

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM064Aug21

In the matter between:

Hatfield Holdings (Pty) Ltd

Primary Acquiring Firm

And

The Business of Summit Auto Trading South Africa (Pty) Ltd
Summit Auto Investments (Pty) Ltd
Triumph South Africa (Pty) Ltd

Primary Target Firms

Panel: E Daniels (Presiding Member)
M Mazwai (Tribunal Panel Member)
AW Wessels (Tribunal Panel Member)

Heard on: 26 October 2021
Decided on: 26 October 2021

ORDER

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 conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Enver Daniels

**Presiding Member
Mr Enver Daniels**

**26 October 2021
Date**

Concurring: Ms Mondo Mazwai and Mr Andreas Wessels



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SOUTH AFRICA

Merger Clearance Certificate

Date : 26 October 2021

To : Cliffe Dekker Hofmeyr 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.

Case Number: LM064Aug21

Hatfield Holdings (Pty) Ltd And The Business of Summit Auto Trading South Africa (Pty) Ltd; Summit Auto Investments (Pty) Ltd and Triumph South Africa (Pty) Ltd

You applied to the Competition Commission on **13 August 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.

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

The Registrar, Competition Tribunal

Tebogo Mputle

ANNEXURE A

CASE NUMBER: LM064Aug21

HATFIELD HOLDINGS PROPRIETARY LIMITED

AND

THE BUSINESS OF SUMMIT AUTO TRADING SOUTH AFRICA PROPRIETARY LIMITED; SUMMIT AUTO INVESTMENTS PROPRIETARY LIMITED; AND TRIUMPH SOUTH AFRICA PROPRIETARY LIMITED

CONDITIONS

DEFINITIONS AND INTERPRETATION

In this document, the following words bear the meanings assigned to them below, and related words take corresponding meanings—

- 1.1 **"Acquiring Firm"** means Hatfield;
- 1.2 **"Approval Date"** means the date referred to in the Tribunal's merger Clearance Certificate (Form CT10);
- 1.3 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
- 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 **"Competition Act"** means the Competition Act No 89 of 1998, as amended;
- 1.6 **"Conditions"** mean these conditions;
- 1.7 **"Hatfield"** means Hatfield Holdings Proprietary Limited;
- 1.8 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.9 **"Merger"** means the acquisition of control by the Acquiring Firm of the Target Firms, as notified under Commission case number 2021Aug0013 and Tribunal case number LM064Aug21;
- 1.10 **"Merging Parties"** means the Acquiring Firm and the Target Firms;

- 1.11 **"Period"** means a 24-month period from the Implementation Date;
- 1.12 **"Retrenched Employees"** means any of the 176 employees of the Merging Parties who were retrenched during June and July 2020 and who have not subsequently been rehired by any of the Merging Parties;
- 1.13 **"SAI"** means Summit Auto Investments Proprietary Limited;
- 1.14 **"SATSA"** means Summit Auto Trading South Africa Proprietary Limited;
- 1.15 **"Target Business"** means the business of SATSA acquired in terms of the Proposed Transaction;
- 1.16 **"Target Firms"** means collectively the Target Business, SAI and Triumph;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.18 **"Tribunal Rules"** means Rules for the Conduct of Proceedings in the Tribunal; and
- 1.19 **"Triumph"** means Triumph South Africa Proprietary Limited.

2 **CONDITIONS ON EMPLOYMENT**

- 2.1 For the duration of the Period, Hatfield will maintain a database of all the Retrenched Employees and their contact details and, should any vacancies arise within the Acquiring or Target Firms, undertake to inform such employees of relevant vacancies through their last known contact details via an SMS and/or email communication.
- 2.2 For the duration of the Period, each time a job opportunity arises at any firm controlled by Hatfield, including the Target Firms, Hatfield shall send to the Retrenched Employees an SMS and/or email communication to inform them of the opportunity. This communication shall be sent out simultaneously with the position being advertised internally. It shall remain the responsibility of any Retrenched Employee to notify Hatfield in writing of any change in their contact details.
- 2.3 Under all circumstances the onus shall rest on the Retrenched Employee to apply for a vacant position.
- 2.4 Should a Retrenched Employee meet the relevant criteria and job requirements in terms of qualification, experience, and skills required, the application shall be processed by the human resources ("HR") department of Hatfield. If two qualified and skilled individuals apply for the same position, one being a Retrenched Employee

and the other one being an external applicant, Hatfield shall give preference to the Retrenched Employee, subject to employment legislation and the existing labour law practices of that firm. If there are two Retrenched Employees who apply for the same position, Hatfield may select one of them in its sole discretion, subject to employment legislation and the existing labour law practices of Hatfield.

