



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:** LM177Jan23

In the matter between:

Hyundai Automotive South Africa (Pty) Ltd

**Primary Acquiring Firm**

and

Tangawizi Motors (Pty) Ltd

**Primary Target Firm**

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Panel	:	S Goga (Presiding Member)
	:	I Valodia (Tribunal Member)
	:	A Ndoni (Tribunal Member)

Heard on	:	24 March 2023
Order issued on	:	24 March 2023
Reasons issued on	:	24 April 2023

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### REASONS FOR DECISION

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- [1] On 24 March 2023, the Tribunal unconditionally approved the proposed merger whereby Hyundai Automotive South Africa (Pty) Ltd (“Hyundai”) intends to acquire the business of Tangawizi Motors (Pty) Ltd (“Tangawizi”) as a going concern.

#### **The parties**

- [2] The primary acquiring firm is the is Hyundai, a private company incorporated in South Africa. Hyundai is controlled by Motus Corporation (Pty) Ltd. Motus Corporation is controlled by Motus Holdings Ltd, a public company listed on the Johannesburg Securities Exchange Ltd (“JSE”). The acquiring firm and all the

firms and indirectly controlling it, are collectively referred to as the “Motus Group”.

- [3] Hyundai is the only importer and distributor of Hyundai motor vehicles, parts, and accessories in South Africa. Of relevance to the proposed transaction, are the Motus Group’s sales of the Hyundai, Renault, and Honda branded vehicles in the greater KwaZulu-Natal province through its dealership network.
- [4] The Target firm is Tangawizi, a private company incorporated in South Africa. Tangawizi is currently jointly controlled by [REDACTED]  
[REDACTED] Tangawizi is a dealer of new and used Hyundai, Renault, and Honda passenger vehicles, as well as new and used Hyundai Light Commercial Vehicles (“LCVs”) and Commercial Vehicles (“CVs”), through a single dealership located in Richards Bay, KwaZulu-Natal. Tangawizi is also involved in related aftersales parts, services, and vehicle financing.

### **The transaction**

- [5] The proposed transaction involves Hyundai acquiring the business of Tangawizi, as a going concern. Upon implementation of the proposed transaction, Hyundai will exercise sole control over Tangawizi.

### **Competition Assessment**

#### ***Horizontal Assessment***

- [6] The Commission assessed the merger parties' activities and it found that the proposed transaction result in horizontal overlap in the following markets in Kwa-Zulu Natal (“KZN”):
- a. Sale of new (i) Hyundai and (ii) Renault passenger vehicles (“PVs”);
  - b. Sale of used (i) Hyundai and (ii) Renault PVs;
  - c. Sale of new and used Hyundai LCVs;
  - d. Sale of new and used Hyundai CVs;

- e. Provision/supply of after-sales service and maintenance work;
- f. Provision/supply of after-sales parts; and
- g. Provision/supply of vehicle finance and insurance products.

[7] The Commission noted that both merger parties offer Honda PVs. However, the Motus Group does not sell Honda PVs in the KZN province, thus it did not investigate this market further.

### ***Market definition***

[8] The merger parties submitted that the relevant product markets to be assessed include the separate markets for vehicle sales, after-sales maintenance of motor vehicles, and the sale of spare parts.<sup>1</sup> The merger parties relied in the Tribunal's decision between *DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd* ("Sandown Motors")<sup>2</sup>, where the Tribunal distinguished the different services offered by a dealership.

[9] The Commission noted that the Tribunal has previously identified two broad markets, namely, the market for the sale of new passenger vehicles and the market for the sale of new commercial vehicles. However, for the purpose of this proposed transaction, the Commission assessed the effects in the market for the sale of new Renault and Hyundai PVs, new Hyundai LCVs, and new Hyundai CVs.

### ***Geographic market definition***

[10] The merger parties submitted that the relevant geographic market is regional, and they relied on the *Barloworld Investments (Pty) Ltd and NMI DSM South Motors (Pty) Ltd*<sup>3</sup>, where the geographic market for passenger vehicles is local

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<sup>1</sup> Merger Record, p51 of 736, para [7.1].

<sup>2</sup> *DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd*, Case No.: Tribunal case no: 44/LM/Jul01.

<sup>3</sup> *Barloworld Investments (Pty) Ltd and NMI DSM South Motors (Pty) Ltd*, Tribunal Case No.: 31/LM/Apr08.

(or regional, which in this case is KZN). However, the merger parties argued that it is not necessary to reach a decision on the definition of the relevant product or geographic market in the context of the proposed transaction since no competition concerns arise, regardless of how the relevant markets are defined.

- [11] For purposes of the proposed transaction, the Commission considered the activities of the merger parties in KZN.

### ***Competitive Assessment***

- [12] The Commission considered the activities of the merger parties the following markets:

- a. The sale of new Renault PVs in KZN;
- b. The sale of new Hyundai PVs in KZN;
- c. The sale of new Hyundai LCVs in KZN; and
- d. The sale of new Hyundai CVs in KZN.

#### ***The sale of new PVs in KZN.***

- [13] In assessing the market in the sale of new Renault PVs in KZN, the Commission relied on data submitted by National Association of Automobile Manufacturers of South Africa ("NAAMSA") /Lightstone Auto and the Merger parties to estimate the market shares of the Merger parties and their competitors in the market for the sale of new PVs, LCVs, and CVs in KZN.

- [14] According to the Commission, the merged entity will have a post-merger market share of [REDACTED]. Based on the market share estimations, it concluded that the proposed acquisition is unlikely to prevent or reduce competition in the corresponding market, as the merged entity will continue to face competition other competitors.

*The sale of new LCVs in KZN*

- [15] In assessing the market of the sale of new LCVs in KZN, the Commission found that the proposed transaction is unlikely to prevent or lessen competition in the respective market. This is because merged entity will account for approximately [REDACTED] of the market for new LCVs in KZN, with an accretion of [REDACTED]

*The sale of new LCVs in South Africa*

- [16] The Commission found that merged entity will account for approximately [REDACTED] of the market for new LCVs in South Africa, with an accretion of [REDACTED]. As a result, it concluded the proposed transaction is unlikely to prevent or lessen competition in the respective market.

*The sale of new CVs in KZN*

- [17] With regards to the market on the sale of new CVs in KZN, the Commission found that the merged entity will account for approximately [REDACTED] of the market for new CVs in KZN, with an accretion of [REDACTED]. As a result, it concluded that the proposed transaction is unlikely to prevent or lessen competition in the respective market.

*The sale of new CVs in South Africa*

- [18] With regards to the sale of new CVs in South Africa, the Commission the merged entity will account for about [REDACTED] of the market for new CVs in South Africa, with a [REDACTED] accretion. As a result, the Commission concluded that the proposed transaction is unlikely to prevent or reduce competition in the relevant market.

*Conclusion on market share and level of concentration*

- [19] The Commission found that the merger parties will continue to face competition from numerous players in the respective markets.

[20] The Commission did not assess the market for used vehicles any further as this market is likely to be a competitive market and there are unlikely to be competition concerns arising from the present transaction.

[21] The Commission here relied in the Tribunal's decision in *Sandown Motor*, where the Tribunal indicated that "*The market for used vehicles is characterised by low entry barriers and various players competing in the market. Used vehicles are sourced from various sources, e.g., vehicle manufacturers, dealers, auctions, demonstration stock, the internet, and "trade-ins" from "man in the street"*" and, accordingly, did not assess the market for used vehicles further as this market appears to be competitive.

#### *Provision/supply of after-sales servicing*

[22] The Commission assessed the effects of the proposed transaction in the provision of aftersales maintenance services for in-warranty and out of warranty Renault and Hyundai vehicles in KZN as part of its intra-brand competition in analysis. This is because dealerships of the same brand also compete to provide maintenance/ service plans services on vehicles.

#### *Spare parts*

[23] The Commission did not assess this market further as it found that the market for after sales service for used car vehicles remains competitive. It noted that they are several independent spare parts suppliers such as AutoZone, Grandmark International, Goldwagen, Allparts, Masterparts, Gaydons and Midas.

### **Intra-brand and inter-brand competition analysis**

#### *Intra-brand competition*

[24] The Commission found in the KZN that there are (i) 15 Renault PV dealerships and (ii) 21 Hyundai PVs, LCVs, and CVs dealerships. Post-merger, the Motus Group will own three of the said Renault dealerships and nine of the said

Hyundai dealerships. This represents [REDACTED] and [REDACTED] of Renault and Hyundai dealerships in KZN respectively.

[25] However, the Motus Group does not own or control any Hyundai or Renault dealerships in Richards Bay area or within a 100-km radius of the Tangawizi dealership. The nearest dealership operated by the Motus Group is 144km away. As a result, this aspect was not considered further by the Commission during the assessment of the proposed transaction.

