

SOUTH AFRICA / JUDGMENT

Motus Group Ltd v Atlantis Nissan Centurion (LM069Jul20) [2020] ZACT 28 (13 October 2020) [2020] ZACT 28

COURT

Competition Tribunal

BEFORE

AW Wessels, E Daniels, F Tregenna

CASE / FILE NUMBER

LM069Jul20

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM069Jul20

In the matter between:

Motus Group Ltd

Primary Acquiring Firm

And

Atlantis Nissan Centurion dealership business Primary Target Firm

conducted as a going concern by Atlantis Motors (Pty) Ltd

Panel : AW Wessels (Presiding Member)

: E Daniels (Tribunal Member)

: Prof. F Tregenna (Tribunal Member)

Heard on: 14 September 2020

Order Issued on : 15 September 2020

Reasons

Issued on: 13 October 2020

REASONS

FOR DECISION

Unconditional approval

[1] On 15 September 2020, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction in terms of which Motus Group Ltd (“Motus”) intends to acquire control over the Atlantis Nissan Centurion dealership (“the Target Business”).

[2] The reasons for the approval of the proposed transaction follow.

Parties to the proposed transaction

[3] The acquiring firm is Motus, a South African public company which is wholly owned and controlled by Motus Holdings Ltd (“Motus

Holdings”). Motus controls numerous firms in South Africa. Motus Holdings controls, apart from Motus, firms such as Motus

Capital and Motus Corporation. Motus Holdings and all its subsidiaries will be collectively referred to as “the Motus Group”.

[4] The Motus Group is South Africa-based with a select international presence mainly in the UK, Australia, South East Asia and Southern Africa. Through its subsidiaries and associates, it operates a diversified business in the entire automotive value chain through its four business segments namely: (i) import and distribution; (ii) retail and rental of Original Equipment Manufacturers’ (OEM) passenger and commercial vehicle brands; (iii) motor-related financial services; and (iv) aftermarket parts. Of relevance to the competition assessment are the Motus Group’s activities involving the retail sale of passenger and commercial vehicles. The Motus Group represents 22 OEMs through 321 dealerships, including 77 pre-owned dealerships, 226 passenger vehicle dealerships and 18 commercial vehicle dealerships nationwide. In Gauteng, the Motus Group owns and controls two Nissan dealerships, one in Menlyn and one at the East Rand Mall. These dealerships sell new and used Nissan passenger and light commercial vehicles.

[5] The Target Business is the Atlantis Nissan Centurion dealership business currently owned by Atlantis Motors (Pty) Ltd (“Atlantis

Motors”). It is situated in Centurion, Gauteng, and is active in the sale of new vehicles, used vehicles, OEM branded parts and accessories and aftermarket services. In particular, the Target Business supplies the following: (i) the sale of new Nissan and Datsun passenger vehicles; (ii) the sale of new Nissan light commercial vehicles; (iii) the sale of used vehicles; (iv) the

provision of after-sale services on Nissan and Datsun vehicles; and

(v) the sale of after-sale parts and accessories on Nissan and Datsun vehicles.

Proposed transaction and rationale

- [6] Motus intends to acquire the Target Business from Atlantis Motors as a going concern. Post-merger, the Target Business will be solely controlled by Motus.

Relevant markets and impact on competition

- [7] The Competition Commission ("Commission") found that the proposed transaction presents a horizontal overlap between the activities of the merger parties because they both operate in the retail sale of new and used passenger and light commercial vehicles within an 80 km radius of the Target Business. The merger parties also provide ancillary services associated with motor dealerships such as after-sale services, spare parts and accessories.

Sale of new passenger vehicles in Gauteng

- [8] The Commission found that the merged entity's post-merger market share in the sale of new passenger vehicles in Gauteng will be less than 25%, with a minimal accretion of less than 1%. The Commission further found that the merged entity will continue to face competition in this market from several dealerships.

Sale of light new commercial vehicles in Gauteng

- [9] The Commission found that the merged entity will have a post-merger market share of less than 15% in the sale of light new commercial

vehicles in Gauteng, with a minimal accretion of less than 1%. The Commission further found that the merged entity will be competitively

constrained in this market by dealerships such as CMH Nissan and Datsun Midrand and Nissan Africa Pretoria.

