



DETERMINATION OF MERGER NOTIFICATION M/18/087– FRUITION PARTNERS (DXC)/TESM

Section 21 of the Competition Act 2002

Proposed acquisition by DXC Technology Company, through Fruition Partners UK Limited, of sole control of TESM Limited.

Dated 10 December 2018

Introduction

1. On 1 November 2018, 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 acquisition whereby Fruition Partners UK Limited (“Fruition Partners”), a DXC Technology Company (“DXC”) controlled company, would acquire the entire issued share capital and thereby sole control of TESM Limited (“TESM”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement between the shareholders of TESM¹ (“the Vendors”), Fruition Partners and DXC. At the date of notification, the parties had not executed the share purchase agreement. Nonetheless, the parties submitted to the Commission, together with the notification, a letter of intention signed on behalf of DXC dated 4 September 2018, and a draft share purchase agreement (the “draft SPA”). The Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act. Following

¹ The Vendors are listed in Schedule 1 of the draft SPA as Michael Godec, Patrick O’Connor, Alexander Wells, Aqib Mushtaq, James Broomhead, Mark Edwards, Pardeip Sahota, Paul Hennigan, Paul Hinxman, Warren Sims, Koushik Roy, Tomi Rekonen, Stuart Hasking, Teresa Santos, Barry Chadwick, Bushra Akhtar, Richard Taylor and David Osman.



the Proposed Transaction, DXC, through Fruition Partners would obtain sole control of TESM.

The Undertakings Involved

The Acquirer – DXC

3. DXC, a publicly traded company listed on the New York Stock Exchange, was formed from the merger of Computer Sciences Corporation and the enterprise services business of Hewlett Packard Enterprise in April 2017.
4. Fruition Partners is a company registered in the United Kingdom (“UK”) and controlled by DXC. Fruition Partners provides IT consultancy services, in particular in respect of the design, implementation and automation of IT Service Management (“ITSM”)² platforms to DXC’s clients.
5. DXC provides independent end to end IT services to enterprises which include analytics services, applications services, business process services, cloud services, consulting services, enterprise and cloud applications services. DXC has a long-term strategic partnership in place with many IT service vendors such as Hewlett Packard Enterprise, International Business Machines Corporation, Microsoft Corporation, ManPowerGroup Inc, AT&T Inc, ServiceNow Inc, in respect of its IT services to its customers.
6. In the UK and the State, DXC’s clients are mainly active in the infrastructure, defence, manufacturing, retail, energy, utilities and security sectors. In the State, DXC has offices in Leixlip, Co. Kildare and in Galway.

² ITSM is a set of policies, processes and procedures for managing the implementation, improvement and support of customer-oriented IT services. ITSM aims to improve IT customer services in alignment with business goals. ITSM is an IT service with a focus on delivery of services to customers, rather than a department that manages technology. ITSM offers various frameworks for businesses to create management standards around IT services and customer service practices, and to help businesses build structure around the lifecycle of IT services, from creation to management and upkeep. ITSM tools are typically offered in platform.



7. For the financial year ended 31 March 2017, DXC's worldwide turnover was approximately €21.6 billion, of which approximately €[...] million was generated in the State.³

The Target – TESM

8. TESM, a private limited company registered in the UK, is active in the provision of IT consultancy services in particular in connection with the design, implementation and automation of service management processes, through the use of ITSM platform *ServiceNow*⁴ and other technologies.
9. TESM also provides proprietary IP solutions built, configured or otherwise designed to add particular functionality to the *ServiceNow* platform. TESM's IT consultancy activities can be broadly broken down into: (i) cloud consulting;⁵ (ii) general services consulting;⁶ and (iii) managed services consulting⁷.
10. For the financial year ended 31 March 2018, TESM's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.⁸

Rationale for the Proposed Transaction

11. The parties state in the notification:

“DXC is seeking to grow its capability in the fast-growing ITSM market globally. TESM presents an opportunity for DXC to acquire highly skilled consultants and industry leading capability across the banking, finance & biopharma segments.

³ The Commission calculated the turnover on the basis of the average currency exchange rate for the twelve months concerned (1 April 2016 – 31 March 2017) using the ECB website average rates for the period 1.138 USD = 1 EUR.

