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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM055Jun19

In the matter between:

CFAO Holdings South Africa (Pty) Ltd	Primary Acquiring Firm
and	
Unitrans Motor Holdings (Pty) Ltd	Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: AW Wessels (Tribunal Member)
Heard on	: 14 November 2019
Order Issued on	: 14 November 2019
Reasons Issued on	: 11 December 2019

Reasons for Decision

Approval

[1] On 14 November 2019, the Competition Tribunal ("Tribunal") approved a proposed transaction between CFAO Holdings South Africa (Pty) Ltd and Unitrans Motor Holdings.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is CFAO Holdings South Africa (Pty) Ltd ("CFAO"), a private company incorporated in SA. CFAO is ultimately a wholly owned subsidiary of Toyota Tsusho Corporation ("TTC"), a company listed on both the Tokyo and Nagoya Stock Exchanges of Japan.

[4] In South Africa, TTC operates through CFAO and Subaru SA. CFAO and its subsidiaries shall be referred to as the Acquiring Group.

[5] CFAO has the following subsidiaries in SA:

a. CFAO wholly owns Automotive Mobility Solutions ("AMS") – provides mobility services including importing and exporting of vehicles. AMS does not sell any vehicles or spare parts in SA but only exports these products from SA;

b. CFAO wholly owns Toyota Tsusho Africa ("TTAF") - Sources parts and assembles wheels and tyres for Toyota SA, as well as sourcing sub-components for independent manufacturers who assemble/manufacture components for Original Equipment Manufacturers ("OEMs");

c. CFAO has the majority shareholding in Toyota Tsusho SA Processing ("TTSAP") – Supplies Toyota SA with inner and outer sheet steel for Hilux and Corolla vehicles; and

d. It should be noted that the Acquiring Group also controls Subaru SA, which oversees the Subaru dealer network to which it distributes Subaru products, including vehicles, parts and components. The Acquiring Group owns and operates 1 (one) Subaru dealership in Edenvale, Gauteng

[6] Relevant to the transaction is the 35.4% shareholding of Toyota Motor Corporation in TTC. 21.69% is directly held by Toyota Motor Corporation and the other 13.71% is indirectly held through various subsidiaries of Toyota Motor Corporation, including Toyota Industries Corporation ("TIC"), which holds 11.18% of TTC.

[7] Due to the shareholding of Toyota Motor Corporation in TTC, the Commission did consider whether or not Toyota Motor Corporation would then be able to exercise any

form of control over the Acquiring Group. The Commission assessed this possibility by looking at the contractual relationships between the merging parties.

[8] The Commission found that Toyota Motor Corporation had granted the Acquiring Group the right to distribute Toyota products (including the Toyota, Lexus and Hino brands) across Africa. However, the Acquiring Group has, in turn, appointed Toyota South Africa Motors (Pty) Ltd ("Toyota SA") to distribute Toyota products on its behalf within the South African Customs Union ("SACU") region.

[9] Although the Acquiring Group had been granted the right to distribute the Toyota products within SACU, these obligations have been carved-out and allocated to Toyota SA, and the Acquiring Group does not have any effective rights over the distribution of Toyota products in the SACU region.

[10] In the absence of any effective rights or involvement in the activities of Toyota Motor Corporation, the Commission was of the view that the Acquiring Group and Toyota Motor Corporation should be viewed as separate entities within the SACU region, such that Toyota Motor Corporation does not exercise control over the Acquiring Group.

Primary target firm

[11] The primary target firm is Unitrans Motor Holdings (Pty) Ltd ("Unitrans"), a company incorporated in SA and ultimately controlled by the Steinhoff Group. Unitrans and its subsidiaries shall be referred to as the Target Group

[12] Unitrans owns and operates a multi-franchise automotive dealership network consisting of 99 dealerships and 123 franchises across 25 OEM brands. Of these dealerships, 30 are Toyota branded, 10 are Hino branded, 6 are Lexus branded and 1 is Subaru branded (East London).

Proposed transaction and rationale

Primary acquiring firm

[13] CFAO viewed the proposed transaction as an opportunity to enter the SA car distribution market. CFAO was of the view that the proposed transaction is a key milestone in further developing CFAO into a leading pan-African multi-brand car distributor and reinforces its position as a strategic partner for car manufacturers in Africa.

Primary target firm

[14] Unitrans submitted that following a strategic review of its operations, Steinhoff resolved to dispose of some of its non-core assets, including its shareholding in KAP Industrial Holdings and Unitrans, which has very different business characteristics and growth drivers from the rest of Steinhoff's retail portfolio.

