Non- Confidential Version

competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 59/LM/Jul11

Volkswagen AG	**Acquiring Firm**
And	
Man SE	**Target Firm**

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels(Tribunal Member)
Heard on	:	12/10/2011
Order issued on	:	14/10/2011
Reasons issued on	:	21/10/2011

Reasons for Decision

APPROVAL

[1] On 14 October 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Volkswagen AG ("VW") and MAN SE ("MAN"). The reasons for approval of the proposed transaction follows below.

THE TRANSACTION

[2] This is an international transaction in which VW, the primary acquiring firm, intends to increase its existing interest in MAN, the primary target firm. Currently, VW holds 29.2% shares in MAN which will increase to 53.71% and also has 30.47% voting rights which will increase to 55.9% post merger. Consequently, VW will acquire control of MAN post merger.

[3] The transaction affects all the subsidiaries of MAN in all the countries where MAN and VW operate, including subsidiaries in South Africa. This deal has been notified for merger control in 22 jurisdictions and unconditionally approved in 16 jurisdictions.[1]

[4] VW is a German registered company which is active worldwide in the development, manufacture, sale and distribution of motor vehicles, including trucks and buses. The main shareholder of VW is Porsche SE which holds 50.74% of the voting rights. In South Africa, VW is active through VW SA, Scania SA and Scania. VW, through Scania, is active in the manufacture and distribution of heavy and extra heavy duty trucks as well as city/commuter buses (used for public transport in urban areas) or intercity buses (used for public transport in rural areas and cities) and coaches (used in the leisure market).

[5] With respect to the acquiring firm's activities in trucks, Scania receives the truck components which it then assembles into the heavy tractor trucks which are then sold to the end user. According to the merger report, [85-90%] of Scania's truck business is in extra heavy tractor trucks which are detachable from the trailer, and only about [5-10%] involves the rigid trucks which are integrated with a single body and not detachable from the trailer. Similarly in the buses business, the bulk about [80-85% in 2010] of chassis for buses manufactured by Scania is used by Scania to assemble the buses which are then sold directly to the end user. Only a very small percentage [10-15% in 2010] of chassis manufactured by Scania are sold to manufacturers (called body builders) who then assemble the buses and on-sell to the end user.

[6] MAN SE is also a German company which is involved in the business of manufacturing of commercial vehicles. The ordinary shares in MAN are held by largely free-float. Apart from VW, BlackRock Inc. also holds shares. In South Africa, MAN, through MAN Truck and Bus, manufactures heavy and extra heavy duty trucks as well as city/commuter buses and intercity buses/coaches. With respect to trucks, MAN assembles [85-95%] of its trucks in South Africa from components brought in to the assembly plant, and the remainder are fully built, specialised trucks. Similarly with buses, MAN also typically uses chassis and other components

[1] At the time of the filing only 13 jurisdictions had unconditionally approved this transaction, however at the hearing the merging parties submitted that three other jurisdictions had since also granted approvals to this deal.

to assemble the complete buses which are then sold to end users, a small percentage of chassis for buses manufactured by MAN are sold to separate body builders.

THE RATIONALE FOR THE TRANSACTION

[7] The merging parties share a common vision in respect of the rationale for this transaction, which is to enable VW to control both Scania and MAN and to operate both firms under the VW group. According to the merging parties this will create synergies particularly in the fields of research and development for the benefit of the merging firms as well as consumers. They also state that the intention is to keep the brands as well as the running of the businesses separate in South Africa.

COMPETITION ASSESSMENT

Horizontal Effects

[8] There is a horizontal overlap in the activities of the merging parties in the following markets:

- The national market for the supply of intercity buses
- The national market for the supply of extra heavy duty trucks; and
- The national market for the supply of city commuter buses

[9] According to the Commission's market share assessment, the merging parties will have about [10-15%] combined post merger market share in the market for the supply of intercity buses. The Commission said that the merging parties in this market will continue to face competition from big players such as Mercedes Benz SA which has [80-85%] of the market, as well as other players such as Volvo [1-5%], and VDL Bus and Coaches SA [1-5%]. The post merger market share of the merging parties in this market is not significant enough to raise any competition issues.

