



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM105Oct23

In the large merger between:

**Bidshelf 93 Proprietary Limited (to be renamed
Bidvest Automotive Holdings Proprietary Limited)**

Primary Acquiring Firm

and

DEKRA Automotive Proprietary Limited

Primary Target Firm

Panel:	L Mncube (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	14 June 2024
Date of last submission:	21 June 2024
Order issued on:	21 June 2024
Reasons Issued on:	18 July 2024

REASONS FOR DECISION

Approval

- [1] On 21 June 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger in which Bidshelf 93 Proprietary Limited ("Bidshelf") to be renamed to Bidvest Automotive Holdings Proprietary Limited ("Bidvest Auto") intends to acquire the entire issued share capital of DEKRA Automotive Proprietary Limited ("DEKRA").
- [2] Post-merger, DEKRA will be solely controlled by Bidvest Auto.

Parties to the transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is Bidshelf (to be renamed to Bidvest Auto). Bidvest Auto is ultimately controlled by the Bidvest Group Limited (“Bidvest Group”). The Bidvest Group is an entity listed on the Johannesburg Securities Exchange and as such it is not controlled by any single shareholder.
- [4] Relevant to this particular transaction, the acquiring group is involved in the sale of new and used passenger vehicles, light commercial vehicles, and heavy commercial vehicles across South Africa. This includes after-sales services (including the servicing of vehicles and parts sales). The acquiring group is also involved in vehicle auctioneering which includes drive through and online auctioneering. The acquiring group has auction centres in Durban, Johannesburg, and Cape Town. The acquiring group also provides roadside assistance.
- [5] In this particular transaction, when the acquiring group is involved in the sale of used motor vehicles a certification of roadworthiness is required by the law. The acquiring group would, in this instance, contact DEKRA or any other automotive automotive testing, inspection, and certification services (“VTS services”) service provider. The Competition Commission (“Commission”) understands that the service provider that is usually chosen, is one that is close to the dealership. This is to reduce any risk or liability that may arise, such as increase the mileage on the car that would be sold or the risk of the car being damaged or in an accident.
- [6] The acquiring group is also active in the market for the provision of fleet management services.

Primary target firm

- [7] The primary target firm is DEKRA, a company registered in South Africa. DEKRA is ultimately controlled by DEKRA e.V (“DEKRA e.V”), an association registered

in Germany. DEKRA e.V has approximately 20 000 members and is thus not controlled by any shareholder.

- [8] DEKRA does not control any firm.
- [9] DEKRA is active in the provision of VTS services through 48 vehicle inspection and testing stations in South Africa. DEKRA provides various services such as certification services, condition reports and technical inspection checks.
- [10] Through engagements with market participants, the Commission found that these services are mainly provided to individuals and motor vehicle dealerships, particularly those that sell used cars. These roadworthiness certificates are usually valid for 60 days. In most instances, a roadworthiness certificate is a requirement for the change of ownership for used vehicles in South Africa.

Description of the transaction and rationale

- [11] In terms of the transaction, Bidvest is in the process of diversifying its automotive division. In line with this diversification strategy, the services offered by DEKRA Automotive will enhance Bidvest's service offering in the automotive industry.
- [12] DEKRA SE, the parent company of DEKRA Automotive, has determined that its South African operations do not align with its global strategic objectives and, therefore, has chosen to exit the South African market and realise the value of its investment to date.

Competition Assessment

- [13] The proposed transaction does not result in a horizontal overlap, as the acquiring group does not provide automotive VTS services.
- [14] However, there is a vertical overlap between the activities of the merging parties as the acquiring group requires the VTS services provided by DEKRA when selling its used vehicles. The acquiring group would, before selling a used car, contact DEKRA or any other automotive VTS service provider to get the car

tested for road worthiness. This is also required by banks when financing used cars sold by dealerships and to transfer ownership of vehicles.

