
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 975

1 October 2021

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SIEMENS HEALTHINEERS AG****AND****VARIAN MEDICAL SYSTEMS, INC.****CASE NUMBER: 2020NOV0008**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the above-mentioned firms subject to conditions as set out below:

1. On 04 November 2020, the Competition Commission (Commission) received notice of an intermediate merger whereby Siemens Healthineers AG (SHS) intends to acquire Varian Medical Systems, Inc. (Varian). Post-merger, SHS will acquire indirect sole control of Varian.
2. The primary acquiring firm is SHS, which is listed on the Frankfurt Stock Exchange. SHS is controlled by Siemens AG (Siemens), which owns directly and indirectly approximately 79% of the issued share capital of SHS. As such, SHS forms part of the Siemens AG group of companies (Siemens Group). The remaining approximately 21% of the issued share capital of SHS is widely held and publicly traded on the Frankfurt Stock Exchange as free float.
3. SHS is a global provider of healthcare solutions and services, active in over 70 countries worldwide. Its business is divided into three business segments, namely: imaging, laboratory diagnostics, and advanced therapies. Imaging provides imaging products and services,

including equipment such as magnetic resonance imaging, X-ray systems, nuclear imaging, and ultrasound. Laboratory Diagnostics comprises in-vitro diagnostic products and services. Advanced Therapies consists of integrated products, solutions, and services that facilitate image-guided minimally invasive treatments, in areas such as cardiology, interventional radiology, surgery, and radiation oncology.

4. The primary target firm is Varian, a firm listed on the New York Stock Exchange. Varian's issued share capital is widely held by public shareholders and, as such, no firm solely or jointly control Varian. Varian controls a number of firms globally. The only firm controlled by Varian in South Africa is Varian Medical Systems Africa Proprietary Limited (VMSA).
5. Varian is a global manufacturer of medical devices and software solutions for treating cancer with radiotherapy and other advanced treatments. VMSA provides interventional oncology solutions; radiation therapy solutions; and oncology software solutions in South Africa.
6. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any product overlap. The Commission notes that SHS manufactures and supplies imaging equipment, which is primarily used to diagnose a wide variety of medical conditions, but which is also used to plan for the treatment of cancer provided through radiation therapy or interventional oncology. Varian, the Target Firm, manufactures and supplies oncology treatment solutions, but not imaging equipment. Varian's activities can be grouped into three categories: (i) interventional oncology solutions; (ii) radiation therapy solutions; and (iii) oncology software. SHS does not offer interventional oncology solutions, radiation therapy solutions or oncology software.
7. The Commission however notes that the activities of the merging parties are complementary in nature. The Commission thus assessed whether the proposed transaction is likely to result in anticompetitive portfolio effects through the bundling of SHS's medical imaging equipment and Varian's oncology treatment solutions.

8. The Commission found that the market in which Varian operates is a bidding market. Consequently, market shares fluctuate from one year to another and are not in themselves indicative of market power. For example, with respect to radiation therapy equipment, Varian's share fluctuated between 10% in 2018 and 93% in 2019, and with respect to oncology software, Varian's share fluctuated between 14% in 2018 and 30% in 2019, in South Africa.
9. The Commission therefore assessed other features of the market to determine the likelihood of anticompetitive portfolio effects. In this regard, the Commission notes that SHS's imaging equipment is very seldom purchased together with Varian's radiation therapy equipment by the same customer. Therefore, there are insufficient opportunities to tie or bundle such that a foreclosure strategy will be effective. In addition, the CT, MRI and PET/CT equipment provided by the Acquiring Firm are very seldom purchased together with radiation therapy equipment provided by the target firm in a single tender. SHS's best estimate is that globally less than 1% of its CT and MRI equipment scanners are procured with radiation therapy equipment in a single tender. Further, the relevant medical imaging equipment and radiation therapy equipment have different product life cycles, making a strategy of bundling or tying unsustainable.
10. Lastly, the Commission notes that there are several alternative manufacturers of imaging equipment that will continue to constrain the merged entity post-merger including, *inter alia*, GE; Canon, Philips, United Imaging, Neusoft and Shimadzu. Other providers of interventional oncology solutions include Merit Medical Systems, BTG and Others. In the market for radiation therapy equipment, Varian faces competition from Elekta, Accuray and Viewray. In the market for oncology software, Varian faces competition from Elekta, RaySearch, Philips, Accuray and Brainlab.
11. Notwithstanding the above, the Commission contacted customers of Varian, such as Icon Radiation Therapy and the KZN Department of Health. Both Icon Radiotherapy and the KZN Department of Health confirmed that no products from SHS, Varian or any of their competitors are purchased together. Hence, no concerns were raised regarding the proposed transaction.

