

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 96/LM/Aug08

In the matter between:

Toyota Tsusho Corporation and

Toyota Tsusho Africa (Pty) Ltd

Acquiring firm

And

Subaru Southern Africa (Pty) Ltd

Target firm

Panel : D Lewis (Presiding Member); M Mokuena (Tribunal Member); N Manoim (Tribunal Member)

Heard on : 15 October 2008

Decided on : 15 October 2008

Reasons Issued : 30 October 2008

Reasons for Decision

Approval

[1] On 15 October 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Toyota Tsusho Corporation, Toyota Tsusho Africa (Pty) Ltd and Subaru Southern Africa (Pty) Ltd. The reasons appear below.

Parties

[2] The primary acquiring firms is Toyota Tsusho Corporation (“Toyota Tsusho Corporation”) and Toyota Tsusho Africa (Pty) Ltd (“Toyota Tsusho Africa”).¹ Toyota Tsusho Corporation is a public company incorporated in accordance with the laws of Japan and Toyota Tsusho Africa is a company incorporated in accordance with the laws of the Republic of South Africa.

[3] At the hearing Mr Hylton Bannon from Toyota Tsusho Africa submitted that Toyota South Africa is 100% owned by Toyota Motor Corporation. Toyota Motor Corporation only has 21% shareholding in the acquiring firm (Toyota Tsusho Africa). He also submitted that Toyota South Africa and Toyota Tsushi Africa operate independently from each other and that these companies are owned by two different parent companies in Japan. He further

¹ Toyota Tsusho Corporation major shareholders are Toyota Motor Corporation with 21.57%; Toyota Industries Corporation holds 11.12% and Japan Trustee Services Bank Ltd holds 5.58% shares. Toyota Tsusho Africa is a wholly owned subsidiary of Toyota Tsusho Corporation. Toyota Tsusho Corporation has a number of subsidiaries worldwide. In South Africa, it only controls Toyota Tsusho Africa. Toyota Tsusho Africa does not control any firm.

submitted that the acquiring firm's parent company in Japan is Toyota Tsusho Corporation and Toyota South Africa's parent company is Toyota Motor Corporation.²

[4] The primary target firm is Subaru Southern Africa (Pty) Ltd ("Subaru SA") a company incorporated in accordance with the laws of the Republic of South Africa. Subaru SA is a wholly owned subsidiary of Barloworld Motor (Pty) Ltd ("Barloworld Motor"). Barloworld Motors is controlled by Barloworld Ltd (Barloworld"), a public company listed on the JSE Securities Exchange in South Africa and has a secondary listing in London, Brussels and Namibia.³

Transaction

[5] In terms of the proposed transaction, Toyota Tsusho Corporation intends to acquire 30% of the ordinary shares in Subaru SA from Barloworld Motor, while Toyota Tsusho Africa will acquire 20% from Barloworld Motor. Post merger Subaru SA will be jointly controlled by Toyota Tsusho Corporation, Toyota Tsusho Africa and Barloworld Motors.

Rationale

[6] From the perspective of the acquiring firms, the transaction provides Toyota Tsusho Corporation with the opportunity to enter the local wholesale vehicle market in which it is currently not present.

[7] From Subaru SA's perspective, the partnership with Toyota Tsusho Corporation will provide the business with both the required capital and expertise in the form of intellectual capital, to more effectively deal with both the South African market as well as the Japanese Principal, to ensure long term sustainability.

Parties' Activities

[8] Toyota Tsusho Corporation has six business divisions namely: metals⁴, machinery and electronics⁵, automotive⁶, energy and chemicals⁷, produce and foodstuffs⁸, consumer products, services and materials.⁹

² See page 15 of the transcript.

³ Barloworld is not controlled by any single shareholder. The following are its major shareholders: Public Investment Corporation 15.65%; Sanlam 6.52% and Liberty Group 4.74%. Subaru SA does not control any firm.

⁴ Through its metals division Toyota Tsusho Corporation is involved in the production of ferrous and non-ferrous metal products.

⁵ In the machinery and related field Toyota Tsusho Corporation handles equipment for every industry, offering a comprehensive engineering service that covers planning to post operation follow-up. In the field of electronics Toyota Tsusho Corporation develops superior technologies and semiconductors, communications and data processing and processing technologies in addition to quality control and delivery management.

