

SOUTH AFRICA / JUDGMENT

RO Metrics Trading (Pty) Ltd v The passenger vehicle dealership business and related assets of Auto Motorsport (Pty) Ltd trading as Leo Haese Centurion (LM008Apr19) [2019] ZACT 62 (2 October 2019)

[2019] ZACT 62

COURT

Competition Tribunal

BEFORE

Mondo Mazwai, Yasmin Carrim, Enver Daniels

CASE / FILE NUMBER

LM008Apr19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM008Apr19

In the matter between:

RO Metrics Trading (Pty) Ltd Primary Acquiring Firm

and

The passenger vehicle dealership business

and related assets of Auto Motorsport (Pty) Ltd

trading as Leo Haese Centurion Primary Target Firm

Panel

: Mondo Mazwai (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Enver Daniels (Tribunal Member)

Heard on

: 04 September 2019

Order Issued on

: 04 September 2019

Reasons

Issued on

: 02 October 2019

Reasons for Decision

Approval

[1] On 04 September 2019, the Competition Tribunal ("Tribunal") approved a proposed transaction between RO Metrics Trading (Pty) Ltd and the passenger vehicle dealership business and related assets of Auto Motorsport (Pty) Ltd, trading as Leo Haese Centurion.

[2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is RO Metrics Trading (Pty) Ltd ("RO Metrics"). RO Metrics is controlled by Barloworld Motor Retail South Africa ("Barloworld Motor Retail"), a division of Barloworld SA (Pty) Ltd ("Barloworld SA"), which itself is a wholly owned subsidiary within Barloworld Ltd ("Barloworld").

[4] Barloworld is a public company with its primary listing on the Johannesburg Securities Exchange Ltd and secondary listings on the

London and Namibian stock exchanges. As such, Barloworld is not controlled by any single firm.

[5] In addition to Barloworld Motor Retail, Barloworld SA controls multiple firms/divisions in the automotive space in South Africa,

including Avis Rent a Car South Africa, Zeda Car Leasing (Pty) Ltd, and used vehicles and disposal solutions. Further, Barloworld Motor Retail does not control any other firms besides RO Metrics.

[6] Relevant to the proposed transaction is that RO Metrics already owns a BMW dealership in the Pretoria (Fountains) area.

Primary target firm

[7] The primary target firm is the BMW/Mini passenger vehicle dealership business and related assets of Auto Motorsport (Pty) Ltd ("Auto Motorsport") trading as Leo Haese Centurion (the "Target Dealership"). The Target Dealership is owned and controlled by Auto Motorsport, which in turn, is controlled by the Leo Haese Family Trust.

Proposed transaction and rationale

Primary acquiring firm

[8] Barloworld viewed the proposed transaction as an opportunity for it to grow its dealer network. Further, the proposed transaction

shall allow Barloworld Automotive to offer customers a wider service offering and a better range of products from which to choose.

[9] Auto Motorsport provided that the proposed transaction is an opportunity for the interest holders to recoup their investment in the business. The transaction allows the interest holders to unlock the value of the investment and ensure that the business operations are kept intact and that employment levels are not affected.

[10] RO Metrics intends to acquire the Target Dealership from Auto Motorsport as a going concern. Upon completion of the proposed transaction RO Metrics will own and control the Target Dealership.

Impact on competition

[11] The Commission found that the proposed transaction results in a horizontal overlap between the activities of the merging parties in that they are both active in the retail of new passenger vehicles (under the BMW/Mini brands), the retail of used passenger vehicles, the sale of aftermarket parts, and the provision of aftersales service and maintenance work.

[12] The Commission proceeded to assess the impact of the proposed transaction in the following markets:

- a. Sale of new passenger vehicles within the Tshwane Metropolitan area;
- b. Passenger vehicles in mid-tier to luxury level vehicles within the Tshwane Metropolitan area;
- c. Sale of new passenger vehicles within an 80km radius of the Target Dealership[1];
- d. Sale of new passenger vehicles in the Gauteng Province;
- e. Sale of used passenger vehicles within the Tshwane Metropolitan area;
- f. Sale of used passenger vehicles in the Gauteng Province;
- g. Sale of used passenger vehicles within South Africa;
- h. Provision of aftersales BMW/Mini spare parts within the Tshwane area; and maintenance of vehicles with service plans and still under warranty; and
- i. Provision of aftersales servicing and maintenance of vehicles for BMW/Mini vehicles within the Tshwane area.

[13] We now turn to discuss the Commission's findings in each of the relevant markets it assessed.

The market for the sale of new passenger vehicles in Tshwane

[14] The Commission found that post-merger, the Acquiring Group will have a market share of [10%-15%] with an accretion of [<5%].

[15] In light of the low accretion in market share, the Commission was of the view that the proposed transaction was unlikely to significantly change the structure of the market. Further, the Commission found that there were alternative players in the geographic market that will continue to constrain the merged entity post-merger.

Passenger vehicles in mid-tier to luxury level vehicles within the Tshwane Metropolitan area

[16] The Commission had no data available to assess this market as the competitors indicated they do not measure passenger vehicles into

submarkets such as this.

[17] The Commission found that the merged entity would continue to face competition from other groups such as Bidvest McCarthy and Hatfield Motor Group.

