



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM250Feb19

In the matter between:

McCarthy Proprietary Limited

Primary Acquiring Firm

and

The Motor Dealership trading as Vereeniging Auto
owned by Vereeniging Motors Proprietary Limited

Primary Target Firm

Panel	: A Wessels (Presiding Member)
	: M Mokuena (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 3 April 2019
Order Issued on	: 3 April 2019
Reasons Issued on	: 7 May 2019

REASONS FOR DECISION

Approval

- [1] On 3 April 2019 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving McCarthy Proprietary Limited (“McCarthy”) and the Motor Dealership trading as Vereeniging Auto (“Vereeniging Auto”) owned by Vereeniging Motors Proprietary Limited (“Vereeniging Motors”).
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary Acquiring Firm

- [3] McCarthy is a wholly owned subsidiary of Bidvest Group Limited (“Bidvest”). Bidvest is a public company listed on the Johannesburg Stock Exchange and is not controlled by any single firm.
- [4] McCarthy is a diversified services company that is active in consumer and industrial products, electrical products, financial services, freight management, office and print solutions, outsourced hard and soft services, travel and aviation services, as well as automotive retail.
- [5] Of specific relevance to the competition assessment is that McCarthy is active in the retail sale of new and used passenger vehicles and commercial vehicles. It also provides workshop services and part sales. Further, McCarthy facilitates vehicle finance and insurance services for its customers.

Primary Target Firm

- [6] Vereeniging Auto is wholly owned by Vereeniging Motors. Vereeniging Motors is wholly owned by [REDACTED].
- [7] Vereeniging Auto is a Ford motor dealership situated in Vereeniging. It is active in the retail sale of new and used passenger vehicles and light commercial vehicles (“LCV’s”). In addition, Vereeniging Auto provides after sale services and acts as an intermediary for its customers in the provision of financial and insurance support services.

Proposed transaction and rationale

- [8] McCarthy intends to acquire Vereeniging Auto from Vereeniging Motors as a going concern, including the fixed assets, contracts, stock and all other assets utilized in the operation of Vereeniging Auto. On implementation of the proposed transaction McCarthy will solely control Vereeniging Auto.

- [9] McCarthy submitted that it seeks to expand its Ford dealership in South Africa and that Vereeniging Auto is a suitable acquisition in pursuance of this strategy.
- [10] From the perspective of the current owner of Vereeniging Motors, [REDACTED] submitted that [REDACTED] the business of operating and managing a car dealership.

Relevant markets and impact on competition

Overlap and product markets

- [1] The Competition Commission (“Commission”) considered the activities of the merging parties and found that the proposed transaction results in horizontal overlaps in the following product markets:
- the sale of new passenger vehicles;
 - the sale of new LCVs;
 - the sale of used / pre-owned vehicles;
 - the provision of after sale services including the sale of parts and accessories and the servicing of vehicles; and
 - the facilitation of financial and insurance services. Given that the merging parties merely act as intermediaries in the facilitation of finance and insurance services for their customers, we do not consider this area of overlap any further in these reasons.
- [2] The Tribunal questioned the Commission regarding the substitutability, from a demand-side or customer perspective, of the different types of after sale services, specifically the sale of parts and accessories on the one hand and the servicing of vehicles on the other hand. However, there is no need for us to decide in this matter whether or not there are separate product markets for the provision of different types of after sale services such as the sale of parts and accessories and the servicing of vehicles, since our ultimate conclusion remains the same when considering either a broad product market for all after sale services or narrower potential product markets for each after sale service.

Geographic markets

- [13] From a geographic market perspective in relation to the sale of (i) new passenger vehicles; and (ii) LCVs, the Commission - without concluding on the exact parameters - analysed the proposed transaction in the following geographic areas: (a) an area consisting of the Vaal Triangle and Johannesburg ("the Vaal-JHB area") - a 80 kilometre radius within which the merging parties' activities overlap; and (b) the Gauteng Province.
- [14] In relation to the sale of used passenger vehicles, the Commission did not define any specific geographic market(s) but indicated that the sale of used passenger vehicles is considered to be competitive since almost all dealerships sell used vehicles and furthermore that there are many dealerships that specialise in the sale of used vehicles. The Commission therefore saw no need to assess this market any further. In the context of this transaction we also see no need to further analyse this.
- [15] In relation to the provision of after sale services such as the sale of parts and accessories and the servicing of vehicles, it was not clear from the Commission's report how it defined the relevant geographic market and the Tribunal asked certain questions in that regard. The Tribunal further suggested that the relevant geographic markets for different types of after sale services (see paragraph 12 above) could differ and that customers may prefer to service their cars in relatively narrow geographic areas surrounding their place of residence or place of employment.
- [16] However, there is no need for us in this case to take a definitive view on the exact geographic parameters of any of the relevant product markets since our ultimate conclusion remains the same when considering possible broader and narrower geographic markets.

