



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM092SEP23

Hatfield Holdings (Pty) Ltd
Hatfield Property Holdings (Pty) Ltd

Primary Acquiring Firms

And

The Business of the Audi Centre, Somerset West Dealership
and the Property on which Audi Centre operates.

Primary Target Firms

Panel	:	A Wessels (Presiding Member)
	:	T Vilakazi (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	09 November 2023
Order issued on	:	09 November 2023
Reasons issued on	:	27 November 2023

REASONS FOR DECISION

Introduction

- [1] On 09 November 2023, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger wherein Hatfield Holdings (Pty) Ltd (“Hatfield Holdings”) intends to acquire control of the business of the Audi Centre, Somerset West Dealership (“Target Dealership”). As part of the proposed merger, Hatfield Property Holdings (Pty) Ltd (“Hatfield Property”) will also

acquire the property on which the Target Dealership operates from (“Target Property”).

- [2] On completion of the proposed transaction, Hatfield Holdings will own and control the Target Dealership whereas Hatfield Property will own and control the Target Property.

The parties and their activities

Primary acquiring firms

- [3] The primary acquiring firms are Hatfield Holdings and Hatfield Property. Hatfield Holdings and Hatfield Property are private companies incorporated in accordance with the laws of the Republic of South Africa.
- [4] Hatfield Holdings and Hatfield Property are jointly controlled by the Brad Kaftel Family Trust (“Trust”)¹ and Grapevine Property Investments 103 CC (“Grapevine”).² Grapevine’s members [REDACTED] [REDACTED] qualify as historically disadvantaged persons (“HDPs”) in terms of the Competition Act.³
- [5] Hatfield Holding and Hatfield Property and the firms controlled by them are collectively referred to below as the “Acquiring Group”.
- [6] The Acquiring Group owns and operates 35 branded motor dealerships in Gauteng and KwaZulu-Natal Provinces. The dealerships primarily sell passenger vehicles (“PAS”) and light and medium commercial vehicles (“LCV and MCV”). The only dealership selling heavy commercial vehicles (“HCV”) is MAN and VW Trucks and Bus.

¹ As to [REDACTED] %.

² As to [REDACTED] %.

³ Act No 89 of 1998, as amended.

[7] The Acquiring Group also sells: used vehicles, after-sales services and after-sales branded original equipment manufacturer (“OEM”) parts and accessories, accessories (such as tow bars, tracking devices and safety film), and top up maintenance plans, and finance and insurance support services.

[8] The Acquiring Group sells the following brands: Audi, VW, Ford, GWM Haval, Omoda, Honda, Isuzu, Mahindra, Mazda, Renault, Suzuki, Triumph, and MAN Truck & Bus.

Primary target firms

[9] The primary target firms are:

- a. The Audi Dealership Business. The Audi Dealership Business is a private company incorporated in accordance with the laws of the Republic of South Africa, operating out of the corner of R44 and R104 Highway, Somerset West, Western Cape Province. The Target Dealership is wholly controlled by Somerset West RS (Pty) Ltd (“SW”);
- b. The property on which the Target Dealership operates. The Target Property is wholly controlled by Dirk Ellis Motor Group (Pty) Ltd (“DEMG”);
- c. Both SW and DEMG are controlled by the Dirk Ellis Trust.⁴ The controlling trustee for Dirk Ellis Trust is Dirk Johannes Scholtz Ellis.

[10] The Target Dealership is an Audi motor vehicle dealership, repair centre and service centre which sells, repairs, and maintains Audi branded motor vehicles.

[11] The Target Dealership sells new and used passenger vehicles. It does not sell LCVs and MCVs or HCVs.

⁴ SW is controlled by The Dirk Ellis Trust as to [REDACTED] shareholding. The remaining [REDACTED] shareholding in SW is held by [REDACTED] an HDP in terms of the Competition Act. The merging parties indicate that [REDACTED] does not have any form of control in SW.

[12] The Target Property is the premises from which the Target Dealership operates.

Transaction

[13] In terms of the proposed transaction, Hatfield Holdings will acquire (100%) control of the Target Dealership from SW. As part of the proposed merger, Hatfield Property will also acquire the Target Property from DEMG. Upon the implementation of the proposed transaction, Hatfield Holdings will wholly own and control the Target Dealership whereas Hatfield Property will wholly own and control the Target Property.