Relevant markets

[15] The merging parties submitted that the relevant product markets in respect of this transaction are the narrow market for the provision of certification of roadworthiness and the narrow market for condition report services (which includes multi-point checks). These markets are collectively referred to as “Vehicle Testing Station Services” or “VTS Services”. Furthermore, the merging parties submitted that the appropriate scope for the services of vehicle testing stations is national and that the dynamics of the market do not significantly differ between national and regional markets.

[16] The Commission did not conclude on the relevant market but as stated above, the proposed transaction results in vertical overlaps as DEKRA provides VTS services to the acquiring group’s used car sales activities. In this regard, the Commission identified the upstream markets for the provision of (i) roadworthiness certification services, (ii) condition assessments and technical inspection services by certified vehicle testing stations. In the downstream market, the Commission identified the markets for the sale of used cars.

[17] We did not receive any evidence suggesting departure from the above approach and there considered the impact of the merger on the basis considered by the Commission. We did not find it necessary to conclude on the precise scope of the relevant product markets.

[18] Furthermore, the Commission identified following local markets (“Affected Local Markets”):

18.1.1. Gauteng: Boksburg, Randburg, Vanderbijlpark, Vereeniging, Malboro Park, Westgate, City Deep, Edenvale, Egoli, Midrand, Centurion, Silverton/Hatfield, Gezina East, and Pretoria North/Rosslyn.

18.1.2. Western Cape: N1 City, Paarl, Stellenbosch, Parow, and Worcester.

18.1.3. KwaZulu Natal: Ballito, Durban, and Pinetown/ Hillcrest/New Germany.

- [19] The identification of the Affected Local Market was guided by the submissions from the customers of DEKRA (used car dealerships). Used car dealerships procure roadworthiness certificates, condition, and technical reports from providers such as DEKRA. Used car dealerships procure these services locally (within 15km radius) to minimize the risk of driving the stock (cars) for a longer distance before it being sold. Thus, to assess the vertical overlap between the activities of DEKRA and the Acquiring Group, the Commission focused on areas wherein the Acquiring Group has a used car dealership located within a 15km radius of a DEKRA testing station.
- [20] We did not receive any evidence suggesting departure from the above approach and therefore considered the impact of the merger on the basis considered by the Commission. We did not find it necessary to conclude on the precise scope of the relevant geographic markets.

Vertical issues

- [21] We considered first whether the merged entity will have the ability to foreclose competitors.
- [22] In relation to the market for the provision of condition assessment and technical inspections, the Commission encountered data limitations and could not conduct a conclusive assessment of the market shares. However, the Commission assessed the available capacity to conduct condition assessment and technical inspections in the respective markets, given the submissions by the market participants, that most vehicle testing stations are also able to conduct these assessments. The Commission noted that there are seven markets where DEKRA competes with less than three other players, and these are the markets that the Commission is of the view would have limited capacity.

- [23] In terms of the downstream market, the merging parties submit that the acquiring group is of the view that its five largest competitors in the downstream market for the sale of used vehicles are Supergroup Dealerships, NMI Durban South Motors Proprietary Limited, the Combined Motor Holdings Limited Group (CMH), Motus Select, and CFAO South Africa.
- [24] The acquiring group submitted that using the figures for the 2022 national used vehicle registrations obtained from the National Traffic Information System (“NATIS”) website would result in a more accurate reflection of its market share, as this figure does not exclude cash sales and consumer to consumer sales. Based on the 2022 national used car registrations (1 662 269 vehicles), the Acquiring Group’s market share in the national used vehicle market would be below 5%.
- [25] The Commission had no objections to the merging parties’ estimates and relied on the same estimates in its assessment of the instant transaction.
- [26] In the Local Affected Markets for the provision of roadworthiness tests by certified vehicle testing stations, the Commission found that DEKRA has high market share (above 40%) in ■ out of the 26 local markets identified, ■ in Gauteng and ■ in Western Cape and KwaZulu Natal.
- [27] The Commission further notes that in those local markets where DEKRA is not dominant, it still is a market leader with a larger proportion compared to its competitors, albeit by small margins.
- [28] The Commission further noted that in those local markets where DEKRA is not dominant, it still is a market leader with a larger proportion compared to its competitors, albeit by small margins. At a national level, DEKRA is the only player that has national presence and thus has 100% market share.

