

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM150Feb20

In the matter between

Unitrans Automotive (Pty) Ltd

Primary Acquiring Firm

And

Whitehouse (Pty) Ltd in respect of its business CMH
Toyota Melrose

Primary Target Firm

Panel	: E Daniels (Presiding Member)
	: F Tregenna (Tribunal Member)
	: H Cheadle (Tribunal Member)
Heard on	: 8 April 2020
Order Issued on	: 8 April 2020
Reasons Issued on	: 9 April 2020

REASONS FOR DECISION

Approval

- [1] On 8 April 2020, the Tribunal unconditionally approved the proposed transaction in terms of which Unitrans Automotive (Pty) Ltd (Unitrans) is acquiring control over the car dealership owned by Whitehouse (Pty) Ltd (Whitehouse), CMH Toyota Melrose.
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm, Unitrans is wholly owned by Unitrans Motor Holdings (Pty) Ltd (Unitrans Motor Holdings), which is in turn controlled by CFAO South Africa Group (CFAO South Africa) with a majority shareholding. The remaining non-controlling interest is held by Kapela Investments, a South African black-owned investment group. CFAO South Africa is controlled by CFAO SAS, which is a wholly owned subsidiary of Toyota Tsusho Corporation (TTC Group). TTC Group is listed on the Tokyo and Nagoya stock exchanges, and is therefore not controlled by any single shareholder. However, Toyota Motor Corporation has a 35.4% interest in TTC, which is of relevance for competition assessment in this transaction.
- [4] Unitrans, its controllers and the firms they control will be collectively referred to as the Acquiring group. In SA, the Acquiring group operates through CFAO Holdings SA, Subaru SA and Unitrans and is involved in, *inter alia*, importing and exporting of vehicles and assembling wheels and tyres for Toyota SA. Of relevance for competition assessment in this merger is the Acquiring group's activities in the motor dealership industry through Subaru SA and Unitrans.

Subaru SA

- [5] Subaru SA has a distribution arrangement with Subaru Corporation in terms of which Subaru SA is required to appoint Subaru dealers and maintain an efficient sales network within SA. Subaru SA has itself established one Subaru dealership in Edenvale, which sells both new and pre-owned vehicles. It has appointed third parties to run the other 13 Subaru dealerships in SA, one of which is operated by Unitrans.

Unitrans

- [6] Unitrans operates one of the biggest automotive dealer networks in South Africa (SA), with approximately 100 franchised dealerships across the country. Its dealerships include vehicle brands such as Toyota, BMW and Ford among others. The main product and service offerings of Unitrans' dealerships include

the sale of new and pre-owned vehicles, parts and accessories and after-market services. In addition to the above services, Unitrans' dealerships also assist customers with acquiring consumer credit, insurance products, fleet management services and car rental. It is important to note that the Acquiring group is active in the upstream and downstream value chain of Toyota products.

- [7] The target business is CMH Toyota Melrose, which is wholly owned and controlled by Whitehouse. Whitehouse is wholly owned by CMH Holdings (Pty) Ltd (CMH Holdings), which is in turn ultimately controlled by Combined Motor Holdings Ltd and indirectly controlled by Thebe Investment, a black-owned investment firm.
- [8] CMH Toyota Melrose sells Toyota motor vehicles. These encompass new passenger and light commercial vehicles (LCVs), and pre-owned motor vehicles. Further, CMH Toyota Melrose provides Toyota branded parts and accessories, tyres, services and repairs of Toyota branded vehicles. CMH Toyota Melrose also acts as an intermediary in the provision of finance and insurance services.

Proposed transaction

- [9] Unitrans intends to acquire the CMH Toyota Melrose dealership from Whitehouse as a going concern. Post-merger, CMH Toyota Melrose will be wholly owned and controlled by Unitrans.

Impact on competition

- [10] The Competition Commission (Commission) identified a horizontal overlap between the activities of the merging parties. The horizontal overlap is in relation to the retail sale of new and used passenger vehicles; new and used LCVs; and aftermarket parts and scheduled services in relation to Toyota vehicles. Regarding the horizontal overlaps presented by the proposed transaction, the Commission defined the following relevant markets: (i) The

market for the retail sale of new passenger vehicles within 80km of CMH Toyota Melrose in Gauteng (GP); (ii) The market for the retail sale of LCVs within 80km of CMH Toyota Melrose in GP; (iii) The market for the retail sale of used and pre-owned passenger vehicles and LCVs in GP; and (iv) The market for the retail sale of Original Equipment Manufacturer's (OEM) spare parts and the provision of scheduled servicing for Toyota Vehicles in GP and within 35km of CMH Toyota Melrose.

Market for the retail sale of new passenger vehicles within 80km of the target dealership in GP (also includes inter-brand competition¹)

[11] The Commission found that the merged entity will likely hold [$<7\%$] of the market share in this market in GP, with an accretion of [$<1\%$]. The Commission also found that the merged entity will face competition from various industry players such as McCarthy, Imperial and Super Group. This market includes other alternative dealerships that sell competing brands, *inter alia*, BMW, VW and Toyota. Due to the insignificant market share accretion and the post-merger constraints from alternative dealerships, the Commission concluded that the proposed transaction is unlikely to substantially lessen or prevent inter-brand competition, and competition as a whole in this market.