[26] The Tribunal notes the increase in intra-brand concentration.

*Provision of aftersales maintenance services for in warranty and out of warranty of Hyundai vehicles in KZN*

[27] The Commission further assessed the possible unilateral implications of the merger on labour rates for vehicles that are (i) under warranty, service plan, or warranty and (ii) out of warranty, service plan, or maintenance plan.

[28] The merger parties submitted that the proposed transaction is not likely to have an impact on the labour rates charged to customers by the Tangawizi dealership, as these are mainly a function of the competitive dynamics in Richards Bay area.

[29] In light of the above, the Commission concluded that the proposed transaction will not change the dynamics in Richards Bay. We concur with the Commissions' findings.

## **CREEPING MERGERS ASSESSMENT**

[30] The Commission assessed the dealerships acquired by the Motus Group during the last five years and concluded that the proposed transaction is unlikely to raise concern in various markets. This is despite the fact that [REDACTED] of the [REDACTED] transactions were Hyundai and Renault dealerships. The Commission found that the Motus Group has a market share of less than [REDACTED] in the national market

for vehicle retailing, and as such, the Motus Group does not appear to possess any market power and is currently constrained by viable competitors. Notwithstanding the above, the Commission will closely monitor the Motus Group's future acquisitions following the proposed transaction.

- [31] The merger parties have noted that the acquiring parties share is [REDACTED] of Hyundai in South Africa and that this merger will take it to [REDACTED]. However, they argue that Hyundai makes up a very small proportion of total passenger vehicles sold [REDACTED] and that they face competition from other brands.
- [32] The Tribunal is concerned about the high level of intra-brand concentration but given the small accretion in share, the distance between dealerships and the small proportion of Hyundai cars in the market, on balance we believe that this transaction alone is not problematic. However, given the number of mergers in the sector the last five years and the parties high share intra-brand, the Tribunal agrees that the Commission should monitor future acquisitions and continue to carefully consider market shares on both an intra-brand and inter-brand basis and from a regional and national perspective.

### **Conclusion on competition assessment**

- [33] Considering the above, the Commission concludes that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition.
- [34] No third-party concerns were raised regarding the transaction.
- [35] On the evidence before it, the Tribunal agreed with the Commission's findings. The Tribunal is of the view that the proposed transaction is unlikely to result in substantial prevention or lessening of competition in any relevant market, though creeping concentration should be monitored.



## **Public Interest**

### *Effect on employment*

- [36] The Commission considered whether the proposed transaction would have an adverse effect on employment. According to the merging parties, the proposed merger will have no adverse impact on employment. Specifically, no retrenchments will occur because of the proposed merger.
- [37] The Commission engaged with the employee representative the relevant trade unions, National Union of Metal Workers (“NUMSA”) and Motor Industry Staff Association (“MISA”), which represent the employees of Hyundai. MISA confirmed that the employees were made aware of the proposed transaction and no employee raised any concerns with the proposed transaction.
- [38] The Commission concluded that proposed transaction is unlikely to raise employment concerns.

### *Effect on the spread of ownership*

- [39] The Commission further assessed the impact on a greater spread of ownership.
- [40] According to the merger parties, pre-merger Tangawizi does not have any HDP shareholding, while the Motus Group has 30.52% shareholding by HDPs. Therefore, the proposed transaction is likely to have a positive effect on the promotion of a greater spread of ownership as the Target does not currently have any BEE shareholdings.
- [41] NUMSA requested the merger parties to generate an Employee Share Ownership Plan (“ESOP”). The merger parties contended that they are not willing to implement an ESOP because they believe that the proposed transaction will benefit the promotion of a greater ownership diversity.

[42] The Commission agreed with the merger parties' submission.

[43] The Tribunal believes the transaction will not have an adverse impact on the spread of ownership.

*Conclusion on public interest*

[44] In light of the above, the Tribunal concludes that the proposed transaction is unlikely to have an adverse effect on public interest.

**Conclusion**

[45] Having carefully assessed the available evidence, the Tribunal concluded that it is unlikely that the proposed transaction will significantly lessen or prevent competition in any relevant market. Furthermore, there are no public interest concerns raised by the transaction.

Signed by: ShaistaG@comptrib.co.za  
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*Sha'ista Goga*

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**Presiding Member  
Ms Sha'ista Goga**

**24 April 2023**

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**Date**

**Concurring: Professor Imraan Valodia and Ms Andiswa Ndoni**

Tribunal Case Managers:	Sinethemba Mbeki
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