[15] CFAO will acquire 74.9% of the shares in Unitrans from the Steinhoff Group. Steinhoff will retain the other 25.1% of Unitrans until such time as a B-BBEE transaction has been concluded and implemented. A preferred bidder has already been identified and has made a binding offer; the intention is to conclude this transaction by the end of 2019. The Commission has confirmed that this shareholding will not confer control on the B-BBEE partner.

[16] The merging parties indicated that they chose the Acquiring Group as the purchaser as it agreed to purchase all the dealerships irrespective of their performance. The merging parties were of the view that if their assets were sold piece-meal, it would have encouraged 'cherry picking' and the non-performing/marginal dealerships would have been closed, resulting in retrenchments. The merging parties have confirmed that the Acquiring Group will keep all existing dealerships operational to avoid job losses.

[17] CFAO will have sole control over Unitrans following the proposed transaction.

Impact on competition

[18] The Commission found that the proposed transaction gives rise to a horizontal overlap in respect of the retail sale of new passenger vehicles; specifically, the sale of Subaru OEM automotive parts and components and the provision of Subaru-related scheduled maintenance services.

[19] Further, through Toyota Motor Corp's effective 35.4% shareholding in the Acquiring Group, the Commission found a potential vertical overlap as the Acquiring Group is notionally connected to the upstream markets for the manufacture and supply of vehicles and components. The Target Group through its dealership activities is active at the downstream level in the retail of Toyota brands.

[20] The Commission proceeded to assess the impact of the proposed transaction in the following markets:

a. The upstream national market for the manufacturer and supply of new vehicles including passenger, light commercial vehicles ("LCVs") and commercial vehicles;

b. The upstream national market for the manufacturer and supply of automotive OEM parts and components for Toyota (including Hino and Lexus) and Subaru vehicles still under warranty;

c. The downstream market for the sale of new vehicles through dealerships within an identified 80km radius in the area of overlap, (i.e. Gauteng Province);

d. The downstream market for the sale of used vehicles through dealerships within an identified 80km radius in the area of overlap (i.e. Gauteng Province);

e. The retail sale of automotive OEM parts and components for Toyota and Subaru vehicles still under warranty;

f. The provision of scheduled maintenance service on Toyota and Subaru vehicles still under warranty; and

g. Provision of financial and insurance services.

[21] We now turn to discuss the Commission's findings in the relevant markets it assessed.

The upstream national market for the manufacturer and supply of new vehicles including passenger, LCVs and commercial vehicles

[22] Regarding the upstream national market for the manufacture and supply of new vehicles, the Commission found that the merged entity will account for [<20%] of the market for the supply of new passenger vehicles with an accretion of [>15%].

[23] In the upstream national market for the manufacture and supply of new LCVs, the Commission found that the merged entity will account for [<40%] of the market with a similar accretion.

[24] In the upstream national market for the manufacture and supply of other new commercial vehicles, the Commission found that the merged entity will account for [<15%] of the market with a similar accretion.

[25] The Commission found that the merged entity faces sufficient competition in the manufacture and supply of new passenger vehicles from OEMs such as VW, Hyundai, Ford, Renault, BMW, KIA, Mercedes Benz, Nissan, Mazda and Suzuki.

[26] In the national market for the supply of LCVs the merged entity faces competition from competitors such as Ford and Nissan among many others. In the supply of other commercial vehicles, the merged entity faces competition from OEMs such as Mercedes Benz, Isuzu and others.

The downstream market for the sale of new vehicles through dealerships within an identified 80km radius in the area of overlap, (i.e. Gauteng Province)

[27] Regarding the downstream markets for the sale of vehicles through dealerships, the Commission found that the merged entity will account for:

a. [<10%] of the market for the sale of new passenger vehicles within Gauteng Province, with a similar accretion; and

b. [<5%] of the national market for the sale of new passenger vehicles, with a similar accretion.

The downstream market for the sale of used vehicles through dealerships within an identified 80km radius in the area of overlap (i.e. Gauteng Province);

[28] Regarding the downstream markets for the sale of vehicles through dealerships, the Commission found that the merged entity will account for:

a. [<25%] of the market for the sale of used passenger vehicles within Gauteng Province, with a market share accretion of [>20%]; and

b. [<20%] of the national market for the sale of used passenger vehicles, with a market share accretion of [>15%].

Provision of financial and insurance services

[29] The Commission further noted that the Target Group's dealerships provide motor related insurance in the form of U-Insure[1] in all the Target Group's dealerships. Through this transaction, it is likely that U-Insure services will, post-merger, be provided in the Subaru dealership controlled, by the merged entity.

