



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 30/LM/Jun10

In the matter between:

Imperial Group (Pty) Ltd

Acquiring Firm

And

Imperial McCarthy (Pty) Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Medi Mokuena (Tribunal Member)
Thandi Orleyn (Tribunal Member)
Heard on : 25 August 2010
Order issued on : 25 August 2010
Reasons issued on : 20 October 2010

Reasons for Decision

APPROVAL

[1] On 25 August 2010, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Imperial Group (Pty) Ltd and Imperial McCarthy (Pty) Ltd. The reasons for the approval follow below.

PARTIES TO THE TRANSACTION

[2] The primary acquiring firm is Imperial Group (Pty) Ltd (“Imperial”). Imperial is a 100% subsidiary of Imperial Holdings Ltd (“Imperial Holdings”). Imperial Holdings is a South African based public company listed on the JSE and since the shares therein are widely dispersed it does not have any controlling shareholders. Imperial has a large number of subsidiaries.

[3] The primary target firm is Imperial McCarthy (Pty) Ltd t/a Schus Nissan and Schus Fiat and Alfa (“IMC”). IMC is a joint venture between Imperial Holdings and McCarthy Ltd, each of them holding 50% of the issued share capital of IMC.

DESCRIPTION OF THE TRANSACTION

[4] According to the merging parties Imperial premerger has management control of IMC with its 50% shareholding since it attends to the strategic business decisions and the day to day running of IMC.¹ In terms of the proposed transaction Imperial will acquire sole control over IMC.

RATIONALE FOR THE TRANSACTION

[5] According to Imperial it no longer wishes to have joint ventures in motor dealerships.

ACTIVITIES OF THE MERGING PARTIES

[6] Imperial Holdings is involved in the wider transportation and mobility markets in Southern Africa, Europe and the United Kingdom. Its divisions include Imperial logistics Southern Africa, Imperial logistics International, car rental and tourism, parts distributorships, vehicle dealerships and insurance. Of relevance to this transaction is its network of motor dealerships in South Africa.

¹ See affidavits of respectively Philip Michaux, CEO of Imperial Motor Dealerships, and Geoff Jooste, the Managing Director of IMC.

[7] IMC has three motor vehicle dealerships located at Parow in the Western Cape consisting of two Nissan dealerships and one Fiat/Alfa² dealership. These dealerships provide services in the retail motor sector specifically in new and used motor vehicles, motor vehicle parts as well as providing workshop facilities.

POTENTIAL MARKETS AND COMPETITION ANALYSIS

[8] The activities of the merging parties overlap in the markets for the retail sale of (i) new and (ii) used vehicles, specifically in the retail sale of (a) passenger vehicles and (b) light commercial vehicles in the broader Cape Town area. Imperial's only association with Fiat/Alpha dealerships in the Western Cape is through IMC. Imperial however has one Nissan franchise located at Claremont; one Toyota dealership in Brackenfell; and four Ford and Mazda dealerships in Paarden Eiland, the Cape Town CBD, Diep Rivier and George.³

[9] The Commission analysed the effects of the proposed deal in the markets for the retail sale of new and used passenger vehicles as well as light commercial vehicles.

[10] According to the Commission the combined market share of Imperial and IMC in the retail sale of new passenger vehicles in 2009 in the broader Cape Town area is less than 10%; for the retail sale of new light commercial vehicles in the same geographic area this market share is below 20%.⁴ The Commission submitted that the market shares of the merged entity for used vehicles would be lower than that stated above.

[11] From a narrower (i.e. localised) geographic market perspective, the merging parties submitted details of the number of motor vehicle dealerships in the

² Nissan and Fiat/Alfa are two separate franchises and have separate dealerships. The merging parties have indicated that Alpha motor vehicles fall within the Fiat Group.

³ See page 113 of the record.

⁴ Source: NAAMSA, 2009 sales in broader Cape Town area.

area surrounding Parow that sell respectively passenger vehicles and light commercial vehicles. From this data we are satisfied that sufficient competition remains post merger from other dealerships at a local geographic level. The Commission at the hearing also indicated that the Parow area has a number of dealerships which deal specifically only in used passenger vehicles.

[12] In addition to the above, Imperial premerger already materially controlled the direction of IMC.

[13] Based on the above, we conclude that the proposed deal is unlikely to substantially prevent or lessen competition in any relevant market.

PUBLIC INTEREST

[14] The merging parties have confirmed that the proposed deal will have no effect on employment.⁵ No other public interest issues arise from the proposed transaction.

CONCLUSION

[15] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially lessen or prevent competition in the affected markets. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

Andreas Wessels

20 October 2010
Date

Medi Mokuena and Thandi Orleyn concurring

⁵ See page 7 of the record.

Tribunal Researcher: Ipeleng Selaledi
For the merging parties: Prinsloo, Tindle & Andropoulos Inc.
For the Commission: Nazeera Ramroop