- [10] Given the minimal market share accretion in the abovementioned relevant markets, the Commission was of the view that the proposed

transaction is unlikely to alter the structure of the new passenger and light commercial vehicle markets in Gauteng.

Intra-brand competition

- [11] The Commission also assessed competition among dealerships selling the same brand of vehicles. The Target Business is involved in the sale of Datsun and Nissan brands of vehicles, and the Motus Group operates two Nissan dealerships in Gauteng. The Commission found that there are approximately 15 Nissan and Datsun dealerships within an 80 km radius of the Target Business. Given this the Commission was of the view that the proposed transaction will not result in a significant portion of the Nissan and Datsun dealerships being owned by the Motus Group post-merger as there are several dealerships that offer Nissan and Datsun vehicles in the Gauteng area. Therefore, the Commission concluded that the proposed transaction is unlikely to lead to a reduction in intra-brand competition within the relevant

area.

Sale of used vehicles and after-sale services

- [12] Regarding the merger parties' activities relating to the sale of used cars, the Commission found that the proposed transaction is unlikely to raise competition concerns given that this market appears to be highly competitive with numerous market players, has low entry barriers and because customers of used vehicles tend to source cars through various outlets, namely through the internet.
- [13] The Commission also found no competition concerns resulting from the proposed transaction relating to the market for after-sale services.
- [14] We concur with the Commission's assessment that the proposed transaction is unlikely to substantially prevent or lessen

competition in any relevant market.

Public interest

- [15] The merger parties submitted that there will be no retrenchments as a result of the proposed transaction.[1]
- [16] The National Union of Metalworkers of South Africa ("NUMSA") filed a Notice of Intention to Participate on 22 July
2020. NUMSA indicated that the Motus Group is in the process of retrenching a substantial number of its employees across the country. The Minister for the Department of Trade, Industry and Competition ("the Minister") also raised concerns regarding the proposed merger's impact on employment.
- [17] In relation to the concerns regarding retrenchments, the merger parties submitted that there is currently a "dismissal based on operational requirements" process being implemented in relation to 63 employees of the Motus Group in terms of section 189 of the Labour Relations Act 66 of 1995, as amended. The merger parties submitted that the current retrenchment process is not related to the proposed transaction and is occurring as part of the Motus Group's cost saving measures in response to the Covid-19 pandemic. This process is likely to affect about 63 employees employed in various dealerships (in areas such as Polokwane, Edenvale, Johannesburg, Ermelo and Richard Bays) across all job categories. The Motus Group furthermore explained certain steps it had taken to mitigate the impact of retrenchments and to reduce the number of affected employees.
- [18] The Commission assessed the above and found that the rationale for the current retrenchment process within the Motus Group appears to be for operational reasons and therefore is not related to the proposed merger. It accepted the merger parties' argument that the retrenchments are occurring as a result of the impact that the Covid-19 national lockdown had on the business of the Motus Group and are unrelated to the proposed

transaction. In addition, the Commission noted that the Motus Group took steps to curtail the impact on jobs. Furthermore, the Commission noted that none of the retrenchments are in the dealerships close to Centurion and therefore appear to be unrelated to the proposed transaction.

[19] The Commission communicated the merger parties' responses to the Minister and NUMSA and no further concerns were raised with the Commission. Accordingly, the Commission concluded that the proposed merger is unlikely to result in any employment concerns.

[20] We approved the proposed transaction unconditionally on the basis of the merger parties' submissions that there will be no retrenchments as a result of the proposed transaction.

[21] The proposed transaction raises no other public interest concerns.

Conclusion

[22] In light of the above and given the merger parties' submissions that the proposed transaction will not result in any merger-specific retrenchments in South Africa, we unconditionally approved the proposed transaction.

13 October 2020

Date

Mr Andreas Wessels

Mr Enver Daniels and Prof. Fiona Tregenna concurring

Tribunal Case Manager : Kgothatso Kgobe

For the Merger Parties : J Sham-Guild and M Wagener of Norton Rose Fulbright

For the Commission : Z Hadebe and N Msiza

[1] Merger Record inter alia pages 7 and 70.

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