



DETERMINATION OF MERGER NOTIFICATION M/14/027 - EMC/VCE

Section 21 of the Competition Act 2002

Proposed acquisition of sole control of VCE Company LLC by EMC Corporation

Dated 14 November 2014

Introduction

1. On 22 October 2014, in accordance with section 18 of the Competition Act 2002 (“the 2002 Act”), the Competition Authority (“the Authority”) received a notification of a proposed transaction whereby EMC Corporation (“EMC”) would acquire sole control of VCE Company LLC (“VCE”).
2. On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014 (“the 2014 Act”), the Authority was dissolved and all of the functions vested in the Authority immediately before that date became vested in the Competition and Consumer Protection Commission (“the Commission”). Section 39(2) of the 2014 Act provides that references in any Act of the Oireachtas passed before 31 October 2014 to the Authority shall, on and after 31 October 2014, be construed as references to the Commission.
3. Section 6 of the 2014 Act provides that where a merger or acquisition was notified under Part 3 of the 2002 Act before the commencement of section 7(1)(b) and Parts 3 and 4 of the 2014 Act (i.e. before 31 October 2014), then, upon such commencement, the 2002 Act shall apply to the merger or acquisition as if the amendments effected by section 7(1) and Parts 3 and 4 of the 2014 Act had not been made.

The Transaction

4. The proposed transaction is pursuant to a Restructuring Agreement between the owners of VCE, namely EMC, Cisco Systems, Inc. (“Cisco”), VMWare Inc. (“VMWare”) and Intel Capital Corporation (“Intel”), whereby EMC would move from a position of joint control of VCE with Cisco to sole control of VCE.
5. EMC currently owns [...]% of the capital of VCE ([...] is held directly by EMC and [...] held by VMWare which is a majority owned subsidiary of EMC with a separate listing on the New York Stock Exchange). Cisco owns [...]% of VCE and Intel a further [...]%.
6. While EMC currently controls [...]% of the voting rights of VCE, important strategic business decisions currently require the consent of both EMC and Cisco. These decisions include the [...]. As a consequence, the parties state in the notification that VCE is jointly controlled by EMC and Cisco.
7. After the implementation of the Restructuring Agreement Cisco and VMWare will remain as equity holders (with [...] and [...], respectively), but their rights under the Restructuring Agreement will be limited to those normally accorded to minority shareholders. Intel will exit



the joint venture and EMC will control 100% of the voting rights in VCE (i.e., it will be able to take all business decisions on its own) and will own [...] %¹ of the equity.

The Undertakings Involved

The Acquirer - EMC

8. EMC is a public company listed on the New York Stock Exchange which is active globally in the development, marketing and sale of a range of information infrastructure and virtual infrastructure technologies and solutions.
9. In the State, EMC has a manufacturing facility in Cork (the largest manufacturing site of EMC outside of the USA) and sales offices in Dublin and Belfast. The Cork facility is the primary production site for EMC in Ireland and [...]. EMC's customers in Ireland cover a broad range of organisations, including service providers in every major industry, in both the public and private sectors, and of sizes ranging from the Fortune 500 to small business and individual consumers.
10. For the financial year ending 31 December 2013, EMC's worldwide turnover was approximately €17.5 billion, of which approximately €[...] million was generated in the State.

The Target - VCE

11. As noted above VCE is a joint venture that is jointly controlled by EMC and Cisco. It was formed in 2009 with its headquarters in Richardson, Texas. It has two manufacturing facilities, one in Franklin, Massachusetts and one in Cork. VCE is active in the assembly, marketing, sales, and servicing of pre-integrated and pre-configured datacentre infrastructure solutions (also known as "converged infrastructure" solutions).
12. Specifically VCE configures various inputs from its parent companies² in a single piece of hardware/software called a "VBlock" which is then inserted into a customer's existing applications and IT infrastructure.
13. In the State, VCE has a wholly owned subsidiary, VCE Technology, located in Cork. VCE Technology manufactures VBlocks and provides the main VCE sales support and services for Europe. VCE's customers on the island of Ireland include service providers of all sizes in both the public and private sectors.
14. For the financial year ending 31 December 2013 VCE's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Acquisition

15. The parties state in the notification:

"The Proposed Transaction will provide EMC with sole control over VCE, simplifying decision-making and enhancing the response time of the target to adapt to dynamic market forces. ...

In addition, the Proposed Transaction will position VCE to offer new, innovative solutions and secure long-term growth. Under the Proposed Transaction, VCE will [...] allowing it to create new solutions using a wider range of inputs. In addition, the Proposed Transaction provides VCE with

¹ [...] % through EMC and [...] % through VMware.

²In addition to various management and security technologies Cisco provides server and network components, EMC provides storage and unified infrastructure manager components, and VMware provides virtualization software.



future support and security in the form of long-term engineering, resale and support agreements.”

Third Party Submissions

16. No submission was received.

Competitive Analysis

Product and Geographic Markets

17. In their notification the parties submit that at its widest the product market could be considered as the whole datacentre solutions market and at its narrowest it could be considered as the converged infrastructure solutions market which is a sub-segment of datacentre solutions. In terms of the geographic market, the parties submit that it is wider than a national market and is at least an EMEA (Europe, the Middle East and Africa) market or possibly a global market.
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets. However for the purpose of its analysis of the competitive effects of the transaction, the Commission has examined the impact of the transaction on the narrowest possible product market, namely converged infrastructure solutions using a wider than national geographic market.
19. In many instances a move from joint control to sole control of an undertaking may be unlikely to result in any significant anti-competitive effects since the acquiring undertaking already exercises some degree of control in the market. However, where the acquiring undertaking and the target compete with each other there is a possibility that, post-acquisition, the competitive incentives of the undertakings will be impacted.
20. In this case, both EMC and VCE offer converged infrastructure solutions to customers in the State and globally. However the overlap in the State is minimal³ and globally while VCE and (to a lesser extent) EMC are large players in the market for converged infrastructure solutions, there are a number of other equally large and sophisticated competitors (such as Oracle, IBM, Cisco/NetApp, HP, Dell and Hitachi) which will act to constrain the activities of both EMC and VCE post-transaction.
21. In addition [...]. Furthermore, both VMWare and Cisco, while continuing to supply components to VCE, will also continue selling these components to the various competitors of VCE and EMC listed above.
22. For these reasons, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

³ For the financial year ending 31 December 2013 EMC generated revenue of approximately €[...] million through sales of its converged infrastructure solutions in Ireland compared with €[...] million for VCE.



DETERMINATION

The Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby EMC Corporation would acquire sole control of VCE Company LLC 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 Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission