



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM201Feb21

In the matter between:

CMH Holdings (Pty) Ltd

Primary Acquiring Firm

And

Ballito Motor Holdings (Pty) Ltd

Primary Target Firm

Panel:	M Mazwai (Presiding Member) E Daniels (Tribunal Panel Member) AW Wessels (Tribunal Panel Member)
Heard on:	21 April 2021
Order Issued on:	21 April 2021
Reasons Issued on:	23 April 2021

REASONS FOR DECISION

- [1] On 21 April 2021, the Competition Tribunal (“Tribunal”) conditionally approved a large merger between CMH Holdings (Pty) Ltd (“CMH Holdings”) and Ballito Motor Holdings (Pty) Ltd (“BMH”).
- [2] The transaction involves CMH Holdings acquiring 100% of the shares in BMH. Post-merger, CMH Holdings will own and control BMH.
- [3] CHM Holdings is controlled by JSE-listed company, Combined Motor Holdings Limited (“CMH Group”). The CMH Group is active in, *inter alia*, the retail of new and used passenger vehicles (“PVs”) and light commercial vehicles (“LCVs”), the provision of car hire, the supply of aftersales services (scheduled repairs), and the import and supply of branded automotive parts for various Original Equipment Manufacturers (“OEMs”).¹
- [4] BMH is currently jointly controlled by Skyfire 550 Trading (Pty) Ltd and SMD Trading Group CC. BMH is active in the retail of new and used PVs and LCVs, operates a Ford motor vehicle dealership (“BMH Ford Dealership”) and a Jaguar Land Rover dealership (“JLR Dealership”)² in Ballito, KwaZulu-Natal, and provides associated maintenance, parts, and accessories.

¹ Polar Sun, Soyat, GWM, Haval, Cherry, Mahindra, Tata, Hyundai, and Kia.

² The franchise in respect of the JLR Dealership will terminate before the implementation of the proposed transaction and only the Ford Dealership will remain post merger.

- [5] The Commission identified horizontal overlaps between the activities of the merger parties and assessed the impact of the proposed transaction on the following markets:
- (i) the sale of new PVs in KwaZulu-Natal;
 - (ii) the sale of new LCVs in KwaZulu-Natal;
 - (iii) the sale of new PVs within a 100km radius of the BMH Ford Dealership in Ballito;
 - (iv) the sale of new LCVs within a 100km radius of the BMH Ford Dealership; and
 - (v) the sale of OEM aftermarket parts and the provision of scheduled services within a 100km radius and within a 35km radius of the BMH Ford Dealership in Ballito.
- [6] The Tribunal during the hearing questioned the Commission regarding the scope of the relevant geographic markets. We leave the exact parameters of the relevant geographic markets open since that does not alter our ultimate conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [7] Post-merger, the merged entity's market shares in the markets in paragraph 5 (i) to (iv) above will be less than 25%, with an accretion of less than 1% as a result of the proposed transaction.
- [8] The Commission further found that the merger does not raise any concerns regarding the sale of OEM aftermarket parts and the provision of scheduled services since Ford OEM parts can be sourced from seven alternative Ford dealerships within a 100 km radius from the merged entity. In addition, the Commission noted that scheduled in-warranty vehicle maintenance is included as part of the vehicle purchase price, so customers would not be at risk of any unilateral effects post-merger.
- [9] As indicated above, the proposed merger results in low market share accretions in the identified markets. Furthermore, the merger parties will continue to face competition from a number of players in all the affected relevant markets.³
- [10] The effect of the proposed transaction on intra-brand competition was also assessed and the Commission found that the merger parties are likely to face intra-band competition in the sale of Ford PVs and LCVs within the broader KwaZulu-Natal area and would continue to be constrained post-merger by alternative Ford dealerships such as Barloworld Ford Pinetown, Halfway Ford Waterfall and Fury Ford Amanzimtoti.⁴ We found no reason to disagree with the Commission's findings.
- [11] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [12] Accordingly, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

³ Durban South Toyota, Alpine Motors Pinetown, McCarthy Volkswagen Durban, Hoopers Durban, Barons Durban, Hillcrest Toyota, Bidvest McCarthy Toyota Pinetown, McCarthy Volkswagen Umhlanga, Halfway Toyota Scottburgh, Halfway Toyota Shelly Beach KwaZulu-Natal, and Halfway Malanda Toyota KwaZulu-Natal.

⁴ Other dealerships include Barloworld Ford Pietermaritzburg, Sentracor Ladysmith KZN, Halfway Ford Port Shepstone and others.

- [13] The proposed transaction also does not raise any public interest concerns. The merger parties submitted that the used-vehicle dealership of BMH in Umhlali, KwaZulu-Natal, will close and the employees of that dealership will remain employed by BMH. The employees of BMH will then transfer to the acquiring firm in terms of section 197 of the Labour Relations Act 66 of 1995.
- [14] Further, the Tribunal notes that the JLR Dealership will also close due to the termination of the franchise arrangement by Jaguar Land Rover South Africa. This will result in the retrenchment of the 36 employees employed at the JLR Dealership. The Tribunal is satisfied that these retrenchments are not merger specific.
- [15] The Tribunal approved the merger, subject to conditions that ensure the termination of the JLR Dealership before the implementation of the proposed transaction. The conditions are attached as Annexure A.



Ms Monde Mazwai

Mr Enver Daniels and Mr Andreas Wessels concurring

23 April 2021

Date

Tribunal Case Manager: Duduetsang Mogapi
For the Merging Parties: L Cleland of Shepstone and Wylie Attorneys
For the Commission: T Loate, P Bele and W Gumbie