Indivisibility of the Transaction

[14] In determining whether the transaction constitutes a single indivisible transaction, the Competition Commission ("Commission") took into consideration that the Target Dealership and Target Property are being bought from similar shareholders. The Commission further noted that the economic rationale made sense as a building is required to operate a dealership. In addition, the Commission noted that the merger parties signed the transaction agreements for the Target Dealership and the Target Property at the same time demonstrating the parties' intention to implement the transactions at the same time. In addition, the Commission's investigation found that the primary acquiring firms are jointly controlled by the same shareholders, the BKF Trust and Grapevine.

[15] Based on the above, the proposed transaction constitutes a single indivisible transaction.

Rationale

[16]

[REDACTED]

[17]

[REDACTED]

Competition Assessment

[18] We considered the activities of the merger parties and found that the proposed transaction gives rise to a horizontal overlap. The horizontal overlap occurs in that the merger parties are both active in the provision of new and used passenger vehicles, after-sales vehicle servicing, sale of OEM branded parts, and the ancillary maintenance plans and warranties.

[19] The transaction does not raise any competition concerns in any narrow geographic market (defined in previous matters as provincial and/or with reference to an appropriate radius from the target dealership).⁵ In this matter, we found that the proposed transaction does not present a geographic overlap as the acquiring firms do not own or operate any dealerships in the Western Cape Province.

[20] Furthermore, we considered the dynamics of the sale of new passenger vehicles in a national market. In this regard, the merger parties submitted that they will have a very small combined estimated market share [REDACTED] in the national market for the sale of new passenger vehicles, with a negligible market share accretion [REDACTED]. At brand level (i.e. Audi), the merged entity will have a combined estimated national market share [REDACTED] with a small accretion [REDACTED] for Audi Branded Motor vehicles.

⁵ Case No.: LM064Aug21; LM150Feb20; LM188Mar22.

[21] There is no vertical relationship between the merger parties in South Africa because the merger parties do not supply any products or services to each other and also do not operate at different parts of the same value chain.

[22] Based on the above, the proposed merger is unlikely to result in a substantial prevention and/or lessening of competition in any market.

Public Interest

Effect on employment

[23] The merging parties submitted that the proposed transaction will not have any negative effects on employment.

[24] The Commission contacted the employee representatives of the merger parties, who confirmed that its employees had no concerns regarding the proposed merger.

[25] In light of the above, the proposed merger is unlikely to raise employment concerns.

Effect on the spread of ownership

[26] The Commission found that the acquiring firms currently have an effective shareholding by HDPs [REDACTED]. The Commission further found that the Target Dealership has [REDACTED] shareholding held by HDPs. Thus, the proposed transaction will result in a dilution [REDACTED] in HDP ownership.

[27] The merger parties submitted that the Acquiring firms' HDP shareholder, Grapevine, has a controlling shareholding and Grapevine has been an integral part of the Acquiring Group's business for 20 years, with a key role in strategic decisions. Thus, the Target Dealership will become controlled by an HDP shareholder post-transaction, whereas the HDP shareholder in the Target

Dealership or SW does not have control rights. As such, the merger results in a promotion of ownership from non-control to control by HDPs.

[28] The Commission also sought to understand the Acquiring Group's strategy in terms of HDP ownership at dealership level. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[29] Given that the Target Dealership is an Audi dealership, the Commission sought to find out if Audi requires any form of HDP shareholding to obtain a franchise.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] effectively holds [REDACTED] shareholding in each of the 35 dealerships owned by the Acquiring Group. The proposed transaction will add a dealership to the Acquiring Group's portfolio. Pre-merger, the Target Property does not have HDP ownership and the Commission noted that the proposed merger will increase the HDP ownership in the Target Property by [REDACTED]

[30] Accordingly, the Commission concluded that the proposed transaction does not raise substantial public interest concerns.

[31] Based on the facts above, the proposed merger is unlikely to have a negative impact on employment or the promotion of a greater spread of ownership.

Conclusion

[32] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger does not raise any public interest concerns.

[33] We therefore approve the proposed transaction without imposing conditions.

Signed by:Prof T Vilakazi
Signed at:2023-11-27 16:22:21 +02:00
Reason:Witnessing Prof T Vilakazi



27 November 2023

Prof T. Vilakazi

Date

Adv G. Budlender SC and Mr. A Wessels concurring

Tribunal Case Manager:	Nomkhosi Mthethwa-Motsa
For the Merging Parties:	Lara Granville and Taigrine Jones of Cliffe Dekker Hofmeyr Inc
For the Commission:	Billy Mabatamela and Themba Mahlangu