



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM105Oct23

In the matter between:

Bidshelf 93 Proprietary Limited (to be Renamed
Bidvest Automotive Holdings Proprietary Limited)

Primary Acquiring Firm

And

Dekra Automotive Proprietary Limited

Primary Target Firm

Panel: L Mncube (Presiding Member)
G Budlender (Tribunal Member)
I Valodia (Tribunal Member)

Heard on: 14 June 2024

Decided on: 21 June 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

**Presiding Member
Prof. Liberty Mncube**

21 June 2024

Date

Concurring: Prof. Imraan Valodia and Adv. Geoff Budlender SC



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 21 June 2024

To : Alchemy Law Africa 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@comptrib.co.za

Case Number: LM105Oct23

Bidshelf 93 Proprietary Limited (to be Renamed Bidvest Automotive Holdings Proprietary Limited) And Dekra Automotive Proprietary Limited

You applied to the Competition Commission on **04 October 2023** 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

ANNEXURE A

**BIDVEST AUTOMOTIVE HOLDINGS PROPRIETARY LIMITED
(PREVIOUSLY BIDSHELF 93 PROPRIETARY LIMITED)**

AND

**DEKRA AUTOMOTIVE PROPRIETARY LIMITED
COMPETITION TRIBUNAL CASE NUMBER: LM105Oct23**

CT CASE NUMBER: LM105OCT23

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them, and cognate expressions bear corresponding meanings -

- 1.1. "**Acquiring Firm**" means Bidvest Automotive Holdings Proprietary Limited (previously Bidshelf 93 Proprietary Limited) and its group companies;
- 1.2. "**Approval Date**" means the date referred to on the Tribunal's merger clearance certificate (Notice CT 10), being the date on which the Merger is conditionally approved in terms of the Competition Act;
- 1.3. "**Bidvest Automotive Dealerships**" means all firms within the Acquiring Firm group as at the Implementation Date, including franchisees, that operate in the market for new and used vehicles;
- 1.4. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5. "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;
- 1.6. "**Competition Act**" means the Competition Act, 89 of 1998, as amended;

- 1.7. "**Competitively Sensitive Information**" means information of a Customer that is not in the public domain which is specific or precise and which is or may reasonably be expected to be commercially sensitive from a competition perspective relating to: current, planned or future pricing; margins; costs; Customer business plans or strategies; Customer information including plans for approaching customers or bidding for customer contracts; and marketing policies, plans, studies or forecasts;
- 1.8. "**Conditions**" means these conditions;
- 1.9. "**Customer(s)**" means any past, current or future customer for the Services of the Target Firm;
- 1.10. "**Days**" means any calendar day other than a Saturday, Sunday or an official public holiday in South Africa;
- 1.11. "**HDP**" means historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.12. "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13. "**LRA**" means the Labour Relations Act, 66 of 1995, as amended;
- 1.14. "**Merger**" means the proposed acquisition by the Acquiring Firm of a controlling shareholding in the Target Firm;
- 1.15. "**Merging Parties**" means the Acquiring Firm and the Target Firm;
- 1.16. "**Services**" means the automotive testing, inspection, certification and reporting services as provided by the Target Firm at the Implementation Date, including (i) the certification of roadworthiness; (ii) the preparation of condition reports (including multi-point checks); and (iii) technical inspection checks;
- 1.17. "**SME**" means a small business or medium-sized business in terms of section 1 of the Competition Act and as defined by the Minister in Government Gazette No. 987 of 12 July 2019 or its successor in title;
- 1.18. "**Target Firm**" means Dekra Automotive Proprietary Limited;
- 1.19. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

1.20. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Tribunal.

2. PROCUREMENT OF SERVICES BY BIDVEST AUTOMOTIVE DEALERSHIPS

The Acquiring Firm undertakes that for a duration of 5 (five) years from the Approval Date:

- 2.1. The Acquiring Firm will not in any way direct or influence any Bidvest Automotive Dealership in respect of their choice of providers of the Services and the Bidvest Automotive Dealerships will retain their unfettered discretion to select providers of the Services;
- 2.2. The Bidvest Automotive Dealerships will, in the ordinary course of business, continue to procure the Services from their existing providers, including providers other than the Target Firm where applicable (including SME and HDP firms). The Services will, where applicable, be procured in accordance with any existing contractual terms as at the Implementation Date where applicable, or otherwise, on terms no less favourable than the terms of procurement with the Target Firm.
- 2.3. The Bidvest Automotive Dealerships will not discriminate against any competitor of the Target Firm when selecting a provider of the Services, provided that the Services are comparable in respect of quality standards, availability, accessibility, capacity, and price.

3. SUPPLY OF SERVICES BY THE TARGET FIRM

The Target Firm undertakes that it will for the duration of 5 (five) years from the Approval Date, the Target Firm will:

- 3.1. not discriminate against any competitor of the Bidvest Automotive Dealerships, including in respect of service times and service quality.
- 3.2. maintain all existing supply agreements with competitors of the Bidvest Automotive Dealerships in accordance with their existing terms and conditions; and
- 3.3. in the ordinary course of business and on commercially reasonable and practical terms, continue to provide services to all competitors of Bidvest Automotive Dealerships.

4. EXCHANGE OF COMPETITIVELY SENSITIVE INFORMATION

The Merging Parties shall establish appropriate information barriers to prevent any flow of Competitively Sensitive Information between the Target Firm and the Acquiring Firm. These information barriers will include physical, electronic, and procedural measures.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1. The Merging Parties shall inform the Commission, in writing, of the Implementation Date within five (5) days of the Implementation Date.
- 5.2. The Merging Parties shall circulate a copy of these Conditions to all Bidvest Automotive Dealerships and Target Firm operations within ten (10) days of the Implementation Date. The Merging Parties will inform the Commission, in writing, within five (5) days of circulating the Condition.
- 5.3. For a period of five (5) years from the Implementation Date, the Merging Parties, shall, within thirty (30) days of the anniversary of the Implementation Date, provide the Commission with a report detailing their compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of either the Acquiring or Target Firms, confirming the report's accuracy.
- 5.4. The report envisaged in paragraph 5.3 will, in respect of compliance with paragraph 2 of these Conditions, include the names of and Commercial Terms on which the Services were procured from providers during the relevant period of reporting compared to the Commercial Terms with the relevant providers as at the Implementation Date.
- 5.5. The Merging Parties shall provide the Commission within thirty (30) days of the Implementation Date with a report detailing the information barriers that will be established in respect of compliance with paragraph 4 of these Conditions.
- 5.6. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.

6. VARIATION OF THE CONDITIONS

The Merging Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

7. APPARENT BREACH

If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

8. GENERAL

All correspondence concerning the conditions must be submitted to: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.