COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 72/LM/Jul08

In the matter between:

Porsche Automobil Holding SE Acquiring Firm

And

Volkswagen AG Target Firm

Panel	:	N Manoim (Presiding Member), Y Carrim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	19 August 2008
Order Issued	:	19 August 2008
Reasons Issued:		10 September 2008

Reasons for Decision

Approval

[1] On 19 August 2008, the Tribunal unconditionally approved the merger between Porsche Automobil Holding SE and Volkswagen AG. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is Porsche Automobil Holding SE, a German-based European Corporation ("Porsche SE"). Porsche SE is jointly controlled by the Porsche and Peich families. In turn, Porsche SE holds 100% of Dr. Ing. h. c. f. Porsche AG ("Porsche AG"). Porsche SE has no subsidiaries in South Africa but its products are distributed in the country by an independent exclusive distributor, LSM Porsche (Pty) Ltd ("LSM").

[3] The primary target firm is Volkswagen AG, a German Stock Corporation ("VW"). VW is not controlled by any firm, as it is currently trading as a German Stock Company. VW's shareholders are Porsche SE (with a 30.6% shareholding), Federal State of Lower Saxony (with a 20.1% shareholding), UBS (with a 2.7% shareholding), DWS (with a 3.9% shareholding), and Free Float (having 43.7% shareholding). VW has a large number of subsidiaries

worldwide.[1] In addition, VW has recently acquired Scania Aktiebolang ("Scania").[2]

[4] In South Africa, VW's operating subsidiary is Volkswagen South Africa (Pty) Ltd ("VWSA").

Description of the transaction

[5] In terms of this transaction, Porsche SE intends to acquire additional shares in VW and thus increase its shareholding from 30.6% to over 50%.[3] At the conclusion of the transaction, VW will be solely controlled by Porsche SE, which is in jointly controlled by Porsche and the Peich families.

Rationale for the transaction

[6] The primary acquiring firm submitted a number of reasons as the rationale for the transaction, including the following:

[6.1] Porsche SE intends to broaden its existing relationship with VW and further ensure continued cooperation with VW;[4]

[6.2] Porsche intends to protect itself against the risk of a hostile takeover of VW, which would negatively affect Porsche. This is important as the "Volkswagen Law" which used to protect VW from being controlled by any one firm has been recently revoked by the European Court of Justice, leaving VW vulnerable to a takeover.

[7] VW has not provided a rationale for the transaction as the shares are being bought on the open market

The parties' activities

<u>Porsche SE</u>

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[1] Refer to Appendix 1 for a complete list of these subsidiaries.

[2] See Competition Tribunal Case No. 47/LM/Apr08.

[3] Porsche will acquire the additional shares through either off-market acquisition of blocks of shares; and or stock market acquisitions.

[4] The parties have a history of cooperation with regards to SUVs, research and development of automobile assemblies as well as purchasing of car parts, development of a hybrid engine, joint electronics platform and pointed bodyshell for the new four-door Gran Tourismo Panamera. See record page 585.

[8] Porsche SE is an international manufacturer and distributor of motor vehicles, specialising in sports cars and SUVs. In South Africa, Porsche SE sells sports cars (Boxster, Cayman and 911 models) and SUVs (Cayenne) through LSM.

VW

[9] VW is active in the development, manufacture, marketing and financing of passenger and commercial vehicles. It is a leading German and international motor vehicle manufacturer and distributor operating in various sectors of automotive industry.

[10] The VW group also includes vehicle brands such as VW, Audi, Seat, Skoda, Bentley, Lamborghini and Bugatti, which are primarily sold via dealers in 154 countries throughout the world.

VWSA

[11] VW's business in South Africa involves the supply of passenger vehicles, light commercial vehicles, heavy trucks, bus chassis (under the brand name Volksbus) and diesel engines.

Scania

[12] VW has recently acquired Scania, which is active in South Africa through its wholly owned subsidiary Scania South Africa (Pty) Ltd ("Scania SA"). Scania SA is active in the supply of trucks, buses and diesel engines in South Africa.

Overlapping activities

[13] There is an overlap in respect of the merging parties' activities in the supply of motor vehicles, which are sold through a network of independent dealerships. In South Africa, Porsche SE sells sports cars and SUVs through an exclusive distributor, LSM. Its sports range of cars includes Boxtser, Cayman and 911 models while its SUVs include the Porsche Cayenne. VWSA sells, inter alia, sports cars and SUVs. In the sports vehicle market, Volkwagen offers the new Beetle Cabrio, Eros, Audi 4 and Audi TT (also referred to as VW's "less prestigious luxury sports cars"), and the Lamborghini, Gallardo and Murchielalo,

Bugatti Veyron and Bentley Continental GT (also referred to as VW's "more prestigious offerings").