Market for the retail sale of new LCVs within 80km of the target dealership in GP

[12] In this market the Commission found that the merged entity will enjoy a market share of approximately [$<14\%$], with an accretion of [$<1\%$]. Given the insignificant market share accretion, the Commission concluded that the proposed transaction will unlikely result in a substantial lessening or prevention of competition in the market for the sale of new LCVs in the relevant market.

Markets for the retail sale of pre-owned passenger vehicles and LCVs in GP

[13] The Commission found that these markets are highly fragmented and subject to high levels of competitions effected by approximately 792 dealerships that

¹ This includes competition in the sale of different brand of vehicles i.e. Toyota, BMW, Ford and Subaru among others.

sell pre-owned cars. Further, the geographic market can be broader than 80km because pre-owned cars can be sold online, on auctions and through private dealers. This bolsters the finding by the Commission of high competition levels in this market.

Market for the retail sale of OEM spare parts and the provision of scheduling services for Toyota vehicles in GP within a 35km of the target dealership

- [14] In assessing the market for the sale of OEM parts and scheduled services for Toyota vehicles within 35km from the target dealership, the Commission used the sale of new passenger vehicles as a proxy for market shares. To that effect, the Commission found that the merged entity will likely hold a market share of approximately [$<15\%$] in the market for the sale of spare OEM parts and scheduled services for Toyota vehicles, with an accretion of [$<2\%$]. The Commission further found that the merged entity will be constrained by, *inter alia*, McCarthy, Imperial and Halfway.
- [15] The Commission also considered an 80km radius in which it found that the merged entity will hold a market share of approximately [$<13\%$] market share with an accretion of [$<2\%$]. Further, the Commission found that the merged entity will continue to face competition from other Toyota independent dealerships such as McCarthy, Imperial and Super Group. In light of the above, the Commission found that the proposed transaction will not result in a substantial lessening or prevention of competition in the market for the sale of OEM spare parts and the provision of scheduled services for Toyota vehicles. The Commission also found that the low market shares in Toyota sales, and the availability of alternatives implies that there is an unlikely negative effect on intra-brand competition (between Toyota products).

Vertical assessment

- [16] The Commission found a potential vertical link through Toyota Motor Corp's 35.4% shareholding in TTC (the Acquiring group). This is because the Acquiring group is notionally connected (through Toyota Motor Corp) to the upstream markets of the manufacture and supply of vehicles and components, whereas

the target firm through CMH Toyota Melrose is active in the downstream markets of the retail of Toyota brands. The Commission considered whether post-merger the Acquiring group may have the ability to influence the sale/allocation of new Toyota passenger vehicles to CMH Toyota Melrose due to Toyota Motor Corp's interest in TTC. This would raise foreclosure concerns.

- [17] The Commission found that although there is an ability to foreclose, there is no incentive to effect foreclosure strategies due to the fact that the Acquiring group would risk profit loss because third party dealerships still account for a significant stake of its vehicle sales. Further, the Commission found that Toyota dealerships enjoy countervailing power and that the Acquiring group does not enjoy market power in the downstream to enable it to foreclose its upstream rivals.

Creeping mergers

- [18] The Commission also considered whether historical acquisitions as well as the current acquisitions by the Acquiring group (through Unitrans) are likely to raise concerns in the relevant markets. The Commission found that even though there have been numerous transactions by the Acquiring group, the transactions result in minimal market share accretions by the Acquiring group in the relevant markets. The Commission concluded that the historical transactions by the Acquiring group will not raise concerns. Lastly, the Commission submitted that it will continue to closely monitor acquisitions by the Acquiring group, especially those involving Toyota branded products.

Public interest

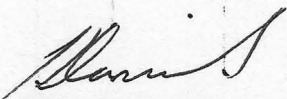
- [19] The proposed transaction will not result in job losses because the employees of CMH Toyota Melrose will be transferred in terms of section 197 of the Labour Relations Act 66 of 1995. Further, the merging parties submitted that the employment conditions of the employees will not be negatively impacted by the proposed transaction.

[20] The merging parties further submitted that the proposed transaction will have positive effects on Broad-Based Black Economic Empowerment (B-BBEE). This is because, through its shareholding in Unitrans Motor Holdings, Kapela Holdings will acquire an indirect interest in CMH Toyota Melrose as a result of this transaction. Essentially, Kapela Holdings will be in a position akin to Thebe Investment's pre-merger position.² This transaction will therefore have a positive effect on the levels of ownership by firms controlled by historically disadvantaged individuals in the relevant market markets.³ The Commission further found that CMH Toyota Melrose utilises SMMEs service providers in the provision of related services. The merging parties submitted that ongoing business with these SMMEs will not be negatively impacted by the proposed transaction.

[21] In view of the above, the Commission concluded that the proposed transaction does not raise any competition or public interest concerns. We find no reason to disagree with the Commission.

Conclusion

[22] In view of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



Mr Enver Daniels

9 April 2020

Date

Prof. Fiona Tregenna and Prof. Halton Cheadle concurring.

Tribunal Case Manager : Kgothatso Kgobe

² Merger Record, page 237.

³ Merger Record, par 8.2 page 57.

For the Merging Parties

: L Cleland and M Jali of Shepstone & Wylie

For the Commission

: H Mandla and M Aphone