



**competitiontribunal**  
*south africa*

## *fax form*

<b>to</b>	Justin Balkin/Derushka Chetty/Lara Trope Edward Nathan Sonnenbergs Inc Lesley Morphet Webber Wentzel	<b>fax</b>	011 269 7899 011 530 6359
	Legal Services Competition Commission		44283
<b>ref</b>	46/LM/Jul11	<b>date</b>	21 July 2011
<b>from</b>	Tebogo Mputle	<b>pages</b>	6 (including this page)
<b>re</b>	Reasons		

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Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Zanele Hadebe - 44583



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 46/LM/JUN11

In the matter between:

**ENGINE HOLDING GmbH**

Acquiring Firm

And

**TOGNUM AG**

Target Firm

**THE BERGEN BUSINESS  
CURRENTLY OPERATED BY ROLLS-ROYCE**

Target Firm

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Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	06 July 2011
Order issued on	:	06 July 2011
Reasons issued on	:	21 July 2011

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### Reasons for Decision

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### Approval

[1] On 06 July 2011, the Competition Tribunal ("Tribunal") approved the transaction involving Engine Holding GmbH, Tognum AG and the Bergen Business currently operated by Rolls-Royce. We explain below our reasons for this conclusion.

## **Parties to the transaction**

- [2] The primary acquiring firm is Engine Holding GmbH ("Newco"), a special purpose vehicle established exclusively for purposes of the current transaction. It is jointly controlled by Daimler AG ("Daimler") and Rolls-Royce Group plc ("Rolls-Royce").
- [3] Daimler is a public company listed on the Frankfurt and Stuttgart Stock Exchanges and is not controlled by any firm. Daimler has a number of subsidiaries in South Africa. Through one of its wholly owned subsidiaries, Daimler Vermögens – und Beteiligungsgesellschaft mbH ("DVB"), Daimler currently holds a 28.4% non-controlling stake in Tognum AG (one of the target firms, see below).
- [4] Rolls-Royce is a public company listed on the London Stock Exchange and is not controlled by any firm. Rolls-Royce has numerous subsidiaries world-wide.
- [5] The primary target firms are (i) Tognum AG ("Tognum"), a public company incorporated under the laws of the Federal Republic of Germany; and (ii) the Bergen Business currently operated by Rolls-Royce ("Bergen"), a public company listed on the London Stock Exchange. Tognum has a number of subsidiaries world-wide. Bergen is wholly owned by Rolls-Royce. It does not itself control any firms. Tognum and Bergen collectively are referred to below as the "target firms".

## **Proposed transaction and rationale**

- [6] According to the merging parties' submissions, the proposed transaction involves two interdependent steps in terms of which Newco intends to acquire at least 50% plus one share in Tognum, thereby acquiring sole control in Tognum and 100% of the entire issued share capital of Bergen. Pursuant to the proposed transaction, Newco therefore will have sole control over both Tognum and Bergen.

- [7] The merging parties submitted that due to the complementary nature of their global activities, the proposed transaction will create both synergies and efficiencies.

## **Merging parties' activities**

### *Acquiring firms*

- [8] As a special purpose vehicle established exclusively for purposes of the proposed transaction, Newco does not currently engage in any business activities.

- [9] Daimler is an automotive company that specialises in the manufacturing and selling of premium cars and commercial vehicles world-wide. Daimler through its subsidiary Mitsubishi Fuso Truck and Bus Corporation ("Fuso") sells diesel engines for off-highway use, mainly in Asia. These engines are not sold in South Africa.

- [10] Rolls-Royce manufactures and develops *inter alia* civil aircraft engines, power systems for military aerospace, marine and energy applications.

### *Target firms*

- [11] Tognum specialises in the development, manufacturing and selling of high-speed diesel reciprocating engines for off-highway applications (such as power generation and industrial and marine applications). It is also active in the area of gas reciprocating engines, generator sets and fuel injection systems. Tognum's main business in South Africa, through MTU South Africa (Pty) Ltd ("MTU South Africa"), relates to diesel engines. MTU South Africa offers a wide range of diesel engines from 20 to 9000kW.

- [12] Bergen produces and sells medium-speed gas and diesel reciprocating engines for power generation and marine applications. Bergen's activities in South Africa however are limited to propulsion and marine equipment (mainly deck machinery).

## **Competition assessment**

- [13] The activities of the merging parties do not overlap in South Africa. In particular, the activities of Bergen, relating to propulsion and marine equipment, are extremely limited in South Africa. Tognum's activities in South

Africa relate to diesel products namely: engines, gensets and fuel injection systems.

[14] Globally however there is an overlap in the merging parties' activities in respect of the manufacture and supply of:

- (i) diesel reciprocating engines for off-highway applications ("diesel engines");
- (ii) gas reciprocating engines for off-highway applications ("gas engines"); and
- (iii) diesel and gas generator sets ("gensets").

[15] Since there is no overlap of the merging parties activities in South Africa the Commission analysed each of the above-mentioned areas of overlap separately as potential product markets in an international geographic market context. It identified the following market shares for various market participants:

**Table 1** International market shares in potential markets for the manufacture and supply of diesel engines (as defined above), gas engines (as defined above), diesel gensets and gas gensets

Participant	Diesel engines (%)	Gas engines (%)	Diesel gensets (%)	Gas gensets (%)
Caterpillar	[20-30]	[30-40]	[20-30]	[20-30]
Wartsila	[0-10]	[20-30]	[10-20]	[20-30]
GE	[0-10]	[20-30]	[0-10]	[20-30]
MWM	-	[10-20]	[0-10]	[10-20]
MAN	[0-10]	-	[0-10]	[0-10]
Cummins	[10-20]	[0-10]	[20-30]	[0-10]
Tognum	[0-10]	[0-10]	[0-10]	[0-10]
Bergen	[0-10]	[0-10]	[0-10]	[0-10]

[16] The estimated international post merger market shares of the merged entity are below 15% in all of the above-mentioned potential product markets. In all of these markets there are a number of competitors, as is evident from the above **Table 1**.

[17] The Commission also found that there are certain vertical supply relationships between the merging parties internationally, but concluded that this raises no foreclosure concerns in South Africa. We therefore do not deal with these vertical relationships any further in these reasons.

[18] Based on the above we conclude that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market.

### **Public interest**

[19] The merging parties submitted that the proposed transaction will not have any negative effect on employment in South Africa.<sup>1</sup> Furthermore, the proposed transaction does not raise any other public interest issues.

### **CONCLUSION**

[20] We find that the proposed transaction is unlikely to lead to any substantial prevention or lessening of competition in any relevant market. The proposed deal also raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.



**Andreas Wessels**

21 July 2011  
**DATE**

**Norman Manoim and Yasmin Carrim concurring**

Tribunal researcher:      Tebogo Hlafane

For the merging parties:      Edward Nathan Sonnenbergs Inc. and Webber Wentzel

For the Commission:      Zanele Hadebe

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<sup>1</sup> See *inter alia* page 16 of the record.

\* \* \* Communication Result Report ( 21. Jul. 2011 16:10 ) \* \* \*

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