



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM135Aug17

In the large merger between:

McCarthy Limited

Primary Acquiring Firm

And

Cargen Proprietary Limited, specifically the Paarl Ford & Mazda Dealership and the Stellenbosch Ford Dealership both T/A as Novel Motor Company

Primary Target Firm

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Panel	: Norman Manoim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 16 November 2017
Order Issued on	: 16 November 2017
Reasons Issued on	: 5 December 2017

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### Reasons for Decision

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#### Approval

[1] On 16 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between McCarthy Limited ("McCarthy") and the primary target firms Cargen Proprietary Limited, specifically the Paarl Ford & Mazda Dealership and the Stellenbosch Ford Dealership both T/A as Novel Motor Company ("Target Dealerships")

[2] The reasons for approving the proposed transaction follow.

#### Parties to the Proposed Transaction

##### *Primary Acquiring Firm*

[3] The primary acquiring firm is McCarthy which is a wholly-owned subsidiary of Bidvest Limited.

- [4] McCarthy is active in the sale of new and used passenger and commercial vehicles and has approximately 84 dealerships across South Africa. In the Western Cape Province McCarthy owns 7 dealerships. McCarthy also provides workshop services and part-sales as well as insurance support to purchases of vehicles at all its dealerships.

#### *Primary Target Firms*

- [5] The Target Dealerships are controlled by Cargen which is in turn controlled by Mr Jurgen Graf zu Bentheim.
- [6] The target dealerships sell new and used Ford and Mazda motor vehicles, branded parts, accessories and tyres. The target dealerships also repair Ford and Mazda branded vehicles. The target dealerships also act as intermediaries in relation to the provision of finance and insurance services.

#### **Proposed Transaction and Rationale**

- [7] The proposed transaction entails McCarthy acquiring the Target Dealerships as a going concern and McCarthy will control the Target Dealerships.
- [8] Bidvest has indicated that the acquisition of the Target Dealerships is in order to expand its existing offering to include Ford and Mazda brands as it currently only owns 2 Ford and Mazda Dealerships in South Africa. Cargen has indicated that the sale of its business is because its controller Mr Bentheim is retiring.

#### **Relevant Market and Impact on Competition**

- [9] The Commission, at the outset submitted that while both parties offered financial and insurance services both had done so as intermediaries and so the Commission did not investigate this market any further. The Commission's investigation identified the following markets below where a horizontal overlap was present.
- [10] The Commission's investigation revealed that the proposed transaction is unlikely to change the existing market structure and that the merged entity would continue to face competition from other dealerships within close proximity of the merging parties, in the following markets; (i) the sale of passenger vehicles within 80km of the target dealerships, (ii) the sale of new light commercial vehicles within 80km of the target dealerships, (iii) sale of new passenger vehicles in the Western Cape Province; (iv) sale of new light commercial vehicles in the Western Cape.

[11] In the market for the sale of used/pre-owned vehicles that Commission found that there are many used car dealerships to indicate high levels of competition and so submitted that the proposed transaction is unlikely to substantially prevent or lessen competition

[12] The Commission also investigated the possible effects of the proposed transaction on inter-brand and intra-brand competition. For intra- brand competition the Commission's investigation revealed that the merging parties do not sell the same brands of vehicles in the Western Cape and so intra- brand competition would remain unaffected. The Commission's investigation into inter-brand competition found that there may be some loss of inter-brand competition to the extent that Ford and Mazda brands of the target firm exert a competitive constraint on Toyota and VW vehicles. However the loss would not be significant as each McCarthy dealership operates interdependently to meet franchise targets and so individual dealerships will continue to compete with each other despite now being owned by McCarthy.

[13] The Commission submitted that the proposed transaction as a whole is unlikely to prevent and lessen competition. We concurred with the Commission's finding.

#### **Public Interest**

[14] The Commission found that proposed transaction will have no negative effect on employment as no employees are likely to be retrenched as a result of the proposed transaction.<sup>1</sup> The only employee of the target dealerships who will not be employed post-merger would be Mr Bentheim, the majority shareholder of Cargen who wished to retire. Further, the Commission was of the view that the merger is unlikely to raise concerns on any other public interest grounds.

#### **Conclusion**

[15] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approved the proposed transaction unconditionally.

  
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**Mr Norman Manoim**

5 December 2017

**DATE**

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<sup>1</sup> Merger Record page 6.

**Ms Mondo Mazwai and Ms Medi Mokuena concurring**

Tribunal Researcher: Aneesa Ravat.

For the merging parties: Jennifer Finnigan of Shepstone & Wylie Attorneys.

For the Commission: Billy Mabatamela and Mogau Aphane.