Input foreclosure

- [29] Regarding whether the merged entity will have the ability to foreclose rival used car dealerships access to VTS services, in particular roadworthiness

certification, the merging parties are of the view that DEKRA will not have the ability to foreclose the Acquiring Group's rivals in the downstream market, as DEKRA does not have market power in the upstream market(s). According to the merging parties, DEKRA has less than 15% market share in the national upstream market.

[30] The merging parties also provided the market shares at the provincial level. In this regard, the merging parties relied on the NATIS data for provincial registrations and [REDACTED]. The merging parties' estimates suggest that at a provincial level DEKRA accounts for less than 30% in both the upstream market for the provision of road worthy reports and the upstream market for condition and technical reports.

[31] The Commission conducted its own market share assessment using data for the number of roadworthiness certificates issued by each firm in each of the Affected Local Markets local from 2021 to 2023. The data was obtained from NATIS, as the custodian of vehicle certification and related information in South Africa.

[32] Having considered the data from NATIS, the Commission is of the view that the rivals of DEKRA in the respective local markets will continue to constrain the merged entity's ability to engage in an input foreclosure strategy in those markets. Furthermore, the Commission found that there are more than 500 registered testing stations in South Africa. This signifies that the market for the provision of vehicle testing services in South Africa is not concentrated. A market participant submitted that in order to open a testing station one would need about R 3 million. This also suggests that barriers to entry in this market are not insurmountable.

[33] The Commission is of the view that the market does not have strenuous regulatory requirements and is very fragmented with several players active. In addition, the Commission also notes that some used car dealerships have their own vehicle testing equipment and conduct the requisite services in house (such as CMH UD Trucks). This suggests that national dealerships can internalise the

provision of VTS services should the merging parties engage in any foreclosure strategy.

[34] Regarding whether the merging parties will have the incentive to foreclose rival used car dealerships, access to VTS services at a national level, the Commission was of the view that the merging parties are unlikely to have incentives to foreclose used car dealership access to VTS services as the revenue derived from acquiring group's total spend on VTS services is insignificant only accounts for less than 10% of the total revenue derived by DEKRA in the provision of VTS services.

[35] To demonstrate that they do not have incentives to foreclose used car dealers (local and national dealers) access to DEKRA testing service stations and to remedy the concerns raised by third parties, the merging parties proposed a condition that DEKRA will for five years, in the ordinary course of business, continue to provide services to all automotive dealerships on commercially reasonable and practical terms that are no less favourable than the terms of procurement from DEKRA.

[36] We found no basis to deviate from the condition agreed to between the merging parties and the Commission.

Customer foreclosure

[37] In assessing if the merging parties will have the ability to foreclose its competitors access to a significant customer, the Commission assessed the ability to foreclose nationally and locally.

[38] The Commission was of the view that the proposed transaction is unlikely to result in a significant customer foreclosure concern at a national level as the acquiring group is a smaller player with a market share of less than 10%. the acquiring group cannot be considered a significant customer at the national level.

