

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 65/LM/Aug06

In the matter between:

SANDOWN MOTOR HOLDINGS (PTY) LTD

Acquiring Firm

and

PAARL MOTORS (PTY) LTD

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), and Y Carrim (Tribunal Member)

Heard on : 11 October 2006

Delivered on : 11 October 2006

REASONS FOR DECISION

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 11 October 2006 approving without conditions the proposed merger between Sandown Motor Holdings Ltd ("SMH") and Paarl Motors (Pty) Ltd ("Paarl Motors"). The reasons for the approval appear below.

The parties and the merger transaction

[2] SMH¹ is a subsidiary of DaimlerChrysler South Africa (Pty) Ltd

¹ SMH owns five (5) dormant companies, viz., Sandown Motors Bryanston; Sandown Truck Centre (Pty) Ltd; Sandown Motors Village Close (Pty) Ltd; Orbit Motors Boland (Pty) Ltd; and Ellenby Motors Hatfield (Pty) Ltd.

("DCSA"),² which in turn is controlled by DaimlerChrysler AG ("DCAG"), a German company.³ DCSA has a 75% interest in and exercises control over SMH.

[3] SMH will acquire the entire business of Paarl Motors,⁴ a DCSA franchised new and used motor vehicle dealership, as a going concern.⁵ Pursuant to entering into the sale of shares agreement, SMH will own and control Paarl Motors.⁶

Rationale for the transaction

[4] The Selfords Trust enters into this deal in order to realise its investment in the business of Paarl Motors.

[5] SMH claims that the proposed deal would allow SMH to improve its efficiency and customer service levels in its Western Cape operations. SMH also claims that it will be able to allocate its capital investment and other resources more efficiently between its various dealerships located in Cape Town and the surrounding areas and thereby enhance its ability to compete with dealers of vehicles brands such as BMW, Audi, Renault

2 DCSA also owns other subsidiaries, viz., DaimlerChrysler Services South Africa (Pty) Ltd; DaimlerChrysler Capital Services SA (Debis) (Pty) Ltd; DaimlerChrysler South Africa Manufacturing (Pty) Ltd; Atlantis Foundaries (Pty) Ltd; Koppe View Property (Pty) Ltd; and DC Aviation (Pty) Ltd.

3 DCAG owns a number of subsidiaries worldwide, which are for our purposes unnecessary to detail here. However, in South Africa DCAG controls two (2) companies, viz., AEG (Pty) Ltd; and Siyakha Project, an association incorporated under section 21 of the South African Companies Act, 1973.

4 Paarl Motors is wholly owned and controlled by the Selfords Trust. Paarl Motors does not have any subsidiaries. In addition, the Selfords Trust controls other six (6) subsidiaries as follows, Selfords (Pty) Ltd (i.e., motor body repair, and Shell); Selford Properties (Pty) Ltd (i.e., property owning business); Donford (Pty) Ltd (i.e., BMW, Motorrad, and Shell); Donford Properties (Pty) Ltd; Donvol (Pty) Ltd (i.e., Landrover, and Volvo); and Stellenbosch Square Service Station (Pty) Ltd (i.e., a Shell fuel service station). See Selfords Group organogram, page 644 of the record).

5 The merging parties advise that in a separate transaction, which also forms part of SMH's corporate strategy in South Africa, the BEE investors will acquire a 40% shareholding in SMH and would result in DCSA reducing its current shareholding in SMH to 51,1% whilst the remaining 9,9% interest will be held by RMC. The merging parties asserted that the said BEE deal is not notifiable and as such has not been filed with the Commission. We note here that our approval herein relates to the acquisition of the entire business of Paarl Motors by SMH, and has therefore nothing to do with the aforesaid BEE deal.

