COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 17/LM/Feb09

In the matter between:

MAN AG	Acquiring Firm
and	
Volkswagen Caminhoes E Onibus Industrai E Cormecio DE Veiculo Comercias LTDA	Target Firm

Panel	:	D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member)
Heard on	:	1 April 2009
Order issued on	:	1 April 2009
Reasons issued on	:	2 June 2009

Reasons for Decision

Introduction

[1] On 1 April 2009 the Tribunal approved the acquisition of indirect control of Brazilian entity Volkswagen Caminhões e Ônibus Indústria e Comércio de Veículos Comerciais Ltda ("VWCO") by MAN AG. It is an international transaction which is notifiable by virtue of the fact that both parties have activities in South Africa. The reasons for approving the transaction follow below.

The transaction and parties

[2] The acquiring firm is P.R.C.S.P.E. Empreendimentos e Participções S.A., a Brazilian subsidiary of MAN AG, a company incorporated in accordance with

the laws of Germany. The target is VWCO a corporation incorporated in accordance with the laws of Brazil.

[3] In terms of the transaction P.R.C.S.P.E. Empreendimentos e Participções S.A. will acquire 100% of VWCO's shares from Volkswagen International Finance N.V. and Mr Eduardo de Azevedo Barros. Post the transaction MAN AG, through its subsidiary, will solely control VWCO.

The parties' Activities

[4] MAN manufactures medium, heavy and extra heavy trucks as well as commuter buses and luxury coaches in South Africa.

[5] VWCO is primarily involved in the manufacture of trucks that range from light trucks to super heavy models as well as bus chassis for urban, charter and intercity use in Brazilia. It has no presence in South Africa but does sell products to Volkswagen South Africa (Pty) Ltd.

Rationale for the transaction

[6] The transaction gives MAN, who wants to expand its business, access to the Latin American market for buses and trucks while the sale of VWCO will enable the Volkswagen Group to focus on its light commercial vehicle business which is not affected by this transaction.

Effect on Competition

[7] The merging parties' activities overlap in the supply of heavy trucks, extra heavy trucks and bus chassis.

[8] Both VWCO and MAN supply heavy and extra heavy trucks in South Africa. The Commission did not distinguish between the two types of trucks in light of demand-side and supply-side substitutability and defined the market as the national market for the supply of Heavy Commercial Vehicles ("HCV") and Extra Heavy Commercial Vehicles.

[9] MAN produces both chassis and completely built up buses while VWCO, unlike MAN, only provides bus chassis which are then sold to independent bus body builders. Since VWCO does not manufacture buses the

Commission split the market into buses and bus chassis. The Commission defined the relevant market as the national market for the supply of bus chassis.

[10] We will consider each market separately.

The market for the supply of HCV and XHCV

[11] The merged entity's estimated market share in the HCV market post the transaction will be 3%. Its main competitors are Toyota with a market share of 26%, Nissan with a market share of 24% and GMSA with a market share of 20%. The Commission found that the proposed transaction is unlikely to prevent or lessen competition in this sub-market as the merged entity will remain a small player post the transaction.

[12] In the XHCV market the merged entity's market share will be 14%. Other large players in this market are, inter alia, Mercedes-Benz with a market share of 35%, Renault Trucks with 13%, Scania with 7%[1], Volvo Trucks with 7%. This is a moderately concentrated market. The pre merger HHI of 1755 points will increase by 34 points to 1789 after the transaction. The Commission found that the transaction is unlikely to affect competition negatively in light of the small increase in concentration, below 50 points.[2]

The market for the supply of chassis

[13] Post the transaction the merged entity's market share will be 45% with its main rivals Iveco, MBSA and Scania supplying 52% of the market.

[14] The merging parties contend that they are not each other's closest competitors. VWCO's brand is positioned in the "value for money" category,

[1] According to the merging parties Volkswagen AG acquired Scania AB in 2008 but Volkswagen Commercial Vehicles in South Africa and Scania trade as separate entities in South Africa and there is no interaction between them. If this fact, that VWCO and Scania share the same parent, is taken into account the merged entities market share would be 21%, i.e. 14% plus the 7% of Scania. However, nothing turns on this and we therefore used the market share estimates as calculated by the Commission.

[2] According to the ICN merger guidelines a market is regarded as highly concentrated and is likely to result in significant competition concerns if the post HHI is above 1800 points and the change in HHI is greater than 50 points.

while MAN's products are "premium class" category, focused on advanced technology. Their buses are used for different purposes. VWCO's inner city buses can be used on uneven an rough terrain due to its higher floor height while MAN's buses can only be used in areas such as airports because of their lower floor height. MAN's buses have longer axles and stronger horse power and are better situated for long distance travel such as inter-city transport. VWCO's buses are more suitable for airport to hotel type of distances due to shorter axles and lower horse power.

[15] The Commission in its investigation found that MAN's customers did not regard VWCO as a competitor and would rather switch to competitors such as Mercedes Benz, Volvo and Scania. On this basis the Commission concluded that the parties were not close competitors and - that the transaction would not result in the removal of an effective competitor.

[16] The Commission also found that although barriers to entry were high due to, inter alia, regulatory barriers this was not insurmountable as there had been new entrants from India (TATA) and China in recent years.

Conclusion

[17] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public Interest

[18] The transaction does not raise any significant public interest concerns.

____________________ **4 June 2009**

Y Carrim Date

D Lewis and N Manoim concurring.

Tribunal Researcher: R Badenhorst

For the merging parties: Bowman Gilfillan

For the Commission: Lindiwe Khumalo