

SOUTH AFRICA / JUDGMENT

Hatfield Holdings (Pty) Ltd and Hatfield Property Holdings (Pty) Ltd v Business of the Hatfield Haval Dealership and the Property on which the dealership operates (LM113Oct23) [2024] ZACT 37 (22 January 2024) [2024] ZACT 37

COURT
Competition Tribunal

BEFORE
T Vilakazi, G Budlender, A Ndoni

CASE / FILE NUMBER
LM113Oct23

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COMPETITION TRIBUNAL
OF SOUTH AFRICA

Case No LM113Oct23

In

the matter between

Hatfield

Holdings (Pty)

Ltd and

Hatfield Property

Acquiring

Firms

Holdings

(Pty) Ltd

and

The

Business

of the

Hatfield

Haval

Dealership

and

Target

Firms

The

Property on which the dealership operates

Panel:	T Vilakazi (Presiding Member) G Budlender (Tribunal Member) A Ndoni (Tribunal Member) Heard
on:	21 December 2023 Order
issued on:	21 December 2023 Reasons
issued on:	22 January 2024

REASONS FOR DECISION

Approval

[1] On 21 December 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Hatfield Holdings (Pty) Ltd (“Hatfield Holdings”) will acquire the Hatfield Haval dealership business (“Target Dealership”). As part of the proposed transaction, Hatfield Property Holdings (Pty) Ltd (“Hatfield Property”) will acquire the property on which the Target Dealership operates (“Target Property”). Upon implementation of the proposed transaction, Hatfield Holdings will own and control the Target Dealership and Hatfield Property will own and control the Target Property.

Parties to the transaction and their activities

Primary acquiring firms

- [2] The primary acquiring firms are Hatfield Holdings and Hatfield Property. Hatfield Holdings and Hatfield Property are jointly controlled by The Brad Kaftel Family Trust (the "Trust") as to [...] % and Grapevine Property Investments 103 CC ("Grapevine") as to [...] %.[1]
- [3] In addition to Hatfield Holdings and Hatfield Property, the Trust controls Hatven Properties (Pty) Ltd and Tarmigan Investments (Pty) Ltd (which in turn wholly owns Hatfield VW (Pty) Ltd).
- [4] Hatfield Holdings controls Summit Auto Investments (Pty) Ltd ("SAI") as to [...] % and Triumph South Africa (Pty) Ltd (“Triumph”) as to [...] %.

[5] Hatfield Holdings and Hatfield Property, the firms controlling them as well as the firms controlled by them will collectively be referred to as “the Acquiring Group”.

[6] The Acquiring Group is the holding company of a car dealership group which owns 39 dealerships based in Gauteng and Kwa-Zulu Natal

retailing various brands of vehicles, including Audi, Volkswagen, Ford, Haval, and MAN Truck and Bus.[2] Relevant to the proposed transaction is the Acquiring Group’s activities in the sale of passenger vehicles (“PVs”), light and medium commercial vehicles (“LCV” and “MCV”, respectively) as well as heavy commercial vehicles (“HCV”).

[7] In addition, the Acquiring Group sells used vehicles; after-sales services and after-sales branded Original Equipment Manufacturer (“OEM”) parts and accessories; accessories (such as tow bars, tracking devices, and safety film); and top up maintenance plans; and finance and insurance support services.

Primary target firms

[8] The primary target firms are the Target Dealership which operates out of 1207 and 1209 Burnett Street, Hatfield, Pretoria as well as the Target Property (the premises that the Target Dealership operates on).

[9] The Target Dealership is owned by Peng Investments (Pty) Ltd (“Peng Investments”) and the Target Property is owned by Belgraveprop (Pty) Ltd (“Belgraveprop”). Both Peng Investments and Belgraveprop are wholly owned and controlled by the Leo Haese Family Trust

[10] The Target Dealership is a Haval motor vehicle dealership which sells new and used Haval PVs and LCVs. There is also a service centre in place at the Target Dealership which is split into a Bosch centre, which services all vehicle brands, and a Haval service centre which services only Haval vehicles.

Proposed transaction and rationale

Transaction

[11] In terms of the Sale Agreement, the Acquiring Group will acquire the Target Dealership. Simultaneously, in an interconnected transaction, the Acquiring Group will also acquire the Target Property. Post-merger, the Acquiring Group will own and control the Target Dealership and the Target Property.

Rationale

[12] [...]

[13] [...]

Indivisibility assessment

[14]

P

The Competition Commission (the “Commission”) considered the indivisibility of the transaction and found that the Target

Dealership and the Target Property have a common shareholder; are involved in an interrelated line of business (in that the Target

Property is the property on which the Target Dealership operates); and that the target firms are to be disposed of as part of a

composite transaction. Following Tribunal precedent[3], the Commission found that the proposed merger constitutes an indivisible transaction for the purpose of assessment. We concur with this finding.

