

SOUTH AFRICA / JUDGMENT

Joint Venture Firm to be Incorporated v New H Powertrain Holding S.L.U (LM091Sep23) [2023] ZACT 81 (5 December 2023)

[2023] ZACT 81

COURT

Competition Tribunal

BEFORE

L Mncube, I Valodia, G Budlender

CASE / FILE NUMBER

LM091Sep23

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COMPETITION TRIBUNAL OF SOUTH AFRICA Case no: LM091Sep23 In the large merger
between: Joint Venture Firm to be incorporated

Primary Acquiring Firm And New H Powertrain Holding S.L.U

Primary Target Firm Panel: L Mncube (Presiding Member) I Valodia (Tribunal Member) G
Budlender (Tribunal Member) Heard on: 23 November 2023 Order issued on: 24 November 2023
Reasons Issued on: 05 December 2023 REASONS FOR DECISION

Introduction

[1] On 24 November 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Joint Venture Firm yet to be incorporated (“JV”) will acquire shares in New H Powertrain Holdings S.L.U (“Horse”).

Primary acquiring firm

[2] The primary acquiring firm is a joint venture (“JV”) firm yet to be incorporated. The JV will be jointly controlled by:

2.1. Renault S.A.S, a 100% affiliate of Renault S.A. (“Renault”), a public limited company with shares listed on the Paris stock exchange incorporated in accordance with the laws of France (50%); and

2.2. Zhejiang Geely Holding Group Co., Ltd (“Geely”), a limited liability company, incorporated in accordance with the laws of China (50%).

- [3] Renault is not controlled by a single individual or firm. Renault's five largest shareholders are Government of France (15%), Nissan Motor Co., Ltd. (15%), Capital Research & Management Co. (World Investors) (4.19%), Renault SA Employee Stock Ownership Plan (3.61%) and the Vanguard Group, Inc. (1.73%).
- [4] Geely is 91.07% owned by Mr. Li Shufu.
- [5] The JV does not conduct any business activities. The JV will be established by Geely and Renault for the purposes of this transaction.
- [6] Relevant to the proposed transaction, globally, the Renault operates an internal combustion engine ("ICE") and hybrid powertrains business. Powertrains are comprised of the engine, torque converter or flywheel, transmission, drive shaft and the wheels of a vehicle. Renault's powertrains business only derives turnover from South Africa emanating from the export of a

limited number of ICE Renault powertrains to [...] assembly plant in South Africa. Renault supplies ICE powertrains to [...]. Renault does not have any subsidiaries or employees in South Africa.

- [7] Geely also manufactures and supplies ICE and hybrid powertrains which includes engines and transmissions worldwide. Geely's powertrains business (which will be contributed to the JV) does not operate in, nor, earn any turnover from South Africa. Therefore, Geely Powertrain Business has neither subsidiaries, nor employees in South Africa.

Primary target firm

- [8] The primary target firm is New H Powertrain Holding S.L.U.2 ("Horse"), a holding company, incorporated in accordance with the laws of Spain. Horse is wholly owned and controlled by Renault S.A.S (the Acquiring Firm).
- [9] Horse will be incorporated for the purpose of the proposed transaction and has no operations, assets, turnover, or employees in South Africa or elsewhere. It is important to note that Renault will not contribute any Renault powertrains assets located in South Africa to Horse given that, Renault does not manufacture any powertrains in South Africa. Geely's powertrains business (which will be contributed to the JV) does not operate in, nor, earn any turnover from South Africa.

Rationale

- [10] The merging parties submitted that the proposed transaction is aimed at creating a standalone global supplier of powertrain solutions, producing next generation hybrid powertrains and highly energy-efficient ICE powertrains. The JV will focus on developing carbon-free and low-emission technologies from five global research and development centres (including three in Europe in Sweden, Spain and Romania), and will operate 17 powertrain plants across three continents.

- [11] In view of increasingly strict technical regulatory requirements across the globe, the combination of Renault's and Geely Holding's assets is necessary to unlock synergies necessary to continue investments in developing low-emission powertrain technologies.
- [12] The JV will offer a complete range of innovative low-emission solutions for ICE and hybrid powertrains and will allow the Parties to increase their offering to cover up to [...] % of customers' needs globally. The JV will also develop its technological offering in the field of alternative and synthetic fuels, on a standalone basis and also potentially through strategic cooperation with a partner in the energy sector. As such, the JV will aim to achieve [...] % decarbonization, on the entire supply chain.
- [13] The activities being contributed to the JV have strong product and geographic complementarity. Indeed, the Geely Powertrain Business completes the Renault Powertrain Business' range, as it focuses on gasoline engines. In terms of geographies, the Renault Powertrain Business is mainly present in Europe and Latin America, while the Geely Powertrain Business is mainly present in Asia (and China in particular) and in Sweden.

Overlaps

- [14] The Commission considered the activities of the merging parties and found that the proposed transaction result in a horizontal overlap in the powertrains business of the merging parties. However, the parties are going into the joint venture in the powertrain business outside of South Africa. The Renault Powertrains Business which will be contributed to the JV has limited sales of Internal Combustion Engine ("ICE") Powertrain Solutions, engines and transmissions to [...] assembly plants in South Africa. The Geely Powertrain Business does not operate in, nor, earn any turnover from South Africa.
- [15] Therefore, the proposed transaction does not result in a geographic overlap as regards the supply of powertrains.

Competition assessment

- [16] Having considered the above, we do not consider it likely that the proposed merger will result in a substantial prevention or lessening of competition in the relevant market.

Public interest

Employment

- [17] The merging parties submitted that Renault, the JV, the Renault Powertrain Business and the Geely Powertrain Business do not have any employees in South Africa therefore, there will be no job losses arising from the proposed transaction. The Commission is of the view that the proposed transaction is unlikely to result in any job losses.

The promotion of a greater spread of ownership

- [18] The Commission found that the JV has no direct or indirect historically disadvantaged persons (“HDP”) ownership. Further, Horse also has no HDP ownership. The Commission considered the impact of the proposed transaction, whether it promoted a greater spread of ownership by HDPs and workers.
- [19] The Commission noted the merging parties’ submissions that the proposed merger involves the combination of overseas based distinct business units to form a joint venture outside of South Africa. The merging parties therefore do not have a physical presence in South Africa with respect to the activities which will form part of the joint venture (i.e. powertrains). Although both parties are active in South Africa through deriving turnover from exports to South Africa (through Renault’s powertrains and vehicle exports and Geely’s vehicle exports) none of these activities are conducted through any entities incorporated in South Africa or by employees based in South Africa.
- [20] Renault’s powertrains supplied to [...] local manufacturing plant are also manufactured offshore and exported in complete form.
- [21] Consequently, the Commission concluded that an ownership remedy at either merging party is practically impossible to implement in the circumstances responsive to section 12A(3)(e) of the Act.

Conclusion on public interest

- [22] For the above reasons, we find that the proposed transaction does not raise any negative public interest concerns overall.

Conclusion

- [23] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or to have a substantial negative public interest effect.
- [24] In the circumstances, the Tribunal unconditionally approves the proposed transaction.

Signed by:Liberty Mncube

Signed at:2023-12-05 09:26:31 +02:00

Reason:Witnessing Liberty Mncube

05 December 2023

Prof Liberty Mncube

Date

Prof Imraan Valodia and Adv Geoff Budlender SC

Tribunal Case Manager: Theodora Michaletos For the Merging Parties: Andriza Liebenberg of Bowmans Inc. For the Commission: Wiri Gumbie, Horisani Mhlari and Ratshi Maphwanya

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Prepared on 11 October 2026 · Esheria