



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM117Jul17

In the matter between

MIH eCommerce Holdings Proprietary Limited

Primary Acquiring Firm

And

Car Trader Proprietary Limited t/a Autotrader

Primary Target Firm

Panel	: Mr Enver Daniels (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Prof. Fiona Tregenna (Tribunal Member)
Heard on	: 1 November 2017
Order Issued on	: 2 November 2017
Reasons Issued on	: 23 November 2017

REASONS FOR DECISION

Approval

- [1] On 2 November 2017, the Tribunal conditionally approved the large merger between MIH eCommerce Holdings Proprietary Limited ("MIH eCommerce") and Car Trader Proprietary Limited t/a Autotrader ("Autotrader"), hereinafter referred to as the merging parties.
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] MIH eCommerce is ultimately controlled by Naspers Limited ("Naspers"). Naspers is a public company listed on the Johannesburg Stock Exchange ("JSE") and the London Stock Exchange. MIH eCommerce is the holding company of all Naspers' e-commerce interests in the Republic of South Africa (apart from certain Media24 divisions) such as the business of OLX, which is of relevance to the proposed transaction.
- [4] OLX is a classified advertising platform that connects buyers and sellers of goods and services on its online portal, www.olx.co.za. It offers classifieds ranging from electronic and computers; office and business; services, farming and industrial.

Primary Target Firm

- [5] Autotrader is a specialist classified online and print advertiser, which is jointly controlled by a number of entities, which are referred to as 'the Sellers'. Autotrader only offers advertising of vehicles and ancillary products for sale on its online portal, www.autotrader.co.za. It also provides consulting services and software products for the SA automotive industry.

Proposed transaction and rationale

- [6] In terms of the Sale and Repurchase Agreement, the proposed transaction involves a series of interrelated and inter-connected steps which ultimately result in MIH eCommerce acquiring the entire issued share capital of Autotrader. Post-merger, MIH eCommerce will exercise sole control over Autotrader.

Relevant market and impact on competition

- [7] The Commission considered the activities of the merging parties and found a horizontal overlap in the national market for the provision of online automotive classified advertising services. In the hearing, we enquired as to why the

geographic market was defined nationally as oppose to defining it regionally. The Commission submitted that the merging parties' online platforms provide advertisement services that target prospective car buyers on a national basis. Moreover the Commission did not perceive regional dimensions to the proposed transaction or any evidence that suggests any regional dimension from the market participants. Mr Murgatroyd, of RBB Economics on the part of the merging parties submitted, *inter alia*, that the merging parties are active on an online space where all the market participants substantially use the same asset to supply each of the regions in South Africa. In other words, they serve each province with the same asset. As such, the market is to be defined nationally.¹

- [8] The Commission found that the merged entity will have a combined post-merger market share of approximately 52.71%, with an accretion of 52.45% which is almost entirely accounted for by AutoTrader, as OLX is a very small player with a market share of 0.26%. The merging parties were of the belief that the market shares would roughly be the same whether viewed nationally or per province.² In addition, the Commission was of the view that the merged entity will still face competition from other alternative online automotive classified advertisers, *inter alia*, Automart, Carfind, Autodealer, Cars, Surf4Cars. Given the above, the Commission was of the view that the proposed transaction shall not alter the structure of the market.
- [9] Despite its findings above, the Commission nonetheless explored whether the proposed transaction would result in any barriers to entry and whether customers possessed some sort of countervailing power they could possibly exercise against the merged entity.
- [10] In relation to barriers to entry, the Commission was of the view that barriers were high. New entrants would require a large capital outlay for marketing purposes. It would take the newly established entrant a minimum of 4-5 years to build relationships with customers and pricing of services would need to be attractive and discounted in order for the new entrant to properly establish itself. The Commission noted that these barriers are pre-existing market conditions that do

¹ Transcript, pgs. 6-7.

² Transcript, pg. 15, line 25 and pg. 16, line 1-2.

not arise as a result of the proposed transaction. There was no evidence that suggested the proposed transaction is likely to strengthen these barriers. In relation to countervailing power, the Commission found that customers possess such power as they are able to negotiate fees payable with their respective service providers based on their historical sales achieved and leads generated by a particular website. Furthermore, customers can switch from one service provider to another based on the performance of the site and not necessarily on price increases. In addition, customers enter into non-exclusive annual contracts with multiple online suppliers which can be terminated on a month's notice.

[11] In summation, the Commission's investigation revealed that the proposed transaction does not alter the competition dynamics in the relevant market; the raising of barriers to entry is unlikely and customers possess some countervailing power that can be exercised against online automotive classified advertising service providers.

