

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM201Feb21

In the matter between:

CMH Holdings (Pty) Ltd

**Primary Acquiring Firm**

And

Ballito Motor Holdings (Pty) Ltd

**Primary Target Firm**

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Panel:	M Mazwai (Presiding Member) E Daniels (Tribunal Panel Member) AW Wessels (Tribunal Panel Member)
Heard on:	21 April 2021
Order Issued on:	21 April 2021

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the attached conditions marked as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

  
\_\_\_\_\_  
Presiding Member  
Ms Mondo Mazwai

21 April 2021  
\_\_\_\_\_  
Date

**Concurring: Mr Enver Daniels and Mr Andreas Wessels**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date:** 21 April 2021

**To:** Shepstone and Wylie Attorneys

## Notice CT 10

### About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: [ctsa@comtrib.co.za](mailto:ctsa@comtrib.co.za)

Case Number: LM201Feb21

CMH Holdings (Pty) Ltd and Ballito Motor Holdings (Pty) Ltd

You applied to the Competition Commission on **11 February 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

**The Registrar, Competition Tribunal**

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## ANNEXURE A

### IN THE LARGE MERGER BETWEEN

CMH HOLDINGS (PTY) LTD

AND

BALLITO MOTOR HOLDINGS (PTY) LTD

TRIBUNAL CASE NUMBER: LM201Feb21

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## CONDITIONS

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### 1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning:

- 1.1. **“Acquiring Firm”** means CMH Holdings Proprietary Limited;
- 1.2. **“Approval Date”** means the date referred to in the Tribunal’s clearance certificate (Form CT 10);
- 1.3. **“Commission”** means the Competition Commission of South Africa;
- 1.4. **“Commission Rules”** mean the Rules for the Conduct of Proceedings in the Commission;
- 1.5. **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.6. **“Conditions”** mean the conditions set out herein;
- 1.7. **“Day”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8. **“Ford Dealership”** means the Ford motor vehicle dealership business operated by the Target Firm at the Premises;
- 1.9. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **“JLR Dealership”** means the Jaguar Land Rover motor vehicle dealership business operated by the Target Firm at the Premises;

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- 1.11. **“JLRSA”** means Jaguar Land Rover (South Africa) Proprietary Limited;
- 1.12. **“Merger”** means the Acquiring Firm’s proposal to acquire 100% of the shares in the Target Firm;
- 1.13. **“Merger Agreement”** means the Sale of Shares and Loan Account Agreement entered between Skyfire and SMD and the Acquiring Firm in respect of the Merger;
- 1.14. **“Merging Parties”** mean the Acquiring Firm and the Target Firm;
- 1.15. **“Premises”** means the premises located at 35 – 37 Moffat Drive, Ballito, KwaZulu-Natal from which the Target Firm operates the JLR Dealership and Ford Dealership before the Implementation Date, which premises is situated at 35 – 37 Moffat Drive, Ballito, KwaZulu-Natal;
- 1.16. **“Selling Firms”** mean Skyfire and SMD, who are selling their interest in Target Firm pursuant to the Merger;
- 1.17. **“SMD”** means SMD Trading CC;
- 1.18. **“Skyfire”** means Skyfire 550 Trading Proprietary Limited;
- 1.19. **“Target Firm”** means Ballito Motor Holdings Proprietary Limited;
- 1.20. **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.21. **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal.

## 2. CONDITIONS

- 2.1. The Target Firm shall terminate the JLR Dealership before the Implementation Date.
- 2.2. The Merging Parties shall inform the Commission in writing of the termination of the JLR Dealership, within 5 Days thereof. For the avoidance of doubt, the termination of the JLR Dealership shall require that prior to the Implementation Date, the Target Firm has, *inter alia*,
  - 2.2.1. sold all new Jaguar Land Rover vehicles in its stock to another Jaguar Land Rover dealer, or return those vehicles to JLRSA;
  - 2.2.2. sold all Jaguar Land Rover parts in its stock to another Jaguar Land Rover dealer, or has scrapped those parts;

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- 2.2.3. cease providing any aftersales services in respect of Jaguar Land Rover warranties, maintenance plans and service plans to customers;
- 2.2.4. removed all Jaguar Land Rover signage from the Premises; and
- 2.2.5. vacate the JLR Dealership from the Premises.

### **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1. The Merging Parties shall inform the Commission of the Implementation Date.
- 3.2. As proof of compliance with the requirements of clause 2.2 above, a director from each of the Merging Parties shall each submit an affidavit attesting to the termination of the JLR Dealership, as required by clause 2.2 above.
- 3.3. To monitor compliance with these Conditions, the Commission may require the Merging Parties to provide any additional information.

### **4. BREACH**

- 4.1. If the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

### **5. VARIATION**

- 5.1. The Merger Parties or the Commission may at any time, and on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

### **6. GENERAL**

- 6.1. All correspondence in relation to the Conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).