⁴ *ServiceNow* is an ITSM platform owned by ServiceNow Inc. It offers two ITSM products: the *ServiceNow* Service Management Suite and *ServiceNow* Express, which are targeted at organizations with high and low I&O maturity, respectively. More information on ServiceNow is available on its website - <https://www.servicenow.com/products/it-service-management.html>. TESM is a *ServiceNow* partner and provides a managed service to users of the *ServiceNow* platform.

⁵ This involves advising and designing processes to align technology with the client's business and leveraging ITSM platforms (*ServiceNow*) to address cloud management requirements.

⁶ This involves the implementation of the ITSM platform (aligning process / technology to the client's specifications), strategic analytics using real time data, test management and IT security operations.

⁷ This involves managing all aspects of the ITSM platform for the client and other IT management services.

⁸ The Commission calculated the turnover on the basis of the average ECB currency exchange rate for the twelve months concerned (1 April 2017 – 31 March 2018) using the ECB website average rates for the period 0.88260 GBP = 1 EUR.



DXC seeks to supplement and grow its ITSM (particularly ServiceNow) practice.”

Third Party Submissions

12. No submissions were received.

Competitive Analysis

Horizontal Overlap

13. There is a horizontal overlap between the activities of DXC and TESM in the State. Both DXC and TESM provide IT consultancy services in the State. In particular, both DXC and TESM are active in the design, implementation and automation of service management processes through the use of ITSM platforms.

Product Market Definition

14. The parties state in the notification that *“the relevant product market for the purposes of the Proposed Transaction is the provision of IT consultancy services.”*
15. In its *M/15/037- Deloitte/Systems Dynamics* decision, the Commission did not conclude on the precise relevant product markets and focused its competitive analysis review on the *“market for the provision of IT consultancy services”*.⁹
16. In its *COMP/M.5301 - CAP GEMINI/ Bas*, the European Commission did not conclude on the precise relevant product markets and considered IT consulting in its competitive assessment.¹⁰
17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission considers that it does not need to come to a definitive view on the precise relevant product market, since the Proposed Transaction is unlikely to raise any competition concerns in any of the potential markets, regardless of whether the product market definition is broad, i.e.,

⁹The Commission’s determination *M/15/037 Deloitte/Systems Dynamics* can be assessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M_15_037-Deloitte_System-Dynamics_Public-Version.pdf

¹⁰The Case European Commission Case No *COMP/M.5301 - CAP GEMINI / BAS* can be assessed at http://ec.europa.eu/competition/mergers/cases/decisions/m5301_20081013_20310_en.pdf



the provision of IT consultancy services; or broken down into sub-segments of IT consultancy services, i.e., the provision of IT consultancy services in relation to ITSM platforms; or even narrower, i.e., the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*.

Geographic Market Definition

18. The parties state in the notification that “*the relevant geographic market is EEA-wide or at its narrowest regional (i.e., Ireland and the United Kingdom)*”.
19. The Commission and the European Commission have previously left the exact geographic product market definition for the provision of IT consultancy services open but have considered definitions based on an EEA, regional and national market.¹¹
20. Following the approach taken by the Commission and the European Commission, the Commission has analysed the likely competitive impact of the Proposed Transaction by reference to the narrowest potential geographic market, i.e., the State. In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed its likely impact by reference to the following three potential markets:
 - i. the provision of IT consultancy services in the State;
 - ii. the provision of IT consultancy services in relation to ITSM platforms in the State; and,
 - iii. the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*, in the State.
21. Table 1 below represents the parties’ estimated market shares in the State in 2017 for the provision of IT consultancy services.

Table 1: Market Share Estimate in relation to the Provision of IT Consultancy Services in 2017 in the State

¹¹ The Commission’s determination M/15/037 Deloitte/Systems Dynamics can be assessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M_15_037-Deloitte_System-Dynamics_Public-Version.pdf. The Case European Commission Case No COMP/M.5301 - CAP GEMINI / BAS can be assessed at http://ec.europa.eu/competition/mergers/cases/decisions/m5301_20081013_20310_en.pdf



Provision of IT Consultancy Services	DXC	TSEM	Total Market	Parties Combined
Turnover generated in relation to IT Consultancy Service	€[...] million ¹²	€[...] million	€4.7 billion	€[...]million
Estimated Market Share	Less than 1%	Less than 1%	100%	Less than 1%

Source: the Commission based these figures on information provided by the parties.

