

SOUTH AFRICA / JUDGMENT

Daimler Trucks Holding AG v Daimler AG obo the Transfer Business (LM124Nov21) [2022] ZACT 12 (3 February 2022)

[2022] ZACT 12

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Enver Daniels, Liberty Mncube

CASE / FILE NUMBER

LM124Nov21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM124Nov21

Daimler Trucks Holding AG

Primary Acquiring Firm

And

Daimler AG obo the Transfer Business

Primary Target Firm

REASONS

FOR DECISION

1. On 27 January 2022, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger in terms of which Daimler Trucks Holding AG (“DT Holding AG”), through its subsidiary, Daimler Trucks & Buses Southern Africa (Pty) Ltd (“Daimler Trucks & Buses”), intends to acquire several entities and related assets in respect of the truck and buses business (“Transfer Business”) currently controlled by Daimler AG (“Daimler AG”) across the globe.

Primary acquiring firm

2. The primary acquiring firm, DT Holding AG, is registered in accordance with the laws of Germany. Daimler Trucks & Buses is registered in accordance with the laws of the Republic of South Africa.

3. DT Holding AG is currently a wholly owned subsidiary of Daimler AG. Daimler AG is the parent company of Mercedes-Benz AG (“Mercedes-Benz”), Daimler Truck AG (“Daimler Truck AG”) and Daimler Mobility AG (“Daimler Mobility”).
4. Daimler Truck AG is the operational entity active in the Truck and Bus Business of Daimler AG and is focused on the manufacturing and sale of trucks and buses and has more than 40 production facilities located in Northern America, Europe and Asia. Its product range includes light, medium and heavy-duty trucks for long distance, distribution, and construction-side haulage, as well as special vehicles that are used mainly in municipal applications. Its product range for buses comprises city and inter-city buses, touring coaches and bus chasses. Daimler Truck AG is also active in the financing of trucks and buses via its financial services companies.
5. DT Holding AG and all firms controlled by it will be referred to in these reasons as the “Acquiring Group”.

Primary target firm

6. The primary target firm comprises several entities and related assets in respect of the truck and buses business (“Transfer Business”) currently controlled by Daimler AG across the globe.
7. In South Africa, the relevant entity forming the Transfer Business is the truck and bus business of Sandown Motor Holdings (Pty) Ltd (“Sandown Motors”). Sandown Motors is a wholly owned subsidiary of Mercedes-Benz South Africa Ltd (“MBSA”).
8. The activities of Sandown Motors include the marketing and retailing of Daimler trucks and buses as well as the provision of aftersales services involving the same products. These activities are carried out from Sandown Motors’ single dealership located in Centurion. The trucks and buses marketed and retailed by Sandown Motors are produced by Daimler Truck AG under the Mercedes-Benz, Fuso and Freightliner brands. No third-party brands are or will be sold by Sandown Motors.
9. Sandown Motors is also currently active in the retail of passenger cars and vans. However, the merging parties submitted that this business will be sold to another third party prior to the implementation of the proposed transaction.

Background

10. The Competition Commission (“Commission”) in its report submitted, by way of background, that DT Holding AG was established by Daimler AG to be the holding company of Daimler Truck AG, which is the subsidiary that is responsible for the operations of the group’s Truck & Bus Business. The Commission said that to achieve this, Daimler AG is in the process of separating its Truck and Bus Business (“Spin-off”) from the Daimler AG Group, in terms of which 65% of the group’s interest in Daimler Truck AG will be spun-off, and this will translate into Daimler AG remaining with a 35% non-controlling interest in DT Holding

AG (“Spin-Off merger”). The Spin-off merger was notified to the Commission and then ultimately approved by the Tribunal around July 2021. We note however that based on the information at the Commission’s disposal at the time of

its referral, it assumed in its assessment of the proposed transaction that the Spin-Off merger was not yet implemented.

11. The Commission noted that pursuant to the Spin-off merger and prior to the implementation of the proposed transaction, Daimler AG will lose control over DT Holding AG and by extension, Daimler Truck AG. Accordingly, at the time of the implementation of the proposed transaction, DT Holding AG will not be controlled by any one firm.
12. The Commission further stated that at the implementation of the current transaction, DT Holdings AG will control many subsidiaries comprising of the Trucks and Buses Business previously controlled by Daimler AG.

Description of the proposed transaction

13. In terms of the proposed transaction, which occurs pursuant to the Spin-Off merger, Daimler AG is in the process of separating its Trucks and Buses Business from the Daimler AG Group’s Cars & Vans Business. This will result in two separate independent businesses in the form of the Cars and Vans Business and the Trucks and Buses Business.
14. The Commission stated that during the Spin-Off merger, it was submitted that Daimler AG would transfer certain entities and/or assets to DT Holding AG, through its subsidiary, Daimler Truck AG. Accordingly, in respect of Daimler AG’s South African operations, the Trucks & Buses Business of Mercedes-Benz Financial Services South Africa Ltd (“MBFS SA”) will be separated and transferred to Daimler Truck Financial Services South Africa (Pty) Ltd (“DTFS SA”), a subsidiary of Daimler Trucks & Buses.
15. Also submitted during the Spin-Off merger was that further activities related to the Trucks and Buses Business would be transferred to Daimler Truck AG, although the details of the entities to be transferred and the method for the transfer had not yet been determined at that time. The merging parties however submitted that they have now established further assets and entities to be acquired by DT Holding AG.
16. With respect to South Africa, the Acquiring Group will acquire Sandown Motors. Therefore, the Transfer Business in South Africa is comprised of Sandown Motors. Post-merger, Sandown Motors will be indirectly wholly owned by DT Holding AG, through Daimler Trucks & Buses.

