

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM111OCT24

In the large merger between:

Nikisize (Pty) Ltd

Primary Acquiring Firm

And

Autozone Holdings (Pty) Ltd (in business rescue)

Primary Target Firm

Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	09 December 2024
Order issued on:	10 December 2024
Reasons Issued on:	19 December 2024

REASONS FOR DECISION

Introduction

[1] On 10 December 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby Nikisize (Pty) Ltd (“Nikisize”) intends to acquire 100% of the issued share capital of Autozone Holdings (Pty) Ltd (in business rescue) (“Autozone”). Post-merger, Nikisize will acquire sole control over Autozone.

Parties to the transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is Nikisize. Nikisize is ultimately controlled by Metair Investments Limited (“Metair”), which is a public company listed on the Johannesburg Stock Exchange (“JSE”).

- [3] Metair and the firms it controls are collectively referred to as the “Metair Group”.
- [4] Nikisize is an investment holding company that holds the subsidiaries of the Metair Group. The Metair Group manages an international portfolio of companies that manufacture, distribute and retail products for energy storage and automotive components. The Metair Group’s business comprises of two key divisions, namely the (i) Automotive Components Division (“ACD”) and (ii) Energy Storage Division (“ESD”).
- 4.1. Of relevance to the proposed merger is Metair’s business activities through its ACD division which includes its subsidiary Alfred Teves Brake Systems (“ATE”). ATE supplies brake pads, brake discs, brake shoes, hydraulics and other brake components.
- 4.2. The Metair Group’s ESD division manufactures batteries for use in mobility applications and in the telecommunications, utility, mining, retail and materials/products handling sectors. ESD’s batteries are primarily lead-acid, with an increasing number of lithium-ion batteries. ESD’s automotive battery activities through its retail outlet, First Battery, are relevant to the proposed merger.
- Primary target firm*
- [5] The primary target firm is Autozone, which is ultimately controlled by Main Street 1256 (Pty) Ltd (“Main Street”).
- [6] Autozone entered into voluntary business rescue on 01 July 2024 under the Companies Act, 71 of 2008 (the “Companies Act”). The business rescue plan, prepared by the business rescue practitioners (“BRPs”) was approved in terms of section 152 of the Companies Act, on 11 September 2024.¹
- [7] Autozone is a wholesaler and retailer of a wide range of automotive aftermarket components, spares and car accessories in South Africa, including but not limited

¹ Joint Competitiveness Report in the Merger Record para 1.6, page 54.

to: batteries, brake components (pads, discs, cylinders), shocks, gaskets, gearboxes, engine parts, oil pumps and other heavy-duty parts catering for passenger and light commercial vehicles, steering wheels covers, pedal pads, tyre rims, sound systems and headlight LED replacement globes. In addition, Autozone (through its subsidiary Move Workshops (Pty) Ltd) acts as an agent between suppliers and customers in relation to the supply of motor spare parts.

Description of the transaction and rationale

[8] In terms of the Sale of Shares, Subscription and Facility Agreement (the “Agreement”), Metair (through Nikisize) will acquire 100% of the issued share capital in Autozone. Post-merger, Metair (through Nikisize) will have sole control over Autozone.

[9] [REDACTED]

Competition assessment

[10] The Competition Commission (“Commission”) considered the activities of the merging parties and assessed the proposed merger in the following markets: (i) the national upstream market for the manufacture and supply of automotive aftermarket components; (ii) the national upstream market for the wholesale supply of automotive aftermarket components; (iii) the national downstream market for the wholesale supply of automotive aftermarket components; and (iv) the national downstream market for the retail supply of automotive aftermarket components. The Commission’s findings are summarised below.