Competition assessment

[15] The Commission considered the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap as both the Acquiring Group and the Target Dealership are active in the sale of new PVs and LCVs.

Product market

[16] In its assessment of product overlap, the Commission had regard to previous motor dealership mergers such as McCarthy/Vereeniging Motor[4] and Kempster/NMG[5] where it was found that the sale of new PVs and LCVs each constitute separate product markets. In the instant transaction, the Commission

therefore assessed the market for the sale of new PVs and the market for the sale of new LCVs (as separate markets).

[17] As mentioned above, the merging parties are active in the sale of used vehicles as well as after-sales service and after-sales parts, however there was no record of assessment of the used vehicle market in the Commission’s merger report.

[18] The merging parties were of the view that there is a higher degree of competition for used vehicles (as compared to new vehicles) since any party can buy used vehicles and sell them, without requiring an agreement with any manufacturer or local distributor. Accordingly, the market shares held by the merging parties in the used market will be even smaller than their shares in the market for new vehicles. Market shares are unavailable for used vehicles[6]

[19] As regards after-sales service and after-sales parts (which constitute products and services ancillary to the sale of vehicles), the merging parties submitted that these markets are unnecessary to analyse in the context of this merger. Using new vehicle sale market shares as a proxy will overstate the shares in the wider after-sales servicing and parts markets, as once a maintenance plan expires, customers are free to service their vehicles at any independent service provider, while post-warranty or maintenance plan, a material

percentage of vehicles are serviced in non-branded workshops.[7]

[20] The Tribunal raised the concern that the Commission's merger report did not provide any assessment or commentary on the used vehicle market, and therefore requested the Commission to confirm its views on the used vehicle market. In response, the Commission confirmed that in previous matters[8], the market for used vehicles was characterised as very competitive with low barriers to entry and a number of players active in the market (corporate dealerships, individual dealerships and private individuals selling their cars privately as well as online). Customers of used cars were also found not to be geographically bound as they tend to source their cars broadly, including via the internet. The Commission, in line with the views of the merging parties, explained that given the very competitive nature of the market, it is unlikely that any significant competition concerns would arise in the used car market. We agree with this conclusion.

Geographic market

[21] Whilst the Tribunal has previously considered the geographic market on a provincial basis, and within different distances (radius)[9] from the Target Dealership, the Commission in this instance followed the conclusions accepted in Motus/Renault[10] and Motus/North Motor Group[11] where it was found that dealerships surrounding the target dealership/s are likely to constrain each other.

[22] Following this approach, the Commission found that the dealerships of the Acquiring Group which are located closest to the Target Dealership are the VW Hatfield Pretoria which is located 750m away from the Target Dealership, Haval Menlyn which is located 9.8km away from the Target Dealership, and Chery Silver Lakes which is located 14.5 km away from the Target Dealership. Further, 30 out of the 39 dealerships owned by the Acquiring Group are located in Gauteng.

[23] The Commission therefore assessed the impact of the proposed transaction in Pretoria (the vicinity wherein the Target Dealership conducts its activities) as well as the Gauteng province. This included-

- 23.1. The market for the sale of new PVs within Pretoria;
- 23.2. The market for the sale of new LCVs within Pretoria;
- 23.3. The market for the sale of new PVs in Gauteng; and
- 23.4. The market for the sale of new LCVs in Gauteng.

Assessment

[24] In all of the markets identified above, the Commission found that the merged entity will have a post-merger market share of less than [...]%, with market share accretions of less than [...]%. The merged entity will continue to be constrained by competing dealerships in each respective market.

- [25] In the context of intra-brand competition[12], the Commission also assessed the Haval-branded PV and LCV market in Pretoria.
- [26] The Commission found that the merged entity will have a market share of [...] % with a market share accretion of [...] % for Haval PVs, and a market share of [...] % with a market share accretion of [...] % for Haval LCVs. The Commission found that the merged entity will continue to face competition from other Haval dealerships located within Pretoria. This includes Haval Pretoria Gezina (located 8.5 km away from the Target Dealership), Haval Pretoria North (located 29.3km away from the Target Dealership), and Haval Silver Lakes (located 17.1km away from the Target Dealership).
- [27] While the market shares for Haval PVs and Haval LCVs are high on a narrow assessment, they are lower when a provincial (Gauteng) market is considered. Hatfield in this regard holds a provincial market share of [...] % and the Target Business [...] %, resulting in a combined provincial market share of [...] % for Haval branded motor vehicles.[13]
- [28] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the sale of new PVs and LCVs within Pretoria and within Gauteng.

