

SOUTH AFRICA / JUDGMENT

Boundlesstrade 154 Proprietary Limited v AA Group (LM173Nov16) [2017] ZACT 35 (6 March 2017) [2017] ZACT 35

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Andiswa Ndoni

CASE / FILE NUMBER

LM173Nov16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM173Nov16

In the matter between

Boundlesstrade 154 Proprietary Limited

Primary Acquiring Firm

And

AA Group

Primary Target Firm

Panel

: Mr Norman Manoim (Presiding Member)

: Ms Yasmin Carrim (Tribunal Member)

: Ms Andiswa Ndoni (Tribunal Member)

Heard on

: 22 February 2017

Order Issued on : 22 February 2017

Reasons

Issued on : 6 March 2017

REASONS

FOR DECISION

Approval

- [1] On 22 February 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between Boundlestrade 154 Proprietary Limited ("Boundlestrade") and the AA Group ("AA Group"), herein referred to as the merging parties.
- [2] The reasons are as follows.

Parties to the transaction

Primary Acquiring Firm

- [3] Boundlestrade is an investment holding company incorporated in accordance with the laws of the Republic of South Africa. Boundlestrade is a wholly owned subsidiary of Imperial Holdings Limited ("Imperial"). Imperial is a public company listed on the Johannesburg Stock Exchange ("JSE") and controls a number of firms[1] ("the Imperial Group") but is not controlled by any firm.
- [4] Imperial has more than 50 dealerships located in the Limpopo Province, North West Province, Mpumalanga Province, Free State Province and the Western Cape Province.
- [5] The Imperial Group provides a diverse range of products and services which include logistics, transportation and distribution services, aviation leasing, car rental, insurance, motor dealerships and auto parts retail. These are provided through various divisions such as Logistics Africa, Logistics international, amongst others.
- [6] Of relevance to the proposed transaction is its vehicle import distribution and dealerships divisions.

Primary Target Firm .

- [7] AA Group is jointly controlled by Boundlestrade (and thus Imperial) and Bidvest Group Limited ("Bidvest"), each with a 50% shareholding. Bidvest is a large industrial holding group. Included amongst its subsidiaries and relevant to this transaction is its ownership of the motor dealership group McCarthy Holdings ("McCarthy").

- [8] The AA Group[2] is principally engaged in the sale of new motor vehicles. One division imports and distributes a Chinese manufactured light passenger vehicle, the Chery. The other division also distributes a Chinese manufactured vehicle, the Foton, a light commercial vehicle. Both businesses also entail the sale of the parts and accessories that relate to these two brands.

Proposed transaction and rationale

- [9] The proposed transaction consists of a change from joint control to sole control. Bidvest wishes to exit the joint venture and realise a return on its investment, while the Imperial Group wishes to acquire the remaining 50% shareholding in the AA Group from Bidvest.[3]
- [10] From the beginning of the joint venture, Bidvest, through its McCarthy subsidiary possessed the technical skill relating to the distribution and retail of the Chery and Foton brands which Imperial did not possess. This is now no longer the position as AMH has gained the technical skills to manage the distribution and retail of the abovementioned car brands. Bidvest is of the view that it makes commercial sense for AMH to acquire the exclusive distribution rights of the brands and for Bidvest to exit the joint venture.

Relevant market and impact on competition

- [11] The relevant product market is the market for the sale of new passenger vehicles and new light commercial vehicles within a narrow market of 80km radius in the Gauteng province and a broader market of 100km radius for Limpopo, Mpumalanga, Kwa-Zulu Natal and Western Cape.
- [12] At the conclusion of its investigation, the Commission found that the proposed transaction presents overlaps in the market for the sale of new passenger vehicles and new light commercial vehicles only within the vehicle import, distribution and dealership division in the abovementioned Provinces.
- [13] When determining the geographic scope of the market, the Commission considered the distance between the dealerships of the merging parties in Limpopo, Gauteng, Kwa-Zulu Natal, Mpumalanga and Western Cape. Where the dealerships of the merging parties overlap within a radius of 80km (in the narrow market) and 100km (in the broad market) respectively, they would fall within the relevant geographical market.
- [14] In respect of the Gauteng Province, the effects of the proposed transaction were measured within a narrow radius of 80km as a result

of the density and concentration of dealerships therein. The Gauteng Province was further subdivided into three narrower markets (Pretoria and surrounding areas[4] Johannesburg and surrounding areas[5] and Germiston and surrounding areas[6]) in order to accurately assess the impact of the proposed transaction.[7]

[15] In respect of the Limpopo,[8] Kwa-Zulu Natal[9], Mpumalanga and Western Cape provinces, [10] the Commission adopted a broad market approach of 100km radius (for each province) as a result of the scarcity of dealerships therein.

