



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM056Jun24

Bidvest Automotive Holdings (Pty) Ltd

Primary Acquiring Firm

And

The SERCO Group

Primary Target Firm

Panel	:	Liberty Mncube (Presiding Member)
	:	Imraan Valodia (Tribunal Member)
	:	Geoff Budlender (Tribunal Member)
Heard on	:	03 September 2024
Order issued on	:	03 September 2024
Reasons Issued on	:	30 September 2024

REASONS FOR DECISION

- [1] On 03 September 2024, the Competition Tribunal unconditionally approved a large merger wherein Bidvest Automotive Holdings Proprietary Limited (“BidAuto”) intend to acquire the entire issued share capital of Serco Industries (Pty) Ltd (“Serco Industries”), Serco Solutions (Pty) Ltd (“Serco Solutions”), Serco Cape (Pty) Ltd (“Serco Cape”), Serco Eastern Cape (Pty) Ltd (“Serco EC”), Serco KZN CC (“Serco KZN”) (collectively, “the Serco Group”).
- [2] On completion of the proposed transaction, BidAuto will own and control the Serco Group.

The parties and their activities

Primary acquiring firm

- [3] The primary acquiring firm is BidAuto, a dormant private profit company duly incorporated in terms of the laws of the Republic of South Africa.
- [4] BidAuto does not directly or indirectly control any firm.
- [5] BidAuto is ultimately controlled by Bidvest Group Limited ("Bidvest"), a publicly traded firm that is listed on the Johannesburg Securities Exchange ("JSE"). Bidvest is not controlled by any firm.
- [6] All the firms controlled by Bidvest will collectively be referred to as "the Bidvest Group."
- [7] Bidvest is a conglomerate involved in the provision of products and services across various economic sectors such as logistics, aviation, financial, catering services, hospitality. Bidvest Group's chassis procurement services and its logistics business is of relevance to the proposed transaction.

Primary target firms

- [8] The primary target firms are:
 - 8.1. Serco Industries (Pty) Ltd ("Serco Industries"), a private profit company duly incorporated in terms of the laws of the Republic of South Africa;
 - 8.2. Serco Solutions (Pty) Ltd ("Serco Solutions"), a private profit company duly incorporated in terms of the laws of the Republic of South Africa;
 - 8.3. Serco Cape (Pty) Ltd ("Serco Cape"), a private profit company duly incorporated in terms of the laws of the Republic of South Africa;

- 8.4. Serco Eastern Cape (Pty) Ltd (“Serco EC”), a private profit company duly incorporated in terms of the laws of the Republic of South Africa;
- 8.5. Serco KZN CC (“Serco KZN”), a close corporation incorporated and registered in accordance with the laws of South Africa.

[9] All the target firms will collectively be referred to as “the Serco Group.”

[10] The Serco Group specialises in the manufacture, sale, rental and repair of new light and heavy duty insulated and dry freight truck bodies and trailers. It has four sales and repairs centres in Durban, Johannesburg, Gqeberha and Cape Town wherein it operates production and repair facilities.

Transaction

[11] In terms of the proposed transaction, Bidvest Group will acquire the entire issued share capital of the Serco Group.

Indivisibility

[12] The transaction was notified as one indivisible transaction. The Competition Commission (“Commission”) considered the Tribunal’s precedent which is premised upon two essential elements, namely that there should, *inter alia*, exist a legal and a factual justification for the subject transaction to be regarded as a single indivisible transaction.¹

[13] The Commission found that the proposed transaction constitutes an indivisible transaction for several reasons including that: (i) the target firms have common shareholders; (ii) the target firms are involved in the same line of business and (iii) the shares in all of the target firm are to be disposed of as part of a composite transaction and are subject to one Share Purchase Agreement. Accordingly, the Commission concluded that both a factual and legal basis exists to consider the transaction as indivisible.

¹ *Khumonetix (Pty) Ltd And Auckland Investments 22 (Pty) Ltd, Blane & Company Sales (Pty) Ltd, Wideprops 97 (Pty) Ltd, Red Gold Investments (Pty) Ltd and Dreamfair Properties 11 (Pty) Ltd in respect of industrial properties (LM112Jul18); Premier SA (Pty) Ltd and Talhado Fishing Enterprises (Pty) Ltd (LM299Mar18);*

[14] We are satisfied that the transactions are indivisibly linked.

Rationale

[15] From the Bidvest Group's perspective, the rationale for the proposed transaction is to drive the diversification of its automotive portfolio.

[16] The Serco Group submits that the proposed transaction present an opportunity for it to liquidate its investment through a transaction with a party that will continue the operations of the Serco Group to preserve its legacy. The seller further submits that the proposed transaction would improve the Serco Group empowerment credentials, support future growth opportunities and assist in growing the Serco Group's reach across the continent.

Competition Assessment

Overlap

[17] We considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap.

[18] We found that the proposed transaction gives rise to a vertical overlap. The vertical overlap arises as a result of the following relationship:

18.1. Bidvest Group may source the services of firms such as the Serco Group for the installation of a truck body in instances where it is requested to do so by a customer which BidAuto has sold a chassis cab to; and