Employment

- [29] The merging parties submitted that there will be no retrenchments as a result of the proposed transaction and employees will be transferred in terms of section 197 of the Labour Relations Act 66 of 1995.
- [30] The employees of the Acquiring Group and the Target Dealership are represented by the Motor Industry Staff Association ("MISA"). The employees of the Acquiring Group are also represented by the National Union of Metalworkers of South Africa ("NUMSA").
- [31] Following engagements with the merging parties, MISA confirmed to the Commission that it had no concerns with the proposed transaction. NUMSA did not submit any concerns to the Commission.

Spread of ownership

- [32] The Acquiring Group, via Grapevine, has a shareholding of [...] % that is held by historically disadvantaged persons ("HDPs"). Pre-merger, both the Target Dealership and the Target Property do not have any shareholding that is held by HDPs.
- [33] The Commission is of the view that the proposed transaction results in the promotion of a greater spread of ownership by virtue of the increase in the HDP shareholding of both the Target Dealership and Target Property HDP to [...] %.
- [34] We are satisfied that the proposed transaction is unlikely to raise any concerns from a public interest perspective.

Conclusion

[35] Considering the above, we unconditionally approved the proposed merger.

Signed by: Thando Vilakazi

Signed at: 2024-01-22 12:56:31 +02:00

Reason: Witnessing Thando Vilakazi

22 January 2024

Prof Thando Vilakazi

Date

Adv Geoff Budlender SC and Ms Andiswa Ndoni concurring

Tribunal case manager: Leila Raffee For the merging parties: Lara Granville and Taigrine Jones of Cliffe Dekker Hofmeyr Inc For the Commission: Nomthandazo Mndaweni and Themba Mahlangu

- [1] The trustees of the Trust are [...] and the members of Grapevine are [...]
- [2] We note that the recent approval by the Tribunal of the acquisition by Hatfield of the Audi Somerset West Dealership, will provide Hatfield Holdings with a presence in the Cape. (See Case No.: LM092Sep23).
- [3] Premier Fishing SA (Pty) Ltd and Talhado Fishing Enterprises (Pty) Ltd (“Premier Fishing/ Talhado”) (Case No: LM299Mar18).
- [4] McCarthy (Pty) Ltd and Vereeniging Motors (Pty) Ltd (“McCarthy/Vereeniging”) (Case No: LM250Feb19).
- [5] Kempster Sedgwick (Pty) Ltd and NMG Umhlanga Ridge (Pty) Ltd (“Kempster/NMG”) (Case No: LM268Mar19).
- [6] See the merging parties’ Joint Competitiveness Report (Merger Record at p44, para5.2.).
- [7] See the merging parties’ Joint Competitiveness Report (Merger Record at p45, para5.3.).
- [8] Motus Group Limited and Sandown Motor Holdings (Pty) Ltd (Case No. LM062Jul22) and CFAO Motors (Pty) Ltd and Buddingtrade 87 (RF) Pty Ltd (in respect of its motor vehicle dealership business, Continental Cars) (Case no: LM138Oct22); Janwertick Investments (Pty) Ltd and The General Motors Franchise Business of Anderson Motors Ladysmith (Pty) Ltd (Commission Case No: 2014Oct0608.); Motus Group Ltd/ Atlantis Nissan Centurion dealership business conducted as a going by Atlantis Motors (Pty) Ltd (Case No: LM069Jul20) and DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd (Case No: LM025Jul01).

- [9] For example, the market was assessed: in a 100km radius from the target dealership in Hatfield Holdings (Pty) Ltd/The business of Summit Auto Trading South Africa (Pty) Ltd; Summit Auto Investments (Pty) Ltd and Triumph South Africa (Pty) Ltd (Case No.: LM064Aug21); in a 80km radius from the target dealership in Unitrans Automotive (Pty) Ltd And WhiteHouse Motors (Pty) Ltd Case No.: LM150Feb20) and in a 50km radius from the target dealership in CFAO Motors (Pty) Ltd And William Simpson Cars (Pty) Ltd (Case No.: LM188Mar22).
- [10] Motus Corporation (Pty) Ltd And Renault South Africa (Pty) Ltd (“Motus/Renault”) (Case No.: LM188Jan21).
- [11] Motus Group Limited and North Motor Group (Pty) Ltd’s Kia Bryanston and Honda Sandton Motor Dealerships (“Motus and North Motor Group”) (Case No.: LM012Apr21).
- [12] Intra-brand competition refers to competition amongst dealerships selling the same brand of cars.
- [13] Merging parties’ Joint Competitiveness Report (Merger Record, p48 at para 6.4.) Public interest
- [13] Merging parties’ Joint Competitiveness Report (Merger Record, p48 at para 6.4.)

Public interest

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