



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM070Jul20

In the matter between:

Isuzu Motors Limited

Primary Acquiring Firm

And

UD Tracks Corporation (Japan)

Primary Target Firm

Panel:	Ms Y Carrim (Presiding Member) Mr E Daniels (Tribunal Member) Dr T Vilakazi (Tribunal Member)
Heard on:	20 October 2020
Order Issued on:	20 October 2020
Reasons Issued on:	16 November 2020

REASONS FOR DECISION

APPROVAL

[1] On 20 October 2020, the Competition Tribunal (“Tribunal”) approved the proposed transaction whereby Isuzu Motors Limited (“Isuzu”) intends to acquire 100% of the issued share capital in UD Trucks from AB Volvo (“Volvo”). Post-merger, Isuzu will be the sole controller of UD Trucks.

[2] The reasons for the unconditional approval follow.

PARTIES TO THE TRANSACTION

Primary Acquiring Firm

- [3] The primary acquiring firm is Isuzu Motors Limited (“Isuzu”), a public company incorporated under the laws of Japan. Isuzu is listed on the Tokyo Stock Exchange and is not controlled by any firm. It has a few beneficial shareholders that hold more than 3% of its issued ordinary shares.
- [4] Isuzu also operates in South Africa through its wholly-owned subsidiary, Isuzu Motors South Africa Proprietary Limited (“IMS Af”). IMS Af wholly owns two subsidiaries: (i) KANU Commercial Body Construction Proprietary Limited (“KANU”); and (ii) Automotive Chassis Technologies Proprietary Limited (“ACT”).
- [5] Isuzu is a manufacturer of heavy, medium, and light-duty commercial vehicles, buses, commercial vehicle engines, and industrial-use diesel engines. Although it is situated in Japan, Isuzu sells its vehicles and engines in countries throughout the world. Through IMS Af, Isuzu owns a production facility in Port Elizabeth which assembles semi knocked down heavy-, medium- and light-duty commercial vehicles imported from Japan. It also uses some components (e.g. batteries and tyres) from South Africa in the assembly process. Some of the commercial vehicles are modified into buses by local third-party contractors. IMS Af sells these commercial vehicles and buses to third-party dealerships and local governments.
- [6] KANU manufactures and installs modifications to the bodies of commercial vehicles. ACT manufactures and installs modifications to the chassis of commercial vehicles. Both KANU and ACT provide their service to IMS Af and dealerships but do not provide these services to any competitors of UD Trucks and Isuzu.

Primary Target Firm

- [7] The target firm is UD Trucks Corporation (Japan) (“UD Trucks”), a private company incorporated in accordance with the laws of Japan. UD Truck is a wholly owned subsidiary of AB Volvo. AB Volvo is a public company incorporated under the laws

of Sweden listed on the Nasdaq Stockholm and Sweden stock exchange. AB Volvo is not controlled by any firm or shareholder.

- [8] In South Africa, the UD Trucks business prior to the transaction was operated by UD Trucks South Africa (the “UD Division”), a division of Volvo Group Southern Africa Proprietary Limited (“Volvo Group SA”). Volvo Group SA is a subsidiary of AB Volvo, which holds all the issued share capital of UD Trucks.
- [9] UD Trucks is involved in the manufacturing and sale of commercial vehicles, buses, bus chassis and special-purpose vehicles. UD Trucks SA was established in anticipation of the proposed transaction. The UD Division will be transferred to UD Trucks SA prior to the implementation of the proposed transaction. Post-merger, UD Trucks SA will operate the UD Trucks business in South Africa.
- [10] The UD Division operates an assembly plant in Rosslyn, Pretoria. It orders heavy and medium-duty commercial vehicles from Japan and Thailand which are then assembled at the Rosslyn plant. These commercial vehicles are then sold to independent third-party dealerships.

PROPOSED TRANSACTION

- [11] The merging parties indicated that there is great complementarity between the two groups from both a geographical and product line perspective. Thus, Isuzu and Volvo Group entered into a Memorandum of Understanding (“MOU”) in terms of which they will conclude a strategic alliance for commercial vehicles. The MOU specifies that the alliance is also inclusive of (i) an acquisition by Isuzu of the UD Trucks and UD branded products in Japan and all abroad markets (the “UD Business”) from the Volvo Group; (ii) [REDACTED]
[REDACTED]
[REDACTED] The merging parties submit that this non-binding MOU is an initial step in the transaction.
- [12] Before this transaction is implemented, it will be preceded by an internal step whereby Volvo will incorporate a new entity, UD Truck SA which was established

in anticipation of this proposed transaction. The UD Division will then be transferred to UD Trucks SA prior to the implementation of the proposed transaction. Following this transfer, UD Trucks SA will operate the UD Trucks business in South Africa.

- [13] Upon the implementation of the proposed transaction, Isuzu will own 100% of the issued share capital of UD Trucks. Isuzu will be the sole controller of UD Trucks and therefore indirectly of UD Truck SA as well.

