

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 47/LM/Apr08

In the matter between:

Volkswagen Aktiengesellschaft Acquiring firm

And

Scania Aktiebolag Target firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member).

Heard on : 26 June 2008

Decided on : 26 June 2008

Reasons Issued : 22 July 2008

Reasons

Approval

[1] On 26 June 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Volkswagen Aktiengesellschaft and Scania Aktiebolag unconditionally. The reasons appear below.

Parties

[2] The primary target firm is Volkswagen Aktiengesellschaft (“Volkswagen”) a public company incorporated under German law, having its principal business address in Wolfsburg, Germany. Volkswagen operates in South Africa through its wholly owned subsidiary, Volkswagen South Africa (Pty) Ltd (Volkswagen SA”).

[3] The primary target firm is Scania Aktiebolag (“Scania”), public stock company listed on the Stockholm Stock Exchange and has its principal place of business in Södertälje, Sweden. Scania operates in South Africa through its wholly owned subsidiary, Scania South Africa (Pty) Ltd (Scania SA”).

Transaction

[4] This is an international transaction in terms of which Volkswagen intends to increase its capital interest in Scania from 20.89% to 37.73% and its voting rights in Scania from 37.98% to 68.06%.

Rationale of transaction

[5] The parties have submitted that the transaction aims at safeguarding the strategic interest of the Volkswagen Group in the commercial vehicles business and at finding a friendly and mutually acceptable solution to the high synergies that exist between the two groups.

Parties Activities

[6] Volkswagen's main area of activity is the development, manufacture, marketing and financing of passenger cars and light commercial vehicles, including spare parts and accessories. The company also retails and distributes vehicles. The Volkswagen Group includes the vehicle brands such as Volkswagen, Audi, Seat, Skoda, Bentley, Lamborghini and Bugatti which are sold via imports and dealers in one hundred and fifty four countries. It also has some diesel engine activities.¹ Volkswagen's South African subsidiary conducts business as a manufacturer, importer and exporter of motor vehicles and components and also offers financing.²

[7] Scania develops, manufactures, and sells trucks with a gross vehicle weight of more than sixteen tones intended for long-distance haulage, regional and local distribution of goods as well as construction haulage. Scania also manufactures and sells buses and chassis for buses and industrial and marine diesel engines. Scania is mainly active in Europe.³

The Relevant Market

[8] It is clear from above that the proposed transaction results in a horizontal overlap in the activities of the merging parties in the supply of heavy trucks; the supply of bus chassis and the manufacture of diesel engines markets. The Commission defines the geographic market as national for all three product markets because the merging parties make use of dealerships that are located throughout the country for the sale of their products.

¹ In addition, Volkswagen holds a minority shareholding in MAN, a German producer of medium-sized and heavy trucks, buses, and engines.

² In South Africa Volkswagen supplies the following products: Passenger Vehicles; Light Commercial Vehicles ("LCH"); Trucks; Buses and Diesel Engines

³ The products supplied by Scania into South Africa include Trucks; Buses and Diesel Engines.

Supply of Bus Chassis

[9] In the market for the supply of bus chassis in South Africa the Commission found that the merged entity is estimated to have a post-merger market share of 23% with Scania having a 21% market share and Volkswagen a 2% market share. According to the Commission the change in concentration levels is approximately 84 points, which shows that the market is less concentrated and not prone to unilateral conduct.

Table 1 Estimated market shares in the market for the Supply of Bus Chassis- 2007⁴

Manufacturer	Total Sales	Market Share
MAN	544	43%
MERCEDES BENZ SA	301	24%
SCANIA	272	21%
VOLVO	41	3%
DAF TRUCKS	38	3%
VOLKSWAGEN	31	2%
BMC	27	2%
IVECO	11	1%
NISSAN DIESEL	10	1%
TOTAL	1257	100.0%

Source: NAAMSA

[10] As can be seen above the leading suppliers in South Africa are MAN, Mercedes Benz and Scania, with estimated market shares of 43%, 24% and 21% respectively. Volkswagen is estimated to have 2% market share. We therefore agree with the Commission that in this market as well, the proposed transaction is unlikely to raise any serious competition concerns as the market share increments are insignificant.

[11] The Commission further investigated the likelihood of coordination that could be facilitated by the proposed merger given the shareholding in Scania by Volkswagen and

⁴ According to the Commission, this table shows market shares of the merging parties and their competitors in the market for the supply of bus chassis in South Africa in 2007. The Commission used a proxy for the number of bus chassis sold, the total number of CBU buses sold in South Africa for 2007. As the final product used by the end user is that of a CBU bus, these, when registered, capture the name of the chassis manufacturer even if the body itself was not manufactured by that particular OEM.

