

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 22/LM/Feb07

In the matter between:

McCarthy Limited

Acquiring Firm

And

Inyanga Motors (Pty) Ltd

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member),
and M Mokuena (Tribunal Member)
Heard on : 25 April 2007
Decided on : 25 April 2007
Reasons Issued: 8 May 2007

Reasons for Decision

Approval

1] On 25 April 2007, the Tribunal unconditionally approved the merger between McCarthy Limited and Inyanga Motors (Pvt) Ltd. The reasons for approving the transaction follow.

The parties

2] The primary acquiring firm is McCarthy Limited ('MCL'), a company incorporated under the company laws of the Republic of South Africa.¹

1 MCL controls Kunene Motor Holdings Limited; Autohaus Centurion (Pty) Ltd, McCarthy Investments (Pty) Ltd, Eliance (Pty) Ltd and GAZ Motor Corporation Southern Africa (Pty) Ltd. In addition MCL owns a number of motor vehicle related insurance firms, property and investment firms and firms active in the provision of financial services. These firms are not

3] MCL is controlled by the Bidvest Group Limited ('Bidvest Group').² Bidvest Group is listed on the JSE Securities Exchange and no single shareholder controls it.

4] The primary target firm is Inyanga Motors (Pty) Ltd ('Inyanga Motors'), a company incorporated in terms of the company laws of the Republic of South Africa. Inyanga Motors is controlled by the following shareholders in the indicated percentages:

[4.1] Peter Cleary 42.50%;

[4.2] Sheila Ngubane 25%;

[4.3] Inyanga Holdings 12.5%;

[4.4] Andrew Cleary 2.5%;

[4.5] Susan Cleary 2.5%; and

[4.6] Caryn Lee Overton 2.5%.

5] Inyanga Motors owns two Daimler Chrysler South Africa ('DCSA') franchised dealerships in the Zululand area.

Description of the transaction

6] The transaction involves the acquisition by MCL of the two DaimlerChrysler franchised dealerships of Inyanga Motors, situated in Vryheid and Empangeni within the Zululand region. Post merger McCarthy MCL will own 80% of the issued shares of Inyanga Motors. The remaining 20% will be held by Peter

relevant for the current transaction.

² Schedule A to Form CC 4(1) filed by MCL details companies, associated companies and joint ventures controlled by Bidvest Group.

Cleary, the current Inyanga Motors majority shareholder and dealer principal.

Rationale for the transaction

- 7] The acquiring firm views this transaction as enabling it to strategically position itself within the Empangeni Richards Bay area as there are planned developments in the surrounding areas which has potential growth for its dealership.³
- 8] The shareholders of the primary target firm wish to realise returns on their investments.

The parties' activities

Primary acquiring firm

- 9] MCL is involved in the sale of new and used passenger and commercial vehicles through more than 100 of its wholly-owned motor vehicle dealerships. MCL is also involved in the sale of parts and services, provision of financial services and fleet support, import and distribution activities, vehicle auctioneering, online retailing and vehicle/truck rental.

The primary target firm

- 10] Inyanga Motors has two franchised DaimlerChrysler dealerships which are involved in the sale of new and used DaimlerChrysler passenger and commercial vehicles, including associated parts and services. Inyanga Motors also sells used vehicles which essentially are trade-ins from Inyanga Motors' customers.
- 11] Inyanga Plaza is a property leasing company which is a wholly owned subsidiary of Inyanga Motors.⁴

Relevant markets

³ MCL was further motivated by the impressive performance of Inyanga Motors for receiving many accolades in various categories and being the current DaimlerChrysler SA Dealer of the year.(Record p41).

⁴ Inyanga Plaza does not form part of this transaction and as a result, it is unnecessary to analyse it in these reasons.

- 12] The Commission submitted that the relevant market is the market for the sale of passenger vehicles and commercial vehicles.⁵ Such a definition would be consistent with the Tribunal's approach in *DaimlerChrysler/ Sandown Motors*.⁶ In that case the Tribunal stated that the market for passenger vehicles can be further segmented into various sub-markets namely small cars, luxury cars, specialty cars, sport utility vehicles and mini vans. The Tribunal further stated that commercial vehicles can further be sub-divided into light commercial vehicles, medium commercial vehicles, heavy commercial vehicles, and extra heavy commercial vehicles and buses.
- 13] With regard to the geographic market the Commission submitted that the relevant geographic market in this transaction is the Zululand area as it is the region where the parties' activities overlap.
- 14] The Tribunal finds that the relevant market is the market for the sale of passenger motor vehicles and commercial vehicles with the respective sub-markets as stated above. The geographic market is at least the Zululand area.⁷

Market Shares

- 15] The Commission concluded that on the basis of the data received from Response Trendline Group⁸ overlaps do occur in the activities of the parties in the B-Medium passenger vehicles and sports utility vehicles in the broader passenger vehicle market.

Table 1: Market shares in the B-Medium passenger vehicles in the Zululand area

5 The retail of new motor vehicles takes place through motor vehicle dealerships. The manufacturers either directly own dealerships but the majority are independently owned franchised dealerships. The independently owned dealerships are either dedicated to a particular manufacturer's products. Dealerships can thus be classified into exclusive and multi-franchise dealerships.

6 *Daimler Chrysler and Sandown Motors* Case No. 44/LM/Jul01.

7 In the *DaimlerChrysler and Sandown Motors* case and in *Unitrans/Senwes* Case No. 68/LM/Dec01 the Tribunal found that customers are not bound to a particular area when buying cars and that the geographic market may be broader than the area where the parties are active and that there is a trend to buy from dealers within customers' close proximity to their work and place or residence suggesting that the market is at least local.