Horizontal competition assessment for the retail market of automotive aftermarket

² Joint Competitiveness Report in the Merger Record para 4, page 58.

components

- [11] The Commission found that the proposed merger presents a limited horizontal overlap between the merging parties in relation to the retail of automotive aftermarket batteries. This is because pre-merger, the Metair Group is engaged in the manufacture and sale of automotive aftermarket batteries through First Battery. Similarly, Autozone is also active in the wholesale and retail sale of automotive aftermarket batteries in South Africa.³
- [12] The Commission found that the merged entity will have an estimated market share of approximately [REDACTED], with an accretion of [REDACTED] in the retail market for automotive aftermarket batteries.
- [13] The Commission further found that the merged entity will continue to be constrained by numerous wholesalers and retailers of automotive aftermarket batteries such as Valitrade SA, Goldwagen, Midas, Tiger Wheel & Tyre, Tyres and More, Hi-Q, SupaQuick, Conti Partner, Tyremart, Enertec, Bosch, Taurus, Powertech (Grand Prix), and numerous independent retailers and as well as imports.⁴
- [14] The Commission additionally assessed the downstream market for the retail of automotive aftermarket components on a local level since the merging parties each retail automotive aftermarket batteries (i.e. within a five km radius of each target retail outlet). The local assessment focused on outlying areas and small towns where the merging parties' retail activities overlap. In this regard, the Commission found that there are 22 instances where First Battery retail outlets are within a five km radius of Autozone. The Commission however found that the merged entity will continue to be constrained by at least five alternative automotive aftermarket battery retailers in each instance.

Vertical assessment

- [15] The Commission found that the Metair Group and Autozone operate at different levels of the same value chain. This is because the Metair Group is a

³ Joint Competitiveness Report submitted by the merging parties' para 5.3.2, page 63.

⁴ Commission's Recommendation in the Merger Record para 38, page 22.

manufacturer of automotive aftermarket components, whilst Autozone is a wholesaler and retailer of automotive aftermarket components. The Commission assessed whether the merged entity would have the ability and the incentive to foreclose competitors of Autozone access to inputs i.e., automotive aftermarket components including brake components and batteries (input foreclosure). The Commission further assessed whether the merged entity would have the ability and incentive to foreclose the Metair Group's rivals, access to Autozone as a channel to market (customer foreclosure).

Input foreclosure

[16] The Commission assessed whether the merger is likely to result in any input foreclosure concerns in the event that the merged entity exclusively supplies its retail channel with automotive aftermarket components, in particular the supply of automotive aftermarket batteries and brake components post-merger.

[17] The Commission could not find any readily available data on the size of the upstream market for the national supply of automotive aftermarket components. The Commission relied on previous merger cases⁵ wherein it was found that there are (i) approximately 20 alternative suppliers of automotive aftermarket components; (ii) approximately 18 alternative suppliers of automotive aftermarket components which also supply batteries and (iii) approximately 26 alternative suppliers of automotive aftermarket components which also supply brakes and brake components.

[18] The Commission found that even if the Metair Group intends to foreclose Autozone's downstream rivals by restricting inputs i.e., batteries, brake components and automotive aftermarket components in general, such foreclosure strategy would not have a material adverse impact on Autozone's competitors due to the presence of ample alternatives which can supply automotive aftermarket components to the downstream.

⁵Motus Group Limited and Motus Spares Shop (Pty) Ltd (Competition Commission case no: 2020Jul0059), Motus Capital (Pty) Ltd and Arco Motor Industry Co Limited (Competition Commission case no: 2017Dec0021); and Imperial Group Limited and the business of Suburban Spares two CC ad the business of Total Auto CC (Competition Commission case no: 2017Dec0022).

[24] During the Commission’s investigation, ██████ submitted that the proposed merger would result in a fundamental change in the nature of the long-standing relationship and was further of the view that the proposed conditions (“Initial Conditions”), which were referred to the Tribunal, did not sufficiently protect its long-standing business relationship with Autozone.⁸

[25] Following the referral of the proposed merger to the Tribunal, ██████ raised further concerns relating to ambiguity of the Initial Conditions. On 21 November 2024, ██████ informed the Tribunal of its intention to be admitted as a participant and intervenor in the merger hearing.⁹

[26] Prior to an intervention application hearing, the merging parties and ██████ came to an agreement regarding suitable conditions (“Subsequent Conditions”) which were submitted to the Tribunal on 05 December 2024¹⁰

Foreclosure concerns

[27] The Commission received foreclosure concerns from nine market participants, namely, ██████ ██████ ██████ ██████ ██████ ██████ ██████ ██████ ██████ (collectively referred to as “the Complainants”).

