



DETERMINATION OF MERGER NOTIFICATION M/19/016 COGNIZANT/ZENITH

Section 21 of the Competition Act 2002

Proposed acquisition by Cognizant Technology Solutions Corporation of sole control of Zenith Technologies Limited.

Dated 18 July 2019

Introduction

1. On 20 June 2019, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”), received a notification of a proposed transaction whereby Cognizant Worldwide Limited (“Cognizant Worldwide”)¹, a wholly-owned indirect subsidiary of Cognizant Technology Solutions Corporation (“Cognizant”), would acquire sole control of Zenith Technologies Limited (“Zenith”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a Share Purchase Agreement (the “SPA”) dated 13 June 2019 between GE Healthcare Life Sciences Holding AB (“GE”)², Zentek Engineering Unlimited Company (“Zentek”)³, Cognizant Worldwide and Mr. Brendan O’Regan.⁴

¹ Cognizant Worldwide is a company incorporated in England under registration number 07195160.

² GE Healthcare Life Sciences Holding AB is a company incorporated in Sweden with company number 556370-5655.

³ Zentek is a private unlimited company incorporated under the laws of the State with registered number 423670. Zentec and GE are together the sellers.

⁴ [...]



3. Under the terms of the SPA, Cognizant Worldwide will acquire the entire share capital of Zenith such that, following completion of the Proposed Transaction, Cognizant will have sole control of Zenith.

The Undertakings Involved

The Acquirer – Cognizant

4. Cognizant is a US-incorporated company, headquartered in New Jersey and listed on the NASDAQ Stock Exchange.⁵ Cognizant provides a range of information technology, consulting and business process services to clients in over 270 offices and digital hubs around the world.
5. Cognizant operates through three primary business divisions:
 - I. Cognizant Digital Business: Cognizant's Digital Business practice works with customers to re-design their products and business models through the use of data analytics and IT.
 - II. Cognizant Digital Operations: Cognizant's Digital Operations helps customers re-engineer their business processes to lower operating costs.
 - III. Cognizant Digital Systems & Technology: Cognizant's Digital Systems and Technology practice works with customers to simplify, modernise and secure information technology ("IT") infrastructure.
6. Through these three business divisions, Cognizant serves customers across four broad industry segments, namely:
 - I. financial services, including banking and insurance;
 - II. healthcare, including life sciences;
 - III. products and resources, including retail and consumer goods, manufacturing, logistics, travel and hospitality and energy and utilities; and

⁵ <https://www.nasdaq.com/symbol/ctsh>



IV. communications, media and technology.

7. For the financial year ending 31 December 2018, Cognizant's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

The Target – Zenith

8. Zenith is a privately-owned, Irish-incorporated technology company, founded by Mr Brendan O'Regan in 1998. Zenith employs approximately 860 staff in 16 offices around the world, and employs approximately 295 staff at its two Irish offices, located in Dublin and Cork.
9. Zenith focuses on delivering manufacturing software systems and specialises in automation, process control and manufacturing execution systems ("MES") solutions. MES are software systems used in manufacturing plants to track and document the transformation of raw materials to finished goods. Zenith's customers operate almost exclusively in the life sciences sector. Zenith operates through four main business divisions:
- I. Consultancy: Zenith's Consultancy business provides decision support to customers considering plant management and production control projects.
 - II. System Integration: Zenith's System integration business helps customers integrate software technologies, business systems, platforms, operating systems and hardware.
 - III. Professional Placement: Zenith provides specialist, dedicated personnel to customers on short and longer-term bases as part of a professional placement service.
 - IV. Managed Services: Zenith's Managed Services business manages customers' automation systems on their behalf, providing support and optimising the cost of ownership of IT and automation systems.
10. For the financial year ending 31 December 2018, Zenith generated worldwide turnover of €[...], of which approximately €[...] was generated in the State.



Rationale for the Proposed Transaction

11. The parties state the following in the notification:

“From Cognizant’s perspective, the acquisition of Zenith will complement Cognizant’s existing operations in life sciences manufacturing, filling a significant gap in its existing capabilities, while allowing it to offer customers an enhanced end-to-end service in life sciences manufacturing.

From the perspective of Zenith’s current shareholders, the Proposed Transaction allows for their realisation of value from the business, while ensuring that Zenith will continue to develop as part of a highly-regarded, innovative and well-resourced organisation, with the scale and expertise to manage and grow the business and develop new product lines and international customer relationships.”

