COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 95/LM/Nov06

In the matter between:

SUPER GROUP DEALERSHIPS Acquiring Firm

and

VAN WYK AND WOLPE (PTY) LTD Target Firm

Panel	:	D Lewis (Presiding Member), N Manoim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	20 December 2006
Order issued on	:	20 December 2006
Reasons issued on	:	10 January 2007

REASONS FOR APPROVAL

Approval

[1] On 20 December 2006, the Competition Tribunal unconditionally approved the proposed merger between Super Group Dealerships ("SGD") and Van Wyk and Wolpe (Pty) Ltd ("Van Wyk & Wolpe").

The parties and the merger transaction

[2] SGD, a wholly owned division of Super Group Trading (Pty) Ltd ("SGT"), which in turn is a wholly owned subsidiary of Super Group Ltd ("SGL") acquired the business of Van Wyk & Wolpe trading as Leon's Rustenburg. Post-

acquisition, SGT will acquire sole ownership and control of Leon's Rustenburg.1

Rationale for the transaction

[3] For a number of years ago, Super Group identified the Rustenburg area as having significant potential for sustainable growth going forward mainly due to its developing mining, agricultural and tourism sectors hence the present deal. The current owners of Van Wyk & Wolpe would like to exit their investments in Leon's Rustenburg in terms of their retirement strategy.

The relevant market

[4] SGL is an integrated supply chain management business operating in both South Africa and abroad. Its primary operating activities comprise supply chain management, fleet solutions, retail supply chain, African operations, motor dealerships and certain in-house treasury and insurance services. These businesses form two core operating divisions, viz., supply chain and automotive, and are supported by the services division. The Supply Chain division, contributing in excess of 78% of the Super Group's operating income, is the largest division. As can be seen from our discussion below, the target firm is involved in the motor dealership business hence our analysis will be focused on the motor dealerships businesses of the merging parties.2

[5] SGD business comprises 20 franchised commercial and passenger vehicle dealerships. It represents the major brands in South Africa including Toyota, Lexus, Volkswagen Commercial, Nissan, Ford, Honda, Mazda, Mahindra, Land Rover, Volvo, Mercedes-Benz, Chrysler Jeep, Dodge, Opel, Isuzu, Isuzu diesel Chevrolet, Renault and Nissan Diesel. SGD's four motorcycle dealerships comprise of the leading brands including Suzuki and Honda. In essence, SGD is engaged in a number of activities pertaining to the vehicle brands mentioned above. These include sales of new and used vehicles, the provision of service, the sale of parts and accessories and the provision of ancillary financial services.

[6] Leon's Rustenburg provides the services similar to SGD, but limited to four brands of motor vehicles, viz., Ford, Mazda, Land Rover, and Volvo.

[7] As is clear from the above there is an overlap in the services provided by

1 See page 148 of the merger record. SGT is one of the subsidiaries of Super Group Ltd ("SGL"), a public company listed in the "Transport" sector of the JSE. No single shareholder controls SGL. SGL's major shareholders include the PIC (17,45%); Old Mutual plc (10,88%); Peu Group (Pty) Ltd (a BEE Entity) (9,95%); SGT (9,55%); and Liberty Group Ltd (5,06%). Pre-acquisition, Mr At Van Wyk and Mr Leon Wolpe jointly controlled Leon's Rustenburg.

2 For more information, please visit SGD's website: www.supergroupdealerships.co.za. .

the merging parties.

What is the geographic market?

[8] As already explained above, the SGD business comprises 20 franchised commercial and passenger vehicle dealerships which represents the major brands in South Africa. Of relevance to this transaction is that SGD owns and operates three motor vehicles branches in the North West province, viz., Northwest Auto in Krugersdorp, Honda Auto Noordwes in Potchefstroom and Lionel Motors Rustenburg in Rustenburg.3 Leon's Rustenburg sells new and used motor vehicles in respect of 4 brands mentioned above and also provides ancillary products and services from its only premises situated in Rustenburg, also in the North West province.