18.2. Truck bodies manufactured by the Serco Group could be utilised by the Bidvest Group in its logistics business.

Input foreclosure

- [19] The Commission considered whether post-merger the Serco Group would likely stop supplying truck bodies and trailers to its customers thereby giving rise to any input foreclosure.
- [20] With respect to input foreclosure between Bidvest Group's chassis cab sales and the Serco Group's truck body manufacturing services, the merging parties submitted that the Serco Group has a market share range of 1%-5%. Further, the merging parties submitted they will continue to face competition from other players in the market such as Route Management (Pty) Ltd t/a SA Truck Bodies ("SA Truck Bodies"), CIMC Vehicles SA (Pty) Ltd, GRW Engineering (Pty) Ltd, Ice Cold Bodies (Pty) Ltd ("Ice Cold Bodies"), and Dalucon Refrigeration Products SA (Pty) Ltd.
- [21] The Commission's investigation revealed that the merged entity will continue to face competition from players in the market such as: Zenzele Truck bodies and Repairs (Pty) Ltd, Ithemba Truck Bodies, Ram Truck Bodies and Trailers, GB Bodies and Trailer, EM Truck Bodies, SSH Body Manufacturers, Route Vehicle Bodies, Truckbodies (Pty) Ltd and Unicab .
- [22] With respect to input foreclosure between Bidvest Group's logistics business and the Serco Group's activities as a manufacturer of truck bodies and trailers, the Commission's investigation found that there are ample alternatives in the market which will still be available in the event that the merged entity stops supplying the current customers of the Serco Group with truck bodies and trailers post-merger.
- [23] The Commission engaged with the customers of the merging parties, who raised no concerns.

[24] Given the merging parties and the Commission's submissions, we found no basis in the context of this transaction to conclude that the transaction is likely to give rise to any input foreclosure.

Customer foreclosure

[25] The Commission considered whether, post-merger, the merged entity could stop supplying its customers with truck bodies and trailers.

[26] With respect to the Bidvest Group's logistics business and the Serco Group's activities as a manufacturer of truck bodies and trailer, the Commission found that this vertical overlap is unlikely to give rise to any customer foreclosure concerns as the Bidvest Group is not a customer of the Serco Group or its competitors in respect of the Bidvest Group's logistics business. The Bidvest Group's trucks are ordered already combined with the truck body from the original equipment manufacturer and accordingly, the Bidvest Group does not source truck bodies from the Serco Group or any of its upstream competitors for use in its logistics business

[27] With respect to the Bidvest Group's chassis cab sales and the Serco Group's truck body manufacturing services, the Commission engaged the customers of the Serco Group, including Standard Bank, Digistics (Pty) Ltd, Prinels Transport CC, Imperial Fast n Fresh and Hino Isando, who raised no concerns regarding the transaction. The Commission's investigation found that there are numerous alternatives suppliers of truck bodies and trailers. These alternatives include Ice Cold Bodies, GRW Engineering, SA Truck Bodies and Royal Truck Bodies S.A. (Pty) Ltd.

[28] The Commission's investigation further revealed that the chassis sales of the Bidvest Group are ad hoc in nature and are not the main business of the Bidvest Group's automotive retail business. The Commission's investigation further found that the revenue derived by the Bidvest Group from the ad hoc chassis

procurement services involving truck body manufacturers is minimal relative to the revenue derived by the Bidvest Group from its automotive retail business.

[29] The Commission engaged the competitors of the Serco Group which had supplied the Bidvest Group with truck bodies and trailers in the past year. Some competitors raised concerns that the Bidvest Group will no longer source truck bodies from them, but they will source these products internally from the Serco Group post-merger.

[30] In response, the merging parties submitted that given the minimal market shares of the Serco Group, the Serco Group is one of the smallest truck bodies and trailers manufacturers in South Africa and the merged entity's market share would not give the Bidvest Group an ability to only source truck bodies and trailers from the Serco Group. This is due to the fact that the Serco Group, relative to its larger competitors, would not have the capacity, in terms of both the scale and scope of its service offering, to meet all the demands from the Bidvest Group for truck bodies and trailers as it has a limited service offering because it does not build all the truck body types that are required by the Bidvest Group's customers from time to time.

[31] The Commission found that the Bidvest Group is not a significant customer of one of the above competitors that raised concerns above as it only accounted for less than 5% sales in the 2022 and 2023 financial years respectively.

[32] The Commission therefore, concluded the merger is unlikely to result in any customer foreclosure.

[33] Having considered the above in assessing the proposed transaction, we found no evidence to suggest that the proposed transaction is likely to give rise to any customer foreclosure.

Public Interest

Effect on employment

[34] The merging parties submitted that the proposed transaction will not have any negative effect on employment.

[35] The Commission contacted the trade unions representing the employees of the merging parties namely, the Motor Industry Staff Association (“MISA”), Motor Industry Bargaining Council (“MIBCO”), and the National Union of Metalworkers of South Africa (“NUMSA”). The Commission also engaged the employee representative representing the employees of the Serco Group. The Commission only received responses from MISA and MIBCO, and no concerns were raised.

[36] In light of the above, we conclude that the proposed merger is unlikely to raise employment concerns.

Effect on the spread of ownership

[37] The Commission found that Bidvest Group currently has an effective shareholding by historically disadvantaged persons (“HDPs”) of approximately 47.97%. The Serco Group does not have any shareholding held by HDPs.

[38] In light of the above, we are of the view that the proposed transaction is unlikely to have a negative impact on employment or the promotion of a greater spread of ownership.

Other public interest considerations

[39] The proposed transaction raises no other public interest concerns.

Conclusion

[40] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger does not raise any public interest issues.

[41] We therefore approved the proposed transaction without conditions.

Signed by: Liberty Mncube
Signed at: 2024-09-30 12:56:36 +02:00
Reason: Witnessing Liberty Mncube

L-Mncube

30 September 2024

Prof Liberty Mncube

Date

Prof Imraan Valodia and Adv Geoff Budlender concurring

Tribunal Case Manager:

Nomkhosi Mthethwa-Motsa

For the Merging Parties:

Nkululeko Khumalo of DM5 Inc and Maphanga Maseko of MVR Attorneys.

For the Commission:

Nomthandazo Mndaweni and Grashum Mutizwa.