3 MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 Hatfield shall inform the Commission of the Implementation Date within five business days of it becoming effective.
- 3.2 Hatfield shall circulate a copy of the Conditions to the relevant trade unions of the Merging Parties within ten business days of the Approval Date. As proof of compliance herewith, Hatfield shall within ten business days of so circulating the Conditions, notify the Commission of compliance herewith and provide evidence of such circulation.
- 3.3 Hatfield shall submit a compliance report 15 (fifteen) Days after the anniversary of Implementation Date detailing compliance with paragraph 2 of the Conditions. The report shall be accompanied by an affidavit from a director of Hatfield confirming the accuracy of the information contained in the report.
- 3.4 Any person/s who believe that Hatfield has not complied with or has acted in breach of the Conditions may approach the Commission with a complaint.
- 3.5 The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4 APPARENT BREACH

In the event that 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 Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

5 VARIATION OF THE CONDITIONS

The Merging Parties or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be lifted, revised or amended.

6 **CORRESPONDENCE**

All correspondence in relation to the Conditions must be submitted to the following email address: **mergerconditions@compcom.co.za** and **ministry@thedtic.gov.za**.



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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM064Aug21

Hatfield Holdings Proprietary Limited

(Acquiring Firm)

and

The Business of Summit Auto Trading South Africa Proprietary Limited

Summit Auto Investments Proprietary Limited

Triumph South Africa Proprietary Limited

(Target Firms)

REASONS FOR DECISION

- [1] On 26 October 2021, the Competition Tribunal conditionally approved a large merger whereby the business of Summit Auto Trading South Africa Proprietary Limited (“SATSA”) (the “Target Business”); Summit Auto Investments Proprietary Limited (“SAI”) and Triumph South Africa Proprietary Limited (“Triumph”) (collectively the Target Firms”) are to be acquired by Hatfield Holdings Proprietary Limited (“Hatfield”).
- [2] In terms of the proposed transaction, Hatfield will purchase the Target Business as a going concern from SATSA. Concurrent with the purchase of the Target Business, but subject to the remaining shareholders in SAI and Triumph not exercising their rights of pre-emption, Hatfield shall acquire Summit Auto SA Proprietary Limited’s (“SASA”) 50% shareholding interest in SAI and Triumph.
- [3] Hatfield is held, as to [REDACTED] % by the Brad Kaftel Family Trust (the “Trust”); and as to [REDACTED] % by Grapevine Property Investments 103 CC (“Grapevine”). The trustees of the Trust are Bradford Kaftel and Michael Kaftel; and the Trust also controls Hatven Properties Proprietary Limited¹ and Tarmigan Investments Proprietary Limited (“Tarmigan”).² Grapevine’s members are Johannes Sanyana Mthimunye and Khomotso Mthimunye, both of whom qualify as historically disadvantaged persons (“HDPs”) in terms of the Competition Act.³ Grapevine also holds 25.1% in Hatfield Property Holdings, a property-owning company.
- [4] The Target Business is carried on by SATSA and SATSA is wholly owned by Summit Auto Holdings South Africa Proprietary Limited (“SAHSA”); which is, in turn, controlled by SAHSA’s shareholders – the current management of SAHSA (“The Management Shareholders”).⁴ The Management Shareholders do not control any other entities. SAHSA also controls Summit Auto Properties Proprietary Limited,⁵ which in turn holds [REDACTED] % of Estine Investments Proprietary Limited. The remaining Target Firms, SAI and

¹ As to [REDACTED] %.

² As to [REDACTED] %. Tarmigan owns [REDACTED] % of Hatfield VW Proprietary Limited, a property-owning company.

³ Act No 89 of 1998.

⁴ The Management Shareholders: [REDACTED]

⁵ As to [REDACTED] %.

