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Project no. 11.08/PRO0043991

Datix / RL Solutions - investigation closure report

Date: 10 December 2019

Purpose

1. This report explains the reasons for the Commission's decision to close the investigation under section 47 of the Commerce Act 1986 (the Act) into Datix Holdco Limited's (Datix) acquisition of 100% of Radicallogic Technologies Inc., Radicallogic Holdings Inc, and Radicallogic Holdings Inc's wholly owned subsidiary, Radicallogic Technologies Pty Ltd (together, RL Solutions) (the Acquisition). The Acquisition was completed on 30 September 2018.

Parties

2. Datix is a global software provider. While it has physical offices in the United Kingdom, the United States and Australia, most of its interactions with customers are conducted remotely including those with customers in New Zealand. Prior to the Acquisition, Datix supplied patient safety software to customers in New Zealand under both the Datix and RiskMan brands.
3. Prior to the Acquisition, RL Solutions was, like Datix, a global provider of patient safety software including supplying customers in New Zealand. RL Solutions supplied its software from its offices in Canada and Australia.

Areas of overlap

4. We assessed the impact of the Acquisition on the national market for the supply of patient safety software (the patient safety software market).
5. Patient safety software is distinct from other types of risk management software because it is specifically designed to address the risks of patient harm arising from negative healthcare events. It does this by providing an incident reporting and management platform that numerous users can easily access. Prior to the Acquisition, Datix and RL Solutions were the only two suppliers of patient safety software used in all of the hospitals within the various district health boards across New Zealand, as well as a number of private hospitals. Previously, in August 2017, Datix acquired the then number three provider of patient safety software, Riskman International Pty Limited (RiskMan).

The investigation

6. On 17 September 2018, we opened an investigation under section 47 of the Act and the Acquisition was completed shortly after this date. The focus of the investigation was to establish whether the removal of RL Solutions as an independent supplier would allow Datix to profitably increase price (or reduce quality) of the patient safety software it supplies to customers in New Zealand above the level that would have prevailed without the Acquisition.
7. Unlike in typical markets where transactions occur on an ongoing basis, competition in the patient safety software market typically occurs only when software suppliers bid to win long term contracts with customers. As such, our assessment considered the likely unilateral effects of the Acquisition at the times when existing or potential customers issue tenders (or similar) for their patient safety software requirements.

8. We considered that the Acquisition would likely have substantially lessened competition in the patient safety software market. Prior to the Acquisition, customers had a choice of two existing suppliers and as a result of the Acquisition, because new entry was unlikely in this market, customers would no longer have a choice of supplier when they next tender their requirements.
9. We considered that entry was unlikely in the patient safety software market because:
 - 9.1 there are very few suppliers globally that have an established reputation in the supply of patient safety software;
 - 9.2 customers are very reluctant to switch to a supplier which does not have an established presence in New Zealand; and
 - 9.3 a tender from an individual customer is unlikely to incentivise a new entrant to attempt to establish themselves in New Zealand.

The divestment

10. Upon enquiry, Datix advised that any issues with the Acquisition in New Zealand would be addressed by a divestment it had decided to undertake. The divestment involved Datix entering into an arrangement to divest its RiskMan customers to Darjack Pty Limited (Darjack), which supplies patient safety software in Australia under the Cgov brand (the Divestment). Datix said that the Divestment would overcome the requirement for a critical mass of customers before new entry would be stimulated and would enable Darjack to effect its entry over the course of 2018 and 2019. After the Divestment, Datix would no longer support RiskMan software in New Zealand.
11. We had concerns about whether the Divestment would remedy the likely harm caused by the Acquisition. Without Darjack having an existing presence in New Zealand, it was unclear:
 - 11.1 whether Darjack's software would be perceived as a feasible alternative by the customers currently using patient safety software; and
 - 11.2 even if some customers transferred to Darjack, whether a sufficient number of customers would switch to Darjack to make it a viable competitor in New Zealand.
12. We decided to monitor the Divestment until we could make an assessment of whether the potential entry of Darjack, facilitated by the Divestment, would restore the competition lost from the market as a result of the Acquisition.
13. The Divestment is unlikely to result in all of the RiskMan customers transferring to Darjack. However, Darjack has secured several RiskMan customers and it is responding to interest from other potential customers in New Zealand. We considered this to be sufficient evidence to conclude that the Divestment has

ensured that there remains a meaningful competitor in the patient safety software market.

Outcome

14. We consider that, while the Acquisition would likely have substantially lessened competition in the patient safety software market, the Divestment resolves our concerns. Several customers have already transferred under the Divestment so there remains a meaningful competitor in the patient safety software market. To this extent, the Divestment is likely to have remedied our competition concerns arising from the Acquisition. As a result of the Divestment, when customers next tender for the provision of patient safety, they will continue to have the choice of two existing patient safety software suppliers.
15. Accordingly, the Commission has decided to close its investigation and take no further action.

Anna Rawlings
Chair