6 For a detailed description of the transaction, see the *Sale of Business Agreement* entered into between Paarl Motors and SMH, pages 181-241 of the merger record.

and Ford.⁷

The relevant market

- [6] SMH is a DCSA franchised dealership subsidiary, which operates the DCSA brand centres in Gauteng and the Western Cape. SMH describes itself on its website as the 'largest dealer network in the powerful Mercedes-Benz, Smart Cars, Chrysler, Jeep and Mitsubishi' (the so-called 'passenger vehicles'). It also sells commercial vehicles in brand names such as Mercedes-Benz, Freightliner, Mitsubishi Fuso and Western Star.⁸ SMH only sells DCSA products, both new and used motor vehicles – and is also involved in after-sales service⁹ and sale of spare parts¹⁰ in respect of the vehicles it sells as well as sourcing of vehicle accessories.¹¹
- [7] DCSA currently operates in South Africa as a manufacturer and supplier of passenger cars and commercial vehicles. DCSA markets eight (8) branded passenger cars¹² as well as commercial vehicles.¹³
- [8] Paarl Motors is a DCSA franchised dealership, which operates in Paarl in the Western Cape. It sells new and used vehicles – it is also involved in after-

7 See page 246 of the merger record, in particular paragraph 2.1. The merging parties did not file any board documents as the transaction was not discussed at the board levels of either the primary acquiring or the target firm. However when we queried the non-existence of minutes during the hearing, we were advised that the transaction had been discussed at the board of the acquiring firm's controlling shareholder. While we are satisfied that the merging parties in this case were not trying to mislead the Commission by not filing the shareholders minutes, we would urge the Commission in future where parties advise that a large merger has not been discussed at a board meeting, to enquire as to whether the transaction has been discussed at some other level of a group, and if so, to require production of those minutes.

8 For more detail, visit Sandown's website: www.sandown.co.za.

9 SMH's after-sales service is conducted by the SMH workshop, which performs routine servicing as part of the maintenance plan with which new vehicles are sold, repairs, and maintains vehicles, performs warranty repairs, outsources specialised repair work and does pre-delivery inspection of new DCSA vehicles.

10 SMH's spare parts are sourced from DCSA. According to the merging parties, DCSA employs the so-called "DNI" strategy for the distribution of spare parts in terms of which all DCSA franchised dealers have equal access to spare parts, drawing from the factory on equivalent terms, when the need arises. SMH's parts sales include retail sales and parts issued to the workshop as a replacement part where a vehicle is being repaired or serviced.

11 According to the merging parties, SMH buys vehicle accessories from suppliers other than DCSA, which accessories are limited to things such as towbars, bullbars and the like.

12 These are Mercedes-Benz, Mitsubishi, Chrysler, Jeep, Pajero, Mitsubishi, Colt and Smart cars.

13 These are Mercedes-Benz commercial vehicles (including buses), Freightliner trucks, Western Star (which are custom built on and off highway vehicles), and Fuso (including Canter trucks).

sales service and sale of spare parts in respect of its franchised brands; vehicle accessories; and provides forecourt/service station.

- [9] It is clear from the foregoing that the merging parties' activities overlap horizontally.¹⁴ This is the case because both parties are involved in the retail sale of new and used passenger and commercial vehicles, spare parts and services of these vehicles and the sourcing of vehicle accessories. It should be noted that we have previously approached market definition in the retail motor vehicle markets by finding that different segments constitute distinct relevant product markets. The passenger vehicle submarkets may include cars which are entry level, small, lower middle, upper middle, large, lower luxury, upper luxury, lower speciality, upper speciality, small utility, lower middle utility, upper middle utility, small minivans, and minivans. The market for commercial vehicles can be categorised into light, medium, heavy commercial vehicles, and buses and coaches over ten tons.¹⁵
- [10] From a geographic market point of view, DCSA manufactures and supplies its products for sale throughout South Africa. SMH operates its entire range of services in Gauteng and the Western Cape whilst Paarl Motors conduct its business in Paarl, Western Cape. The merging parties believe that the geographic markets for the manufacture/supply of vehicles as well as for the sale of passenger and commercial vehicles is national. The Commission viewed the geographic market as the Western Cape area/region.¹⁶ We deem it unnecessary for us to explore the geographic market issue for purposes of this transaction given our finding below.

Competition analysis

- [11] We are satisfied that the proposed transaction appears unlikely to result in a substantial prevention or lessening of competition for reasons outlined below.

