COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM016May23

In the matter between:

Auto Industrial Investment Holdings (Pty) Ltd	**Primary Acquiring Firm**
and	
Auto Industrial Group (Pty) Ltd	**Primary Target Firm**

Panel:	J Wilson (Presiding Member) A Wessels (Tribunal Member) I Valodia (Tribunal Member)
Heard on:	11 July 2023
Last date of submission:	26 July 2023
Order issued on:	26 July 2023
Reasons issued on:	08 August 2023

REASONS FOR DECISION

[1] On 26 July 2023, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby Auto Industrial Investment Holdings (Pty) Ltd ("AIIH") intends to acquire the entire issued share capital of Auto Industrial Group (Pty) Ltd ("AIG").

The parties and their activities

[2] The primary acquiring firm is AIIH, a new entity established for purposes of the proposed transaction, with no existing operations. AIIH is jointly controlled by M and M Capital (Pty) Ltd ("MMC"), the Industrial Development Corporation of South Africa Limited ("IDC"), and Mr Andrea Moz ("Mr Moz"). The other shareholders in AIIH are members of management and an employee share ownership plan ("ESOP") (to be formed). AIIH, MMC, IDC and Mr Moz, and the

firms controlled by them, are collectively referred to below as the “Acquiring Group”.

[3] MMC is an investment holding company that invests primarily in South African businesses. MMC is 100% owned and controlled by Ms Rethabile Mathabathe.

[4] The IDC is a corporation established under section 2 of the Industrial Development Corporation Act,[1] and is fully owned by the South African Government. The IDC’s activities centre on the Government’s National Development Plan, New Growth Path and Industrial Policy Action Plan. The IDC identifies sector development opportunities aligned with policy objectives and develops projects in partnership with stakeholders.

[5] Mr Moz is a businessman and the current chief executive officer of AIG.

[6] The primary target firm is AIG. AIG is an integrated provider of machining and assembly, ductile and grey iron castings, and hot steel forgings of various automotive components. AIG’s customer base is comprised of automotive original equipment manufacturers (“OEMs”).

[7] AIG is a private company controlled by Trinitas Fund General Partner (Pty) Ltd (“Trinitas”) in its capacity as a juristic representative of Trinitas Private Equity (Pty) Ltd (“TPE”). Trinitas has a shareholding of [redacted] in AIG, with the remaining [redacted] shareholding being held by members of AIG’s management team. Trinitas is an independent South African private equity fund advisor, currently managing Trinitas Private Equity Fund I (“Trinitas Fund I”). Trinitas Fund I is a diversified specialist private equity fund.

[1] Act 22 of 1940.

Transaction and rationale

[8] In terms of the proposed transaction, AIIH will acquire the entire share capital of AIG in an indivisible transaction. Post-merger, AIIH will have sole control of AIG.

[9] MMC submitted that the [**rationale for the proposed transaction**].

[10] From the seller side, [**rationale for the proposed transaction**].

Competition Assessment

[11] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction does not raise any horizontal or vertical overlaps. AIG is a manufacturer of automotive components for OEM's, whilst the Acquiring Group is comprised of investors who do not have any other interests in this sector.

[12] The Commission accordingly concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market.

[13] Based on the above facts, and having obtaining confirmation from MMC that neither it nor its controller has any other interests in the automotive sector, the Tribunal agrees with the Commission's conclusion in this regard.

Public Interest

Effect on employment

[14] The merging parties submitted that the proposed transaction will not have any negative effects on employment, as no employees will be retrenched as a result of the proposed transaction.

[15] The Commission contacted the employee representative of MMC, who confirmed that its employees had no concerns regarding the proposed merger.

[16] The Commission also contacted the trade unions representing the AIG employees, namely the National Union of Metal Workers of South Africa ("NUMSA") and Solidarity Union ("Solidarity"). NUMSA did not respond to the Commission. Solidarity indicated that its members had raised a concern that employees who earn above a particular threshold had not received a Motor Industry Bargaining Council ("MIBCO") salary increase. AIG submitted that this was not a merger-specific issue, but explained that, in any event, the MIBCO salary increase agreement did not apply to employees earning above a certain salary threshold.

[17] The Commission agreed with AIG that the concern raised by Solidarity was not merger-specific, and accordingly concluded that the proposed transaction does not raise any employment concerns.

[18] Based on the above facts, the Tribunal agrees with the Commission's conclusion in this regard.

Effect on the spread of ownership

[19] The Commission found that AIG currently has an effective shareholding by historically disadvantaged persons ("HDPs") of approximately [redacted] (through Trinitas). The Commission found further that AIIH will, after the establishment of the proposed ESOP, have an effective HDP shareholding of [redacted] (if the IDC's shareholding is included) or [redacted] (if the IDC's shareholding is excluded). The Commission therefore found that the proposed transaction will lead to an increase in the effective HDP shareholding of AIG.

[20] As indicated above, the merging parties committed to the establishment of an ESOP. They confirmed that the ESOP would hold 10% of the shares in AIG for the benefit of the employees of AIG (excluding management shareholders). The merging parties also provided a term sheet setting out the design principles

of the ESOP, including the shareholding of the ESOP; the terms on which it will be funded by the IDC; the category of employees who will participate in the ESOP, and on what allocation basis; the duration of the ESOP; and the governance of the ESOP. The merging parties agreed with the Commission to make the establishment of the ESOP, in accordance with the stipulated design principles, a condition to the merger.

[21] The Commission accordingly concluded that the proposed merger does not raise any public interest concerns under section 12A(3)(e) (or any other provision) of the Act.

[22] The Tribunal agreed with the Commission's conclusion in this regard but sought clarity from the merging parties regarding various aspects of the ESOP design principles. In particular, the Tribunal sought clarity regarding (i) how the 10% shareholding was arrived at; (ii) which employees would not participate in the ESOP; (iii) the basis and terms upon which the ESOP would be funded by the IDC; and (iv) whether there would be any recourse against the employees of AIG if the hurdle rate stipulated by the IDC in its funding terms was not met.

[23] Based on the responses provided by the merging parties, the wording of the design principles was clarified as reflected in the final conditions imposed by the Tribunal, attached hereto as Annexure "A".

Conclusion

[24] The Tribunal concludes that the proposed transaction is unlikely to lessen or prevent competition in any relevant market, and does not raise any public interest concerns.

[25] The Tribunal therefore approves the proposed merger subject to the conditions annexed hereto as **Annexure A**.

Signed by:Jerome Wilson
Signed at:2023-08-08 10:34:24 +02:00
Reason:Witnessing Jerome Wilson

08 August 2023

Presiding Member
Adv. Jerome Wilson SC.

Date

Concurring: Mr Andreas Wessels and Professor Imraan Valodia

Tribunal Case Manager:	Sinethemba Mbeki
For the Merger Parties:	Kgomotso Mmutle and Edgar Malomane for Webber Wentzel Attorneys
For the Competition:	Makati Seekane and Grashum Mutizwa