



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM138Oct22

In the matter between:

CFAO Motors Proprietary Limited

Acquiring Firm

and

Buddingtrade RF (87) Proprietary Limited

Target Firm

Panel : Imraan Valodia (Presiding Member)
: Andiswa Ndoni (Tribunal Panel Member)
: Andreas Wessels (Tribunal Panel Member)

Heard on : 21 December 2022

Order issued on : 21 December 2022

Reasons issued on : 21 December 2022

REASONS FOR DECISION

Approval

- [1] On 21 December 2022, the Competition Tribunal ("Tribunal") unconditionally approved the large merger wherein CFAO Motors South Africa (Pty) Ltd ("CFAO Motors"), intends to acquire Buddingtrade RF (87) (Pty) Ltd ("Buddingtrade") in respect of its motor dealership business t/a Continental Cars ("Continental Cars") as a going concern. Post-merger, Continental Cars will be a wholly owned subsidiary of CFAO Motors.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is CFAO Motors South Africa Proprietary Limited (“CFAO Motors”), a company duly incorporated in accordance with the laws of the Republic of South Africa.
- [3] CFAO Motors is jointly controlled by CFAO South Africa Group (“CFAO RSA”), as to [REDACTED]
- [4] CFAO RSA is in turn a wholly owned subsidiary of CFAO SAS (“CFAO SAS”), which is in turn a wholly owned subsidiary of Toyota Tsusho Corporation Africa Division (“TTC Africa”).
- [5] TTC Africa is ultimately a wholly owned subsidiary of TTC Group (the “TTC Group”), a company publicly listed on the Tokyo Stock Exchange, under the laws of Japan.
- [6] CFAO Motors and its controllers will henceforth be referred to as the “Acquiring Group”.
- [7] The Acquiring Group operates approximately [REDACTED] franchised dealerships across South Africa. The dealerships offer various original equipment manufacturers (“OEM”) brands such as Audi, BMW, Isuzu, Ford, Hino, Honda, Kia, Lexus, Mercedes Benz, Mini, Mitsubishi, Nissan, Renault, Subaru, Toyota and Volkswagen.

Primary target firm

- [8] The primary target firm is Buddingtrade 87 (RF) Proprietary Limited (“Buddingtrade”), in respect of its motor vehicle dealership business t/a Continental Cars (“Continental Cars”).
- [9] Buddingtrade is controlled by [REDACTED]
- [10] Continental Cars does not control any firm.
- [11] The target firm, Continental Cars, will henceforth be referred to as the “Target Dealership”.
- [12] The Target Dealership is active in the sale of new BMW branded passenger vehicles (“PV”) and used vehicles and is the only BMW dealership franchise operating within Gqeberha area.

Proposed transaction and rationale

Transaction

- [13] In terms of the proposed transaction, CFAO Motors intends to acquire the motor vehicle dealership t/a Continental Cars, as a going concern from Buddingtrade. Post-merger, Continental Cars will be a wholly owned subsidiary of CFAO Motors.

Rationale

- [14] The Acquiring Group submits that the proposed transaction will enhance the BMW division of CFAO Motors, especially in Gqeberha, where CFAO Motors does not own and operate any BMW motor vehicle dealerships. CFAO also does not own and operate any BMW motor vehicle dealership in the broader Eastern Cape province.
- [15] The Target Dealership submits that the proposed transaction allows Buddingtrade to dispose of its motor vehicle dealership business to realise its investment made over many years.

Relevant market and impact on competition

- [16] The Competition Commission ("the Commission") considered the activities of the merging parties and found that these activities overlap horizontally in respect of the sale of (i) new and (ii) used passenger vehicles and (iii) the facilitation of access to financial products.
- [17] The Commission noted that although the merging parties' activities overlap horizontally insofar as the provision of aftermarket scheduled maintenance service and parts are concerned, the Commission found that this is unlikely to raise concerns as their after-market activities are offered in relation to completely different OEM brands.
- [18] The Commission found that the merged entity will account for [REDACTED] in the market for the sale of passenger vehicles within Gqeberha, with a market share accretion of [REDACTED]. The merged entity will continue to face competition from 38 other dealerships operating within Gqeberha.
- [19] The Commission also found that the Acquiring Group accounts for [REDACTED] of the national market for the sale of passenger vehicles with a market accretion of [REDACTED].

- [20] The Commission considered intra-brand and inter-brand competition among the Gqeberha dealerships and is of the view that the proposed transaction is unlikely to result in the dampening of intra-brand and inter-brand competition.
- [21] The Commission however notes that the Acquiring Group will not face intra-brand competition in BMW, Toyota and Haval. The Acquiring Group will be the only motor retail group which operates BMW, Toyota and Haval dealerships within Gqeberha and the adjacent areas. This is however not merger specific because this structure prevailed pre-merger.
- [22] Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- [23] When assessing the proposed transaction, the Tribunal did not find any evidence suggesting that the relevant market should be broader than the one defined above.

Relevant counterfactual

- [24] 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.
- [25] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [26] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

- [27] The merging parties submitted that there will be no retrenchments as a result of the proposed transaction. The Commission thus concluded that the proposed transaction will not have adverse effects on employment.
- [28] We agree with the Commission's findings that the proposed transaction is unlikely to have a negative impact on employment in South Africa.

Effect on SMMEs and HDP businesses in the economy

- [29] The merging parties submit that the Target Dealership currently procure products and services from companies owned by HDPs and the Acquiring Group will continue to procure products and services from these HDP companies if the suppliers meet the quality standards of the Acquiring Group.
- [30] The merging parties submit that CFAO Motors spend on B-BBEE suppliers amounts to more than R15 billion per annum. The Commission has not uncovered evidence which suggests CFAO will change its procurement strategy as a result of the proposed merger. Nonetheless, CFAO Motors has made an undertaking that it will continue to procure goods and services from the current small medium and micro enterprises (“SMMEs”) and HDP suppliers of the Target Dealership.

Effect on the spread of ownership

- [31] The merging parties submit that [REDACTED] of the entire issued share capital in the Acquiring Group are held by HDPs, through [REDACTED]. Based on its BEE Certificate, CFAO Motors is [REDACTED] owned by HDPs and is a level 4 (four) BBBEE contributor.
- [32] The merging parties further submit that the HDP shareholder of the Target Dealership is exiting to realise his investment. In summary, the shareholding by HDPs in the Target Dealership will increase from [REDACTED] as a result of the merger.
- [33] The Commission found that the proposed transaction raised no further public interest concerns, and the Tribunal concurs.

Conclusion

- [34] Considering the above, the Tribunal conclude 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: Imraan Valodia
Signed at: 2022-12-21 16:06:59 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

Prof Imraan Valodia

21 December 2022

Date

Concurring: Ms Andiswa Ndoni and Mr Andreas Wessels

Tribunal case manager : Baneng Naape

For the merging parties : Gideon Bothma of CFAO Motors (Pty) Ltd

For the Commission : Rakgole Mokolo