



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM173Nov15

In the matter between:

**NMI DURBAN SOUTH MOTORS
PROPRIETARY LIMITED**

Primary Acquiring Firm

and

**THE UNION MOTORS LOWVELD AND
UNION MOTORS SOUTH COAST DEALERSHIPS**

Primary Target Firms

Panel : Norman Manoim (Presiding Member)
: Andiswa Ndoni (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 3 February 2016
Order Issued on : 3 February 2016
Reasons Issued on : 24 February 2016

Reasons for Decision

Approval

- [1] On 3 February 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between NMI Durban South Motors Proprietary Limited and The Union Motors Lowveld and Union Motors South Coast Dealerships.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is NMI Durban South Motors Proprietary Limited ("NMI Durban") which is a joint venture between Barloworld SA and NH Partnership. NMI is owned as to 51% by Barloworld SA, as such, Barloworld SA controls NMI.
- [4] Barloworld SA is a wholly owned subsidiary within the Barloworld Group of firms ("Barloworld Group"). The proposed transaction is taking place within the Barloworld Automotive division of Barloworld Limited ("Barloworld Automotive").
- [5] Barloworld Automotive provides a wide range of integrated motor vehicle usage solutions. These include vehicle ownership, short and long term rental, and asset disposal solutions. Currently, Barloworld operates eight multi-brand dealerships in Durban and Pietermaritzburg through the NMI joint venture, which allows for the sale of a range of passenger and commercial branded vehicles. In addition the various dealerships also carry out aftermarket services ancillary to the dealership businesses conducted.

Primary target firms

- [6] The primary target firms are the Union Motors South Coast Dealership located in Shelley Beach (Kwa-Zulu Natal) and Union Motors Lowveld dealership located in Nelspruit (Mpumalanga). Both firms are owned by a partnership of firms which hold interests in the respective dealerships.
- [7] The businesses operate in terms of a dealership agreement concluded with various manufacturers which allows for the sale of a range of branded vehicles. The dealerships are involved in the sale of new passenger, new commercial and used cars. Additional products and services include aftermarket services of parts sales and services.

Proposed transaction and rationale

- [8] NMI Durban intends to acquire the dealership businesses of Union Motors South Coast and Union Motors Lowveld as a going concern.
- [9] The primary acquiring firm submits that the proposed transaction presents an opportunity for Barloworld Automotive to expand its product and service offering; and

grow its motor retail business by offering an enhanced link between manufacturers and customers.

- [10] The primary target firms submit that the transaction will enable the partners in the respective businesses to recoup their investment. They submit that selling the businesses to Barloworld Automotive as a going concern will allow interest holders to unlock the value of their investments as well as ensure that business operations are kept intact.

Impact on competition

- [11] The Commission found that the proposed transaction would result in a horizontal overlap as both NMI Durban and the Target Firms are involved in the selling and servicing of new and used cars. However, the Commission found that the market for the sale of used passenger vehicles was highly competitive. The Commission also identified various other avenues through which a customer could purchase a used vehicle, as such the Commission did not assess this market further.
- [12] As noted above, both the primary and target firms are involved in additional products and services which include aftermarket services of part sales and services. As such, for completeness, the Commission also considered the parties activities with regards to aftermarket services. In terms of new vehicles, the Commission found that maintenance plans came standard as one of the value added products when purchasing a new vehicle. In addition, the customer was found to have a variety of dealerships from which to choose from when servicing their vehicles. With respect to used cars, the Commission found that customers acquired the balance of the warranty and maintenance plan and as a result could service their vehicle with the manufacturer or any dealer aligned to the manufacturer. Upon expiry of the maintenance plan, the Commission found that customers were free to service their cars with any independent service provider. The Commission therefore did not assess this market further.
- [13] In defining the relevant geographic market the Commission relied on **Super Group/Zingaro Trade** in which the Tribunal held that the purchase of vehicles within an 80km radius suggested that the market was regional. When the Commission applied the 80km radius, it found that the merging parties' activities did not overlap. However, the Commission sought to adopt a more cautious approach and widened the geographic market to include both the merging parties' respective dealerships.

- [14] In terms of the distance between the Acquiring Group's new car dealerships and Union Motors Lowveld (Nelspruit) the Commission found that the shortest distance between the two was 189km, while the furthest distance was calculated as 212km.
- [15] With respect to the Acquiring Group's dealerships and their distance from Union Motors South Coast (Shelley Beach), the Commission found that the shortest distance between the two was 123km, while the furthest distance was 184km.
- [16] Based on these findings, the Commission concluded that these dealerships were unlikely to impose a strong competitive constraint on each other. However the Commission still undertook to assess the effects of the proposed transaction in the Kwa-Zulu Natal and Mpumalanga provinces.
- [17] In assessing the relevant market the Commission defined the relevant market as the market for the sale of (i) new Passenger Vehicles in KwaZulu-Natal and Mpumalanga, (ii) new Light Commercial Vehicles in KwaZulu-Natal and Mpumalanga, (iii) new Medium Commercial Vehicles in KwaZulu-Natal and Mpumalanga (iv) new Heavy Commercial Vehicles in KwaZulu-Natal, and (v) new Extra Heavy Commercial Vehicles in KwaZulu-Natal.
- [18] In assessing the market shares for the above relevant markets in the KwaZulu-Natal region, the Commission found that market shares were less than 15% in each market. The Commission was therefore of the view that the post-merger market shares were relatively low and that the merged entity would continue to be constrained by the behavior of their competitors. The Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market in the KwaZulu-Natal region.
- [19] Similarly, in assessing the market shares of the relevant markets in the Mpumalanga region, the Commission found that the market shares were less than 10% in each relevant market. The Commission was therefore of the view that the post-merger market shares were relatively low and that the merged entity would continue to be constrained by the behavior of their competitors. The Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market in the Mpumalanga region.

[20] The Commission also considered a possible vertical aspect given that the merging parties have traded from time to time. However, given that these transactions only accounted for a negligible amount of the merging parties' revenues, the Commission did not assess this aspect further.

[21] Therefore based on the post-merger market shares of the merged entity, the Commission was of the view that the proposed transaction was unlikely to substantially prevent or lessen competition in any market.

[22] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[23] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.¹

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

Conclusion

[25] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr. Norman Manoim

24 February 2016
DATE

Ms Andiswa Ndoni and Ms Medi Mokuena

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Bowman Gilfillan

For the Commission: Nolubabalo Myoli

¹ *Inter alia* merger record page 3.