[28] The Complainants were concerned that post-merger, the supply of automotive aftermarket components could be restricted by Metair, thereby giving Autozone an unfair advantage from a supply perspective (i.e., input foreclosure). The Complainants submitted that this could be done through various methods such

⁸ Email correspondence from ██████ dated 10 November 2024 and 13 November 2024.

⁹ Email correspondence from ██████ dated 21 November 2024.

¹⁰ Email correspondence from the merging parties dated 05 December 2024.

¹¹ Letter from ██████ submitted on 18 October 2024 in the Merger Record pages 666 – 676.

¹² Letter from ██████ dated 22 October 2024 in the Merger Record, pages 710 – 723.

¹³ Letter from ██████ dated 23 October 2024 in the Merger record, pages 594 – 605.

¹⁴ Letter from ██████ submitted on 30 October 2024 in the Merger Record pages 691 – 695.

¹⁵ Letter from ██████ dated 29 October 2024 in the Merger Record, pages 615 – 623.

¹⁶ Letter from ██████ dated 30 October 2024 in the Merger Record, pages 682 – 683.

¹⁷ Letter from ██████ dated 23 October 2024 in the Meger Record pages 657 – 658.

¹⁸ Email correspondence from ██████ dated 07 November 2024 in the Merger Record, pages 702 – 703.

¹⁹ Email correspondence dated 28 and 29 October 2024 in the Merger Record pages 725 – 726.

as Metair supplying Autozone at preferential terms, supply disruptions or price increases (i.e., Metair may prioritise supplying Autozone over its rivals, resulting in delayed deliveries or higher costs imposed on their business).

[29] AutoX, also raised concerns that it may lose a significant downstream customer i.e., Autozone (customer foreclosure). AutoX [REDACTED] [REDACTED] and supplies it with SABAT and Willard brand batteries. AutoX [REDACTED].

[30] The Commission found that the foreclosure concerns raised by the Complainants are unlikely to materialise given the Commission's findings in its vertical assessment. In addition, firms such as [REDACTED] confirmed that notwithstanding their foreclosure concerns, there are numerous alternative suppliers of automotive aftermarket components.

[31] In relation to the concerns raised by AutoX, the Commission found that AutoX has various channels to market as well as AutoX's own retail partners and Willard Xpress, a network of over 50 retail outlets.

[32] Notwithstanding the Commission's findings, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[33] At the hearing, we enquired on the factors which the Commission took into account when determining the duration for the commitments [REDACTED]
[REDACTED]
[REDACTED]²⁰ The Commission submitted that the proposed timelines provide AutoX with adequate time to explore alternative channels to market.²¹ AutoX confirmed

²⁰ Hearing Transcript dated 09 December 2024 page 26, lines 17 – 22 and page 27, lines 1 – 2.
²¹ Hearing Transcript dated 09 December 2024 page 27, lines 7 – 11.

the position presented by the Commission and confirmed that it agrees with the time periods proposed.²²

[34] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED].²³ At the hearing we enquired the rationale behind the [REDACTED] agreed to and an explanation as to how the [REDACTED] were [REDACTED].²⁴ The merging parties submitted that the [REDACTED] are based on [REDACTED]
[REDACTED].²⁵

[35] We further enquired the purpose of the [REDACTED] included in the Addendum. The merging parties submitted that the t [REDACTED]
[REDACTED]
[REDACTED].²⁶ We additionally sought to understand whether any other downstream market participants would be adversely affected by the [REDACTED] commitments. The merging parties submitted that no other market participants would be affected [REDACTED]
[REDACTED].²⁷

[36] The Addendum further stipulates that Autozone [REDACTED] in relation to [REDACTED] and [REDACTED] in relation to [REDACTED]. In this regard, we enquired the rationale behind the [REDACTED]. The merging parties submitted that the [REDACTED] is based on [REDACTED] and seeks to [REDACTED]
[REDACTED].²⁸

[37] The merging parties submitted that the Addendum is [REDACTED]
[REDACTED] and [REDACTED]
[REDACTED].²⁹

²² Hearing Transcript dated 09 December 2024 page 28, lines 2 – 6.

