

SOUTH AFRICA / JUDGMENT

# CFAO Motors South Africa (Pty) Ltd v William Simpson Cars (Pty) Ltd (LM188Mar22) [2022] ZACT 98 (12 May 2022)

[2022] ZACT 98

## COURT

Competition Tribunal

## BEFORE

Yasmin Carrim, Imraan Valodia, Enver Daniels

## CASE / FILE NUMBER

LM188Mar22

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## Source record

COMPETITION TRIBUNAL OF  
SOUTH AFRICA

## Case

no: LM188Mar22

## In

the large merger  
between:

CFAO  
Motors South Africa (Pty) Ltd  
Primary Acquiring Firm  
and  
William  
Simpson Cars (Pty) Ltd  
Primary  
Target Firm

## REASONS FOR DECISION

- [1] On 12 May 2022, the Competition Tribunal unconditionally approved the large merger between CFAO Motors South Africa (Pty) Ltd (“CFAO Motors”) and William Simpson Cars (Pty) Ltd (“William Simpson Cars”).
- [2] The proposed transaction involves CFAO Motor’s acquisition of the entire issued share capital of William Simpson Cars. Post-transaction, CFAO Motors will have sole control over William Simpson Cars.

[3] The primary acquiring firm, CFAO Motors, is 74.9% controlled by CFAO Holdings South Africa (Pty) Ltd (“CFAO Holdings”).[1] The balance, a 25.1% non-controlling shareholding, is held by Kapela Holdings (Pty) Ltd (“Kapela Holdings”). CFAO Motors does not control any firm, however, CFAO Holdings controls several firms in South Africa.

[4] The Acquiring Group[2] is active in the distribution of pharmaceutical products and in the retail of motor vehicles. Relevant to the proposed transaction are the activities of the Acquiring Group in the retail motor industry which include the sale of new and pre-used vehicles including

passenger vehicles (“PVs”) and light commercial vehicles (“LCVs”), sale of parts and accessories, and aftermarket

services through their franchised dealerships in South Africa.[3] The Acquiring Group comprises of over 100 franchised dealerships, which hold a range of Original Equipment Maker (“OEM”) brands. These brands include Audi, BMW, Ford, Hino, Honda, Kia, Lexus, Mercedes Benz, Mini, Nissan, Renault, Subaru, Mitsubishi, Toyota and Volkswagen across South Africa.

[5] The primary target firm, William Simpson Cars, is 100% controlled by Mr. William Simpson. William Simpson Cars does not control any firm.

[6] William Simpson Cars is active in the retail motor industry, it operates a Nissan dealership located in Tokai, Cape Town and does not conduct any business activities in any other location. The dealership sells new and pre-used LCVs and PVs. It also offers customers access to financial services related to the purchase of vehicles. In addition, the dealership sells parts and accessories, and provides aftermarket services.

#### Competition assessment

[7] In its assessment of the proposed transaction, the Competition Commission (the “Commission”) found no vertical overlap between the activities of the merging parties but identified a horizontal overlap in that both are active in the sale of new vehicles, the sale of used vehicles, and provision of after sale services and products which include workshop services, repairs, and spare parts.

[8] No further assessment of the effects of the proposed transaction in the market of used or pre-owned vehicles and provision of after sale services and products was conducted as the Commission found that these markets do not raise concerns.

[9] The Commission assessed the effects of the proposed transaction in the following markets:

9.1. The market for the sale of new PVs within a 100km radius of William Simpson Cars Tokai dealership;

9.2. The market for the sale of new LCVs within a 100km radius of William Simpson Cars Tokai dealership;

9.3. The sale of new PVs within a 50km radius of William Simpson Cars Tokai dealership; and

9.4. The sale new LCVs within a 50km radius of the William Simpson Cars Tokai dealership.[4]

[10] In each of the abovementioned markets, the Commission found that the merged entity will have market shares of less than [...] with a market accretion of less than respectively.[5]

[11] Furthermore, the Commission found that the merged entity will continue to be constrained post-transaction by several alternative dealerships in each of the relevant markets.

Public interest

Employment

[12] The merging parties submitted that the employees of William Simpson Cars will be taken over in terms of Section 197 of the Labour Relations Act, 66 of 1995 and that the proposed transaction will not result in any retrenchments.

[13] The Commission engaged with the Motor Industry Staff Association (“MISA”) and the National Union of Metalworkers of South Africa (“NUMSA”) who represent the employees of William Simpson Cars and the Acquiring Group, and they did not raise any concerns in relation to the proposed transaction.[6]

[14] We agree with the Commission’s findings that the proposed transaction is unlikely to have a negative impact on employment.

Spread of Ownership

[15] The Commission assessed the effect of the merger on greater spread of ownership and the merger parties submitted that CFAO Motors has an historically disadvantaged person (“HDP”) shareholding of 25.1% through Kapela Holdings[7] while William Simpson Cars does not have any HDP shareholding pre-transaction.

[16] The Commission is of the view that the proposed transaction does not raise substantial concerns relating to the promotion of a greater spread of ownership by HDPs as the proposed transaction will not result in dilution of HDP shareholdings and we concur with this.

## Conclusion

[17] For the above reasons, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise public interest concerns.

Date: 12 May 2022

Ms Yasmin Carrim

Professor Imraan Valodia and Mr Enver Daniels concurring

Tribunal Case Managers: Makati Seekane and Leila Raffee

For the Merging Parties: Gideon

Bothma

For the Commission: Tumiso

Loate and Themba Mahlangu

[1] CFAO Holdings is, in turn, wholly controlled by Toyota Tsusho Corporation (“TTC”), a public firm listed on the Tokyo Stock Exchange and the Nagoya Stock Exchange. TTC’s shares are widely held, and it is not controlled by any single shareholder.

Shareholders with more than 5% of TTC’s issued share capital are: Toyota Motor Corporation (as to 21.69%); Toyota Industries

Corporation (“TICO”, as to 11.18%); and The Master Trust Bank of Japan, Ltd (as to 10.45%).

[2] CFAO Motors, CFAO Holdings, all the firms controlled by CFAO Holdings shall be referred to as the “Acquiring Group”.

[3] The product offering also includes new and used medium commercial vehicles and heavy vehicles.

[4] The Acquiring Group is not active in the retailing of Nissan branded vehicles in the Western Cape, as such there is no intra-brand

competition taking place between the merger parties.

[5] The Commission’s market share assessment was based off data provided by Lightstone Auto, published by NAAMSA, for sale volumes

of new PVs and LCVs from 1 January 2021 to 30 December 2021 within Cape Town and surrounding areas.

[6] See email from the MISA’s Labour Relations Officer dated 8 April 2022 (Merger Record, p199) and email from the Commission to NUMSA dated 7 April 2022 (Merger Record, p204).

[7] Which is a 95.44% HDP owned firm as stated in the Competition Commission's Large Merger Report LM188Mar33 at p8 para 4.

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