[9] The merging parties argued that the market is national.4 They nevertheless took what they considered to be a conservative approach to this case and defined the market as regional and used the North West province as the regional market.5 The merging parties' argument that the geographic market is either national or provincial in nature is - especially in this case – artificial. It is

3 See page 32 (i.e., Schedule 3: CC4(2) – Addendum B) of the merger record

4 They argued that a customer would typically first look for the vehicle model s/he wants at the dealerships in the city or town that s/he resides in, but if s/he cannot find what s/he wants at the right price, s/he would shop further afield to the nearest city or town and, failing that, throughout South Africa. They further submitted that there are a number of dealerships with branches throughout the country (for example, CMH, Imperial and Barloworld Motor) and that it is customary for them to sell across their various branches, i.e., if the required model is not available at one branch, it is procured from a different branch. They added that dealerships also market their vehicles over the Internet and that these sales take place on a national basis. *See pages 153-154 of the merger record*.

5 The merging parties submitted that customers of the merging parties would shop at least throughout the North West province if they wish to acquire a particular model of car. *See page 154, paragraph 1.5.4, of the merger record*.

unlikely that the average consumer of this type of vehicle would look to dealers nationally to source a vehicle. Nor is this consistent with the acquiring firm's own approach which is to identify Rustenburg as a niche area for a business opportunity.6 A provincial boundary to an antitrust market is even more arbitrary, particularly in the case of North West, whose provincial boundaries are far from the location of the merged firm. Indeed the merged firm's clients are more likely to look to Gauteng dealers as alternatives, than dealers at the far corners of the province. It is more probable that the geographic market is a greater Rustenberg market. We do not need to delineate the boundaries of this market rigidly as the merger does not give rise to a significant concentration.

[10] Usefully the merging parties provided us with market share figures for a geographic area which would probably approximate the greater Rustenburg area. Below is a table which depicts both Super Group and Leon's Rustenburg's pre and post-merger market share estimates for the licensing districts of Rustenburg, Brits, Koster and Swartruggens.7

VEHICLE TYPE	SUPER GROUP %	VAN WYK & WOLPE %	MERGED ENTITY'S COMBINED MARKET SHARE %
Light Commercial	11,49	13,89	25,38
Medium commercial	10,93	5,67	16,60
Small passenger	5,25	5,95	11,21
Middle passenger	8,04	11,80	19,84
Large passenger	NIL	8,77	8,77
Luxury/sports and exotics passenger	NIL	4,35	4,35
Speciality/recreational	10,65	7,69	18,34

6 This is evidenced by both the stated rationale for the transaction and internal documents from Super Group which we have had access to.

7 See page 230 of the merger record.

passenger			
Minivans/panel vans	13,58	NIL	13,58
Heavy Commercial; Extra Heavy Commercial; Busses; and Mini Busses	NIL	NIL	NIL

[11] Although the concentration in respect of some of the categories such as light motor vehicles is on the high side entry into these markets is low and it is not necessary for us to interrogate the geographic extent of the market with any greater precision.

[12] The merging parties indicated that there are other significant dealers in the greater Rustenburg area who compete with the merging parties. According to the merging parties, it is also evident that new motor manufacturers are penetrating the motor vehicle retail market with competitively priced models such as Kia, SEAT, Proton, Tata, Chana and other Asian imports.8 We are of the view that even when the geographic market is defined as the greater Rustenburg area, the proposed transaction is unlikely to give rise to anticompetitive concerns.

Public Interest

[13] There will be no adverse public interest issues arising from the proposed acquisition.9

8 See page 158, paragraph 6.6, of the merger record.

9 In confirming this, the merging parties submitted as follows: *(1) we will acquire and recognise the employees' employment contracts with the previous ownership and will offer on the whole equivalent or not less favourable employee benefits / working conditions of service; as previously enjoyed under the old employer; (2) we will recognise the employee members' continuity of employment; and (3) we will refrain from dismissing the members for any reason related to the transfer of ownership."* See Super Group Dealerships' letter to MISA/SAMU and NUMSA respectively, that is, *pages 3, 5 and 20 of the merger record*.

Conclusion

[14] Given our findings above, we accordingly approve the proposed transaction unconditionally.

N Manoim
Tribunal Member

D Lewis and M Mokuena concurring.

Tribunal Researcher: T Masithulela

For the merging parties	:	P Coetser (Brink Cohen Le Roux)
For the Commission	:	M Ngobese assisted by H Ratshisusu
		(Mergers & Acquisitions)