²³ Clause 1.1 of the Addendum submitted by the merging parties on 05 December 2024.

²⁴ Hearing Transcripts dated 09 December 2024 page 29, lines 4 – 10.

²⁵ Hearing Transcripts dated 09 December 2024 page 30, lines 1 -11.

²⁶ Hearing Transcripts dated 09 December 2024 pages 31 – 33. Further see Hearing Transcripts page 38, lines 13 – 16.

²⁷ Hearing Transcripts dated 09 December 2024 pages 33 – 34. [REDACTED]
[REDACTED]

²⁸ Hearing Transcripts dated 09 December 2024 pages 34 – 35.

²⁹ Hearing Transcripts dated 09 December 2024 page37, lines 10 – 16.

Information exchange concerns

[38] The Commission received information sharing concerns from [REDACTED]. These firms were concerned that Metair would potentially have access to its upstream and downstream rivals' information such as purchase volumes, customer buying patterns, areas of sale, pricing structures, sales strategies and alike, and use same to its competitive advantage in competing at the at the relevant levels of the aftermarket value chain.

[39] The Commission found that given the fragmented nature of the relevant markets, the mechanism and incentive for co-ordination are unlikely.³⁰ Furthermore, the merging parties have not been implicated in any previous or ongoing cartel investigations in relation to the relevant automotive aftermarket components markets. Notwithstanding its findings, the Commission proposed the imposition of a commitment which will mitigate the risk of competitively sensitive information exchanges between the merged entity and its competitors at various levels of the aftermarket value chain.

[40] At the hearing, we requested the Commission to elaborate on the factors it considered in determining whether the sharing of competitively sensitive information would be adequately prevented through the imposition of the proposed commitment.³¹ The Commission and merging parties submitted that the entities within the Metair Group operate as separately legal entities and as such there is no information flow between internal firms.³² The Commission further stated that given the fragmented nature of the market, as well as the absence of a history of coordination, the proposed commitment is not ordinarily imposed however, given the concerns raised, the Commission viewed the information sharing commitment as an enhanced mechanism to prevent information sharing, which places a specific obligation on the merging parties to prevent the exchange of competitively sensitive information.³³

³⁰ Hearing Transcripts dated 09 December 2024 page 15, lines 1 -6.

³¹ Hearing Transcripts dated 09 December 2024 page 13, lines 10 – 20.

³² Hearing Transcripts dated 09 December 2024 page 14, lines 2 - 7. Further see Hearing Transcripts page 18, lines 3 – 7.

³³ Hearing Transcripts dated 09 December 2024 page 17, lines 2 – 8.

Scrap battery returns concern

[41] AutoX raised concerns that the proposed merger would have an impact on its scrap battery returns. Pre-merger, AutoX sourced scrap batteries from Autozone for lead recycling purposes. These scrap batteries would be converted into an input for the manufacturing of new lead acid batteries. Since both [REDACTED] own smelting facilities, [REDACTED] was concerned that, post-merger, [REDACTED] would be likely to divert Autozone's scrap batteries to [REDACTED] own smelting facility, which would compromise [REDACTED] ability to remain competitive.

[42] The Commission noted that AutoX sourced scrap battery returns from Autozone [REDACTED]
[REDACTED]
[REDACTED], Autozone may divert scrap batteries to AutoX's rival battery suppliers. The Commission therefore found that the concern is not merger specific.³⁴

[43] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[44] At the hearing, we enquired whether other market participants receive scrap battery returns from Autozone and whether these market participants raised any concerns.³⁶ In response the Commission submitted that the concerns raised in respect of the scrap batteries are limited to AutoX, given the historic arrangements between AutoX and AutoZone and particularly in relation to the fact that [REDACTED] and AutoX received scrap batteries from Autozone.³⁷

³⁴ The Commission's Recommendation para 85, page 36.

