



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM062Jul22

In the matter between:

Motus Group Limited

Acquiring Firm

and

Sandown Motor Holdings (Pty) Ltd

Target Firm

Panel : Sha'ista Goga (Presiding Member)
: Mondo Mazwai (Tribunal Panel Member)
: Andiswa Ndoni (Tribunal Panel Member)

Heard on : 19 October 2022

Order issued on : 19 October 2022

Reasons issued on : 14 November 2022

REASONS FOR DECISION

Approval

- [1] On 19 October 2022, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger wherein Motus Group Limited ("Motus Group"), intends to acquire the business of three Mercedes-Benz passenger vehicle dealerships and one commercial vehicle dealership as well as a portion of an administrative that services these dealerships from Sandown Motor Holdings (Pty) Ltd ("Sandown Motor Holdings") as a going concern. Upon implementation of the proposed transaction, Motus Group will acquire sole control over Sandown Motor as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended ("the Act").

Parties to the transaction and their activities

Primary Acquiring Firm

- [2] The primary Acquiring Firm is Motus Group Limited (“Motus Group”). Motus Group is wholly owned and controlled by Motus Holdings Limited (“Motus Holdings”), a public company listed on the Johannesburg Stock Exchange.
- [3] Motus Holdings is not directly or indirectly controlled by any firm.
- [4] Shareholders that hold in excess of 5% shareholding as at 30 June 2021 in Motus Group are Public Investment Corporation (South Africa) 12.02%, Ukhamba Holdings (Pty) Ltd (South Africa) 9.04%, M&G Investment Management (UK) 7.17%, Ninety-One (South Africa) 6.17% and Visio Capital Management (South Africa) 5.42%.
- [5] All firms directly and indirectly controlled by Motus Group are collectively referred to as the “Acquiring Group”.
- [6] The Acquiring Group is involved in vehicle importation, vehicle distribution and dealership, vehicle rental, after-market and vehicle related financial services predominantly through its network of dealerships across South Africa.

Primary Target Firm

- [7] The primary Target Firm is Sandown Motor Holdings (Pty) Ltd (“Sandown Motor Holdings”), in respect of the business consisting of three Mercedes-Benz passenger vehicle dealerships in Sandton, Bryanston, and Constantia Kloof, one commercial vehicle dealership in Roodepoort and a portion of an administrative function located in Bryanston that services such dealerships.
- [8] Sandown Motor Holdings is wholly owned and directly controlled by Mercedes-Benz South Africa Limited (“Mercedes-Benz SA”).
- [9] All firms directly and indirectly controlled by Sandown Motor Holdings, are collectively referred to as the “Target Group”.¹
- [10] The Target Group is involved in the sale of new and used Mercedes-Benz passenger, LCVs, as well as other commercial vehicles, like Fuso and Mercedes-Benz trucks. It is active in the servicing of the vehicles and other commercial vehicles (i.e., Mercedes-Benz buses and Freightliners). The Target

¹ Sandown Motor Holdings does not directly or indirectly control any firm.

Group also provides related aftersales parts and services in Gauteng. The Target Group operates as an agent for Mercedes-Benz SA.

Proposed transaction and rationale

Transaction

- [11] In terms of the proposed transaction, the Acquiring Group intends to acquire the Target Group from Sandown Motor Holdings as a going concern. Post-merger, the Acquiring Group will own and control the Target Group. The Acquiring Group will exercise sole control over the Target Group, as envisaged by section 12(2)(a) of the Act.

Rationale

- [12] The Acquiring Group submits that the Motus Group considers Mercedes-Benz to be a prestigious vehicle brand. [REDACTED]

- [13] The Target Group submits that the proposed transaction is likely to provide an opportunity for the Target Group to continue its growth and development. [REDACTED]

Relevant market and impact on competition

- [14] In respect of the products market, both Motus and the target dealerships sell new passenger and commercial vehicles. In commercial vehicles, the parties' activities overlap with respect to light commercial vehicles, medium commercial vehicles, and heavy commercial vehicles.

- [15] Motus sells new passenger and commercial vehicles throughout South Africa whereas the target dealerships are located in Gauteng Province. Therefore, of relevance to the proposed transaction dealerships in Gauteng Province. The target dealerships comprise of four dealerships, while there are [REDACTED] Motus dealerships in Gauteng Province.