Market shares

- [17] The Commission found that the merged entity will have market shares of less than 10% in the sale of (a) new passenger vehicles within the Vaal-JHB area; and (ii) LCV's within the Vaal-JHB area. If the broader Gauteng area is

considered, the merged entity's market shares in the abovementioned product markets are below 15%.

Intra-brand competition

[18] The merging parties both sell Ford branded vehicles. As indicated above, Vereeniging Auto is a Ford motor dealership situated in Vereeniging. McCarthy owns only two Ford dealerships in Gauteng, (i) Ford the Glen, situated approximately 58 kilometres from Vereeniging Auto; and (ii) Ford Silver Lakes, situated approximately 127 kilometres from Vereeniging Auto.

[19] The Commission found no concerns relating to intra-brand competition due to the presence of many alternative Ford dealerships in the Vaal-JHB area. The Commission said that McCarthy's two Ford dealerships within the Vaal-JHB area (in the Glen and Vereeniging) will face competition from a number of other Ford dealerships post merger, including Park Auto Vanderbijlpark, Barloworld Ford Alberton, Imperial Ford Germiston, Barloworld Ford Bruma, Consolidated Auto Boksburg, Barloworld Ford Selby, Joburg City Ford and Imperial Ford Kempton Park.

Inter-brand competition

[20] The Commission indicated that McCarthy, other than the abovementioned Ford dealerships, owns the following dealerships in the Vaal-JHB area: (i) Toyota Edenvale; (ii) Toyota Bruma; (iii) Nissan End Street, Johannesburg; and (iv) Nissan Germiston.

[21] With regard to inter-brand competition, the Commission found that the McCarthy dealerships operating within the Vaal-JHB area will continue to face inter-brand competition from a large number of competing dealerships comprising 16 Toyota dealerships, 18 Ford dealerships, 10 Renault dealerships, 10 VW dealerships, 12 Kia dealerships, 14 Hyundai dealerships, and 8 Nissan and Datsun dealerships.

[22] The Commission was of the view that there are a sufficient number of dealerships offering different original equipment manufacturers (“OEM’s”) to compete with the vehicles of McCarthy.

After sale services

[23] According to the Commission’s findings the merging parties provide ancillary workshop services to their respective brands of motor vehicles. It further stated that most dealerships commonly package other services including maintenance plans and warranties into the sale of new vehicles.

[24] According to the Commission there are a number of independent workshops, such as motor body repairers, who offer after sale services and sell spare parts to customers with vehicles that are out of warranty and service plans. Furthermore, the Commission indicated that it has conducted advocacy work relating to various anti-competitive practices arising from the automotive industry which include after sale services.

[25] The Tribunal questioned the Commission and the merging parties regarding the alternatives that will be available to customers requiring the servicing of their vehicles that are still within the warranty period after the proposed transaction. We were satisfied that there are alternative Ford dealerships available to the merged entity’s customers post merger.

[26] Given that only one Ford dealership is being acquired by McCarthy by means of the proposed transaction and the number of competitors that remain in each relevant market, we have no reason to doubt the Commission’s conclusion that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market.

Public interest

[27] The merging parties submitted that the proposed transaction will not result in any adverse impact on the employment conditions of any of their employees.

They further submitted that McCarthy will acquire sole control over Vereeniging Auto as a going concern, including all permanent employees.¹

[28] The Commission investigated the fact that the Motor Industry Staff Association (“MISA”) initially raised certain concerns regarding potential changes to employee benefits such as medical aids, structure of commissions paid, incentive bonuses, 13th cheques and pay dates after the proposed transaction. However, MISA ultimately indicated that it was satisfied with the merging parties’ assurances that nothing will change with regards to employees or their benefits post merger.²

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

Conclusion

[30] 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 adverse public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr. Andreas Wessels

7 May 2019

Date

Ms. Medi Mokuena and Ms. Andiswa Ndoni concurring

Tribunal Case Manager : Andiswa Nyathi

For the Merging Parties : Lerisha Naidu and Lesetja Morapi of Baker
McKenzie

For the Commission : Thabelo Masithulela and Rakgole Mokolo

¹ Merger Record, pages 12 and 27.

² Page 320 of the Merger Record.