- [39] In all of the Affected Local Markets, the Commission found that the acquiring Group makes use of other vehicle testing stations outside of DEKRA. The Commission received a number of submissions from competitors of DEKRA that have the acquiring group as a customer for vehicle testing services. These market players raised concerns about the possibility of losing the acquiring group's business as a result of the merger. The acquiring group contributes less than 40% of the total revenue generated by some of the competitors of DEKRA that the Commission engaged, depending on their size.
- [40] The Commission noted that in the Affected Local Markets, DEKRA is operating below capacity and consequently the merged entity would have the ability to foreclose its upstream rivals within the different local markets, given that all the acquiring group's dealerships are located within 10km-15km of DEKRA's stations.
- [41] The Commission was of the view that the merged entity would have an incentive to foreclose its rivals by preventing the acquiring groups' dealerships from dealing with other VTS service providers and the proposed transaction has a potential to affect competition in the market for vehicle testing services. Such a strategy would benefit DEKRA by earning an additional revenue that would have otherwise been directed to other competing players in the upstream market. The Commission was also of the view that such a strategy would not lead to significant cost escalation for the downstream operations as most of the acquiring firm's dealerships are mostly located within the determined catchment area of DEKRA's station. Thus, a condition which seeks to prevent the merged entity from instructing and/or inducing its dealerships to not deal with other market players was warranted.
- [42] In light of the above, the merging parties agreed to a condition that for a period of 36 months from the implementation of the transaction the acquiring group agree that:
- 42.1. it will not direct or influence any of the acquiring group's dealerships in respect of their selection of VTS service providers;

- 42.2. the acquiring group's dealerships will, in the ordinary course of business, continue to procure VTS services from their existing providers, provided that those services can be procured on commercially reasonable and practical terms (specifically in respect of quality standards, availability, accessibility, capacity and price); and
- 42.3. the acquiring group's dealerships will procure services from VTS service providers on terms that are no less favourable than the terms of procurement from DEKRA.

[43] According to the merging parties, the duration (of 36 months) would be sufficient to allow the competitors of DEKRA to realign their business and find alternative customers.

[44] The Commission has tested the condition with the testing stations that have raised concerns and a market participant indicated that the condition proposed by the merging is wide, non-specific and difficult to enforce. The market participant also submitted that a five-year period would be more appropriate as there is no alternative(s) in the local market in which they operate and that they would not be able to replace the business that could be lost as a result of the transaction.

[45] The merging parties agreed to increase the duration of the conditions by 5 years and the Commission made the following recommendation to the Tribunal:

- 45.1. The acquiring firm undertakes that for a duration of 5 (five) years from the approval date:
 - 45.1.1. The acquiring firm will not in any way direct or influence any Bidvest Automotive Dealership in respect of their choice of providers of the services and the Bidvest Automotive Dealerships will retain their unfettered discretion to select providers of the services; and
 - 45.1.2. The Bidvest Automotive Dealerships will, in the ordinary course of business, continue to procure the services from their existing providers, including providers other than the target firm where applicable (including small, and medium-sized enterprises ("SME"))

and historically disadvantage person (“HDP”) firms). The services will, where applicable, be procured in accordance with any existing contractual terms as at the implementation date where applicable, or otherwise, on terms no less favourable than the terms of procurement with the target firm.

- [46] Following the Tribunal hearing on 14 June 2024, we enhanced the condition to include that the Bidvest Automotive dealerships will not discriminate against any competitor of the target firm when selecting a provider of the services, provided that the services are comparable in respect of quality standards, availability, accessibility, capacity, and price.

Other concerns raised

Conflict of interest and unethical behavior

- [47] The [REDACTED] submitted that the proposed merger would result in a conflict of interest, as the Acquiring Group may have an interest to use DEKRA to certify the roadworthiness of its used vehicles at the expense of ethical business practices.

- [48] Similarly, the [REDACTED] submitted that the transaction would allow dealerships to operate testing stations that could lead to manipulation in the market, especially where exclusive deals or market domination is concerned. The [REDACTED] submitted that this would result in corruption, reduced effectiveness, and a lack of fairness in the testing process. The [REDACTED] also submitted that the transaction would result in a conflict of interest which would also cause confusion in the industry in respect of the roles of each market player. The [REDACTED] submitted that the industry has traditionally accepted that vehicle testing station owners should not be involved in the sale or repair of motor vehicles as this separation maintains integrity and fairness. The GDT also submitted that the transaction has a risk of setting precedent which could potentially open the door for dominance and manipulation in the market.