[20] The merged entity will have an estimated market share in the range of 10% to 40% with an accretion in the range of 1% to 10% in Gauteng Province. Considering the modest accretion in market share, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this market. Further, the merged entity will continue to face competition from a number of alternative dealerships in this market such as [REDACTED]

Intra-brand competition in the market for the sale of passenger vehicles

[21] Within 50km of the Target Dealerships, the Commission notes that there are approximately 13 Mercedes-Benz Dealerships. Motus owns [REDACTED] Mercedes-Benz passenger vehicles dealerships and is acquiring three additional Mercedes-Benz passenger vehicles dealerships. Motus will own [REDACTED] of dealerships within a 50 km radius of the Target Dealerships. In Gauteng as a whole, the merging parties will have an estimated market share in the range of 30% to 50% in the sale of Mercedes Benz passenger vehicles based on the number of vehicles sold.

[22] The Commission notes that Mercedes Benz sold total of [REDACTED] passenger vehicles in 2021, Motus dealerships account for [REDACTED] vehicles whereas the Target Group account for [REDACTED]. This implies that the merged entity will account for [REDACTED] passenger vehicles out of a total of [REDACTED] passenger vehicles. Therefore, the merged entity will have an estimated market share of in the range of 20% to 50% in the sale of Mercedes Benz passenger vehicles. Considering the high market shares, the Commission was concerned of potential unilateral effects in the sale of Mercedes Benz passenger vehicles.

[23] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Provision of aftersales maintenance services for in warranty and out of warranty Mercedes Benz vehicles in the relevant geographic markets

- [25] Given that the merged entity will have a substantial market share in the sale of Mercedes Benz passenger vehicles in the relevant geographic market, the Commission considered the potential unilateral effects that might arise as a result of the merger on labour rates for vehicles that are (i) in maintenance plan, service plan or warranty and (ii) out of warranty or out of service plan or maintenance plan.
- [26] The Commission understands that dealerships receive a base labour rate and key performance indicators ("KPIs") which each have a rand value linked to them. If dealerships achieve the KPI's they can add achieved KPI's to the base rate for a particular quarter. Therefore, a particular dealership could charge a base labour plus the KPI achieved.
- [27] The merging parties submit that the hourly labour rates vary on a quarterly basis for vehicles that are in maintenance plan and under warranty as these are linked to the achievement of KPIs that are set by Mercedes Benz SA.
- [28] [REDACTED]
[REDACTED] The Tribunal sought clarity in respect of the Commission's analysis and sought to understand what these rates are and whether they are the rates charged to customers or whether they are the rates paid to providers. The merging parties submitted that the labour rates refer to the rates charged to a retail customer when it procures repair services from either of the merging parties in respect of Mercedes-Benz passenger cars or commercial vehicles that are under warranty or service plan and those that are not covered by warranty or service plan.
- [29] The Commission's analysis showed that the difference in labour rates between the Acquiring Group and Target Group's labour rates is not significant. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this market.
- [1] The Commission also assessed margins. [REDACTED]
[REDACTED] The Commission notes that the proposed transaction is likely to result in an increase in the margins charged for parts in the target dealerships. In light of this finding, the Commission shared its concerns with the merging parties and also sought to understand the reasons behind the differences in the margins.

- [30] In response, the merging parties submit that the margins between Motus and the target dealerships or Sandown are not materially different. Further, the margins are determined by each individual dealership based on a range of different factors, Motus does not expect that the margins of the target dealerships will vary significantly from their current levels as a result of the proposed transaction. The parties explain that the difference in the margins arise due to differences between the merging parties accounting, trading policies, and the particular mix of products/services provided at each individual dealership.
- [31] Considering the above, the Commission notes is of the view that the margins are not significantly different. Further, Mercedes-Benz provides a recommended retail price for all parts. As such, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. In addition, there are dealerships located in close proximity to the merging parties' dealerships that could serve as alternatives to customers should the parties increase their margins to a significant level.
- [32] The Commission notes that there exists strong inter-brand competition which can off-set a potential reduction in intra-brand competition. Mercedes-Benz competes with the likes of BMW and Audi amongst others.

Intra-brand competition in the market for the sale of commercial vehicles

- [33] The Commission and Tribunal have previously made findings that the market for commercial vehicles is national because the customer profile of commercial vehicle buyers is different from that of passenger vehicles. The typical commercial vehicle customer would be a firm buying several vehicles for its fleet which are also much more expensive; these customers are unlikely to be reluctant to spend the extra time in travelling to source the best deal. The Commission is of the view that the proposed transaction is unlikely to have a negative effect in the sale of Daimler and/Mercedes Benz commercial vehicles.
- [34] The Commission notes that Motus has an estimated market share in the range of 10% to 20% the Target Group has a market share in the range of 1% to 10%. Considering the above market shares, the Commission is of the view that the proposed transaction is unlikely to result in intra-brand issues.
- [35] Taking the above into consideration, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

- [36] When assessing the proposed transaction, the Competition Tribunal (“the Tribunal”) did not find any evidence suggesting that the relevant market should be broader than the one defined above.

