



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM204Mar23

In the matter between:

K2023647843 (South Africa) (Pty) Ltd

Acquiring Firm

and

**Danny's Auto Body Parts (Pty) Ltd / Danny's Auto
Property Holdings (Pty) Ltd**

Target Firm

Panel : Jerome Wilson SC (Presiding Member)
: Prof. Fiona Tregenna (Tribunal Panel Member)
: Dr Thando Vilakazi (Tribunal Panel Member)

Heard on : 08 June 2023
Order issued on : 08 June 2023
Reasons issued on : 09 June 2023

REASONS FOR DECISION

Approval

[1] On 08 June 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby K2023647843 (South Africa) Proprietary Limited ("SPE BidCo") will acquire Danny's Auto Body Parts Proprietary Limited ("Danny's Auto") and Danny's Auto Property Holdings Proprietary Limited ("Danny's Auto Property") (collectively "the Target Firms"). Upon implementation of the proposed merger, SPE BidCo will exercise sole control of the Target Firms.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is SPE BidCo, which is controlled by SPE Mid-Market Fund 1 Partnership (the “SPE Fund”) (represented by the general partner, SPE Mid-Market Fund 1 General Partner Proprietary Limited (“SPE Fund General Partner”)). The SPE Fund General Partner is controlled by Sanlam Investment Management Proprietary Limited (“Sanlam Investment Management”).
- [3] Sanlam Investment Management is controlled by Sanlam Investment Holdings Proprietary Limited, which in turn is controlled by SIH Capital Holdings Proprietary Limited (“SIH Capital Holdings”). SIH Capital Holdings is controlled by Sanlam Limited (75%). The remaining 25% of the shares in SIH Capital Holdings is held by ARC Financial Services Investments Proprietary Limited (“ARC”).
- [4] All the firms directly or indirectly controlled by Sanlam Limited are referred to as the “Acquiring Group”.
- [5] SPE BidCo is a newly-established investment holding company which does not currently conduct any business activities. The Acquiring Group is active in the provision of financial services, including short- and long-term insurance, employee benefits, private equity and investments. Furthermore, through the SPE Fund, the Acquiring Group is active in pet care retail, meat production, waste and environment management, and payment collection services.

Primary target firms

- [6] The primary target firms are Danny’s Auto and Danny’s Auto Property.
- [7] The Target Firms are [REDACTED] [%] owned and controlled by [shareholder names listed] [REDACTED]. [REDACTED] is in turn solely controlled by [shareholder names listed] [REDACTED]. The balance of the shares in the Target Firms is held by various non-controlling shareholders, including [shareholder names listed] [REDACTED], the current [REDACTED] of Danny’s Auto ([REDACTED]).
- [8] Danny’s Auto is a wholesaler of branded aftermarket automotive parts and accessories for brands such as Dunlop, Lucas and FIAMM, and its in-house brand Imoto Chemicals. Danny’s Auto also distributes a portfolio of unbranded products to wholesalers and retailers that want to rebrand and package their own products.

[9] Danny's Auto Property is a property holding company and does not conduct any business activities. Danny's Auto Property owns the property on which Danny's Auto conducts its business.

Proposed transaction and rationale

Transaction

[10] In terms of the Sale Agreement, SPE BidCo will acquire 100% of the issued shares in the Target Firms. Upon implementation of the proposed transaction, SPE BidCo will exercise sole control of the Target Firms. Post-closing, [shareholder names listed] [REDACTED] will acquire an indirect non-controlling [REDACTED] [%] interest in the Target Firms, through SPE BidCo.

Rationale

[11] The Acquiring Group submits that [Acquiring Group's rationale] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[12] From the sellers' perspective [Target Firm's rationale] [REDACTED]
[REDACTED]

Competition assessment

[13] The Competition Commission ("the Commission") considered the activities of the merging parties and found that there is no horizontal overlap between the activities of the merging parties. In particular, the Commission found that none of the firms within the Acquiring Group provide services or products that could be considered as substitutable with those offered by the Target Firms.

[14] In particular, the Commission found that the Target Firms are active in the aftermarket automotive industry supplying, *inter alia*, car hooters, brakes, steering and timing kits; whereas the Acquiring Group is active in the financial services industry and other industries such as pet care retail, meat production, waste and environment management, and payment collection services.

- [15] The Commission also found that the proposed transaction does not raise any vertical overlaps as the merging parties do not supply each other with any products or services.
- [16] Clause 17 of the Sale Agreement entered between the Acquiring Group and the sellers contains a restraint of trade in terms of which the Target Firm's shareholders, excluding [shareholder name listed] ██████████, are restricted from directly or indirectly establishing a firm that will compete with the Target Firm for a period of five years. The parties indicated that the purpose of the restraint is to protect the investment made by SPE BidCo in the Target Firms.
- [17] The Commission was of the view that the five-year duration of restraint was unreasonable in the context of the proposed transaction and requested the merging parties to reduce the duration to three years. The merging parties were amenable to the Commission's request and submitted an addendum to the Sale Agreement reflecting the reduced three-year duration of the restraint of trade.
- [18] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- [19] The Tribunal agrees with the Commission's conclusion in this regard.

Public interest

Effect on employment

- [20] The Commission noted that the merging parties have provided an unequivocal undertaking that the proposed transaction will not result in any retrenchments.
- [21] SPE BidCo does not have any employees in South Africa. Accordingly, the employees of the Acquiring Group are represented by an employee representative, [employee representative listed] ██████████. The employees of Danny's Auto are represented by the Motor Industry Bargaining Council ("MIBCO") and the National Union of Metalworkers of South Africa ("NUMSA"). The Commission contacted the respective employee representative and trade unions to obtain their views on the proposed transaction. [employee representative listed] ██████████ confirmed receipt of the non-confidential merger filing and indicated that the employees of the Acquiring Group had not raised any concerns regarding the proposed transaction. The Commission submitted that they did not receive any response from either MIBCO or NUMSA despite follow-up emails.
- [22] Considering the above, the Commission concluded that the proposed merger is unlikely to raise any significant employment concerns.

Effect on the spread of ownership

- [23] The Commission found that the Target Firms currently have an HDP shareholding of [REDACTED] [%] through [shareholder name listed] [REDACTED] shareholdings in the companies, whilst SPE BidCo currently has an indirect HDP shareholding of [REDACTED] [%] through the HDP shareholdings of Sanlam Limited and ARC, respectively. In addition, [shareholder name listed] [REDACTED] will continue to hold a [REDACTED] [%] interest in the Target Firms through SPE BidCo.
- [24] Considering the above, the Commission concluded that the proposed transaction promotes a greater spread of ownership of the Target Firms by HDPs.
- [25] The Commission also found that the proposed transaction does not raise any other public interest concerns.
- [26] The Tribunal agrees with the Commission's conclusion in this regard.

Conclusion

- [27] For the reasons set out above, the Tribunal approves the proposed transaction unconditionally.

Jerome Wilson SC

09 June 2023

Date

Concurring: Prof. Fiona Tregenna and Dr Thando Vilakazi

Tribunal case manager : Baneng Naape

For the merging parties : Richardt van Rensburg and Tayla Theron of Edward Nathan Sonnenbergs Attorneys

For the Commission : Nonhlanhla Msiza and Themba Mahlangu