

SOUTH AFRICA / JUDGMENT

Daimler Truck AG v Ukuvela Holdings Proprietary Limited (LM002Apr20) [2020] ZACT 23; [2020] 1 CPLR 345 (CT) (15 June 2020) [2020] ZACT 23

COURT

Competition Tribunal

BEFORE

E Daniels, A Ndoni, F Tregenna

CASE / FILE NUMBER

LM002Apr20

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM002Apr20

In the matter between

Daimler Truck AG

Primary Acquiring Firm

And

Ukuvela Holdings Proprietary Limited

Primary Target Firm

Panel: Mr E Daniels (Presiding Member)

: Ms A Ndoni (Tribunal Member)

: Prof. F Tregenna (Tribunal Member)

Heard on: 27 May 2020 Order

Issued on: 27 May 2020

Reasons

Issued on: 15 June 2020

REASONS

FOR DECISION

Approval

- [1] On 27 May 2020, the Tribunal unconditionally approved the proposed transaction in terms of which Daimler Truck AG (“Daimler Truck”) is acquiring control over Ukuvela Holdings Proprietary Limited (“Ukuvela Holdings”).
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm is Daimler Truck, a public company incorporated in terms of German Laws. Daimler truck is controlled by Daimler AG (“Daimler”). Daimler has direct as well as indirect control over numerous firms such as Mercedes - Benz South Africa Limited, Sandown Motor Holding Proprietary Limited, and Daimler Trucks and Busses South Africa Proprietary Limited. Daimler is not controlled by any firm.
- [4] The Daimler Group develops, manufactures and distributes products and services in the automotive sector, on a global scale. Daimler Truck is in charge of the group’s global business in relation to the manufacturing and distribution of trucks and busses.
- [5] The target firm, Ukuvela Holdings Proprietary Limited (“Ukuvela Holding”) is a wholly owned subsidiary of Ardan Livvey Investors B.V. (“Ardan Livvey”). Ardan Livvey is a limited liability company incorporated in accordance with laws of the Netherlands. Ukuvela Holdings controls Atlantis Foundries Proprietary Limited (Atlantis) and Ukuvela Properties Proprietary Limited (“Ukuvela Properties”).
- [6] Ukuvela Holdings, through Atlantis, operates a metal foundry which manufactures and sells iron engine blocks for heavy duty trucks.
- [7] Atlantis formed part of the Daimler group until 2015 when it was aquired by Neue Halberg-Guss GmbH. Subsequent to this acquisition, a long-term supply agreement was concluded between Daimler and Atlantis, in terms of which Atlantis would supply Daimler with cast iron engine blocks for trucks.

Proposed transaction

- [8] Daimler Truck’s intention is to acquire 100% of the issued share capital of Ukuvela Holdings from Ardan Livvey. Post-merger, Daimler Truck will wholly own and control Ukuvela Holdings and its subsidiaries.

Impact on competition

- [9] The Competition Commission (Commission) found no horizontal overlap in the activities of the merging parties due to the fact that no entity from the Daimler Group is in a position to compete with Ukuvela in the manufacture and supply of cast iron engine blocks for trucks.

Vertical Assessment

- [10] The Commission identified a vertical overlap as Ukuvela, through Atlantis, supplies cast iron engine blocks for trucks to the Daimler group. In its assessment, the Commission therefore assessed the upstream market for the manufacture and supply of cast iron engine blocks, as well as the downstream market for the manufacture of trucks.

Input foreclosure

- [11] With regard to input foreclosure, the Commission questioned Atlantis' ability and incentive to deny customers' access to Atlantis by exclusively dealing with the Daimler Group, and whether this would substantially lessen competition. The Commission found that the merged entity will be constrained by other suppliers in the upstream market. Furthermore, the Parties submit that Atlantis has been selling a majority of its output to Daimler Trucks, since 2015. The remaining truck manufacturers that were supplied by Atlantis were in the run-out phase of their respective product lines and, therefore, the volume of products supplied by Atlantis to them continued to decrease. The Commission therefore found that a foreclosure strategy by the merged entity is unlikely to raise significant concerns. The Commission further found that customers, inter alia, CA Components raised no concerns/objections regarding the proposed transaction.
- [12] Based on the information above, the Commission is of the view that the proposed transaction is unlikely to raise input foreclosure concerns.

Customer foreclosure

- [13] The Commission found that Atlantis is the only supplier of cast iron engine blocks to the Daimler Group. As a result, no third-party suppliers will be affected by this transaction. In light of the above, the Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in the relevant markets. We find no reason to disagree with the Commission.

Public interest

- [14] Subsequent to the Commission's analysis of the proposed transaction's potential effect on employment, small businesses or firms owned by historically disadvantaged individuals, local production and other public interest considerations, the Commission found there to be no public interest concerns.

Conclusion

[15] In view of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

15 June 2020

Date

Mr Enver Daniels

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring.

Tribunal Case Manager : Camilla Mathonsi and Kgothatso Kgobe

For the Merging Parties : A I. Tzarevski

For the Commission : R Molotsi and T Masithulela

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