- [49] Similar concerns were also raised by several testing stations contacted by the Commission. Market participants were of the view that the certification of vehicles should be an arm's length transaction, to ensure the proper, independent, and objective certification of vehicles. It is submitted that the consequence of the above would be that the sale of vehicles would take precedence over the inspection and certification process of a vehicle, which would be detrimental to consumers.
- [50] In relation to the information sharing concerns, the merging parties submitted that when conducting inspections for certificates of roadworthiness and condition reports (including multi-point checks), DEKRA has access to certain limited information of the dealerships to which it provides services. This includes information such as vehicle information, the condition of a vehicle, and the number of vehicles that it inspects per dealership. DEKRA does not obtain access to information regarding a dealership's inventory nor pricing information, including the prices at which cars are bought and sold by such dealerships. None of this information ought to be considered as competitively sensitive information.
- [51] Notwithstanding the above, the merging parties proposed a condition which would restrict the exchange of information between the merging parties, by way of implementing appropriate information exchange protocols to prevent the flow of competitively sensitive customer information between the merging parties. According to the merging parties, the competitively sensitive customer information to be covered should include: *"information of a Customer that is not in the public domain which is specific or precise and which is or may reasonably be expected to be commercially sensitive from a competition perspective relating to: current, planned or future pricing; margins; costs; Customer business plans or strategies; Customer information including plans for approaching customers or bidding for customer contracts; and marketing policies, plans, studies or forecasts"*.
- [52] The Commission accepted the conditions as proposed by the merging parties and we found no basis to disagree.

Public interest assessment

Employment

- [53] The merging parties submitted that the proposed transaction will have no negative effect on employment. More specifically, no retrenchments will occur as a result of the merger.
- [54] NUMSA indicated to the Commission and made written submissions to the Tribunal that since the merging parties have provided a firm statement that the proposed merger will not result in any retrenchment, the parties should commit to a condition that there would not be merger-specific (or a result of this merger, there would not be) retrenchments in perpetuity. Furthermore, NUMSA also submitted that the merging parties must, jointly with NUMSA, embark on a harmonization of benefits, wages and conditions of employment process as the existence of differing sets of standards in terms of wages, working conditions and benefits structure is not ideal and cannot be sustained as it will be a source of discontent and tensions among workers.
- [55] At the Tribunal hearing, we questioned both the merging parties and NUMSA on the proposed transaction's impact on employment. From a public interest perspective, the Commission found that there were no concerns in relation to employment as there is no potential duplication, or any potential loss of employment, as a direct result of the merger because of the lack of duplications.
- [56] NUMSA submitted that even though they concede that the proposed transaction would not necessarily have a direct impact on the employment, they are requesting that there must be an undertaking or a condition must be imposed that as a result of this merger there will be no retrenchments at least for the next five years.¹
- [57] The merging parties reiterated that there will be no merger specific retrenchments.

¹ Hearing Transcript at p 25.

[58] We considered the submissions made by NUMSA and the merging parties and are of the view that the transaction would not result in a negative effect on employment. This is because the transaction does not result in any overlap in the activities of the merging parties and therefore there will not be any duplications. In addition to the above, the merging parties have provided an unequivocal undertaking that there shall be no job losses as a result of the transaction.

Spread of ownership

[59] The merging parties submit that the acquiring group has 39.62% of its shareholding held by HDPs. Whereas, DEKRA does not have any of its shareholding held by HDPs.

[60] The Commission therefore found that the transaction would result in a promotion of a greater spread of ownership by 39.62%.

[61] NUMSA raised a concern that NUMSA submitted that they are perplexed by Bidvest not planning to have an employee share ownership program (“ESOP”) in place and merely reiterating its currently existing black economic empowerment (“BEE”) credentials of 39.62%. Therefore, NUMSA, in its written and oral submissions, proposed that an ESOP be formulated and at least 10% equity be given to the employees.

