

## COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 113/LM/Oct08

In the matter between:

**Vodacom (Pty) Ltd**

Acquiring Firm

And

**Storage Technology Services (Pty) Ltd**

Target Firm

Panel : Y Carrim (Presiding Member), N Manoim (Tribunal Member) and U Bhoola (Tribunal Member)

Heard on : 21 January 2009

Decided on : 21 January 2009

Reasons Issued on : 04 March 2009

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### Reasons for Decision

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#### Approval

[1] On 21 January 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Vodacom (Pty)Ltd and Storage technology Services (Pty)Ltd. The reasons appear below.

#### Parties

[2] The acquiring firm is Vodacom (Pty) Limited ("Vodacom"), an operating subsidiary of Vodacom Group (Pty) Ltd ("Vodacom Group"). At the time when this transaction was approved Vodacom was owned 50-50 by Vodafone Group ("Vodafone") and Telkom SA Ltd ("Telkom").<sup>1</sup>

[3] The primary target firm is Storage Technology Services (Pty) Ltd ("StorTech"), a private company currently controlled by Storhold (Pty) Ltd ("Storhold"); Arbez Storage Technologies (Pty) Ltd ("Arbez"); and Pyramid Trading (Fourteen) (Pty) Ltd ("Pyramid"). Storhold is a wholly owned and controlled subsidiary of StorTech Holdings (Pty) Ltd

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<sup>1</sup> The parties submitted in their filing that Telkom announced on 9 October 2008 that its board is supportive of a transaction proposed by Vodafone in which Vodafone would purchase an additional 15% interest in Vodacom from Telkom and, as a condition of the transaction; Telkom would distribute its remaining 35% interest to its shareholders. If this transaction goes forward Telkom would no longer have an interest in Vodacom. Vodafone would own 65% of Vodacom and public investors would own the remaining 35%. This transaction has since been approved by the Tribunal on 25 February 2009.

("StorTech Holdings"). Storhold controls StorTech Employment Holdings (Pty) Ltd. In addition to Storhold, StorTech Holdings controls the following firms: Orcom Trading 169 (Pty) Ltd; ID4 Mobility (Pty) Ltd, Adaptive Information Solutions (Pty) Ltd and StorTech Secretarial Services (Pty) Ltd. StorTech does not own or control any subsidiaries.

### **Transaction**

[4] In terms of the proposed transaction, Vodacom intends to acquire, from Storhold, 51% of the issued share capital in StorTech. The pre-merger shareholders in StorTech and their respective shareholdings are as follows: Storhold (68.68%); Arbez (26.32%) and Pyramid (5%). The post-merger shareholders and their respective shareholding in StorTech will be as follows: Vodacom (51%); Storhold (17.68%); Arbez (26.32%); and Pyramid (5%). If the transaction is approved StorTech will continue to trade under its own name for at least the next two years (at which point Vodacom will have the option to increase its interest to 100%). The parties also submit that StorTech might also operate as a reseller of other services offered by Vodacom Business such as MNS and various hosted services including but not limited to off site data storage and security.

### **Rationale for the Transaction**

[5] Vodacom submits that acquiring control over StorTech will enhance its Vodacom Business operations. Vodacom Business is looking to enter the broader IT services market and offer hosting, security, storage and applications services from its data centre to corporate and business customers. Because Vodacom has been a mobile phone operator and has not been active in IT services, it does not have in-house staff with the skills necessary to design, develop and operate an off-site data centre. Vodacom therefore is of the view that this acquisition will help Vodacom with the development of its off-site data centre. Furthermore, Vodacom believes that the acquisition will help ensure that Vodacom will have the supply of skilled IT workers that it needs to operate and expand its off-site data centre business.

[6] Storhold's thought the price that Vodacom was willing to pay exceeded the value it believed StorTech could otherwise generate in an environment in which the ICT industry seems to be moving to convergence solutions and in which StorTech lacked the network capabilities to become a full-line supplier of these solutions.

## **Parties Activities**

[7] Vodacom's core business in South Africa has been the provision of cellular telecommunications services. Vodacom has recently launched Vodacom Business. Vodacom Business has developed its own multi-protocol layer switching internet protocol ("MPLS-based IP") network based primarily on lines that it has leased from Telkom and fibre that it is in the process of laying in major cities across Gauteng and other metro areas in the country.<sup>2</sup> Vodacom Business has already been launched and has customers signed up for a number of services including access services via fibre and WiMax, managed network services.

[8] StorTech is a firm in the information technology services industry. According to the parties StorTech's business is split about 50-50 between sale of computer hardware (primarily Sun servers and storage devices) and software (primarily Symantec data protection and security software), and provision of maintenance and support services for this hardware and software.

