

SOUTH AFRICA / JUDGMENT

Daimler Truck Holding AG v Part of the commercial vans business of Sandown Motor Holdings (Pty) Ltd (LM119Sep22) [2022] ZACT 91 (19 December 2022)

[2022] ZACT 91

COURT

Competition Tribunal

BEFORE

T Vilakazi, Y Carrim, S Goga

CASE / FILE NUMBER

LM119Sep22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM119Sep22

In the large merger between:

Daimler Truck Holding AG Primary Acquiring Firms

And

Part of the commercial vans business of

Sandown Motor Holdings (Pty) Ltd Primary Target Firm

Panel: T

Vilakazi (Presiding Member)

Y Carrim (Tribunal Member)

S Goga (Tribunal Member)

Heard on: 08 December 2022

Reasons

issued on: 19 December 2022

REASONS

FOR DECISION

- [1] On 8 December 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Daimler Truck Holding AG (“DT Holding AG”) and part of the commercial vans business of Sandown Motor Holdings (“Sandown Motor”).

Primary acquiring firm

- [2] The Acquiring Firm is DT Holding AG, a German company listed on the Frankfurt Stock Exchange. DT Holding AG controls Daimler Truck Southern Africa Limited (“DTSA”). Daimler AG is the parent company of Mercedes-Benz AG (“Mercedes-Benz”), Daimler Truck AG and Daimler Mobility AG (“Daimler Mobility”). DT Holding AG and all firms controlled by it shall be referred to as the “Acquiring Group”.

Primary target firm

- [3] The primary target firm comprises part of the commercial vans business of Sandown Motor Holdings (Pty) Ltd (“Target Business”). Sandown Motor is a wholly owned subsidiary of Mercedes-Benz South Africa Limited (“Mercedes-Benz SA”). Mercedes-Benz SA is in turn a wholly owned subsidiary of Mercedes-Benz AG which is ultimately controlled by the Mercedes-Benz

Group.

Activities of the parties

- [4] The Acquiring Group is active in the truck and bus business and is focused on the manufacturing and sale of trucks and buses.
- [5] The Target Business comprises (i) the marketing and retailing of Mercedes-Benz commercial vans and (ii) the provision of aftersales services for Mercedes-Benz commercial vans from a single dealership located in Centurion.

Description of the proposed transaction

- [6] The proposed transaction will be structured as follows:

6.1. DT Holding AG will indirectly, through its subsidiary DTSA, acquire all of the shares in Sandown Motors.

6.2. DT Holding AG has already obtained the approval of the competition authorities for the acquisition of Sandown Motors, in particular the trucks and buses business of Sandown Motors (“T&B Transaction”).[1] The target business in the T&B Transaction related to marketing, sales and aftersales services for Daimler trucks and buses only. The T&B Transaction formed part of a series of transactions related to the separation by the Mercedes-Benz Group of its trucks and buses business from its cars and vans business (the “spin-off”), approved by the Tribunal on 19 August 2021.[2] The Proposed Transaction envisages the separation of the commercial vans

business of Sandown Motors from the Mercedes-Benz Group.

6.3. The Proposed Transaction relates to a part of the commercial vans business of Sandown Motors which is now intended to be included as part of the transaction in terms of which DT Holding AG will acquire Sandown Motors.

6.4. Following the implementation of the Proposed Transaction, Sandown Motors will be wholly owned and controlled by DTSA, a wholly owned subsidiary of DT Holding AG. However, the passenger cars business of Sandown Motors will not be transferred to DT Holding AG and will be sold to a third party prior to the implementation of the Proposed Transaction.

Competition assessment

- [7] The Competition Commission (“Commission”) considered the activities of the merging parties and found no horizontal overlap since DT Holding AG operates at the manufacturing / wholesale level by supplying dealerships with Daimler vehicles, including the Target Business. The Target Business operates at a retail dealership level providing vehicles and after-sales services to end-users. The Commission also notes the merging parties’ confirmation that Sandown Motors currently sells and services no other brands save for Daimler and Mercedes-Benz vehicles.
- [8] The proposed transaction results in a vertical relationship in that the Acquiring Group supplies the Target Business with its commercial vans. However, the Commission notes that the vertical relationship between the Acquiring Group and the Target Business is pre-existing as the Target Business has been and will continue to purchase commercial vans and parts from the Acquiring Group. Furthermore, the Daimler Group confirmed that they will continue to supply competing dealerships in line with the current practice.
- [9] The Commission found that the proposed transaction is an internal restructuring that had to be notified as a merger as part of the spin-off merger. Specifically, because the competition authorities did not, at the time, consider the acquisition of the Target Business as part of the T&B Transaction, the Proposed Transaction has been notified for consideration by the competition authorities.[3]
- [10] As such, the Commission found that the transaction does not alter the structure of the market as it maintains the existing vertical relationship between the merging parties.
- [11] On this basis, we found that the proposed transaction will not lead to substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

- [12] The Commission found that the Proposed Transaction will have no effect on the employees of the merging parties. In particular, the merging parties submitted that there will be no merger specific retrenchments in South Africa as a result of the proposed transaction.

[13] The merging parties submitted that a substantial number of DT Holding AG's employees in South Africa [....]. No concerns relating to merger specific retrenchments or employment were raised.

[14] Employees of the Target Business are represented by the Motor Industry Staff Association ("MISA"). MISA submitted that the proposed transaction will not give rise to any negative effects on employment and, in particular, no merger specific retrenchments

will arise as a result of the Proposed Transaction.

Effect on the promotion of a greater spread of ownership

[15] The Acquiring Group and the Target Group do not have ownership by any historically disadvantaged persons ("HDPs"). As such, the proposed transaction does not result in any dilution of shareholding held by HDPs.

[16] The merging parties submitted that the proposed transaction is the final step in an internal restructuring [....].

[17] In addition, the merging parties submit that the Acquiring Group is a level 5 B- BBEE contributor based on their latest scoring while the Target Business is a level 6 B-BBEE contributor based on their latest scoring. The merging parties also submit that measured on a scorecard basis, in circumstances where the merger parties do not have any HDP shareholding, and the proposed transaction is neutral in this regard, the Acquiring Group has a better overall B-BBEE rating.

[18] In light of the above, we find that the proposed transaction does not raise any public interest concerns.

Conclusion

[19] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, there are no public interest concerns raised by the transaction.

DATE: 19 December 2022

Dr Thando Vilakazi

Ms Yasmin Carrim and Ms Sha'ista Goga concurring

Tribunal Case Manager: Makati Seekane

For the Merging Parties: Claire Alice Vertue and Burton

Phillips of Webber Wentzel

For the Commission: Horisani Mhlari and Thabelo Masithulela

[1] Case No. LM124Nov21, approved on 27 January 2022.

[2] Merger Record p. 25, Merging Parties Merger Report para 1.2. Case No. LM049JUL21.

[3] Merger Record p. 26, Merging Parties Merger Report para 1.7.

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