[62] At the hearing, the Commission advised that in its consideration of the proposed transaction, it found that the acquiring firm already has an HDP shareholding, and the target firm does not. Therefore, the merger does not dilute any HDP shareholding but promotes HDP ownership. This is what informed the Commission to not seek an ESOP condition, as it only does so where there is a dilution of HDP ownership or where there is no promotion at all. The merging parties concurred with this submission and added that their position remains that no additional conditions should be imposed in respect of the public interest.

[63] Accordingly, we did not find that the proposed transaction required an ESOP to be imposed and that the proposed transaction already promotes a greater spread of ownership by HDPs.

Effect of the merger on the ability of small and medium enterprises and firm owned by HDP to enter into and expand in the market

[64] Market participants had submitted that DEKRA pre-merger is already dominant in local automotive VTS service markets in South Africa. With the acquiring group's acquisition of DEKRA, individual testing centres would no longer receive any business from the acquiring group, and this would result in these individual testing not being able to participate in the market and ultimately closing of their business. Various other market participants, most of whom are independent entities (which have smaller testing stations) also submitted this concern.

[65] A market participant also submitted that due to the size of the acquiring group, as well as the national footprint of DEKRA, there is an incentive and motive to conclude exclusivity deals with each other. This would result in the acquiring group exclusively using DEKRA post-merger, which would result in other testing stations losing revenue and perhaps even closing their business.

[66] The merging parties submitted that the merged entity does not have incentive, nor would it be profitable to engage in any customer foreclosure strategies. The merging parties submit that they anticipate that transaction would result in shift that will be limited as the various used-car dealerships that are already within the acquiring group will already be using the supplier located most conveniently to them. In addition to the above, the merging parties submitted that the acquiring group that its dealerships are empowered to make their own, independent decisions whether or not to use DEKRA's testing services in carrying out their business-as-usual operations. Moreover, whilst customers do not generally make such requests, the acquiring group's customers may request the acquiring group to make use of a specific vehicle testing station.

[67] In light of the submissions received by market participants, the Commission found that the vehicle testing market is characterised by low margins, the Commission is concerned about possible exit of some players as a result of customer foreclosure post-merger. As suggested by the market participants, although the potential increment to the merged entity's market share in the upstream market may seem almost insignificant, coupled with the Merging Parties financial resources, the instant transaction has the potential to propel the merged entity toward minimum efficiency scale, which could confer it with some level of market power. This would also remove smaller entities in the market, which would allow entities such as DEKRA who have a national footprint to increase their market power.

[68] The Commission was thus of the view that the transaction would have a negative effect on small businesses and possibly businesses controlled by HDPs. However, the condition stated above which requires the merging parties to continue using third party service stations, including providers other than the target firm where applicable (including SME and HDP firms) addresses this harm.

Other public interest considerations

[69] The proposed transaction raised no other public interest concerns.

Conclusion

[70] Having considered the above, we conclude that the procurement and supply of services conditions, as well as the information barrier condition, adequately remedy the competition concerns identified. Furthermore, the imposed condition in respect of the continued use of third-party service stations, (including SME and HDP firms) addresses the public interest concern raised.

[71] We accordingly approved the merger on the basis of the conditions in **Annexure A** to our order dated 21 June 2024.

 Signed by: Liberty Mncube
Signed at: 2024-07-18 13:34:46 +02:00
Reason: Witnessing Liberty Mncube

18 July 2024

Prof. Liberty Mncube

Date

Prof. Imraan Valodia and Adv Geoff Budlender SC concurring

Tribunal Case Manager:	Juliana Munyembate
For the Merging Parties:	Leana Engelbrecht of Alchemy Law Africa and Aidan Scallan of ENSAfrica
For the Commission:	Mishkah Abdool Sattar and Themba Mahlangu