[30] However, the Commission found that U-Insure does not offer traditional motor vehicle services, but offers value added products (""VAPs") insurance, which competes with similar products currently offered by MiWay, King Price and OUTsurance within the Target Group's dealerships.

[31] Considering the number of alternative insurance providers in the market, and the small market share of the Acquiring Group at dealership level, the Commission is of the view that the proposed transaction is unlikely to raise concerns in the provision of financial services for value-added automotive aftermarket financial services.

Intra-brand competition

[32] Due to the absence of geographic overlap (1000 kilometers apart) between the Subaru dealerships of the merging parties, the Commission did not consider intra-brand competition regarding Subaru.

[33] The Commission focused on the sale of new and used vehicles by dealerships within the Gauteng Province; as this is the area in which both parties have a dealership presence.

[34] The Commission found that the merging parties will continue to face inter-brand competition from other third party dealerships including 12 Toyota dealerships, 12 Kia dealerships, 14 Hyundai dealerships, eight Ford dealerships, nine BMW dealerships, three Subaru dealerships, five Audi dealerships, seven Mercedes Benz dealerships, five Volvo dealerships, three Opel dealerships, nine VW dealerships and other OEMs for which the merging parties do not have a franchise. The Commission further found that the proposed transaction will not lead to a structural change in the markets for the retail of vehicles.

[1] U-Insure is a division of Unitrans that provides motor-related insurance products primarily to customers of Unitrans Automotive via its dealership network, as well as corporate insurance products to selected customers.

Vertical Assessments

[35] The Commission considered whether the merged entity may, post-merger, have the ability to influence the sale and/or allocation of new passenger vehicles to Unitrans dealers due to its relationship with Toyota Motor Corporation. This would potentially raise input foreclosure concerns.

[36] The Commission was of the view that while the Acquiring Group may have the ability to influence Toyota SA through its relationship with Toyota Motor Corporation, it is unlikely that Toyota SA (which is not a party to the merger) will have incentives to treat the merged entity in a preferential manner post-merger.

[37] Unitrans dealerships account for [<15%] of Toyota vehicles sales in South Africa so a foreclosure strategy will put a large proportion of profits at risk. There are numerous other (non-Unitrans) dealerships that are essential to the effective distribution of Toyota vehicles and components in South Africa. The Commission could not find any evidence that Toyota SA or Toyota Motor Corporation, through this merger, have the incentive to undermine their existing network.

[38] The Commission also considered possible customer foreclosure in a worst-case scenario where the merged entity decides to convert all its dealerships to Toyota-branded dealerships.

[39] The Commission found that the Target Group owns and operates a relatively small number of non-Toyota dealerships. The Target Group has eleven Volkswagen, 2 Kia, 1 Renault and 9 Ford dealerships which equates to 11% of VW dealerships in SA, 8.18% of all Ford dealerships, 1.28% of all Renault dealerships and 2.86% of all Kia dealerships.

[40] The Commission was of the view that none of the OEMs are likely to be impacted significantly if the merged entity may decide to turn all non-Toyota dealerships into Toyota dealerships. Additionally, the Acquiring Group's strategic documents confirm its strategic decision to operate a multi-brand business in all segments in which it is active.

[41] Therefore, the Commission was of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any of the defined markets.

Public interest

[42] The merging parties have submitted that the merger will not result in retrenchments. In particular, the Steinhoff Group submitted that the rationale for disposing of all 99 dealerships to only one Purchaser is to prevent cherry-picking of the best-performing dealerships. In other words, if they were to sell the dealerships on a piecemeal basis, potential purchasers would only have been interested in the best-performing dealerships and there would have been job losses as poorer-performing dealerships are closed.

[43] In this regard, the Acquiring Group made an undertaking that they will not retrench any employees post-merger. The Acquiring Group further submitted that they will continue to procure goods and services from historically disadvantaged individuals ("HDIs") currently supplying goods and services to the Target Group.

[44] Further, the merging parties submitted that they are currently facilitating the introduction of a B-BBEE partner to acquire 25.1% of the entire share capital of the Target Group. Bids for the shares have already been submitted and a preferred bidder was chosen by the Steinhoff Group. The preferred B-BBEE partner has since submitted a binding offer. The merging parties submit that they hope to conclude the B-BBEE deal in respect of the Target Group by November 2019.

[45] In addition, the proposed transaction does not raise any other public interest concerns.

Conclusion

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

Mr Enver Daniels

11 December 2019
DATE

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Case Manager:	Kameel Pancham
For the merging parties:	Jean Meijer and Stewart Payne of Herbert Smith Freehills
For the Commission:	Rakgole Mokolo and Thabelo Masithulela