Triumph are 50% controlled by, respectively, Newinvest 231 Proprietary Limited (an entity controlled by Wesbank, a division of FirstRand Bank Limited) and Allen Automotive Proprietary Limited (“Allen Automotive”).

- [5] Hatfield operates VW, MAN and Audi branded dealerships. The Hatfield dealerships sell new and used passenger and commercial vehicles as well as used MAN and VW heavy commercial vehicles. Each of Hatfield’s dealerships are single branded as either VW, Audi or MAN. The used vehicles are sold through MasterCars. Hatfield also offers after-sales services and OEM⁶ parts and accessories. The service and maintenance plans are honoured either by Hatfield or by any OEM-approved repairer. Hatfield also acts as an intermediary in the provision of finance and insurance support services to its customers, by selling a small number of motor risk policies such as (i) purchase protection; (ii) top up insurance; (iii) used vehicle warranty; (iv) tyre plan and (v) tyre and rim plan. In this regard, Hatfield acts as an approved financial services provider, and such policies are underwritten by Guardrisk.
- [6] The Target Business consists of 22 motor vehicle dealerships, repair centres and service centres operated by SATSA which operate from 11 sites and sell, repair and maintain motor vehicles (“Dealerships”);⁷ included in the sale are the business assets of SATSA i.e., the assets owned by SATSA and used in, or in connection with, the Target Business. The Dealerships sell new and used Fiat, Ford, Haval, Honda, Isuzu, Jeep, Mazda, Opel, Renault, and Suzuki vehicles. The Target Business does not carry the VW, Audi or MAN brands. Four business units, which are ancillary to the Dealerships,⁸ are also included.
- [7] SAI acts as an intermediary in the provision of finance and insurance support services to customers of the Target Business, by selling a small number of motor risk policies, including (i) top up insurance; (ii) credit life / purchase protection; (iii) extended warranties on new vehicles and warranties on used vehicles; (iv) paint and minor dent protection; (v) window protection; and (vi) tinting. It also sells service and maintenance plans.
- [8] Triumph holds the sole distribution rights for Triumph branded motorcycles for South Africa. Triumph is engaged in both the wholesale distribution and retail of new Triumph branded motorcycles. The retail aspect of the company’s operations includes the sale of both new and second-hand motorcycles, the sale of spare parts and the general

⁶ Original Equipment Manufacturers.

⁷ The sites and the respective Dealerships on each site are as follows: (1) Fury Ford Amanzimtoti, located at 34 Rockview Road, Amanzimtoti; (2) Fury Ford Fourways, located at the corner of Witkoppen and Douglas Roads, Fourways, Sandton; (3) Fury Ford Sandton, located at 24 Witkoppen Road, Paulshof Sandton; (4) Fury Ford William Nicol, located at the corner of Mattie & William Nicol, Parkmore, Sandton; (5) Fury Mazda Pinetown, located at 122 Josiah Gumede Road, Pinetown; (6.) Fury Multi-Franchise Amanzimtoti (Honda, Fiat / Jeep and Renault), located at 30 Arbour Road, Amanzimtoti; (7) Fury Multi-Franchise Fourways (Mazda and Suzuki), located at the corner of Percy & Fourways Boulevard, Fourways, Sandton; (8) Fury Multi-Franchise Midrand (Ford, Haval and Mazda) located at the corner of 16th & New Road, Midrand; (9) Fury Multi-Franchise Pietermaritzburg (Honda, Fiat / Jeep and Suzuki), located at 290 Boom Street, Pietermaritzburg; (10) Fury Multi-Franchise Richards Bay (Isuzu, Opel, Jeep and Fiat), located at the corner of 23/25 Alumina Allee, Alton, Richards Bay; (11) Fury Multi-Franchise Woodmead (Ford, Haval, Isuzu and Mazda), located at the corner of Woodmead Drive & Waterfall Crescent, Woodmead Sandton.

⁸ (1) Fury Auto Parts, located in Paulshof, Sandton; (2) Fury Motorent, located in Paulshof, Sandton; (3) Fury Platinum Select in Woodmead, Sandton; (4) Fury Technical Training Academy located in Fourways.

servicing of motorcycles. Triumph is also a wholesale distributor of new Triumph motorcycles and parts throughout South Africa. In addition, the company derives income from the sale of insurance and other related policies to customers.

