

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 64/LM/Jul05

In The Large Merger Between:

Combined Motor Holdings Limited

Acquiring Firm

And

Forza (Pty) Ltd

Target Firm

Reasons for Decision

APPROVAL

1. On 30 August 2005 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Combined Motor Holdings Ltd and Forza (Pty) Ltd. The reasons for the approval of the merger appear below.

THE TRANSACTION

2. The parties to this merger are Combined Motor Holdings Ltd ("CMH") and Forza (Pty) Ltd ("Forza"). No other firm directly or indirectly controls CMH.¹ Forza is a wholly owned subsidiary of Forza Group Ltd, which in turn is not controlled by any other firm.² Both companies operate motor vehicle dealerships. The activities of each of these firms are discussed below.
3. Forza and CMH entered into a sale agreement in terms of which CMH acquired the shares and business of Forza, these being:

- a BMW franchise motor vehicle dealership trading as Lyndhurst Auto at the corner of Melrose Arch and Corlett Drive, Johannesburg,
- a motor vehicle panel and repair shop owned by Forza's wholly owned subsidiary, Lyndhurst Autobody (Pty) Ltd, operating in Wynberg,
- two used motor vehicle dealerships trading under the name Investment Cars, one in Bryanston and the other in Pretoria,
- a Lamborghini franchise motor vehicle dealership in Johannesburg,
- a Peugeot franchise motor vehicle dealership in Johannesburg,

¹ CMH's thirteen (13) subsidiaries are Bonerts (Pty) Ltd, CMH Car Hire (Pty) Ltd, CMH Luxury Motors (Pty) Ltd, Datcentre Motors (Pty) Ltd, Kempster Sedgwick (Pty) Ltd, Pipemakers (Pty) Ltd, Power Financial Services (KZN) (Pty) Ltd, Ute Developments (Pty) Ltd, and Whitehouse Motors (Pty) Ltd (all of these being active), and Combined Motor Finance (Pty) Ltd, Comcar Motors (Pty) Ltd, Swedish Car Distributors (Pty) Ltd and the Extra Mile Service and Fitment Centres (Pty) Ltd (which are all dormant).

² Forza's active subsidiaries are Investment Cars (Cape) (Pty) Ltd, Forza Marine (Pty) Ltd, Lyndhurst Autobody (Pty) Ltd and Forzaprop (Pty) Ltd whilst its dormant subsidiaries are Inv Cars Drivers Club (Pty) Ltd, Waterworld (Pty) Ltd and Black Ginger 67 (Pty) Ltd.

- ✍ ✍ Forza's 70% shareholding and claims on loan account in Forza Marine (Pty) Ltd, and
- ✍ ✍ Forza's 65% shareholding and claims on loan account in Investment Cars (Cape) (Pty) Ltd.³

RATIONALE FOR THE TRANSACTION

4. The stated commercial rationale for the proposed transaction is that CMH wishes to expand its range of products and representation within the car dealership groups as well as entering the market for marine products. Forza is unable to get funding for growth without providing the banks with personal sureties by the shareholders as it lacks the cash and capital to grow the business. Forza further submitted that the proposed merger would be beneficial to Forza's staff as it would enhance career and promotional opportunities which are limited in Forza because it has few dealerships.⁴

The merging parties' activities

5. CMH is a holding company which controls various subsidiaries that operate in the motor vehicle retail market. These subsidiaries operate motor vehicle dealerships nationwide which sell the following brands of motor vehicles: Alfa Romeo, BMW, Chevrolet, Fiat, Ford, Honda, Isuzu, Jaguar, Land Rover, Lexus, Mazda, Mini, Nissan, Peugeot, Opel, Toyota and Volvo.⁵
6. The motor vehicles sold by CMH's dealerships are primarily new and used passenger and light commercial vehicles although 1 outlet sells new medium and heavy commercial vehicles.⁶
7. CMH also operates in the motor vehicle rental industry⁷ and in financial services. It facilitates the granting of loans to finance the purchase of the motor vehicles, the granting of vehicle insurance and vehicle maintenance plans.
8. CMH is also involved in panel shop services approved by BMW to repair accident damage to BMW and Mini motor vehicles. However, it also provides panel repair services to all brands of motor vehicles.⁸
9. The motor vehicle dealerships, which CMH wishes to acquire from Forza, only trade in passenger and light commercial vehicles. These dealerships comprise 1 of each of BMW, Lamborghini and Peugeot dealerships and 4 dealerships for used cars. The parties therefore defined the market as the "motor retail market", but limited to the retail market for passenger and light commercial vehicles only. The Commission and the parties contend that to the extent that financial services are related to the motor vehicle retail and rental industries therefore CMH can be said to be involved in the rental and financial services industry.

³ See the parties' merger transaction description, pages 30-31 and 245-246 of the record.

⁴ Page 305-306 of the record.

⁵ See page 46 of the record.

⁶ According to the Commission, these activities are undertaken by CMH through its 4 subsidiaries, viz.: CMH Luxury Motors, Datcentre Motors, Kempster Sedgwick and Whitehouse Motors.

⁷ That is through CMH's subsidiary CMH Car Hire (Pty) Ltd trading as "National / Alamo Car Rental".

⁸ Page 47 of the record.