MAN. The Commission found that the voting rights of shares of MAN remain unchanged post merger. The also found no evidence of history of collusion in the motor vehicle market particularly in the European Union and South Africa involving Scania, MAN and Volkswagen.⁵ Furthermore the Commission's investigation revealed that there are numerous competitors in the relevant market that would make successful co-ordination in the relevant markets unlikely.

Diesel engines

[12] With regards to diesel engines the Commission found that there is overlap in respect of industrial engines and marine engines. However, the Commission found that the merging parties' engines were not considered as substitutes due to the fact that VW's engines were significantly less powerful than those produced by Scania and they could not be used interchangeably for the respective intended uses.

Supply of heavy trucks

[13] The Commission submitted that this Tribunal has previously found that the market for commercial vehicles can be subdivided into light, medium, heavy vehicles, and buses and coaches greater than ten tonnes.⁶ Using this approach the Commission analysed the broad product market that includes both the supply of heavy commercial vehicles ("HCV") and extra heavy commercial vehicles ("EHCV"). The Commission concluded that the narrowest possible product market is that of extra heavy commercial vehicles (greater than 16 tons), given that Scania only supplies trucks that have a gross vehicle weight in excess of 16 tons and that Volkswagen SA supplies trucks that are classified as heavy commercial vehicles and extra heavy commercial vehicles.

[14] The Commission calculated market shares in line with the relevant product markets it identified above. The following tables contain market share data of each market participant in the respective markets.

Table 1⁷

Estimated market shares in the market of Heavy Commercial Vehicles and Extra Heavy Commercial Vehicles in South Africa (April 2007-March 2008).

⁵ During the Commission's investigations the parties also submitted that no cross directorships exist at the respective boards of Volkswagen SA, Scania SA, and MAN in South Africa.

⁶ See our decisions in the *Daimler Chrysler SA (Pty) Ltd and Sandown Motors Holdings (Pty) Ltd: Tribunal Case No. 44/LM/Jul01*. Also refer to Tribunal Case No: 65/LM/Aug06: *Sandown Motor Holdings (Pty) Ltd and Paarl Motors (Pty) Ltd*.

⁷ According to the Commission Table1 shows market shares of the merging parties and their competitors for the sale of HCV and XHCV in South Africa for the period April 2007 to March 2008.

Manufacturer	EHCV	Market Shares (%)	HCV	Market Shares (%)	Combined	Market Shares (%)
MERCEDES-BENZ SA	4408	33%	1291	17%	5699	27%
NISSAN DIESEL	1806	13%	1619	21%	3425	16%
TOYOTA	605	4%	1907	25%	2512	12%
MAN	1877	14%	178	2%	2055	10%
TATA	497	4%	1227	16%	1724	8%
GMSA	393	3%	1289	17%	1682	8%
VOLVO	1119	8%	0	0%	1119	5%
INTERNATIONAL TRUCKS SA	1043	8%	0	0%	1043	5%
SCANIA	667	5%	0	0%	667	3%
IVECO	347	3%	76	1%	423	2%
SUPER GROUP	419	3%	76	1%	421	2%
DAF TRUCKS	163	1%	0	0%	163	1%
VOLKSWAGEN	74	1%	45	1%	119	1%
RENAULT TRUCKS	89	1%	2	<1%	91	0%
BMC	2	0%	0	0%	2	0%
TOTAL	13509	100%	7636	100%	21145	100%

Source: NAAMSA

[15] As can be seen above the merging entity is estimated to have a post merger market share of approximately 6% and 4% in the XHCV and HCV markets respectively. According to the Commission in the broad market encompassing both XHCV and HCV, the merged entity will have a combined market share of approximately 4% in South Africa. The Commission concludes that the proposed transaction is unlikely to result in substantial prevention or lessening of competition in either the market for XHCV or combined market of

HCV and XHCV, as the parties are estimated to have a low post merger combined market share in the affected markets.⁸

Public Interests Issues

[16] There are no public interest issues.

Conclusion

[17] Based on the above the transaction will not result in a substantial lessening or prevention of competition and is accordingly approved unconditionally.

Y Carrim
Tribunal Member

22 July 2008
Date

D Lewis and N Manoim concurring

Tribunal Researcher : J Ngobeni
For the merging parties : Bowman Gilfillan Inc
For the Commission : Marlon Dasarath (Mergers and Acquisitions)

⁸ In addition the Commission found that there are other major players in this market such as Mercedes Benz, Nissan Diesel, Toyota and MAN, having an estimated 27%; 16%; 12% and 10% market shares respectively.