SLPC Test

[9] The Competition Commission (the “Commission”) found horizontal overlaps; as well as vertical overlaps that it assessed to be *de minimus*. Regarding the Commission’s assessment of any potential vertical effects we agree, so we now turn to consider the Commission’s evaluation in relation to the horizontally overlapping activities of the merger parties; namely, the retail sales market of new and used passenger vehicles and light commercial vehicles; as well as the provision of aftermarket parts and services.

- a. *Sale of used passenger and light commercial vehicles*: In terms of case precedent, the Commission did not assess the market for used vehicles as this market appears to be a competitive market with a number of active competitors (i.e., corporate dealerships, individual dealerships and private individuals selling their cars privately, on the internet etc). Customers of used cars have also been found not to be geographically bound as they tend to source their cars broadly, including via the internet. The Tribunal has confirmed this approach and has not adopted a different view to the Commission in this respect. Thus, the Commission did not assess the market for used passenger and light commercial vehicles any further.
- b. *Sale of new passenger and light commercial vehicles*: In the instant transaction, Hatfield dealerships retail new and used passenger vehicles and new light commercial vehicles in the Gauteng province in areas such as Sandton, Midrand and Pretoria. These dealerships sell new and used VW, Audi and MAN vehicles. The Target Business sells new and used Fiat, Ford, Haval, Honda, Isuzu, Jeep, Mazda, Opel, Renault, and Suzuki vehicles and is based in KwaZulu-Natal and Gauteng. The Commission did not conclude a relevant geographic market but assessed the effects of the proposed transaction nationally (on a worst case scenario basis, as the Target Business is based in Gauteng and KwaZulu-Natal while Hatfield is only based in Gauteng). Case precedent has found geographic markets for the sale of new passenger vehicles and light commercial vehicles as within an 80km radius in the Gauteng province but likely to be at least a 100km radius for Limpopo, Mpumalanga, KwaZulu-Natal and the Western Cape provinces.
- c. *The provision of scheduled maintenance and aftersales*: There are four types of after-sale services offered by OEMs for new vehicles; namely: warranty, service plan, maintenance plan, and extended warranty.⁹ Regarding the sale of parts and accessories for new vehicles, the use of spare parts and accessories is generally regulated by the warranty provisions that specify that a customer is required to buy or use the particular OEM-branded spare parts.

⁹ Warranties and service plans are standard as one of the value-added products when purchasing a new vehicle. Maintenance plans and extended warranties are not offered as standard products when purchasing a new vehicle and it is the purchaser’s choice to procure these services. However, if a purchaser procures these services, they are likely to utilise the services of the dealership.

In relation to pre-owned vehicles, a customer inherits the balance of warranty and maintenance plan from the previous owner and the vehicle gets serviced by the dealerships licensed by similar OEMs. Upon expiration of the warranty plan, customers may have their vehicles serviced by independent service providers and/or suppliers of wear and tear parts not supplied by the OEMs for cheaper prices.

- d. Regarding used vehicles or vehicles that are no longer under the warranty and service plan, the Commission notes that the Automotive Guidelines have recommended that OEMs and/or approved dealers make original spare parts, available through sales and distribution, to independent service providers (“ISPs”) where required to perform service, maintenance or repair work. As such, the Commission notes that a customer has a choice of purchasing the spare parts from OEM-approved dealerships or independent workshops, motor body repairers or panel beaters who offer after-sale replacement spare parts. The Commission notes that there are a number of independent players in this market that offer different spare parts and accessories for different brands and model of cars; including AutoZone, Grandmark International, Goldwagen, Allparts, Masterparts, Gaydons, Kotwals, Kapico and Midas. As such, the Commission found that the market for after-sales services for used car vehicles remains competitive and it did not assess this market any further.
- e. *The sale of motor risk policies:* The merging parties indicate that motor risk policies tend to be sold at point of sale together with financing and are generally associated with the financing. Indeed, the merging parties also only provide the policies in respect of a vehicle sale that has already been made by the respective dealership to their own customers and in relation to the brands that they sell. As such, the merging parties do not compete for the sale of these products and thus there is no overlap in this regard. The Commission, accordingly, did not assess this market any further.