12. For the above reasons, the Commission concludes that it is unlikely that the merged entity will be able to implement a successful bundling/tying strategy post-merger.
13. Accordingly, the Commission concludes that the proposed merger is unlikely to result in a substantial lessening or prevention of competition in the affected market/s.
14. Regarding employment, the merging parties submit that no integration plans impacting employment in South Africa have been made at this stage. In light of this, the Commission enquired with the merging parties to confirm in no uncertain terms that there will be no retrenchments or job losses as a result of the proposed transaction. To this end, the merging parties were not able to provide a definitive statement that the proposed transaction would not result in any merger-related retrenchments in South Africa. However, SHS tendered conditions to address any potential concerns in this regard. In summary, the merging parties made an undertaking that they shall not retrench any employees in South Africa as a result of the proposed transaction for a 2-year period. To this end, the Commission is satisfied that the proposed employment condition will address any potential employment-related concerns that may arise as a result of the proposed transaction.
15. The proposed transaction does not raise any other public interest concerns.
16. For the above reasons, the Commission approves the proposed transaction subject to employment-related conditions as set out in **Annexure A** hereto.

ANNEXURE A
SIEMENS HEALTHINEERS AG
AND
VARIAN MEDICAL SYSTEMS, INC.
CASE NUMBER: 2020NOV0008

CONDITIONS

DEFINITIONS

1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
 - 1.1. **“Acquiring Firm”** means Siemens Healthineers AG;
 - 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.3. **“Approval Date”** means the date referred to in the Commission’s merger clearance certificate (Form CC15) in respect of the Merger;
 - 1.4. **“Commission”** means the Competition Commission of South Africa;
 - 1.5. **“Conditions”** means these conditions;
 - 1.6. **“Days”** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.7. **“Implementation Date”** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
 - 1.8. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;

- 1.9. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm, which constitutes an intermediate merger for the purposes of the Act;
- 1.10. **“Merged Entity”** means the entity that will result from the Merger between the Merging Parties;
- 1.11. **“Moratorium”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 years from the Implementation Date;
- 1.12. **“Merging Parties”** mean the Acquiring Firm and Target Firm;
- 1.13. **“South Africa”** means the Republic of South Africa;
- 1.14. **“Target Firm”** means Varian Medical Systems, Inc.; and
- 1.15. **“Tribunal”** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 4 November 2020, the Merging Parties notified the Merger to the Commission.
- 2.2. The Commission found that the Merging Parties were not able to provide a definitive statement that the Merger would not result in any Merger-related retrenchments in South Africa. However, the Acquiring Firm tendered the Conditions to address any potential concerns in this regard.

3. CONDITION TO THE APPROVAL OF THE MERGER: EMPLOYMENT

- 3.1. The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium period.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business;

(v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

4. MONITORING OF COMPLIANCE WITH THE CONDITION

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa and their relevant trade unions or employee representatives within 5 (five) business days of the Approval Date.
- 4.2. As proof of compliance thereof, the Chief Financial Officer of the Acquiring Firm, and Field Vice President, Middle East and Africa Operations of the Target Firm, shall each within 10 (ten) business days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions to their employees in South Africa and provide a copy of the notice that was sent to the employees, respectively.
- 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) business days of it becoming effective.
- 4.4. The Merged Entity shall, on the first and second anniversary of the Implementation Date submit a report confirming compliance with Conditions 14 and **Error! Reference source not found..**
- 4.5. Each report submitted in terms of paragraph 4.4 shall be accompanied by an affidavit of the Chief Financial Officer of the Acquiring Firm confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
- 4.6. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 4.7. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

5. APPARENT BREACH

- 5.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37 of the Tribunal Rules.

6. VARIATION

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

7. GENERAL

- 7.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298