[18] The Commission did, however, calculate the market shares at a brand level and found that BMW has a market share of [10%-20%] with

an accretion of [<5%]. and will continue to face competition from other brands such as Audi, Toyota, VW, Ford, Mazda and Land Rover.

[19] In light of the above, the Commission was of the view that the proposed merger was unlikely to substantially prevent or lessen competition in the market for the retailing of middle level to luxury level passenger vehicles. The merged entity will continue to face competition from reputable groups selling reputable brands in this segment of the market.

Sale of new passenger vehicles within an 80km radius of the Target Dealership

[20] The Commission found that post-merger, the Acquiring Group will have an estimated market share of [10%-20%] with an accretion of

[<5%].

[21] In light of the low accretion in market share, the Commission was of the view that the proposed transaction was unlikely to significantly change the structure of the market. Further, the Commission found that there were alternative players in the geographic market that will continue to constrain the merged entity post-merger.

[22] Further, with regard to intra-brand competition the Commission found that the merged entity will own 2 of the 4 BMW dealerships in

Tshwane. Within an 80km radius of the Target Dealership there are approximately 18 BMW dealerships, of which the merged entity will own

2. The broader Gauteng market for BMW's contains the same 18 dealerships within an 80km radius.

[23] In light of the above, the Commission was of the view that the proposed merger was unlikely to substantially prevent or lessen competition in this market.

Sale of used passenger vehicles within the Tshwane Metropolitan area

[24] The Commission found that the Acquiring Group will have a post-market merger share of [30%-40%] with an accretion of between [5%-10%]. Further the merged entity will continue to face competition from other groups such as CMH, Matus, Hatfield Group, Unitrans and Super Group.

Sale of used passenger vehicles in the Gauteng Province

[25] The Commission found that the Acquiring Group will have a post-market merger share of [10%-15%] with an accretion of [<5%].

[26] In light of the low accretion in market share, the Commission was of the view that the proposed transaction is unlikely to significantly change the structure of the market.

Sale of used passenger vehicles within South Africa

[27] The Commission found that the Acquiring Group will have a post-market merger share of [10%-15%] with an accretion of [<5%].

[28] In light of the low accretion in market share, the Commission was of the view that the proposed transaction was unlikely to significantly change the structure of the market.

Provision of aftersales BMW/Mini spare parts within the Tshwane area; and maintenance of vehicles with seNice plans and still under warranty

[29] The merging parties supply BMW/Mini aftermarket parts. The Commission is also aware that customers who own vehicles that are still under warranty or service plans are required to use Original Equipment Manufacturer ("OEM") branded parts for their cars.

[30] However, the Commission found that post-merger the merged entity will continue to face competition from other BMW dealerships that supply OEM branded spare parts.

Provision of aftersales servicing and maintenance of vehicles for BMW/Mini vehicles within the Tshwane area

[31] With respect to BMW/Mini cars, every dealership that sells these brands can also do aftersales services of the cars. Therefore, in this market the Commission found that post-merger the merged entity will continue to face competition from other BMW dealerships.

[32] With respect to those cars that are out of warranty or that do not have a service plan, the Commission found that there were a number of other independent workshops in close proximity to the merging parties that offer aftersales servicing.

[33] Based on the above findings from its investigation, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any market.

Public interest

[34] The Commission noted that the Target Dealership sources various products and services from more than 85 suppliers, including small businesses and firms owned by historically disadvantaged individuals (HDIs).

[35] Barloworld was unable to provide an undertaking that it will maintain the HDI or other supplier contracts held by Leo Haese Centurion because the proposed transaction does not include the existing supplier contracts. However, in an effort to alleviate this concern the merging parties did submit that they would undertake to apply Barloworld's existing localisation and empowerment programmes and where feasible it would appoint firms owned by HDIs as supplies to service the Leo Haese business.[2]

[36] Further the parties submitted that only two of the small suppliers are owned by HDIs, namely Mabidi Traders and Ultimate Valets. Mabidi submitted that the Target dealership is one of the two clients it currently has, thus it would be negatively affected should

their services be no longer required. Mabidi employs 4 people. However, Mabidi provides services that are not dealer specific and

can be provided to any other business. In addition, there was no contract between Mabidi and the Target Dealership. Further, Barloworld will consider using Mabidi as a service provider post-merger.

[37] The other firm is Ultimate Valets, of which the Target Dealership provides only 2% of its revenue. Ultimate Valets provides numerous other dealerships with its services.

[38] Given that Leo Haese is only one dealership, the Commission concluded that it was unlikely that the proposed transaction would have a negative effect on these suppliers.

[39] In addition, the proposed transaction does not raise any other public interest concerns.

Conclusion

[40] In light of the above, we also concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

Ms Mondo Mazwai

02 October 2019 DATE

Ms Yasmin Carrim and Mr Enver Daniels concurring

Case Manager: Kameel Pancham

For the merging parties: Maryanne Angumuthoo of Bowmans

For the Commission: Billy Mabatamela and Themba Mahlangu

- [1] In the McCarthy and Cargen merger the Tribunal had previously accepted the geographic market to be an area withing 80km of the Target Dealership. This is also in line with the position adopted in the Hallmark Motor Group (Pty) Ltd and Mekor Motors Sandton (Pty) Ltd and Mekor Motors Umhlanga (Pty) Ltd merger.
- [2] This was confirmed before the Tribunal, see Transcript page 10, lines 4-20.

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