New passenger vehicles market

[16] In the Gauteng Province, the Commission found that the merging parties will have a market share ranging between 12% and 24%, with an accretion between 5% and 8.5%.

[17] In the Limpopo Province, the Commission found that the merged entity will have a market share of 13.4% with an accretion of 6.2%.

[18] In the Kwa-Zulu Natal Province, the Commission found that the merged entity will have a market share of 15.5% with an accretion of 7.4%.

In the Western Cape Province, the Commission found that the merged entity will have a market share of 17.4% with an accretion of 6.4%.

New light commercial vehicles market

[19] In the Gauteng Province, the market share of the merged entity will be between 9.9% and 25.2% with an accretion between 2.7% and 3.7%.

[20] In Limpopo Province, the merged entity will have a market share of 24.3% with an accretion of 10.2%. The merging parties will continue to face competition from other dealerships such as BB Motors, Westvaal Motors, Mercurius Motors, MGM Motors, Toyota and Volkswagen.

[21] In the Western Cape province, the Commission found that the merged entity will have a market share of 13.4% with an accretion of 3.5%.

[22] In the KwaZulu Natal province, the Commission found that the merged entity will have a market share of 9.4% with an accretion of 3.1%.

[23] In view of the insignificant accretion of market share in each of the relevant markets, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition ("SLC") in the identified product markets.

Tribunal

analysis

[24] We agree with the Commission that the transaction will not lead to an SLC. However we would place more emphasis on the fact that the merger leads to the termination of a joint venture between two rival groups in the broader market for motor vehicle distribution. Viewed from this point, the merger is pro- competitive as it reduces an opportunity for rivals to meet in a joint venture. We emphasise however that there is no evidence in the record that such activity took place. The point is that the opportunity is reduced.

[25] The emphasis on market share accretion is also not significant in this case as pre-merger the record shows that the Imperial partners in the joint venture were, pre-merger, largely responsible for managing the joint venture including the determination of pricing decisions.
[11]

Public interest

[26] The merging parties submit that the proposed transaction will not result in job losses or have any negative effects on employment in South Africa. Given that the AA Group will continue to conduct its business as it did pre-merger, the Commission is of the view that proposed transaction will not have a negative effect on employment and does not raise any other public interest concerns.[12]

Conclusion

[27] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

6 March 2017

Date

Mr Norman Manoim

Ms Yasmin Carrim and Ms Andiswa Ndoni concurring

Tribunal Researcher: Ndumiso Ndlovu

For the merging parties: Kevin Minofu for ENSafrica

For the Commission: Boitumelo Makgabo and Xolela Nokele

[1] Imperial also controls other firms including Associated Motor Holdings ("AMH").

[2] AA Group comprises the following three companies: Amalgamated Automobile Holdings (Pty) Ltd ("AAH"), Amalgamated Automobile Distributors (Pty) Ltd ("AAD") and Future Automobile related financial services, vehicle import distribution and dealership divisions Distributors ("FAD").

[3] Page 1 and 2 of the Transcript.

[4] Encompassing Centurion, Menlyn, Pretoria central and Zambezi.

[5] Encompassing Midrand, Krugersdorp, Randburg, Sandton and Strijdom Park.

[6] Encompassing Alberton, Edenvale, Boksburg, Kempton Park and Vereenigln.g

- [7] Page 2 of the Transcript.
- [8] Encompassing Duiwelskloof, Lours Trichardt, Mokopane and Tzaneen.
- [9] Encompassing Durban central, EThekwinl, Gateway, Harbour View, Umhlanga and Pinetown.
- [10] Encompassing Cape Town, Diep Rivier, Kenilworth, Milnerton, Paarden Eiland (Air Port Park), Tygerberg and Worcester.
- [11] Page 7 and 8 of Transcript.
- [12] Page 4 of the Transcript.
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