

In the Larger Merger Between:

Imperial Group (Pty) Ltd

Acquiring Firm

And

Magic Merkel (Pty) Ltd

Target Firm

Reasons for Decision

APPROVAL

1. On 3 August 2005, the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between Imperial Group (Pty) Ltd (“Imperial Group”) and Magic Merkel (Pty) Ltd (“Magic Merkel”). The reasons for the approval appear below.

THE TRANSACTION AND ITS RATIONALE

2. The parties to this merger are Imperial Group¹ and Magic Merkel.² Both parties have entered into a sale agreement in terms of which Imperial Group acquired the motor dealership business of Magic Merkel as a going concern.

3. The stated commercial rationale for the proposed transaction is that Imperial Group wishes to grow its business through the acquisition of dealerships in certain franchisees, including the Daimler Chrysler franchise. Mr Rayhaan Hassim indicated that his selling of Magic Merkel is purely driven by commercial reasons.

THE RELEVANT MARKET

Product market

4. Through its various subsidiaries, Imperial Group conducts a range of activities within the transportation, fleet management and mobility sectors. The primary activities of Imperial Group include logistics and transport services, leasing and fleet management services, aviation leasing, car rental and tourism services, distribution of motor vehicles, motor vehicle dealerships and insurance

¹ Imperial Group is one of the subsidiaries of Imperial Holdings Ltd (“Imperial Holdings”), a company listed on the JSE. Imperial Holdings does not have any controlling shareholders.

² Mr Rayhaan Hassim wholly owns Magic Merkel, which does not have any subsidiary.

businesses relating to motor and motor related cover. It is through its various motor vehicle dealership that Imperial Group sells both passenger and light commercial vehicles. Magic Merkel, which holds a dealership franchise of Daimler Chrysler, sells the entire range of Daimler Chrysler' passenger and light commercial vehicles (both new and used) as well as parts of motor vehicles. It also provides workshop facilities.

5. From the above, it is clear that a horizontal overlap exists between the activities of the merging parties. The activities of the parties overlap because both are involved in the retail sale of new and used passenger and light commercial vehicles, through dealerships.³ We have previously approached market definition in the retail motor vehicle markets by finding that different segments constitute the relevant product market. The passenger vehicle submarkets may include cars which are entry level, small, lower middle, upper middle, large, lower luxury, upper luxury, lower speciality, upper speciality, small utility, lower middle utility, upper middle utility, small minivans, and minivans. The market for commercial vehicles can be categorised into light, medium, heavy commercial vehicles, and buses and coaches over ten tons.⁴

Geographic market

6. Imperial Group operates countrywide with its various motor vehicle dealerships located in seven (7) of the nine provinces in South Africa. In *toto*, it has ninety (90) motor vehicle dealerships as follows: Free State (9); Gauteng (56); KwaZulu-Natal (3); Limpopo (4); Mpumalanga (2); North-West (3); and Western Cape (13).⁵ Of relevance to this transaction is that Imperial Group owns Mercurius Motors and Intercity Delta both located in Polokwane (the erstwhile Pietersburg) whilst Magic Merkel operates in Tzaneen only.⁶ The Commission submitted that if the geographic market is assumed to be local then there is no geographic overlap given the two respective areas from which the merged entity operates. Consequently, the Commission did not reach a definitive conclusion on the relevant geographic market, but limited its investigation to the Limpopo region.

³ The Commission submitted that the merged entity operate an exclusive dealership. It is important to note that retail market is characterized by dealerships owned by the original equipment manufacturers who sell their own products, or by independently owned dealers such as the merging parties. The independently owned dealerships are either dedicated dealers of particular manufacturers' products or are multi-brand franchises which sell a number of different manufacturer's products. These dealerships can either be multi-franchise or exclusive dealerships.

⁴ See our previous decisions, *inter alia*, *DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd* Case No.: 44/LM/Jul01; and *Combined Motor Holdings Limited and Forza (Pty) Ltd* Case No.: 64/LM/Jul04.

⁵ See table 1, page 5 of the Commission's Report.

⁶ Both Polokwane and Tzaneen are areas situated a number of kilometers apart from each other, but both located in Limpopo. Furthermore, research has shown that people can travel from as far as Limpopo to Gauteng, e.g., Pretoria, Johannesburg, etc. to buy a car suitable to their own purpose and style.

Impact on competition

7. As explained below, the proposed transaction does not give rise to a cause for concern in the markets for the sale of passenger and light commercial vehicles. The Commission's investigation revealed the merged entity's combined post-merger market shares per segment as follows: 0.1% (entry level cars); 2.4% (small cars); 52% (luxury cars)⁷; 24% (speciality cars); 30% (utility cars); and 29% (minivans).⁸ Insofar as the market segments of luxury, speciality, and specialized vehicles are concerned, we are satisfied that inter-brand competition exists and will remain post-merger. According to evidence presently before, there is in this high-end of the market a large number of imported brands directly competing with the Daimler Chrysler brands. The Commission, however, pointed out that the proposed transaction might result in a diminished intra-brand competition. Nevertheless, the merging parties argued that they do not compete on price but by essentially providing other value added services, *inter alia*, after sales service, warranties, etc.

Public Interest

8. The merger will see the exit of what appears to be a highly successful black owned business and the expansion of one of the traditional corporate retailers. There are some suggestions in the record that Mr Hassim of Magic Merkel had been pressured into the sale by Daimler Chrysler.⁹ Despite this he now wishes to proceed and has recorded that he has no objection to the sale. Given that he appears now in the guise of a willing seller we cannot pursue this issue any further.

Conclusion

9. There is nothing that would alter our conclusion above; hence the transaction is unconditionally approved.

N. Manoim

20 March 2006
DATE

Concurring: **Y. Carrim, M. Mokuena**

⁷ Magic Merkel has 16% of the luxury market whilst Imperial enjoys 36% of the market. The remainder is owned by remaining luxury vehicle markets, being BMW, etc.

⁸ The Commission based its share figures on the units sold by the merged parties per category of passenger and light commercial vehicles in Limpopo for the period 2004. See tables 3 and 4, pages 6-7 of the Commission's Report.

⁹ **See Magic Merkel's complaint to the Commission, pages 382-455 of the merger record.** However at the time of the merger he filed, most unusually, a letter from his attorneys in which they recorded that he was entering into the sale for commercial reasons.

For the Merging Parties: Ms. Safeera Mayet (*Tugendhaft Wapnick Banchetti and Partners*)
For the Commission: Ms. Lindiwe Khumalo (*Mergers & Acquisitions*)