



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM149Aug17

In the matter between

UNITRANS AUTOMOTIVE (PTY) LTD

Acquiring Firm

And

CLEARWATER MOTORS (PTY) LTD

Target Firm

Panel : Enver Daniels (Presiding member)
: Fiona Tregenna (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 11 October 2017
Order Issued on : 11 October 2017
Reasons Issued on : 07 November 2017

REASONS FOR DECISION

Approval

- [1] On 11 October 2017, the Competition Tribunal ("Tribunal") approved the large merger between Unitrans Automotive (Pty) Ltd ("Unitrans"), and Clearwater Motors (Pty) Ltd ("Clearwater") without conditions.
- [2] The reasons for the unconditional approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Unitrans, a wholly owned subsidiary of Steinhoff International Holdings Limited ("Steinhoff"). Steinhoff is a public company listed on the Johannesburg Securities exchange ("JSE").
- [4] Unitrans represents Steinhoff's automotive retail activities and its key offerings are the sale of new and pre-owned passenger and light commercial vehicles, parts and accessories and after-market services.¹ Unitrans operates more than 90 franchised dealerships across all provinces which include a variety of vehicle brands.

Primary Target Firm

- [5] The primary target firm is Clearwater, a private company incorporated in accordance with the company laws of the Republic of South Africa. Clearwater is controlled by ACW Quin and N.K Sobiso who command a 74.6% and 25.1% shareholding in the company respectively.
- [6] Clearwater operates an exclusive BMW vehicle dealership in Roodepoort. It offers new BMW passenger vehicles as well as accessories and aftermarket services. Clearwater also offers its customers access to financial services related to the purchase of vehicles, by acting as an intermediary.

Proposed transaction and rationale

- [7] In terms of the proposed transaction, Unitrans will acquire Clearwater as a going concern. Post-merger, Unitrans will solely control Clearwater.
- [8] Broadly, the acquiring firm submits that the proposed transaction will enhance the BMW division of Unitrans. The Primary target firm submits that the

¹ Unitrans additionally assists customers with acquiring consumer credit, insurance products, fleet management services and car rental.

transaction allows the Clearwater Shareholders to dispose of the business in order to realise their investment.

Impact on Competition

- [9] The Commission found that the proposed transaction would result in a horizontal overlap in the markets for the sale of new passenger vehicles, the sale of pre-owned vehicles, and the provision of after sale servicing of motor vehicles and sale of spare parts in Roodepoort, Gauteng.
- [10] In its analysis, the Commission did not assess the horizontal overlaps present in the market for the sale of pre-owned and demonstration passenger and light commercial vehicles or the market for the provision of after sales service on the basis that these markets were strongly competitive. It concluded that the merger was unlikely to lead to competition concerns in these markets.
- [11] The Tribunal, noting that Clearwater additionally sells motorcycles from its showroom requested that the merging parties and the Commission make submissions to it on the motorcycle market. The Commission submitted that it excluded the sale of motorcycles from its investigation owing to the fact that Unitrans was not active in this space and thus the merger presented no horizontal overlap likely to substantially prevent or lessen competition.
- [12] In its assessment of the market for the sale of new passenger vehicles in Roodepoort and surrounding areas within Gauteng, the Commission found that the presence of other dealerships, the low post-merger market shares held by the merged entity (6.33%) and the small market share accretion accrued by the merger (0.16%) meant that the transaction was unlikely to substantially prevent or lessen competition in any of the mentioned markets.
- [13] We concur with the Commission's conclusion that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

- [14] The merging parties confirmed that the proposed transaction will not have a negative effect on employment owing to the fact that Clearwater will be taken over in terms of section 197 of the Labour Relations Act, 66 of 1995, as amended.²
- [15] The Commission did not receive any concerns related to employment and found that the proposed transaction was unlikely to have a negative effect on employment.
- [16] The proposed transaction further raised no other public interest concerns.

Conclusion

- [17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Enver Daniels

07 November 2017

Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Tribunal Researcher: Alistair Dey-van Heerden

For the merging parties: Gideon Botha of Unitrans

For the Commission: Nonhlanhla Msiza assisted by Lindiwe Khumalo

² S197(2)(a) of the Labour Relations Act requires that if a transfer of business occurs, the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer. For the purposes of this transaction, it is the Tribunal's understanding that Unitrans will step into the shoes of Clearwater in respect of obligations to all its employees.