⁶ Its Automotive Division exports vehicles and parts produced in Japan by the Toyota Group to 120 countries. It also re-exports vehicles produced in overseas plants to third countries and conducts retail sales activities

[9] Toyota Tsusho Africa offers intermediary support function between Toyota Tsusho Corporation in Japan and Toyota Group companies. Toyota Tsusho Africa business service entails the supply of products used for the manufacture of various automotive components to original equipment manufacturers in South Africa which supply Toyota with motor vehicle components. Toyota Tsusho Africa trades through the following divisions: Automotive Division¹⁰; Metals Division¹¹; Machinery Division¹²; Wheel and Tyre Assembly¹³; Global Autoparts Division¹⁴ and Logistics Division.¹⁵

[10] Through an exclusive distributorship with Fijiu Heavy Industries Ltd (“FHI”), Subaru SA has the exclusive right to distribute and sell Subaru parts and motor vehicles in South Africa.

Competition Analysis

[11] There is no overlap in the activities of the merging firms as the primary acquiring firms are not active in the wholesale of new and used passenger vehicles in South Africa. Furthermore the primary acquiring firms are not active in the sale of Subaru parts. The Commission however found that there is a vertical relationship between the merging firms in that Toyota Tsusho Corporation acts as an intermediary between FHI and Subaru SA. FHI is a Japanese manufacturer of Subaru motor vehicles and Subaru SA is an exclusive supplier of Subaru motor vehicles in South Africa, and Toyota Tsusho Corporation acts as an intermediary between FHI and Subaru SA. The Commission’s assessment of the vertical relationship revealed that the proposed transaction will not result in input foreclosure, as

overseas. Toyota Tsusho Corporation offers sales, spare parts and services to car dealers in each country. In addition to coaching in sales and marketing, it provides a full range of support services.

⁷ Toyota Tsusho Corporation procures and supplies synthetic resins, chemical products and basic energy resources such as petroleum and coal from around the world to meet the specific needs of customers from both downstream and upstream industries.

⁸ This division handles a broad range of food products such as food ingredients and prepared frozen food, as well as products including livestock feeds, oils/fats, rice, wheat, raw sugar and products processed from such materials. Toyota Tsusho Corporation’s main strength is its grain processing facilities. Toyota Tsusho Corporation is also an importer of bean sprouts, sesame seeds and buckwheat.

⁹ Toyota Tsusho Corporation’s consumer products include textile materials/products, housing materials, condominium and emerging growth areas such as nursing care and insurance. In the textile field its activities cover development, sales and delivery of materials for car interiors, together with clothing.

¹⁰ This division is responsible for managing Toyota Tsusho’s distributor network in Africa. Toyota Tsusho uses South Africa as a hub for motor vehicles destined for Toyota dealerships situated in other African countries.

¹¹ Toyota Tsusho Africa’s metals division includes a scrap metal recycling plant, and the sourcing and supply of special coated steels for the production of Toyota motor vehicles.

¹² The machinery division is responsible for sourcing equipment and equipment spares for automotive manufacture.

¹³ This division assembles wheels and tyres for Toyota South Africa manufacturers.

¹⁴ This division is involved for the procurement of components for automotive vendors, as well as the procurement of chemicals and fabrics for the automotive and non automotive industry and for OEMs.

¹⁵ This division is involved in warehousing and storage in respect of an array of goods including automotive parts, chemicals and resins. It is also involved in clearing and forwarding operations which entail clearing the product through customs, transportation, packing and unpacking, shipping and delivery.

Toyota Tsusho Corporation does not act as an intermediary for any other Subaru motor vehicle dealership in South Africa. With regard to customer foreclosure, the Commission found that the proposed transaction would not give rise to any customer foreclosure as Subaru SA is only distributing Subaru motor vehicles in South Africa. Furthermore the Commission found that Subaru SA is a smaller player in the market for wholesale of passenger vehicles with only 0.5%. We agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen completion.

Conclusion

[12] There are no public interest issues. Accordingly the transaction is unconditionally approved.

N Manoim

Tribunal Member

30 October 2008

Date

M Mokuena and D Lewis concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Bowman Gilfillan Attorneys

For the Commission : Themba Mahlangu (Mergers and Acquisitions)