[10] Based on the above, the Commission only found it necessary to derive market shares for the markets for the sale of new passenger and light commercial vehicles (i) in South Africa; and (ii) within an 80km¹⁰ radius of the Target Business in Gauteng. Based on data gathered from the National Association of Automobile Manufacturers of South Africa (“NAAMSA”) regarding the number of vehicles sold, the Commission determined that the merged entity would have a post-merger market share of less than 5% in the national market and less than 10% in the regional market. Furthermore, the Commission also contacted the merging parties’ competitors in the Gauteng market. In this regard, none of the competitors raised any concerns with the proposed transaction.

Public Interest

Employment

[11] The merging parties submit that no retrenchments will arise as a result of the proposed transaction, and therefore there will be no negative effect on employment.

¹⁰ Kilometre.

- [12] The merging parties also disclosed that there had been retrenchments at Hatfield and at the Target Firms during 2020. The merging parties submitted that these retrenchments did not arise because of the proposed transaction. Rather, the COVID-19 pandemic, the National State of Disaster and the subsequent restrictions placed on the economy as a result of various “lockdowns”; had prevented Hatfield and the Target Firms from conducting business for a period, and even once lockdowns were eased, there had been a marked decline in the number of vehicle sales. These factors led to 64 retrenchments in Hatfield’s business and 112 retrenchments at the Target Firms, which took place in June and July 2020, respectively.
- [13] The merging parties provided the Commission with their strategic documents including board minutes and presentations, internal memorandums, correspondence with trade unions as well as correspondence between the merging parties from when discussions regarding the proposed transaction commenced. From these documents, it was apparent that the merging parties’ discussions about the proposed transaction commenced during February 2021 and the first time the proposed transaction was discussed by the SAHSA board was on 30 April 2021. This means discussions about the proposed transaction commenced approximately a year after the retrenchments were implemented. The conclusion that these retrenchments were not merger related is bolstered by the fact that the contacted trade union did not raise any concerns relating to the merger. The Commission could not find any evidence to suggest that the retrenchments that were implemented by the merging parties in their respective businesses during the year 2020 were in any way linked to the proposed transaction.
- [14] To minimise job losses, especially in light of the current economic climate and the unemployment rates in South Africa, the Commission engaged the merging parties on the possibility of the proposed transaction being approved subject to a condition obligating the merging parties to give preference to the retrenched employees when vacancies become available. The merging parties were in agreement with this. The Commission also noted that, as of 7 September 2021, Hatfield had rehired 15 retrenched employees and the Target Firms have rehired 18 retrenched employees. This is a development that we welcome. We have considered the proposed conditions and believe that they promote the public interest and give rise to positive effects in terms of the employment public interest ground.

Spread of ownership

- [15] The merging parties submitted that the proposed transaction promotes a greater spread of ownership by HDPs; in that, Hatfield is 25.1% black-owned while the Target Business has 4.4% B-BBEE¹¹ shareholding. The proposed transaction therefore results in an increase in HDP-ownership in the Target Business from 4.4% to 25.1% black ownership and advances the public interest. Given that Hatfield also intends to acquire 50% in SAI and Triumph respectively, the 25.1% B-BBEE shareholding in Hatfield will also contribute the B-BBEE status of SAI and Triumph. In this regard, Hatfield’s 25.1% replaces SASA’s 4.4% B-BBEE shareholding in SAI and Triumph. The remaining shareholder in SAI, the FirstRand group, has 30.1% B-BBEE shareholding while the remaining 50% shareholder in Triumph, Allen Automotive, has no B-BBEE shareholding. The Commission did not come to a conclusion on the

¹¹ Broad-Based Black Economic Empowerment.

merging parties' submissions in this regard but we conclude that this does not amount to a worsening on the spread of ownership.

- [16] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We also believe the merger will not have a negative impact on the public interest and welcome the conditions undertaken by the merging parties in this regard.

Enver Daniels

**Mr Enver Daniels
Ms Mondo Mazwai and Mr Andreas Wessels concurring**

26 October 2021

Date

Tribunal Case Manager: Mpumelelo Tshabalala
For the Merging Parties: Lara Granville and Craig Thomas
For the Commission: Busisiwe Ntshingila and Ratshidaho Maphwanyana