



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM228Nov17

In the matter between

Unitrans Automotive (Pty) Ltd

Primary Acquiring Firm

And

Action Ford Ltd

Primary Target Firm

Panel	: Mr Enver Daniels (Presiding Member)
	: Prof. Imraan Valodia (Tribunal Member)
	: Ms Andiswa Ndoni (Tribunal Member)
Heard on	: 24 January 2018
Order Issued on	: 24 January 2018
Reasons Issued on	: 13 February 2018

REASONS FOR DECISION

Approval

- [1] On 24 January 2018, the Tribunal conditionally approved the large merger between Unitrans Automotive (Pty) Ltd ("Unitrans Automotive") and Action Ford Ltd ("Action Ford"), hereinafter referred to as the merging parties.
- [2] The reasons for approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Unitrans Automotive is active in the sale of new and pre-owned vehicles, parts and accessories and after-market services. It has numerous car dealerships across the Republic of South Africa (RSA) which include various vehicle brands, *inter alia*, BMW, Lexus, Nissan and Ford. In addition, Unitrans Automotive also assists customers with acquiring consumer credit, insurance products, fleet management services and car rentals.
- [4] Unitrans Automotive is a wholly-owned subsidiary of Steinhoff International Holdings Limited, and owns a number of entities in South Africa.

Primary Target Firm

- [5] Action Ford only sells new and pre-owned Ford vehicles. Apart from its vehicle sales, its key service offerings include a service and parts department. It does not, however, offer heavy commercial vehicles nor does it engage in fleet sales. Action Ford also acts as an intermediary by offering customers access to financial services related to the purchase of vehicles.
- [6] Of relevance to the proposed transaction is Action Ford's five dealerships in Gauteng (Krugersdorp and Roodepoort), North-West (Zeerust and Lichtenburg) and Western Cape (Citrusdal).
- [7] Action Ford is controlled by P.P Vorster, H.J Streicher and H.J Meyer. Action Ford does not control any firm.

Proposed transaction and rationale

- [8] In terms of the Sale of Shares and Claims Agreement, the proposed transaction entails Unitrans Automotive acquiring Action Ford's motor vehicle dealership as a going concern. Post-merger, Unitrans will own and operate Action Ford's motor vehicle dealership business.

- [9] Action Ford has experienced a depletion in cash reserves owing to the growth of car dealerships. The proposed transaction is therefore a corollary of Action Ford's rather uncertain financial position.

Relevant market and impact on competition

- [10] The Commission considered the activities of the merging parties and found a horizontal overlap in the market for the sale of new and used passenger and light commercial vehicles. The Commission did not further consider the market for the sale of used passenger and light commercial vehicles as the market is very competitive. Ultimately, the Commission limited its investigation to the market for the sale of new passenger and new light commercial vehicles in Gauteng, North West and Western Cape.
- [11] In the market of the sale of new passenger vehicles, the Commission found that the merging parties will have a combined post-merger market share of less than 10%, with an accretion of less than 5%.
- [12] In the market for the sale of new light commercial vehicles, the Commission found that the merging parties will have a combined post-merger market share of less than 15%, with an accretion of less than 5%.
- [13] In view of the above, the Commission concluded that the insignificant post-merger market share accretions in each relevant market shows no evidence of market power that could be exercised by the merged entity. The proposed transaction is unlikely to alter the pre-merger market structure and that the merged entity will continue to face competition from other firms, *inter alia*, McCarthy Ltd, Imperial Holdings Ltd and Barloworld SA (Pty) Ltd. As such, the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the relevant market. We find no reason to differ with the Commission's findings.

Public interest

- [14] The merging parties submitted that the proposed transaction will not result in any adverse effects on employment as all employees employed by Action Ford will be taken over by Unitrans Automotive as contemplated in section 197 of the Labour Relations Act 66 of 1995. In the same vein, the Commission emphasised that Action Ford is being acquired as a going concern and thus no job losses will occur as a result of the proposed transaction. The Commission therefore concluded that the proposed transaction is unlikely to raise any employment or other public interest concerns.
- [15] Although we agreed with the submissions made above, we suggested that the parties include a condition that would restrain the merged entity from any merger specific retrenchments at least for a period of 2 years, as reflected in 'Annexure A'. This condition serves as some measure of comfort that jobs will be protected in light of Action Ford's rather precarious financial position.¹

Conclusion

- [16] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, no other public interest issues arise, save for those safeguarded by the conditions imposed. Accordingly, we approved the proposed transaction with conditions marked as 'Annexure A'.



Mr Enver Daniels

13 February 2018

Date

Prof. Imraan Valodia and Ms Andiswa Ndoni concurring.

Tribunal Case Manager

: Kgothatso Kgobe and Ndumiso Ndlovu

For the Merging Parties

: G Bothma and N Kotze of Unitrans Automotive

For the Commission

: I Mhlongo and Z Hadebe

¹ Unitrans reiterated that they are protecting jobs and adding 250 more employees.

ANNEXURE A:

Unitrans Automotive (Pty) Ltd

And

Action Ford Ltd

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CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Unitrans Automotive (Pty) Ltd;
- 1.2 **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate;
- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.5 **"Conditions"** mean these conditions;
- 1.6 **"Implementation Date"** means the date on which the Merger is implemented;
- 1.7 **"Merger"** means the acquisition of the Target Firm by the Acquiring Firm;
- 1.8 **"Merging Parties"** means the Acquiring Firms and the Target Firms;
- 1.9 **"LRA"** means Labour Relations Act;
- 1.10 **"Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;

1.11 "Target Firm" means Action Ford; and

1.12 "Tribunal" means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1 The Merging Parties shall not retrench any employees as a result of the Merger for a period of two (2) years from the Implementation Date.

2.2 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; and (vii) any decision not to renew or extend a contract of a contract worker.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1 The Merging Parties shall circulate a copy of the Conditions to all their employees and their relevant trade unions or employee representatives within 5 (five) business days of the Approval Date.

3.2 As proof of compliance thereof, the Chief Executive Officer of the Merging Parties shall within 10 (ten) business days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees.

3.3 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) business days of it becoming effective.

3.4 The Acquiring Firm shall, on an annual basis on the anniversary of the Implementation Date, submit an affidavit confirming compliance with Condition 3.1.

4. BREACH

- 4.1 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the merger entity of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Competition Commission Rules.
- 4.2 Any individual who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

5. VARIATION

- 5.1 The Merging Parties shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Conditions.

6. GENERAL

- 6.1 All correspondence in relation to this Condition should be forwarded to: mergerconditions@compcom.co.za.