¹⁴ Notwithstanding the horizontal overlap thereof, the Commission submitted that the proposed transaction further entail a vertical dimension in it because DCSA is a supplier of new and used passenger and commercial vehicles to both SMH and Paarl Motors. However, the Commission contends that the trading between SMH and Paarl Motors is insignificant as it constituted very few percentages of Paarl Motors' turnover in the previous financial year. We agree with the Commission's view and ultimately take it no further than this.

¹⁵ See our previous decisions, *inter alia*, *DaimlerChrysler South Africa (Pty) Ltd and Sandown Motor Holdings (Pty) Ltd* [2001-2002] CPLR 151 (CT); *Unitrans Motors (Pty) Ltd and the Motor Division of Senwes Ltd* [2001-2002] CPLR 350 (CT); etc.

¹⁶ See page 4, para. 4.1.2, of the Commission Recommendation.

[12] The Commission's market share investigation yielded the following results in respect of each segment/sub-category of the affected markets.¹⁷ The merging parties' have a combined post-merger market share for the passenger vehicles market in the Western Cape region of approximately 8% (small cars); 32% (luxury cars); 32% (specialty cars); 15% (sport utility vehicles); and 14% (minivans). With regard to commercial vehicles, the merging parties have a combined post-merger market shares of approximately 6% (light commercial vehicles); 13% (medium commercial vehicles); 13% (heavy commercial vehicles); 35% (extra-heavy commercial vehicles) and 23% (buses).

[13] As can be seen from the above market shares, the merging parties appear to be market share leaders in the three (3) categories, viz., luxury cars, specialty cars and extra heavy commercial vehicles. The merging parties contend that the luxury market is highly competitive and manufacturers continually innovate and release new models in order to attract luxury vehicle buyers, and that new players such as Subaru have entered this market segment recently.¹⁸ The merging parties argued similarly with respect to specialty cars but added that there are a significant number of large competitors in this market notably Toyota whom the merging parties regard as a formidable competitor. The merging parties advised us that there are other large competitors in the

¹⁷ Both the Commission and the merging parties based the market share estimates on the NAAMSA annual report of 2005.

¹⁸ The merging parties submit that Audi, for example, has released its new RS4 model and this would impact on the market shares of other competitors in this market in 2006. They further pointed out that in recent years, DCSA products lost significant market share to BMW and to a lesser extent to Audi. See page 273 of the merger record.

extra heavy commercial market segment in the form of Tyco, Nissan and Volvo.

[14] The Commission contends that although in its view there is a high likelihood of a reduction in *intra-brand* competition, this is unlikely to result in reduced *inter-brand* competition in the affected markets given the prevalence of a wide range of brands and players in the market for the sale of new and used passenger and commercial vehicles.¹⁹

Public Interest

[15] The merging parties submitted that proposed transaction would not have an impact on any public interest aspects. Indeed the merging parties foresee potential benefit to the hundred and eight (108) current employees of Paarl Motors since they will all be employed by SMH, a larger vehicle dealer.²⁰

Conclusion

[16] We are satisfied that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in the relevant markets. There are no public interest grounds that justify prohibiting or imposing any conditions on the merger. We accordingly approve the proposed transaction unconditionally.

¹⁹ See page 14 of the Commission Recommendation. According to the Commission, the other dealerships compete with the merging parties in each and every category and sub-category of new and used passenger and commercial vehicles, and as such dealership outlets compete for customers in terms of better services offerings and attractive maintenance contracts and related services. These dealerships include those supplying vehicles of other manufacturers such as Audi, Volvo, BMW, Chevrolet, MAN, and Scania. The Commission submit that it has considered DCSA's strategy as DCSA has been substantially involved in a number of acquisitions. The Commission investigation revealed that DCSA's strategy is in line with its own DNS approach and has entered into acquisitions related to its own products. According to the Commission, this approach does not amount to any form of foreclosure or anti-competitive behaviour. See pages 15-16 of the Commission Recommendation.

²⁰ See in this regard, pages 30 and 297 of the merger record.

D Lewis

N Manoim and Y Carrim concurring.

Tribunal Researcher: T Masithulela

For the merging parties : L Morphet and H Irvine (*Deneys Reitz Inc.*)

For the Commission : L Lamola (Mergers and Acquisitions)