

SOUTH AFRICA / JUDGMENT

Transaction Capital Motor Holdco (Pty) Ltd v WBC Holdings (Pty) Ltd (LM030Jun21) [2021] ZACT 50 (3 August 2021)

[2021] ZACT 50

COURT

Competition Tribunal

BEFORE

Imraan Valodia, Enver Daniels, Thando Vilakazi

CASE / FILE NUMBER

LM030Jun21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM030Jun21

In the large merger between:

Transaction Capital Motor Holdco (Pty) Ltd

(Primary Acquiring Firm)

and

WBC Holdings (Pty) Ltd

(Primary Target Firm)

Heard on: 3 August 2021

Order Issued on: 3 August 2021

REASONS

FOR DECISION

1. On 3 August 2021, the Competition Tribunal unconditionally approved a large merger between Transaction Capital Motor Holdco (Pty) Ltd (“TCMH”) and WBC Holdings (Pty) Ltd (“WBC Holdco”).
2. The transaction involves an increase in shareholding as Transaction

Capital Ltd (“TC”), through its wholly owned subsidiary, TCMH, intends to increase its shareholding in We Buy Cars (Pty) Ltd (“WBC”) by 25% from 49.9% to 74.9%. Post-merger, TCMH will have sole control over WBC through WBC Holdco.

3. TCMH apart from its non-controlling interest in the target firm does not conduct any further business activities. TC is an investor in and operator of credit-orientated-alternative assets. TC’s two divisions are SA Taxi Holdings (Pty) Ltd (“SA Taxi”) and Transaction Capital Risk Services Holdings (Pty) Ltd (“TCRS”).

SA Taxi is a vertically integrated business platform providing, inter alia, a comprehensive financial, insurance and allied services offering to minibus taxi operators. Additionally, SA Taxi procures new minibus taxi vehicles for sale through its two dealerships in Midrand and Polokwane. SA Taxi also sells second-hand minibus taxis and limited second-hand light commercial vehicles. TCRS combines its technology, data and analytics competencies to provide a range of business services that are primarily outsourced to consumer collection services.

4. WBC Holdco is a holding company and does not conduct any business

activities. WBC operates in the buying and selling of second-hand vehicles. WBC operates 8 dealerships from which it buys and sells

vehicles. WBC occasionally sells second-hand minibus taxis, but this is a minor and incidental part of its activities. Additionally, WBC acts as an intermediary in the provision of the following related services: insurance products, service and maintenance plans, car tracking services, vehicle finance and motor insurance.

5. In the assessment of the merging parties’ activities, the Competition Commission (“Commission”) identified horizontal overlaps in the markets for (i) the sale of used minibus taxis; (ii) the sale of used light commercial vehicles; (iii) the sale of used vehicles; and (iv) for the provision of ancillary

services - insurance products/services, stolen vehicle recovery services and vehicle finance. The Commission found that there is a geographic overlap between the activities of the merging parties in Gauteng Province. In respect of the markets for the sale of used minibus taxis, used light commercial vehicles, and used vehicles, the Commission assessed geographic markets in South Africa as a whole and in Gauteng. The provision of ancillary services was assessed on a national basis.

6. In the narrow market for used minibus taxis in South Africa and in Gauteng, the Commission found that there are a number of players in the sale of used minibus taxis that would continue to constrain the merged entity. Further, the Commission was of the view that the proposed transaction is unlikely to substantially change the structure of the market in Gauteng as WBC is not a prominent player in this segment.

7. In the markets for used light commercial vehicles and used vehicles

in South Africa and in Gauteng, it was noted that the acquiring group sells limited second-hand light commercial vehicles on an ad-hoc basis. The acquiring firm is a small player in the sale of used cars. The Commission was of the view that the proposed transaction is unlikely to change the structure of either of these markets.

8. In the markets for the provision of insurance products and services

and stolen vehicle recovery services, the Commission found that the merging parties act as intermediaries for a wide range of insurers,

finance houses and stolen vehicle recovery services houses. In light of this, the Commission did not assess these markets any further as all dealerships offer these services and customers are ultimately able to freely choose an insurer that best suits their individual requirements.