17. With regards to the implementation of the Spin-Off merger, on 27 January 2022 the merging parties informed the Tribunal that the Spin-Off merger was implemented in December 2021. [1] They stated that accordingly DT Holding AG is not controlled by any firm. The Commission was not aware of the latter development at the time of analysing the proposed transaction and referring the matter to the Tribunal and we deal with this under the competition assessment.

Competition assessment

18. The Commission considered the activities of the merging parties and found that they do not overlap horizontally as they do not offer products or services that can be regarded as interchangeable in any of the markets. The Acquiring Group operates upstream at the manufacturing and wholesale level of the truck and bus value chain by supplying dealerships, including the Transfer Business, with Daimler branded truck and bus vehicles. On the other hand, the Transfer Business operates at the dealership level of the value chain.
19. The Commission further noted that the vertical relationship between the Acquiring Group and the Transfer Business is pre-existing as the latter has been and will continue to purchase truck and bus vehicles and parts from the former and further also concludes warranty and maintenance transactions with the end-users in terms of the existing dealer arrangement with the former.
20. Given the above, the Commission concluded that the proposed transaction does not alter the structure of the market as it maintains the existing vertical relationship between the merging parties prior to the implementation of the Spin-Off merger.
21. As indicated above, on 27 January 2022 the merging parties informed the Tribunal that the Spin-Off merger was implemented in December 2021. The Commission in response to the merging parties' abovementioned update, stated that its position when the matter was referred to the Tribunal was that the Spin-Off merger had not yet been implemented, as that was the information it had at its disposal at the time of referring the matter. It confirmed however that it is still of the view that the proposed transaction does not lead to a substantial prevention or lessening of competition regardless of the implementation (or lack of thereof) of the Spin-Off matter.[2]
22. No third party raised any concerns with the proposed transaction.
23. We concur with the Commission's finding that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market.

Public interest

Employment

24. The merging parties in their merger filing stated that the proposed transaction will not have any negative effect on employment.[3]

25. As part of its investigation the Commission contacted the National Union of Metal Workers of South Africa (“NUMSA”). NUMSA stated that it has no concerns with the proposed transaction provided that it is indeed handled as a section 197 of the Labour Relations Act deal whereby all the employees will be transferred to the acquirer, no employee will be retrenched, and all their currently applicable employee benefits will be preserved with the acquiring firm.
26. The Tribunal requested the merging parties to respond and provide clarity in respect of NUMSA’s position following its consultation with the Commission on potential employment effects.[4]
27. The merging parties responded stating that they confirm that the transaction notified involves a change in the shareholding, and not a transfer of business as envisaged under section 197 of the Labour Relations Act. They submitted that the proposed transaction will therefore not result in the transfer or amendment of employment agreements in place with the employees of Sandown Motors. Accordingly, there will be no changes in employment conditions as a result of the proposed transaction and all currently applicable employment benefits will be reserved. [5]
28. Based on the above submissions of the merging parties, we conclude that the proposed transaction is unlikely to raise any employment concerns.

Ownership

29. The merging parties submitted that the proposed transaction is the final step in an internal restructuring and separation with no impact on the levels of ownership held by historically disadvantaged persons or workers[6] and the Commission identified no ownership-related concerns resulting from the proposed transaction.

Other public interest issues

30. The proposed transaction raises no other public interest concerns.

Conclusion

31. For the above reasons, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Signed by: Andreas Wessel Wessels

Signed at: 2022-02-03 10:22:11 +02:00

Reason: Witnessing Andreas Wessel We

03 February 2022

Mr Andreas Wessels

Mr Enver Daniels and Dr. Liberty Mncube concurring

Tribunal Case Manager:

Juliana Munyembate

For the Merging Parties:

Burton Phillips and Clare-Alice Vertue of

Webber Wentzel

For the Competition Commission: Rakgole Mokolo and Grashum Mutizwa

- [1] Email from Webber Wentzel dated 27 January 2022.
- [2] Commission's email dated 27 January 2022.
- [3] As stated in the merging parties' Form CC4(1) on page 16 of the Merger Record and the merging parties' Joint Competitiveness Report at paragraph 6.1 on page 142 of the Merger Record
- [4] Email from the Tribunal to the merging parties' legal representatives, Webber Wentzel, on 25 January 2022.
- [5] Email of 26 January 2022 from Webber Wentzel
- [6] See Merger Record pages 142 and 143

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