Relevant markets

[14] The merging parties identified two relevant product markets namely, the market for the sale of sports cars, and the market for the sale of SUVs. The Commission, on the other hand, opted for a narrower market definition and highlighted that the Tribunal has previously held[5] that different segments of the retail motor vehicle sector constitute distinct relevant product markets. The Commission, as a result, averred that there are three relevant markets in this transaction, namely, the market for the supply of large SUVs; the market for the supply of standard sports cars and exotics; and the market for the supply of premium sports cars and exotics. We will analyse this transaction using the Commission's classification.

[15] The parties submitted that the geographic market is national. The Commission refrained from making a definitive finding but in all respects argued for a national market though it analysed the transaction on a national basis and on a regional basis. It stated that competition in the supply of both large SUVs and sports cars occurs at the level of assembly and supply to the customers. The merging parties' customers in South Africa are independent and exclusive dealerships located throughout the country and compete with each other for sales to the final customer. The Commission further highlighted that VWSA has a central assembly plant in Uitenhage where its motor vehicles are assembled. Dealers place orders on a central system based on consumer purchases, from which they are then supplied the specified vehicles from central assembly plant. On the other hand, Porsche SE is not present in South Africa, and its sales are through LSM, its sole independent exclusive distributor, which imports from Porsche SE directly for sale in South Africa to the final consumer.

Competition analysis

[16] This is an international merger which was notified in various jurisdictions. While Porsche SE does not have operations in South Africa, its products are distributed by an exclusive and independent distributor, LSM. The Commission

[5] See *Daimler Chrysler South Africa (Pty) Ltd/Sandown Motor Holdings (Pty) Ltd* Case No. 44/LM/Jul01.

furnished the Tribunal with both national and regional market shares for the market players in the product markets it identified. However, in these reasons we will use the national market shares as they are more or less similar to the regional market shares and there are no major differences for all product markets identified.

Market for large SUVs

[17] The leading players in this market segment in 2007 were Toyota with 38% of the market, Mercedes-Benz with 20% market share, TATA (Jaguar Land Rover) with 15% market share and the BMW Group with 9% market share. Volkwagen had an estimated market share of approximately 6% while Porsche SE had an estimated market share of 1%.

[18] This merger is unlikely to prevent or lessen competition in the market for the supply of large SUVs will have a low post merger market share of 7% and will continue to face competition from Toyota, Mercedes-Benz, TATA, Land Rover and the BMW Group.

Market for the supply of standard sports cars and exotics

[19] The market shares for the supply of standard sports cars in 2007 show that VW was leading with a 34% market share; followed by Mercedes-Benz (with a 31.2% market share), BMW Group (with a 12%), FMC (with a 7.3%), Porsche (with a 6.8%), and Nissan (with a 4% market share), among others. As a result, the merged entity will have a post merger market share of 40.8%. and will continue to face competition from Mercedes-Benz, BMW Group, and FMC, among others.

[20] Though the post merger market shares are high, we approved the merger unconditionally as the parties and the Commission submitted that market shares in this market are highly volatile and that when a new vehicle model enters the market, the market share attributable to the manufacturer of that new model increases drastically and will typically decrease at the end of the product cycle.[6] For instance, VW's market shares rose from 3.5% in 2006 to 34% in

[6] See record page 591.

2007 due to the introduction of the Audi TT. In the comparative period, Mercedes-Benz's market share fell from 57.8% in 2006 to 31.2% in 2007.

Market for the supply of premium sports cars

[21] In 2007, Mercedes-Benz had a market share of 40.9%, BMW had 18.6%, Porsche had 17.9%, Jaguar had 14.5%, VW had 3.9%, Ferrari had 2.6% and Maserati had 1.7% in the market for the supply of premium sports cars. The post merger market shares of the merged entity will be 21.8%.

[22] In its investigations, the Commission found that Mercedes-Benz, BMW, Ferrari and Maserati were identified as primary competition to the more premium Porsche models and Lambourghini models.[7] Based on the Commission's findings and the market shares of other market players, we conclude that the transaction is unlikely to result in substantial prevention or lessening of competition as the merged entity will continue to face competition from Mercedes-Benz, BMW, and Jaguar, among others.

Public Interest

[23] There are no public interest issues.

Conclusion

[24] The merger is approved unconditionally.

_________________ **10 September 2008**

Y Carrim **DATE**

Tribunal Member

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

Tribunal Researcher : R Kariga

For the merging parties: Bowman Gilfillan Attorneys.

For the Commission : M Dasarath (Mergers and Acquisitions)

[7] See Commission's recommendations page 17.