

SOUTH AFRICA / JUDGMENT

K2023647843 (South Africa) Proprietary Limited v Mayfair Gearbox Holding Company Proprietary Limited (LM124Nov23) [2024] ZACT 12; [2024] 2 CPLR 19 (CT) (17 January 2024)

[2024] ZACT 12

COURT

Competition Tribunal

BEFORE

Thando Vilakazi, Andiswa Ndoni, Geoff Budlender

CASE / FILE NUMBER

LM124Nov23

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COMPETITION

TRIBUNAL OF SOUTH AFRICA

Case no: LM124Nov23

In

the large merger
between:

K2023647843
(South Africa) Proprietary Limited
Primary
Acquiring Firm
And
Mayfair
Gearbox Holding Company Proprietary Limited
Primary
Target Firms

Panel:

Thando Vilakazi (Presiding Member)
Andiswa
Ndoni (Tribunal Panel Member)
Geoff
Budlender (Tribunal Panel Member)
Heard

on:

21 December 2023
Order

issued on:

21 December 2023
Reasons

Issued on:17 January 2024

REASONS FOR DECISION

Introduction

- [1] On 21 December 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between K2023647843 (South Africa) Proprietary Limited (“SPE BidCo”) and Mayfair Gearbox Holdings Company Proprietary Limited (“Mayfair”). The large merger envisages the acquisition of [...] % of the issued shares of Mayfair by SPE BidCo.

Merging parties

Acquiring firm

- [2] The primary acquiring firm is SPE BidCo. SPE BidCo is controlled by SPE Mid- Market Fund I Partnership (“SPE Fund”) represented by the general partner, SPE Mid-Market Fund I General Partner Proprietary Limited (“SPE Fund General Partner”) which holds [...] % of the issued shares. The balance of the issued shares is held by [...] who holds [...] %.
- [3] SPE Fund is managed, and the SPE Fund General Partner is 100% controlled, by Sanlam Investment Management Proprietary Limited (“Sanlam Investment Management”). Sanlam Investment Management is wholly owned by Sanlam Investment Holdings Proprietary Limited (“Sanlam Investment Holdings”).
- [4] Sanlam Investment Holdings is controlled (as to [...] %) by SIH Capital Holdings Proprietary Limited (“SIH Capital Holdings”)[1] SIH Capital Holdings is controlled (as to [...] %) by Sanlam Limited.[2] Sanlam Limited is a listed public company and is not controlled by any firm/s.[3]
- [5] All the firms directly or indirectly controlled by SIH Capital Holdings are hereinafter referred to as the “Acquiring Group”.

Acquiring firm activities

- [6] The Acquiring Group’s activities, which are material to the proposed merger, are conducted through Danny’s Auto Body Parts Proprietary Limited (“Danny’s Auto”) and Danny’s Auto Property Holdings Proprietary Limited (“Danny’s Auto Property”). Danny’s Auto is a wholesaler of aftermarket automotive parts and accessories for known brands. Danny’s Auto also distributes a portfolio of unbranded products to both wholesalers and retailers. Danny’s Auto Property on the other hand is a property holding company and does not conduct any business activities. Danny’s Auto Property owns the property on which Danny’s Auto conducts its business.

- [7] The Acquiring Group is also active in the market for the provision of financial services through Sanlam. The financial services include short and long-term insurance, employees' benefits, private equity, and investments.

Target firm

- [8] The primary target firm is Mayfair. Mayfair is controlled by Michael Lawlor who holds [...]% of the issued shares. The balance of the shares is held by [...] which holds [...]% of the issued shares.

- [9] Mayfair controls the following wholly owned firms:

9.1. Mayfair Gearbox Proprietary Limited;

9.2. Mayfair Gearbox Pretoria Proprietary Limited;

9.3. Mayfair Gearbox Automatic Transmissions Proprietary Limited;

9.4. Mayfair Gearbox & Differential Proprietary Limited; and

9.5. Mayfair Maintenance Fleet Proprietary Limited.

- [10] Mayfair and all its subsidiaries are referred to hereafter as the "Mayfair Group".

Target firm activities

- [11] The Mayfair Group remanufactures and repairs gearboxes for manual and automatic passenger vehicles, light and heavy commercial vehicles as well as earthmoving and mining machinery. Mayfair also has a fleet business, which provides maintenance and repairs for customers with large corporate fleets.

Proposed transaction and rationale

Transaction

- [12] In terms of the proposed transaction, SPE BidCo intends to acquire [...]% of the issued shares of Mayfair from Michael Lawlor. Upon implementation of the proposed transaction, SPE BidCo will exercise sole control of Mayfair.

Rationale

- [13] [...].

Competition assessment

- [14] In line with the Commission's recommendation and having considered the activities of the merging parties we find that the proposed transaction will not lead to vertical or horizontal overlaps.

[15] The Acquiring Group, through Danny's Auto, neither remanufactures nor distributes gearboxes, and it has no plans to do so in future. In addition, the merging parties do not provide products or services to each other nor do they service the same type of customers.

Public interest assessment

Effect on Employment

[16] The merging parties provided an unequivocal undertaking that there will be no retrenchments or redundancies as a result of the proposed transaction.

[17] The employees of the Acquiring Group were represented by an employee representative. The employees of Mayfair were represented by the Motor Industry Bargaining Council, the National Union of Metalworkers of South Africa, and the Motor Industry Staff Association ("MISA").

[18] MISA filed a notice of participation in the proposed transaction. MISA sought confirmation that the current employment contracts will remain in place and that no employee will be affected in any way. The merging parties provided the requested confirmation, and no further concerns were raised.

Effect on the spread of ownership

[19] The Mayfair Group [...]shareholding held by Historically Disadvantaged Persons ("HDPs"). [...], SPE Bidco has [...] HDP shareholding held [...]. In addition, [...] % shareholding held by HDPs. As such, the transaction results in an increase in the shareholding held by HDPs in the target firm.

[20] Based on the above facts, we conclude that the proposed transaction does not raise any significant public interest concerns.

Conclusion

[21] For the reasons set out above, we conclude that the proposed transaction does not raise any significant competition or public interest concerns, and therefore approve the proposed transaction unconditionally.

17 January 2024

Prof. Thando Vilakazi

Date

Concurring: Adv Geoff Budlender SC and Ms Andiswa Ndoni

Tribunal Case Manager: Bobedi Seleke For the Merging Parties: Richardt van Rensburg and Tayla Theron of ENS Africa For the Commission: Nonhlanhla Msiza and Themba Mahlangu

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- [1] ABSA Financial Services Limited owns the remaining non-controlling [...]% of the issued shares in Sanlam Investment Holdings.
- [2] ARC Financial Services Investments Proprietary Limited owns the remaining non-controlling [...]% of the issued shares in SIH Capital Holdings.
- [3] Sanlam is a public company listed on the Johannesburg Stock Exchange in South Africa, with a secondary listing on the Namibian Stock Exchange in Namibia. As at 31 December 2022, firms holding a beneficial shareholding in Sanlam of 5% or more were: (i) Ubuntu-Botho Investments Proprietary Limited (13.13%); and Government Employees Pension Fund (PIC) (14.21%).
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