COMPETITION ANALYSIS

- [14] When considering the activities of the merging parties, the Commission found that the proposed transaction results in a horizontal overlap in the market for the supply of commercial vehicles. These commercial vehicles are divided into medium commercial vehicles (MCVs), namely: heavy commercial vehicles (HCVs) and extra heavy commercial vehicles (XHVVs).
- [15] In the national market for the supply of heavy-duty commercial vehicles (HCV), the Commission found that the merged entity will have a high market share that is slightly above 40%. Given the high market shares that result from this proposed transaction, the removal of an effective competitor in an even narrower market of the supply of Freight Carrier was considered. It was found that the merged entity will have a market estimate of below 40% with an accretion of approximately 6%. This suggested that the merging parties are not the closest competitors to each other.
- [16] The merged entity will continue to face competition from many well-established players active in the market such as Hino, FAW and FUSO amongst others. As well as face competition from potential new entrants in the market as there has been recent entries by various firms in the medium commercial vehicle market. These entrants include firms such as Sinotruck, SHACMAN, Powerstar and Eicher that entered in 2017 and Foton that entered the market in 2018.

[17] With respect to the national market for the supply of extra heavy commercial vehicles (XHV), the Commission found that although the merged entity will have a high market share, they will continue to face competition from well-established firms such as Volvo, Scania, Mercedes, and FUSO amongst others, post-merger. In assessing a narrower market for Freight Carriers and Truck Tractors, the merging parties hold a market share that is above 30% with a substantial accretion. However, similar to the other markets, well-established firms will impose effective competition on the merged entity such as MAN, Mercedes, and Hino.

Unilateral effect analysis

[18] Due to the high post-merger market shares that result from the proposed transaction, the Commission assessed whether or not the proposed merger results in any unilateral effects. A further basis for doing this assessment were the concerns raised by the Department of Trade Industry and Competition (“DTIC”) that the merger parties were close competitors due to similar price offerings. The DTIC submitted that majority of brands in the SA market (such as Hino, Volvo, Mercedes-Benz, SCANIA and MAN) trade in the upper end of the price range and therefore cannot be considered as direct competitors to either Isuzu or UD Trucks.

[19] The Commission assessed these concerns by observing factors such as pricing, infrastructure (assembly plants and service points) and the market shares of the merging parties in narrower markets than those discussed above, such as the market for the supply of tipper trucks, mixers, and freight carriers. The Commission found that in these narrow markets, the merging parties market shares suggest that they are not close competitors.

[20] In relation to the HCV market, the Commission considered pricing dynamics in that market and found that although there are overlaps between the merging parties in terms of product portfolio in this market segment, the price ranges indicate that the market was segmented in terms of pricing and the merging parties were not close competitors. The price ranges indicate that the merging parties have various competitors, although some are closer than others - Isuzu’s maximum prices are closer to Hino, Mercedes, MAN and Iveco, while UD Truck’s maximum prices are closer to Fuso, Powerstar, Tata and FAW. Thus, the Commission found that the merging parties are not each other’s close competitors.

[21] The merging parties each have 1 plant in South Africa while other competitors such as MAN own 2 plants in Gauteng and KwaZulu Natal. All other original equipment manufacturers (“OEMs”) own no more than one plant in South Africa. With respect to service points, the Commission found that the merging parties own and/or operate just under 20% of the heavy vehicles service points available in South Africa. It is therefore unlikely that the proposed transaction will give the merged entity an unassailable advantage over its rivals because of the number of service points that are available to it. Based on the pricing analysis, the number of service points and dealerships discussed above, the Commission was of the view that the merging parties are not each other’s close competitors.

[22] As stated earlier, there have been firms that recently entered the heavy-duty commercial and extra heavy commercial vehicles markets. Therefore, although barriers to entry exist, they are not insurmountable. The third parties contacted by the Commission expressed that the new entrant imposed competitive constraint to existing firms and have supplemented the industries capacity.

PUBLIC INTEREST

Employment

[23] In the preliminary stages of the transaction, employees of the UD Division will all be transferred to UD Trucks SA. Following the proposed transaction, UD Trucks SA will continue operating the UD Division as a stand-alone business. The merging parties submitted that the proposed transaction will not result in any retrenchments in South Africa.

[24] Due to Isuzu and UD facilities being situated in different provinces, the DTIC requested clarity on whether the merging parties intend to discontinue one of the brands in future or anticipates consolidating production of the two brands to a single site. In response to this, the merging parties submitted that they do not intend on consolidating the production of the two brands to a single site. Therefore, no retrenchments are envisaged. The DTIC indicated that its concerns have been addressed and had no further concerns

[25] Following NUMSA's concerns on retrenchments and possible adjustments to the firm's procurement and production process that may influence the terms and condition of employment, the merging parties in a letter provided assurance that the proposed transaction would not result in adverse effects on employment or the terms and conditions of employment.

Effect on particular industrial sector or region

[26] The merging parties submit that the proposed transaction will not have any negative impact on the automotive sector as they do not intend to discontinue either of the brands. Moreover, IMSAf does not have HDI or SMME suppliers. The UD Division, however, does have HDI and SMME suppliers which it submits will continue to operate as a stand-alone business post-merger. All agreements between UD Division and SMME suppliers will not be affected by the current transaction and will remain in place.

[27] Taken as a whole, the proposed transaction does not raise any public interest concerns.

CONCLUSION

[28] Based on the above, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the markets observed. We therefore unconditionally approved the transaction.

Signed by: Yasmin Tayob Carrim
Signed at: 2020-11-16 16:25:52 +02:00
Reason: Witnessing Yasmin Tayob Carrim

Yasmin Tayob Carrim

Ms Yasmin Carrim

16 November 2020
Date

Mr Enver Daniels and Dr Thando Vilakazi

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