[12] Given the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We accordingly agreed with the Commission's assessment.

Public interest

[13] The merging parties submitted that the proposed transaction will not have any negative effect on employment as no particular job losses or retrenchments will occur. At the time when the transaction was negotiated between the merging parties, no retrenchments of any employees were envisaged. A third party, however, raised a concern in that the proposed transaction presents a risk of possible retrenchments of the merging parties' employees. In response, Mr Altini, for the merging parties, submitted that the third party's concern is without substance and wholly speculative. Furthermore, the Commission did not convey this concern to the merging parties. All things considered, we were assured by the merging parties that the proposed transaction will not result in any retrenchments or other public interest concerns.³

³ Transcript, pg. 5, line 7-19.

- [14] To reinforce the assurance made to us by the merging parties, we proposed a condition that restrains any merger specific retrenchments for a period of two (2) years from the approval date of this transaction. This was agreed to by the Commission and the merging parties.

Conclusion

- [15] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, no further public interest concerns arise from the proposed transaction and the employees' interests are adequately safeguarded by the proposed condition. Accordingly, we approved the proposed transaction with conditions marked as **Annexure 'A'**.


Mr Enver Daniels

23 November 2017
Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Tribunal Case Manager : Mr Ndumiso Ndlovu.

For the Merging Parties : Mr Nick Altini of Baker McKenzie.

For the Commission : Ms Reabetswe Molotsi and Mr Thabelo Masithulela.

ANNEXURE A

**MIH eCommerce Holdings Proprietary Limited and The Car Trader Proprietary Limited
trading as Autotrader**

CC CASE NUMBER: 2017Jul0024

CT CASE NUMBER: LM117Jul17

CONDITIONS

1. DEFINITIONS

In this document, the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

- 1.1 **"Acquiring Firm"** means MIH eCommerce Holdings Proprietary Limited;
- 1.2 **"Approval Date"** means the date on which the Merger is approved by the Tribunal in terms of a merger Clearance Certificate (Form CT 10);
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission"
- 1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa unless otherwise described in the Conditions;
- 1.8 **"LRA"** means the Labour Relations Act 66 of 1995 (as amended);
- 1.9 **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.10 **"Merging Parties"** means collectively the Acquiring Firm and the Target Firm;
- 1.11 **"Target Firm"** means The Car Trader Proprietary Limited trading as Autotrader;
- 1.12 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.13 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Competition Tribunal.

2. RECORDAL

- 2.1 It is recorded that the Merging Parties notified the Merger to the Commission on 10 July 2017 under case number 2017Jul0024.

2.2 The Merging Parties indicated in the notification of the Merger to the Commission that the Merger will not result in any employees of the Merging Parties being retrenched. The Merging Parties confirmed this during the Commission's investigation as well as during the hearing before the Tribunal on 1 November 2017.

2.3 The Merging Parties are willing to make this a condition of approval of the merger in the form set out herein.

3. CONDITIONS

3.1 The Merging Parties shall not retrench any employees as a result of the Merger for a period of two (2) years from the Approval Date.

3.2 For the sake of clarity, retrenchments (as contemplated in clause 3.1, above) do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.

4. MONITORING COMPLIANCE WITH THE CONDITIONS

4.1 The Merging Parties shall –

(a) notify all their employees of these Conditions within 10 (ten) Days of the Approval Date; and

(b) within 10 (ten) Days of giving notice as contemplated in clause (a) above, provide the Commission with an affidavit by a senior official of the Acquiring Firm confirming the fact and attaching a copy of the notice sent.

4.2 The Acquiring Firm shall, on an annual basis on or within one (1) month of the first and second anniversary of the Approval Date, submit a report to the Commission confirming its compliance with the condition set out in clause 3.1, above. The report shall indicate, *inter alia*, the number and skills levels (as identified in the Paterson Grading System) of employees retrenched within that period and the reasons for such retrenchments, provided that such retrenchments are not as a result of the Merger. This report shall be accompanied by an affidavit by a senior representative of the Acquiring Firm confirming the accuracy of the report.

4.3 In the event that the Commission receives a complaint regarding non-compliance by the Merging Parties with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

4.4 All correspondence in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

5. DURATION OF THE CONDITIONS

The Conditions will automatically terminate upon fulfillment by the Merging Parties of their obligations contained herein, but in any event on the second anniversary of the Approval Date.

6. VARIATION OF THE CONDITION

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.