

In The Large Merger Between:

Bidvest Group Limited

And

McCarthy Limited

Reasons for Decision

Approval

1. On 04 February 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Bidvest Group Limited and McCarthy Limited. The reasons for this decision follow.

The Parties

2. The primary acquiring firm is Bidvest Group Limited ("Bidvest"), a public company, listed on the Johannesburg Stock Exchange, under the Industrial Services Sector. Bidvest comprises a group of companies involved in providing a wide range of services in South Africa. Bidvest's major shareholders are financial institutions including pension funds insurance companies, unit and investment trusts, who own approximately 90% of Bidvest. Its largest shareholder is Dinatla Investments Holdings (Pty) Ltd ("Dinatla"), an empowerment consortium, which as of December 2003, owned 15% of Bidvest.
3. The primary target firm is Mc Carthy Limited ("McCarthy"), which is controlled (88,27%) by a consortium of banks consisting of ABN AMRO Bank N.V, ABSA Bank Limited, Investec Bank Limited, Nedbank Limited, FirstRand Bank Limited, Standard Bank of South Africa Limited and Societe Generale.

The Transaction

4. The transaction, involves Bidvest acquiring the entire issued stated capital of McCarthy and all the issued preference shares in the share capital of McCarthy. The transaction will be implemented either by way of a scheme of arrangement in terms of the Companies Act¹; section 311 (compromise and arrangement between company, its members and creditors) or by invoking the provisions of Section 440K (Compulsory acquisition of securities of minority in affected transaction).

¹ Act 61 of 1973

Rationale

5. The consortium of banks that currently controls McCarthy has been looking for an opportunity to exit on favourable terms. From Bidvest's perspective it will be provided with an opportunity to enter into a major industry and distribution business in which it is not currently represented.

The Parties' Activities

6. Bidvest, through various subsidiaries, provides a diverse range of business activities in South Africa; from freight management to travel related financial services to supplying office products to meat and food processing. The following is a summary of the services provided by the various Bidvest subsidiaries:

- ?? Bidfreight - freight management;
- ?? Bidserv - Provision of a wide range of outsourcing activities, for example, security and contract cleaning, laundry services etc;
- ?? Caterplus - Distribution of a wide range of products to catering and hospitality business;
- ?? Combined Foods - Manufacturing and distribution of products to bakery, meat, food industries;
- ?? Rennies Financial Services - provision of a wide range of services relating to travel and foreign currency;
- ?? Bid Corp Services - provision of strategic direction and corporate services to Bidvest Group;
- ?? Bidpac - provision of packaging closures, fastenings, strapping, stationery, adhesive tape, coding and labels; and
- ?? Bidoffice - office products, for example, stationery, furniture, computers etc.

7. McCarthy is active primarily in the motor vehicle retailing industry, i.e. selling new and used vehicles through various franchises and dealerships throughout South Africa. McCarthy is also involved in financial services through its brokerage operation (McCarthy Insurance Services) and a vehicle financing company (McCarthy Finance). Aside from this, McCarthy's other operations include a car rental service through Budget Rent-a-car, the auctioneering of motor vehicles (Burchmores Car Auctions), corporate and commercial fleet management (McCarthy Fleet services) and the importation and distribution of a wide range of Yamaha products. McCarthy also has a loyalty programme, which inter alia entitles members to benefits such as roadside assistance and medical rescue.

8. From the above, it is clear that there is no overlap in the activities of the merging parties.

Impact on competition

9. There are a number of vertical relationships that exist between the Bidvest group and McCarthy, viz.:
 - 9.1. Vehicles purchased from McCarthy by Bidvest;
 - 9.2. Vehicle rental services provided by McCarthy (Budget Rent-a-car) to Bidvest;
 - 9.3. Vehicle rental services purchased by Bidvest (Rennies) on behalf of third parties from McCarthy (Budget);

- 9.4. Water cooler rentals, cleaning and sundry supplies provided by Bidvest (Bidserve) to McCarthy);
 - 9.5. Food products provided by Bidvest (Caterplus) to McCarthy;
 - 9.6. Travel management services provided by Bidvest (Rennies) to McCarthy;
 - 9.7. Office products provided by Bidvest (Bidoffice) to McCarthy; and
 - 9.8. Vehicle servicing and repairs provided by McCarthy to Bidvest.
10. However, none of the above raises any significant competition concerns. With regard to the car-rental services, the parties claim that Rennies' clients usually stipulate which supplier to use. Where Rennies has discretion, they would normally use Budget. Budget has a market share of 14% in the car-rental market, and at the hearing submitted that even in the event that Rennies used Budget exclusively, Budget's share was unlikely to exceed 20%, since Rennies only enjoys 15% of the Travel agent market.
11. The parties brought to the attention of the Tribunal, the fact that Avis Europe plc ("Avis Europe") owns the intellectual property rights for the use of the Budget trademark.²
12. It is unclear from what little information we have at hand as to whether Avis Europe plc's power over the two competing franchises should give rise to any Competition concerns and the Commission might want to look further at this.³ However, this relationship between Avis and Budget existed prior to the transaction and has no bearing on the competitive impact of the present merger.

Conclusion

13. Having found that there is no overlap in the activities of the merging parties, there are no significant vertical integration issues, we conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

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11 February 2004
Date

Concurring: D Lewis and U Bhoola

For the merging parties: Vani Chetty (Edward Nathan and Friedland)

For the Commission: Khathija Ramathula (Mergers and Acquisitions)

² Avis Europe and Budget Rent-a-Car International Inc. operate the Avis and Budget brands respectively via franchise arrangements, namely as Avis South Africa and McCarthy Limited.

³ According to the parties, Avis South Africa has approximately 37% of the car rental market.