Third Party Submissions

12. No submission was received.

Competitive Analysis

Horizontal Overlap

13. There is a horizontal overlap between the Parties in the State in relation to the provision of MES software solutions including professional services⁶.
14. MES is a sub-category of Automation & Control (“A&C”). The A&C sector provides solutions for sensing, monitoring, supervising, controlling and automating machines, industrial processes or systems.⁷

⁶ Referred to as ‘managed services’ by Zenith, these services include: 24/7 on-call and front-line support; automation systems network administration; process optimisation consultancy services; software engineering support; change management and control; automation systems validation; automation project management and coordination; automation hardware maintenance and change support; training and project management.

⁷ Further details of industrial automation are available at the following link: <https://www.electricaltechnology.org/2015/09/what-is-industrial-automation.html>



Product Market Definition

15. The European Commission has previously considered the A&C sector in a number of merger Decisions.⁸ In these Decisions, the European Commission has analysed A&C by reference to the following four levels of the automation hierarchy⁹:
- **Level 1:** Instrumentation located throughout a manufacturing facility, including valves, sensors, drives, robots, motors, relays and switches, and other machine tools;
 - **Level 2:** Computerised systems for the direct monitoring, controlling and supervising of production processes and systems.
 - **Level 3:** Automation of production processes, including integrated solutions for controlling and monitoring production processes, quality and logistics of a plant. Level 3 mainly consists of MES; and
 - **Level 4:** Products which facilitate information flow between all business functions inside the enterprise and the management of resources involved in the production process.
16. Within each of the levels of the automation hierarchy, the European Commission has also considered further segmentation based on individual products and services. As regards level 3 of the automation hierarchy (the only level at which Cognizant and Zenith overlap), the European Commission has previously considered a distinct product category for MES software solutions, including professional services. The European Commission also considered as an alternative a distinct category for MES software solutions only.¹⁰
17. The Commission has also considered the A&C sector in previous determinations, and adopted broadly the same approach as the European Commission. In its determination

⁸ See, for example, Case No COMP/M.4608 Siemens/UGS (2007) and Case No COMP/M.7005 Schneider Electric/Invensys (2013).

⁹ The various elements of A&C systems can be grouped into different functional levels within an overarching automation hierarchy.

¹⁰ Case No COMP/ M.4608 Siemens/UGS (2007), para 18.



in case M/06/087 *Applied Materials/Brooks Software*,¹¹ the Commission's predecessor, the Competition Authority, considered the supply of MES software solutions, specifically to the semiconductor industry. In its determination in case M/13/016 *GE/Lufkin*,¹² the Competition Authority considered the supply of industrial A&C systems, and in particular SCADA systems.¹³ .

Views of the parties on product market definition

18. The parties state in the notification that:

“while the precise market definition can be left open in this case, in light of the decisional practice of the European Commission and the Competition Authority outlined above, the appropriate basis on which to analyse the Proposed Transaction is by reference to the supply of MES software solutions, including the supply of professional/managed services, without distinction as to end-user sector or type of industry”.

The Commission's conclusions on product market definition

19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, it is not necessary for the Commission to conclude on the relevant product markets as regardless of whether the potential product markets are narrower (MES software and solutions including professional services to the life sciences sector) or broader (MES software solutions including professional services, across all industrial sectors), the Proposed Transaction is unlikely to raise any competition concerns.

20. However, for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by

¹¹ This determination is available to download from the CCPC's website at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Determination_M_06_087_applied-materials_brooks-public_-1.pdf

¹² This determination is available to download from the CCPC's website at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-13-016-GE-Lufkin.pdf>

¹³ Supervisory control and data acquisition (SCADA) is a system of software and hardware elements that allows industrial organizations to control industrial processes locally or at remote locations.



reference to the narrowest potential product market i.e., MES software solutions including professional services to the life sciences sector.