22. Table 2 below represents the parties' estimated market shares in the State in 2017 for the provision of IT consultancy services in relation to ITSM platforms.

Table 2: Market Share Estimate in relation to the provision of IT Consultancy Services in relation to ITSM platforms in 2017 in the State

Provision of IT Consultancy Services in relation to ITSM platforms	DXC	TSEM	Total Market	Parties Combined
Turnover generated in relation to ITSM platforms	€[...] million ¹³	€[...] million	€[...] million ¹⁴	€[...] million
Estimated Market Share	[0-5]%	[0-5]%	100%	[0-5]%

Source: the Commission based these figures on information provided by the parties.

¹² DXC informed the Commission that the factual DCX sales could be less than its best estimate.

¹³ DXC informed the Commission that the factual DXC sales could be less than this figure. The Commission calculated this turnover on the basis of the average currency exchange rate for the twelve months concerned (1 April 2017 – 31 March 2018) using the ECB website currency exchange rates for the period 0.88260 GBP = 1 EUR.

¹⁴ This figure is provided by DXC based on the Marketline report generated by DXC.



23. Table 3 below represents the parties' estimated market shares in the State in 2017 for the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*.

Table 3: Market Share Estimate in relation to the provision of IT Consultancy Services in relation to the specific ITSM platform, *ServiceNow*, in the State in 2017

Provision of IT Consultancy Services in relation to the specific ITSM platform, <i>ServiceNow</i>	DXC	TSEM	Total Market	Parties Combined
Turnover generated in relation to <i>ServiceNow</i>	Nil	€[...] million	€[...] million ¹⁵	€[...] million
Estimated Market Share	Nil	[0-5]%	100%	[0-5]%

Source: the Commission based these figures on information provided by the parties.

24. Table 1 shows that the parties' combined market share for the provision of IT consultancy services in the State is less than 1%. Table 2 shows that the parties' combined estimate market share for the provision of IT consultancy services in relation to ITSM platforms in the State is approximately [0-5]%. Table 3 shows that, there is no overlap in respect of the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*. The Commission notes that TSEM has approximately [0-5] of this market in the State.
25. For the following reasons, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns:

¹⁵This figure is based on the average of both parties' estimated.



- a. DXC generated little or no turnover in the State in 2017 with respect to the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*.
 - b. Regardless of the precise product market definition, the parties' combined estimated market share in respect of any of the potential product markets identified in paragraph 20 is less than [0-5]%.
 - c. Following implementation of the Proposed Transaction, DXC will continue to face competition from its main competitors, such as Fujitsu Limited, BMC Software Ireland Limited, Ernst & Young LLP, Accenture PLC, and Deloitte Touche Tohmatsu Limited for the provision of IT consultancy services in relation to ITSM platforms in the State.
 - d. Following implementation of the Proposed Transaction, DXC will continue to face competition from competitors, such as Accenture PLC, Fujitsu Limited, Atos S.A., Cognizant Technology Solutions Corporation and Crossfuzze Ireland Limited for the provision of IT consultancy services in relation to the specific ITSM platform, *ServiceNow*.
26. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

27. The parties state in the notification that there is little or no material vertical relationship between the parties. The parties state in the notification that, [...], it does not subcontract such services to TESM and that there is no subcontracting relationship between the parties in the State.
28. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.



Conclusion

29. 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

30. Schedule 11 of the draft SPA contains restrictive obligations on the Vendors, including non-compete and confidentiality clauses. The duration of these restrictive obligations exceeds the maximum duration acceptable to the Commission. Following engagement with the Commission, the parties decided to withdraw their request that the restrictive obligations in the draft SPA be considered by the Commission as restrictions that are directly related and necessary to the implementation of the Proposed Transaction in the State. Such obligations are therefore not addressed further in this Determination and will not benefit from the protection offered by sections 4(8) and 5(3) of the Act.



Determination

31. 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 DXC Technology Company, through Fruition Partners UK Limited, would acquire sole control of TESM 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