[10] In the market for the supply of extra heavy duty trucks, the Commission found that the merged entity will have about [20-25%] combined post merger market share and will also face competition from players such as Mercedes [15-20%], Volvo [10-15%], Iveco [10-15%] and UD Trucks SA [10-15%], which will restrain the merged entity from unilaterally increasing prices. The Commission also submitted that customers in this market have countervailing power which will enable them to easily switch to

other alternatives. Hence there is unlikely to be any lessening of competition in this market.

[11] In the market for the supply of city/commuter buses, the merged entity will have approximately [50-55%] combined post merger market share. The Tribunal raised concerns about the high market share in this market which will virtually make the merged entity a dominant player in this market as it will have more than half of the market. However both the Commission and the merging parties expressed the view that such high market shares do not pose any threats to competition in this market as market shares can easily fluctuate in this market, given the market dynamics such as the sporadic demand and the fact that tenders play a significant role as products in this market are largely bought through tender process. However, neither the Commission nor the merging parties at the time of the filing of the transaction provided market share data for over the years to reflect the said shifts in market shares in this market. We therefore asked for this information at the hearing which the merging parties later provided.

[12] The information furnished by the merging parties showed market share data in the city/commuter bus market for the period between 2005-2010 which show that both MAN's market share and Scania's market share were higher in 2005 than in any subsequent year, and also reflects a high volatility of market shares for all major participants in this market.

[13] According to this information, market shares have fluctuated over the period for the merging parties. By way of example in 2005 Scania's market share was between [25-30%] but fell to between [5-10%] in 2009. Whilst MAN's market shares appears to be steadier over the period, it also shows market share fluctuations from between [40-45%] in 2005 to between [30-35%] in 2006 and a movement in 2009 to about [40-45%]. Similarly for the merging parties' rivals such as Iveco, fluctuations of market shares over the period are shown, for example, in 2005 Iveco had about [1-5%] market share which increased to about [25-30%] in 2009. This confirms what the merging parties have said about high volatility of market shares in this market.

[14] According to the Commission's recommendation none of the competitors raised significant concerns regarding this deal. In addition, local customers of this segment also did not raise any concerns regarding this transaction.

Vertical Effects

[15] There is a vertical relationship between the merging parties' activities in the bus segment given that MAN is active in the manufacturing of both chassis for city/commuter buses and bodies for city/commuter buses, whereas Scania is active in the manufacturing and supply of chassis for buses. It is therefore necessary to assess any possible foreclosure concerns which may arise in this segment.

[16] With respect to input foreclosure, the Commission found that the bodies are an essential input for the manufacturers of chassis to manufacture a complete bus, however due to the availability of alternative manufacturers of body builders which will serve as an alternative to the downstream competitors (chassis manufacturers), it is unlikely that the merging parties could engage in any foreclosure strategy.

[17] Likewise with respect to customer foreclosure, the Commission found that there are other competitors in both the upstream and downstream market which can serve as alternatives to customers of the merging parties. Furthermore it was submitted that customers in this market have significant countervailing power and can dictate which chassis they want for what body and vice versa, which will constrain the merged entity from engaging in any foreclosure strategy. Moreover, none of the customers raised significant concerns relating to the proposed transaction.

[18] Hence from a vertical perspective there are no foreclosure concerns which arise from this deal.

PUBLIC INTEREST

[19] There are no public interest issues.

CONCLUSION

[20] We therefore conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant identified markets as the merged entity will continue to face competition from the various players in the identified relevant markets. The proposed deal will also not result in the removal of an effective competitor in the relevant market given that the merging parties have not been effective competitors pre-merger given their existing shareholding structure. Further, customers of the merging firms in the affected markets have some degree of countervailing power.

N Manoim

21/10/2011
Date

Yasmin Carrim and Andreas Wessels concurring

Tribunal Researcher:	Londiwe Senona
For the merging parties:	Adv. Jerome Wilson instructed by Bowman Gilfillan
For the Commission:	Bongani Ngcobo and Themba Mahlangu