9. In the market for vehicle financing the Commission noted that the acquiring group (through SA Taxi) offers vehicle finance of minibus taxis (and not in respect of other passenger vehicles and/or trucks or busses) in South Africa. SA Taxi also finances minibus taxi operators that are not financed by other financial institutions such as commercial banks.[1] Whereas WBC does not offer any vehicle financing services itself, it acts as an intermediary for a number of the large banks in South Africa. On this basis, the Commission did not assess this market any further; as the relevant market for minibus taxis finance was viewed as different from the traditional vehicle finance market.
10. The Commission also identified vertical overlaps as the acquiring group provides minibus taxis finance whereas WBC also sells minibus taxis (on a limited scale). Furthermore, the Commission identified a potential vertical overlap, as the acquiring firm intends to enter the broad vehicle finance market.
11. The Commission considered the national market for the provision of credit finance to minibus taxis by developmental credit providers. In this market, the Commission noted that SA Taxi has an estimated market share of between 80% and 100%; therefore, it has the ability to foreclose. However, the merging parties provided that SA Taxi would have no incentives to deny access to SA Taxi's finance to other dealers and their customers. Considering this and given the insignificant sale of minibus taxis by WBC,[2] the Commission found that the proposed transaction is unlikely to result in input foreclosure concerns for competitors of SA Taxi and WBC (in the sale of minibus taxis).
12. Given SA Taxi/TC's intention to enter the broad vehicle finance market, the Commission also assessed vertical concerns pertaining to this market and noted that it will face competition from the four large retail banks (i.e. ABSA, First Rand, Nedbank, and Standard Bank) and other financiers.

13. The Commission considered whether competitors of the Acquiring Group will be substantially foreclosed from accessing WBC's service offerings. The Commission noted WBC's capacity as an intermediary for a number of the large banks in South Africa in the provision of vehicle financing / funding. However, it was found that customers can pre-arrange vehicle finance with their bank and purchase a car from any dealership. In addition, almost all dealerships offer vehicle finance from these large retail banks. Therefore, the Commission found that even in a case wherein WBC exclusively sourced vehicle finance from the Acquiring Group, it is unlikely that these large retail banks would be substantially affected.
14. The panel agreed with the Commission's findings on the markets identified but put questions to the parties. The panel sought additional information on whether a portfolio effects assessment was conducted in the market for second-hand vehicles and related markets; given that a previous transaction involving WBC and MIH e-Commerce Holdings (Pty) Ltd t/a OLX South Africa ("OLX") was prohibited, in part, on this basis.[3] The prohibited matter raised data sharing concerns given that WBC would have access to several advertising platforms and media platforms which would enable it to obtain and cross share intelligence (customer data, sales trend etc.) from AutoTrader (and the greater Naspers stable), which in turn can be used as a competitive advantage against other public-to-dealer platforms. Considering the aforementioned concerns, the panel deemed it necessary to know whether the Commission assessed a portfolio effects theory of harm.
15. The Commission submitted that it had considered the data related activities of TC in the proposed transaction and whether such activities will result in portfolio effects that could substantially prevent or lessen competition in the market for second-hand vehicles or related markets. The Commission was of the view that, because the technology, data & analytics competencies of TC are not directly related to the second-hand vehicles market, it is unlikely that the proposed transaction will result in portfolio effects that could substantially prevent or lessen competition in the market for second-hand vehicles or related markets. The merging parties submitted that the [CONFIDENTIAL]. Furthermore, [CONFIDENTIAL].
16. Based on the responses provided, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. The Commission assessed whether the potential transaction would have any effects on the public interest and there were not found to be any. We found no basis to disagree with the Commission's conclusion on the public interest.

Signed by: Imraan Valodia

Signed at: 2021-08-17 13:56:17 +02:00

Reason: Witnessing Imraan Valodia

4 August 2021

Prof Imraan Valodia

Date

Mr Enver Daniels and Dr Thando Vilakazi concurring

Tribunal Case Manager: L Maiwashe and K Kgobe

For the Merging Parties: R Goodman and H Lyle of ENS

For the Commission:

B Mabatamela and R Maphwanya

- [1] For instance, SA Taxi and Bridge Taxi Finance provide credit finance to minibus taxi operators (i) who are blacklisted and have defaulted
- high rate of default (ii) with no employment history or source of income and (iii) no bank account or credit history or profile
- [2] Less than [CONFIDENTIAL] of WBC's total sales.
- [3] MIH eCommerce Holdings Pty Ltd t/a OLX South Africa and WeBuyCars Pty Ltd Competition Tribunal Case No: LM183Sep18.

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