10. Forza carries on its motor vehicle dealerships business of selling passenger and light commercial vehicles in Lyndhurst, Bryanston and Pretoria. It runs 1 panel shop for damaged vehicles in Wynberg, Johannesburg. Like CMH, Forza too provides financial services to its customers who buy or lease cars. Through its subsidiary, Forza Marine (Pty) Ltd (in North Riding), Forza operates in the motorboat and marine products wholesale and retail markets. It sells and distributes motorboats, other marine accessories and products, jet ski's, motorised quad bikes and engines, both to the wholesale market for on-sale and in the retail market. As part of its motorboat and marine products business, Forza operates workshops which render after-sales services to customers. CMH is also involved in panel shop services approved by BMW to repair accident damage to BMW and Mini motor vehicles. However, it also provides panel repair services to all brands of motor vehicles.⁹

COMPETITION ANALYSIS

Relevant Market

Product market

11. The merging parties are involved in the following product markets:

- A. Sale of passenger and light commercial vehicles;
- B. Motor vehicle panel and repair shop;
- C. Motor vehicle rental;
- D. Motor boat and related marine products wholesale and retail; and
- E. Financial services, only to a certain extent.

12. CMH does not operate at all in the retail or wholesale markets for the sale or distribution of motorboats and marine products. Forza does not operate at all in the motor vehicle rental market. Hence these 2 markets do not give a cause for concern as only CMH operates in the (C) market whilst only Forza operates in the (D) market. As a result, the Commission only analysed the (A), (B) and (E) markets.

The market for the sale of passenger and light commercial vehicles

13. The merging parties are involved in the retail sale of new and used motor vehicles through dealerships. The retail market is characterised 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 and sell a number of different manufacturer's products. These dealerships can either be exclusive or multi-franchise dealerships. According to the Commission both parties run exclusive dealerships.
14. According to the Commission, CMH operates 46 dealerships: around Johannesburg (7); East Rand (3); Pretoria (11); Cape Town (8); Durban (16); and Pietermaritzburg (2).¹⁰ On the other hand, Forza operates 6 dealerships – that is, 1 in Cape Town; 4 in

⁹ Page 47 of the record.

¹⁰ Pages 312-314 of the record.

Johannesburg; and 1 in Pretoria.¹¹ According to the Commission, the only overlaps exist in Johannesburg and Pretoria. As a result, the Commission did not need to reach a definitive conclusion on the relevant geographic market, but limited its investigation to the region of Gauteng.

15. CMH sells both medium and heavy commercial vehicles. The overlap between the merging parties is in the sale of new and used passenger vehicles and light commercial vehicles. We have previously defined motor vehicle markets based on different segments.¹² We follow this approach here. According to the Commission the merged entity's combined post-merger market shares per segment is as follows: 4.4% (small cars); 6.9% (middle cars); 11.1% (luxury cars); 3% (speciality cars); and 4.6% (utility cars). This appears to be based on the units sold by the parties per category of passenger and light commercial vehicles in Gauteng for the period 2004.¹³

Effect on competition

16. The merged entity's post-merger market shares in the sale of passenger and light commercial vehicles will remain low. Although both merging parties operate BMW and Peugeot dealerships in Gauteng, intra brand competition in respect of these marques is unlikely to be diminished, as rival dealerships remain in the region. Furthermore the evidence currently before us suggests that there is sufficient inter-brand competition in Gauteng in these market segments. The merger therefore does not give rise to any concerns in the markets for the sale of passenger and light commercial vehicles.

Motor vehicle panel and repair shop market

17. Both merging firms own panel repair shops. CMH's panel shop operates in Umhlanga, KwaZulu-Natal whilst Forza's operates in Johannesburg, Gauteng. Although the merging parties' panel shops provide exactly the same services, the geographic distance between these two panel shops is sufficiently large for them not to be considered substitutes for consumers who need panel repair services. In our view, this market too does not give a cause for concern.

Financial services market

18. As alluded to above, the merging parties provide financial services (limited only to vehicle finance and insurance) to their customers who either buy or lease cars. We were, however, advised that the parties do not offer financial services individually and as such act as intermediaries thereof.¹⁴ We need not consider this market any further.

¹¹ Pages 310 and 315 of the record.

¹² We have held that the passenger vehicle submarkets may include entry level cars; small cars; lower middle cars; upper middle cars; large cars; lower luxury cars; upper luxury cars; lower speciality cars; upper speciality cars; small utility; lower middle utility; upper middle utility; small minivans; and minivans. The market for commercial vehicles can be sub-divided into: light; medium; heavy commercial vehicles; as well as buses and coaches over ten tons. See also pages 10-12 of Tribunal Case *DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd* Case No.: 44/LM/Jul01.

¹³ See tables 1 and 2, page 9 of the Commission's Merger Competitiveness Report.

¹⁴ When buying or leasing, these customers have 3 options. That is (1) buying on cash with no interaction with banks; (2) using pre-arranged finance facilities where the merged entity prepare instalment sale agreement and is paid directly by the customer's bank – resulting in the customers

Public Interest

19. No substantial public interest issues were at stake here. In addition, the parties do not anticipate any job losses.

Conclusion

20. The Tribunal is satisfied that it is unlikely that the merger will lead to lessening or prevention of competition in the relevant markets. The proposed transaction is therefore unconditionally approved.

N. Manoim

02 September 2005

Concurring: **D. Lewis, Y. Carrim**

For the merging parties: Jebb McIntosh (MD: CMH) and Alan Schlesinger (Director: Forza)

For the Commission: Lindiwe Khumalo (Mergers and Acquisitions).

paying the bank in instalments; or (3) requesting CMH or Forza to arrange finance whereby credit is sought from all the major asset finance banks. The latter results in the bank paying CMH or Forza directly whilst the customer pays back the bank.