Geographic market definition

21. The European Commission has previously considered the relevant geographic market for the provision of A&C products and services generally, and MES software solutions including professional services in particular, to be global (or at least EEA-wide in scope).¹⁴ Similarly, the Competition Authority has previously analysed the supply of MES software solutions to the semiconductor industry on a worldwide basis.¹⁵

Views of the parties on geographic market definition

22. In this case, the parties submit that it is not necessary for the Commission to reach a firm view on the geographic scope of the potential market for MES software solutions including professional services. The parties state in the notification that there are a number of underlying industry factors which support the global (or at least EEA-wide) nature of the potential market for MES software solutions including professional services:

- First, there is a common regulatory environment for the supply of these products/services and there are typically no country or regional-specific technical standards or regulatory differences within the EEA (or indeed more broadly at a global level).
- Second, many of the suppliers of A&C products/services generally and MES software solutions including professional services specifically are active on an international basis. These include major global companies such as ABB Limited (“ABB”), Siemens Limited (“Siemens”), Rockwell Automation, Ltd. (“Rockwell”) and others.

¹⁴ Case No COMP/M.4608 Siemens/UGS (2007), paras 14-19.

¹⁵ See Determination M/06/087 Applied Materials/Brooks Software (2006), Section 2.



- Third, given the global scale of manufacturing processes, the majority of customers procure MES software solutions including professional services on at least an EEA-wide basis as part of their group procurement functions.

The Commission's conclusions on geographic market definition

23. The Commission accepts that it is not necessary for the Commission to conclude on the relevant geographic market in respect of MES software solutions including professional services to the life sciences sector since regardless of whether the potential geographic market is narrower (i.e., the State), or broader (i.e., worldwide), the Proposed Transaction is unlikely to raise any competition concerns in the State.
24. However, for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic market i.e., MES software solutions including professional services to the life sciences sector in the State.



Competitive assessment

MES software solutions including professional services to the life sciences sector

Table 1: Share of MES software solutions including professional services to the life sciences sector, worldwide and EEA, 2017

Supplier	Worldwide		EEA-wide	
	€ million	%	€ million	%
Cognizant	[...]	[0-10]%	[...]	[0-10]%
Zenith	[...]	[0-10]%	[...]	[0-10]%
Combined	[...]	[0-10]%	[...]	[0-10]%
Others	[...]	[10-90]%	[...]	[10-90]%
TOTAL	[...]	[100]%	[...]	[100]%

Source: parties' estimates based on data compiled by Infiniti Research Ltd ("Technavio")¹⁶.

25. Table 1 above, shows that the Parties estimate that their *pro forma* combined share for the provision of MES software solutions including professional services to the life sciences sector would be below [...] % on an EEA-wide basis and below [...] % on a worldwide basis, with an increment to Cognizant's pre-existing position of [...] %.
26. While market share data are not available at a national level, there are a large number of major national, regional and international companies offering MES software solutions and professional services across all industrial sectors, including the life sciences sector, that compete with the parties in the State. In particular, following implementation of the Proposed Transaction, the parties will continue to face

¹⁶ Taken from 'Global Industrial Automation in the Life Sciences Industry'. Technavio is a market research firm with a focus on the development and supply of technology for various industries.



competition from some of the world's largest industrial automation companies, including: Siemens, Rockwell and ABB, all of which have operations in the State.

27. In addition to the established suppliers of A&C and MES software solutions including professional services already active in the State, the parties face competition from a number of system integrators, including ESCO Group LLC, Maverick Technologies Holdings, LLC and Brock Solutions Inc.
28. The Commission considers that that some of the world's largest IT consultants and service providers are increasingly active at all levels of the automation hierarchy. Following implementation of the Proposed Transaction, the parties will therefore continue to face competition from IT service providers such as Accenture plc, Infosys Limited, Wipro Limited, Tata Consulting Services Limited, HCL Technologies Limited and CapGemini SE, each of which have recently strengthened partnerships with A&C product vendors.

Conclusion

29. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of MES software solutions including professional services to the life sciences sector in the State.

Vertical overlap

30. The parties state in the notification that there is no vertical relationship between the parties in the State. The Commission has not identified any vertical relationship between the parties. On that basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

31. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



Ancillary Restraints

32. Clause 23.1(a), (b), (c) and (e) of the SPA contain non-compete and non-solicitation obligations on Zentek. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission¹⁷. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.

¹⁷ In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Cognizant Worldwide Limited, a wholly-owned indirect subsidiary of Cognizant Technology Solutions Corporation, would acquire sole control of Zenith Technologies Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh
Member
Competition and Consumer Protection Commission