³⁵ [REDACTED]

[REDACTED]. Hearing Transcripts dated 09 December 2024 page 25, lines 6 – 9.

³⁶ Hearing Transcripts dated 09 December 2024 page 22, lines 2 – 10.

³⁷ Hearing Transcripts dated 09 December 2024 page 22, lines 11 – 14.

[45] We further enquired whether the commitment would affect any other market participant in relation to scrap battery returns.³⁸ The merging parties confirmed that [REDACTED].³⁹

Other concerns raised

[46] The Commission received concerns from [REDACTED] that Metair may lobby for higher import tariffs against imports of automotive aftermarket components post-merger, which would increase prices for the local market. The Commission found that this concern is not merger specific. Moreover, the Commission found that the concern on import tariffs lends credence to its finding that imports exert a significant competitive constraint on the local market.

[47] The Commission also received concerns from [REDACTED] regarding prior implementation of the proposed merger. The Commission dismissed the allegations that the merger has been prior implemented as no evidence corroborates the allegation that the merging parties are presenting themselves as a merged entity to market participants.

[48] Based on the above, we are of the view that the proposed merger is unlikely to result in the substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

[49] The merging parties provided an unequivocal undertaking that the proposed merger will not result in merger specific job losses.⁴⁰

[50] In its investigation, the Commission found that prior to being placed in business rescue, Autozone embarked on a restructuring plan which resulted in certain non-viable stores being closed. This culminated in the retrenchment of [REDACTED]

³⁸ Hearing Transcripts dated 09 December 2024 page 24, lines 1 – 4.

³⁹ Hearing Transcripts dated 09 December 2024 page 25, lines 2 – 4.

⁴⁰ Schedules to Form CC4(2) submitted by the merging parties.

individuals in the past financial year.⁴¹ The merging parties submitted that the aforementioned retrenchments were not a result of the proposed merger but rather, as a direct result of the financial distress of Autozone.

[51] In addition to the above, following the commencement of business rescue proceedings by Autozone, a limited number of stores were identified for closure. The merging parties submitted that this process would result in the retrenchment of ■ employees (“Affected Employees”). Of the ■ retrenchments, ■ were voluntary, with the remaining ■ employees still reviewing (through their union) their termination proposals. The Commission found that the ■ involuntary retrenchments were part of Autozone’s attempts to restructure its unprofitable branches which predates the business rescue process (which commenced on 01 July 2024).

[52] The Commission however noted that the merging parties remained uncertain of the potential impact of the business rescue process on Autozone’s employees. To address this, the Commission proposed the imposition of a moratorium on retrenchments for a period of ■, as well as a commitment that where employment opportunities arise within Autozone, that the merging parties will give the Affected Employees first preference to apply for such employment opportunities.

[53] Considering the above, we are of the view that the proposed merger is unlikely to have a negative impact on employment.

Promotion of a greater spread of ownership

[54] The merging parties submitted that the proposed merger would result in a promotion of a greater spread of ownership by historically disadvantaged persons (“HDPs”). That is because Autozone’s HDP shareholding will increase from 18.63% to 67.05% post-merger based on B-BBE certificates.

[55] We are of the view that the proposed merger raises no substantial issues regarding the promotion of a greater spread of ownership.

⁴¹ See the Joint Competitiveness Report in the Merger Record para 10.1.1, page 69.

Conclusion

[56] For the reasons set out above, we are satisfied that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger does not raise any public interest concerns.

[57] We accordingly approved the merger on the basis of the conditions in **Annexure A** to our order dated 10 December 2024.

Signed by: Imraan Valodia
Signed at: 2024-12-19 15:32:58 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

19 December 2024

Prof. Imraan Valodia

Date

Ms Andiswa Ndoni and Prof. Thando Vilakazi

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Mark Garden and Kgomotso Mmutle of Webber Wentzel for the Metair Group; Jocelyn Katz and Hoosein Mayet of ENS Africa for Autozone
For AutoX	Greta Engelbrecht <i>instructed by</i> Chris Charter of Cliff Dekker Hofmeyr
For the Commission:	Kgothatso Kgobe and Wiri Gumbie