8 The Response Group Trendline is an official supplier of National Automobile Association Manufacturers of South Africa ('NAAMSA') retail sales statistics, car prices and specifications.

Market participant	Estimated market share in Zululand (%)
Ritchie Auto	26
Inyanga Motors	20.6
NT Motors (Vryheid)	14
Renault (Richardsbay)	10.7
Provincial Delta (Richardsbay)	10.7
McCarthy	7.4
Nissan Intercity (Empangeni)	4.1
Toyota (Vryheid)	4.1
East's Toyota	2.8
FASA Intercity	0.8
Provincial Delta (Mtubatuba)	0.2
Others	0.6
Total	100

- 16] The post merger market share in the market for the B-medium passenger vehicles market in the Zululand would be 28%.

Table 2: Market shares in the sports utility vehicles in the Zululand area

Market participant	Estimated market share in Zululand (%)
Inyanga Motors	36
McCarthy	15.3
Land Rover (Empangeni)	12.2
East's Toyota	8.3
Toyota (Vryheid)	8.3
Nissan Intercity (Empangeni)	5.6
Renault (Richardsbay)	5.4
NT Motors	4.8
Provincial Delta	2.6
FASA Intercity	0.6
Others	0.9
Total	100

- 17] The post merger market share in the market for sports utility vehicles in the Zululand would be 51.3%.

Table 3: Market shares in the light commercial vehicles market in the Zululand area

Market participant	Estimated market share in Zululand (%)
Ritchie Auto	31.8
Iyanga Motors	14.7
East's Toyota	12.6
Nissan Intercity (Empangeni)	11.2
McCarthy	11
Toyota Vryheid	8.8
FASA Intercity (Empangeni)	3.8
Provincial Delta (Mtubatuba)	2.8
Provincial Delta (Richards Bay)	2.3
Renault (Richards Bay)	0.3
Others	0.7
Total	100

- 18] The post merger market share in the market for light commercial vehicles in the Zululand area would be 25.7%.

Table 4: Market shares in the medium commercial vehicles market in the Zululand area

Market participant	Estimated market share in Zululand (%)
Inyanga Motors	28.5
McCarthy	26.7
Richie Auto	12.5
East's Toyota	10.7
Provincial Delta (Richards Bay)	10.7
FASA Intercity (Empangeni)	5.3
Toyota Vryheid	5.3
Others	0.3
Total	100

- 19] The post merger market share in the market for medium commercial vehicles in the Zululand would be 55.2%.

Competition analysis

- 20] From the market shares above, it is clear that the market shares which might raise competition concerns are in the market for sports utility passenger vehicles (with a post merger market share of 51.3%) and the medium

commercial vehicles (with a post merger market share of 55.2%).⁹

- 21] The Commission is of the view that the post merger high market shares are mainly because of the quality of the brands, price variety (number of different branded products available to choose from and after sales services). In addition, the Zululand area, which is the relevant geographic market in this transaction can be categorised as a peri-urban area and dealership outlets are widely dispersed. Accordingly, large franchised dealerships based in the broader KwaZulu Natal market such as Imperial Holdings Ltd, Barloworld Limited, Super Group Limited and others neighbouring the Zululand region, could potentially be regarded as competitors in the Zululand region due to the geographic overlap.
- 22] In addition, there is competition from other dealerships supplying different brand vehicles such as Renault, Volvo, Toyota, BMW, Chevrolet, MAN and Scania. They compete with the merging firms in almost every category of new and used passenger vehicles market. Different dealership outlets compete for customers on the basis of better service offerings, price, quality, attractive maintenance contracts and related services.
- 23] The parties submitted that it is difficult for a single retail dealer to effectively exercise market power in any of the identified segments since the competitive landscape is much wider. Competition between brands (as opposed to intra-brand competition) at manufacturing level seems to filter through to the retail level and customer preference.
- 24] These markets are highly competitive, especially as they are dependent on various factors which include continuous innovation, customer preference, affordability in terms of price and attitude towards a particular brand of vehicle.

⁹ In the market for B-Medium passenger vehicles the merged entity will have a post merger market share of 28% and will continue to face competition from Ritchie Auto (with a market share of 26%) and NT Motors (with a market share of 14%), among others. In the market for light commercial vehicles the merged entity will have a post merger market share of 25.7% and will continue to face competition from firms like Ritchie Auto (with a market share of 31.8%) and East's Toyota (with a market share of 12.6%), among others.

25] The barriers to entry are low. There are no regulatory barriers to entry but a new entrant into the market would have to consider various factors which include seeking the permission of the municipalities and local authorities to develop suitable premises to operate from; getting approval from franchise principal to operate as a franchised dealer; significant capital requirements required to commence business as a motor vehicle retailer; high working capital requirements; and capital requirements in respect of custom built facilities and plant equipment.

26] Accordingly the Tribunal finds that the transaction will not lead to a substantial lessening of competition in the relevant market

Public Interest

27] There are no public interest issues.

Conclusion

28] The merger is approved unconditionally.

Y Carrim

Tribunal Member

8 May 2007

DATE

N Manoim and M Mokuena concur in the judgment of Y Carrim

Tribunal Researcher: R Kariga

For the merging parties: S Ramluckan, Garlicke and Bousfield Attorneys

For the Commission : L Lamola and HB Senekal (Mergers and Acquisitions)