the following reasons. Firstly, customers purchase transmission and distribution products in worldwide bidding procedures, and major suppliers from all across the globe are able to partake in any given bid. Secondly, global competitors such as ABB, GE, ALSTOM and Siemens are able to offer their products worldwide. However, the merging parties submitted that focus should be on their activities within South Africa as it is the region where Marqott focuses its business. The Commission’s investigation also confirmed and revealed that the geographic nature of the affected market for the manufacture of MV switchgear equipment is

⁷ According to the parties, transmission involves the process by which electricity is conveyed from a power station and transmitted through high voltage power lines and substations to a city or large industrial plant. Distribution is defined as the process whereby electricity is taken from the transmission files and transformed to MV and low voltage (“LV”) electricity so that consumers can use it. The equipment involved in this process can be broadly grouped into transformers (which convert electricity from one voltage to another), switchgear (a generic term for a range of equipment which is used to switch electricity on and off) and protection (a generic term for intelligent electrical devices which measure and monitor electrical energy in a power system for the sake of safety and control). **See page 589 of the merger record.**

global. As regards the geographic market for the provision of turnkey projects services, the Commission viewed such a market as a national one given, amongst other things, that the majority of customers for turnkey projects are local municipalities and power entities which consume a large quantity of electricity power for their manufacturing processes and which are located throughout South Africa.

11. In light of the foregoing, the Commission concluded that the proposed transaction comprises both the global market (i.e., the market for the manufacture of MV switchgear equipment) and the national one (i.e., the market for the provision of turnkey projects services.⁸ We need not reach a definitive finding on whether the market for the manufacturing and supply of MV switchgear products is an international or a local one as we know that Siemens did not compete in supplying products into South Africa due to its licensing agreement with Marqott.

Competition analysis

Horizontal dimension

12. Having considered all the information submitted before us, we found that within the MV switchgear manufacture market, the merged firm is subject to competition from large players such as ABB, ALSTOM, Schneider Electric and General Electric ("GE"). The Commission's investigation revealed that there are several eastern manufacturers that are active in this market.⁹ We were also advised that ABB is considered the leading manufacturer of MV switchgear equipment followed by the merged firm and ALSTOM. In addition, the merging parties' post-acquisition market share estimates for the global manufacture of MV switchgear for the year ending 2005 are as follows: ABB (15-20%); ALSTOM (5-10%); Schneider (5-10%); the merged firm (10-15%); and Others (55-60%).

13. The merging parties also provided us with market share estimates pertaining to the national turnkey projects market for the year 2005. According to the figures, Alstom is the market leader (45-50%) followed by ABB (25-30%); Siemens (5-10%); Marqott (0-5%); and Others (10-15%). Insofar as this market is concerned, we would like to make a number of observations in favour of the approval of the proposed transaction. We note firstly that all the MV switchgear is sourced from the principal offices and other regional manufacturing locations of the entities active in the MV switchgear equipment manufacture market. Secondly, that the turnkey projects services in South Africa are undertaken by the local representative subsidiary of the MV switchgear manufacturers. Thirdly, that the proposed acquisition of Marqott will position Siemens on the same footing as its vertically integrated competitors such as ABB and Alstom in the sense that Siemens would become a vertically integrated entity. Fourthly, the merged entity would become a number three (3) player with

⁸ See para. 6.2 of page 12 of the Commission's Mergers and Acquisitions Report.

⁹ In fact, during the Commission's investigation, one of the customers of Marqott confirmed with the Commission that "*the procurement demand for MV switchgear equipment may be satisfied by Mitsubishi, Fuji, AE Power, Crompton Greaves, and Hitachi*". See also para 7.1 of the Commission's Mergers and Acquisition Report.

(10%-15%) market share post-merger.¹⁰

Vertical dimension

14. As already alluded to above, the proposed acquisition entails vertical elements. In the first place Siemens a licensor of technology in the MV market is integrating with a manufacturer in that market. Given that this has always been an exclusive arrangement from the point of view of both licensor and licensee the merger does not lead to any lessening of competition. The next vertical aspect is the relationship of the manufacturer to the turnkey market. Here post merger, as we have noted, the firm remains the same size in the upstream market (MV manufacture) but it is now integrated with a firm of a larger size in the downstream market (turnkey). The provision of turnkey projects services is basically undertaken on an invitation by tender basis. In other words, the customers frequently specify the equipment to be used when issuing a tender. The merging parties advised us that although Siemens could for example be awarded a tender, it would in delivering such a project source products from its competitors if required. In addition, the usual procedure in projects of this kind is that the parties' main consideration is suitability of the products for the task and cost effectiveness in order to be awarded a particular tender. We were told that in circumstances where a competitor's product is cheaper the successful bidder might well utilise a competing product in order to be cost effective. Nevertheless, the merging parties were adamant that the manufacturing of the MV switchgear equipment will be an integral part of the merged entity's business, and they would continue to supply equipment to the third parties as required.¹¹

15. We are given comfort by all the evidence submitted before us in this regard that neither horizontal nor vertical concerns identified above may give rise to the substantial lessening or prevention of competition regardless of any market definition approach adopted.¹²

¹⁰ Subsequent to the hearing and our reasons for decision in this case, the merging parties wrote to us requesting that we keep the market share figures away from the public domain given, amongst others, that this information is not readily known, either in local or global markets. We find the written motivation for keeping the market shares unconvincing. However as the merging parties did not have an opportunity to argue these issues more fully before us and since the market shares are not material to this decision as post merger the market is not sufficiently more concentrated we nevertheless give the merging parties the benefit of doubt in this regard, and in the non confidential version have adopted the practice of not giving actual market shares of players but the range within which that market share is located.

¹¹ See page 597 of the merger record.

¹² In fact, some of the essential and indeed big customers of the merging parties, such as large municipalities, echoed the Commission's findings and remained adamant that the potential for foreclosure occasioned by the proposed acquisition is unlikely. For a detailed Commission interaction with the merging parties' customers, see footnotes 22 - 23 of the Commission's Mergers and Acquisitions Report.

Public Interest

16. The merging parties submit that the proposed transaction would result in substantial skills development and employment benefits. On implementation of the proposed acquisition, Siemens will employ all staff members currently employed by Marqott. We are also cognisant of the fact that the merging parties tendered a condition as part of the sale of shares in Marqott that “no Marqott employees may be retrenched for a period of two years from the date of the approval of this transaction”.¹³ In addition, the merging parties submit that one main reason for the proposed transaction is to enable the merged entity to become a significant competitor in a marketplace in which strong business growth is expected pursuant to a substantial anticipated increase in electricity infrastructure spend. Accordingly, this may lead to further job creation and training of employees. For this reason we conclude that the merger will have no adverse consequences on the public interest.

Conclusion

17. We accordingly endorse the Commission's submission that the merger be approved unconditionally.

N Manoim

22 May 2006
Date

Concurring: **M Holden, and U Bhoola**
Tribunal Researcher: T Masithulela

For the Merging Parties: L Morphet and L Vundla Deney's Reitz Inc.
For the Commission: T Kekana (Mergers & Acquisitions)

¹³ In a correspondence between the Commission and Solidarity (one of the registered trade unions to whom employees of the parties to the merger are affiliated), it is plainly clear that Solidarity does not have an adverse view regarding the proposed merger's potential to negatively affect its affiliated members. The Commission's understanding is that NUMSA shares the same sentiment expressed by Solidarity. **See pages 615 – 616 of the merger record as well as page 16 of the Commission's Mergers and Acquisitions Report.**