## **Horizontal Overlap**

[9] There is no overlap between Vodacom and StorTech services provided to customers. StorTech is currently active in the on site provision of a range of IT services, focusing on data centre storage and security. According to the Commission Vodacom does not offer on site IT services currently and the merging parties also submitted that Vodacom does not intend to offer this service in the future. The Commission further submits that Vodacom Business has not yet started offering offsite data storage facilities, but is in the process of constructing Vodacom Business off site data centre. StorTech does not currently own or operate its own off site data centre. Therefore the Commission concluded that there is no product overlap between the activities of the merging parties in relation to the provision of on site data centre storage

## **The Relevant Market**

[10] The Commission's examination of the relevant market revealed that there is evidence to suggest that on-site data storage services and off-site data storage services are in

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<sup>2</sup> The parties submit that the services that Vodacom will provide can be segmented into four categories namely: Access Services; Managed Network services; Converged Applications Services and Managed Hosting Services (see page 93-94 of the record)

separate markets.<sup>3</sup> The Commission however made no finding on whether off-site data centres constitute a separate relevant market for purposes of competition evaluation since the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition whether off-site data centres are in a separate market or not. We agree with the Commission. With regard to geographic market, the Commission found that all Vodacom and StorTech's products and services are supplied by both throughout South Africa. Vodacom's core business has been the provision of mobile voice and data services primarily in South Africa. StorTech submits that it conducts its business activities throughout South Africa. We therefore agree with the Commission's conclusion that the relevant geographic market is national.

### Competition Analysis

[11] The Commission is of the view that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition. The merging parties submitted in their filing that the leading players of off-site data centre services include many of the leading IT service providers in South Africa. According to the merging parties, off-site data services in South Africa are offered by more than 6 firms, including Dimension Data, BCX, T-Systems, Verizon, EDS/HP, IBM, MTN NS, Telkom, Arivia.kom, and GijimaAST. The parties submitted the BMI-T estimates for IT outsourcing in Table 1 below.<sup>4</sup>

**Table 1: Market Shares in IT Outsourcing**

Competitor	2007 Revenues (R millions)	Market Share
Dimension Data/IS	1,788.16	19.2%
BCX	1,658.05	17.8%
Arivia.kom	1,130.04	12.1%

<sup>3</sup> According to Mr Alan Moon: Head of Business Continuity in the IS & T Directorate, City of Cape Town the former incorporates the storage of data on disk and tape media at a customer's data centres, and includes services related to data protection. The latter relates to the storage of tape cartridges off site from a customer's premises and housed in a managed and secure manner. Please see his submission to the Commission on page 66 of the record.

<sup>4</sup> The parties submit that BMI-T includes five service sub-categories within what it defines as the IT outsourcing market, such as (i) application management outsourcing, (ii) information system outsourcing, (iii) network and desktop outsourcing services, (iv) hosted application management, and (v) hosting infrastructure services. The parties added that BMI-T's definition of IT outsourcing includes services that typically do not require the use of an off-site data centre and therefore covers a market definition that is broader than the relevant market in the instant transaction. They submit that only sub-categories (iv) and (v) are in table 1 below are services that are provided through off-site data centres.

GijimaAST	708.41	7.6%
CSC	658.13	7.1%
Other	3,364.25	36.1%
Total	9,307.05	100.0%

**Source:** Roy Blume, Brian Neilson and Phuculwa Lupuwana (BMI-T), *South African IT Services: Market Sizing and Forecast, 2007-2012*, August 2008. Page 254 of the record Table 11.

[12] Although the Commission was unable to obtain the market shares for all competitors in the market for the provision of the off-site data centre storage services, its investigation<sup>5</sup> revealed that Vodacom Business and StorTech are not major players in so far as off-site data centre storage services are concerned. Again when one considers the BMI-T market share estimates<sup>6</sup> for IT outsourcing or StorTech's estimates of market shares for outsourcing of data centre storage services through off-site data centres, the conclusion remains the same.

[13] The Commission also considered whether the proposed transaction result in the elimination of future competition between Vodacom and StorTech. The Commission submits that Vodacom Business is a new entrant into the off-site data centre storage market whilst StorTech is a small player in relation to a market that has established players such as Dimension Data, BCX, and others. The relevant market does not appear to be highly concentrated. We therefore agree with the Commission's view that the proposed merger is unlikely to result in the elimination of future competition between StorTech and Vodacom.

[14] The Commission also analysed the likely effects on competition arising from the fact that Telkom currently owns 50% of Vodacom. During its investigations the Commission contacted Telkom for clarity regarding its widely-publicised of its share in Vodacom. The Vodafone and Vodacom transaction was notified with the Commission and we subsequently approved it on 25 February 2009. In light of the above, we agree with the Commission that the elimination of Telkom's ownership would eliminate any concerns about indirect effects. There are no public interest issues.

<sup>5</sup> According to the Commission, Dimension Data submitted during the Commission's investigations that market shares are unknown, but it believed that the major players in the provision of off-site data centre storage services to be Dimension Data, BCX, DataCentrix, Bytes, T-Systems, GijimaAST, and IBM. Business Connexion alleges that it is very difficult to determine market shares as the various ways in which companies define their services differ considerably. It nevertheless submitted a document which reflects the revenue per service category (as defined by BMI-T). Neither Telkom, Vodacom Business nor StorTech feature in the document. Again the Commission submits (see page 11 table 2) that according to StorTech, the largest operators in this market are SITA, BCX, Dimension Data and Verizon. EDS/HP, T-Systems, MTN NS and IBM are smaller players, with significant market shares of 5% each.

<sup>6</sup> See Table 1 above.

## **Conclusion**

[15] Accordingly the transaction is unconditionally approved.

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**N Manoim**

Tribunal Member

**04 March 2009**

**Date**

U Bhoola and Y Carrim concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Adv Jerome Wilson instructed by Cliffe Dekker Hofmeyr

For the Commission : Thabelo Masithulela (Mergers and Acquisitions)