Relevant counterfactual

- [37] The Tribunal assessed the prospects for competition with the proposed transaction against the competitive status quo without the proposed transaction. Based on the above evidence, it concluded that there are no competitive concerns raised.
- [38] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [39] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

- [40] The Commission engaged with the merging parties who submitted that the proposed transaction will not give rise to any retrenchments.
- [41] The employees of the merging parties are represented by the National Union of Metal and Workers (“NUMSA”) and the Motor Industry Staff Association (“MISA”).
- [42] MISA did not raise any concerns with the proposed transaction. NUMSA submits that the merging parties should impose a condition on a perpetual freeze on job losses. However, the merging parties are of the view that it would not be appropriate to place any restrictions on retrenchments which are not merger-specific and that this would be inconsistent with the approach applied by the Commission and the Competition Tribunal.
- [43] Further, NUMSA requested that the merging parties commit on a process that will ensure harmonization of employment conditions and benefits of workers in consultation with NUMSA post-merger at the cost of the merging parties. The merging parties confirmed in a letter to NUMSA dated 18 August 2022, that harmonization of terms and conditions of employment of NUMSA represented employees will be done with the full involvement of Motus.
- [44] Considering the above, and the fact that the merging parties have provided an unequivocal statement that no job losses will arise as a result of the proposed

transaction, the Tribunal agrees with the Commission's findings that the proposed condition is not necessitated by the merger and that the proposed transaction is unlikely to have a negative effect on employment.

Effect on the spread of ownership

- [45] The Commission engaged the merging parties on the manner in which the proposed transaction promotes a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market in terms of Section 12A(3)e of the Act.
- [46] The merging parties submitted that overall, the proposed transaction will promote a greater spread of ownership by historically disadvantaged persons and/or workers. The Target Group currently has no direct shareholding by historically disadvantaged persons ("HDPs"). The shares in Motus Holdings are widely held and freely traded, including by HDPs.
- [47] The Commission notes that according to the BEE certificate of Motus, black people hold 37.96% of the voting rights in Motus and 30.56% of the economic interest. Therefore, the proposed transaction is likely to have a positive effect on the promotion of a greater spread of ownership as the Target Group does not currently have any BEE shareholdings.
- [48] NUMSA requested the merging parties to provide an unencumbered 10% equity ownership by workers to be facilitated through an Employee Share Ownership Plan ("ESOP"), NUMSA is of the view that the ESOP should be established within 12 months after the approval date in consultation with NUMSA and their advisors at the cost of the merging parties. The merging parties are do not deem it necessary to create an ESOP as they are of the view that the proposed transaction will have a positive effect on the promotion of a greater spread of ownership. Further, the employees of the Target Group, by virtue of forming part of the Acquiring Group will benefit from impactful and transformative corporate initiatives relating to transformation governance, ownership, employment equity, supplier enterprise development and socio-economic development.
- [49] The Target Group currently has no direct shareholding by HDPs. However, the Acquiring Group in this instance, through Motus Holdings, is a listed entity and its shares are widely held and freely traded, including by HDPs.
- [50] The Tribunal inquired how the Commission and the merging parties measured the spread of ownership or dilution beyond comparing the total percentage of HDP ownership. In response, the merging parties advised that there is an absolute increase in shareholding as the Target Group is currently indirectly wholly owned by a single offshore entity. Accordingly, there will be a positive

impact on the spread of ownership as Motus is a listed entity, whose shares are widely held including by HDPs. Furthermore, the merging parties provided the Commission with Motus' BEE certificate as a means of estimating "ownership" by HDPs.

[51] The Commission is of the view that it is unlikely that the proposed transaction will have a negative effect on the spread of ownership. The Tribunal agrees with this assessment.

[52] The Commission found that the proposed transaction raised no further public interest concerns, and the Tribunal concurs.

Conclusion

[53] Considering the above, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

Signed by: Sha'ista Goga
Signed at: 2022-11-14 15:59:47 +02:00
Reason: Witnessing Sha'ista Goga

Sha'ista Goga

Ms Sha'ista Goga

14 November 2022

Date

Concurring: Ms Mondo Mazwai and Ms Andiswa Ndoni

Tribunal case managers : Theodora Michaletos and Baneng Naape

For the merging parties : Heather Irvine of Bowmans Law

For the Commission Billy Mabatamela and Ratshidaho Maphwanya