

Case no: LM011Apr21

In the matter between:

Texmex 57 (Pty) Ltd

Primary Acquiring Firm

And

Bidvest Car Rental (Pty) Ltd

Primary Target Firm

REASONS FOR DECISION

Conditional approval

- [1] On 23 June 2021, the Competition Tribunal (“Tribunal”) conditionally approved the proposed transaction in terms of which Texmex 57 (Pty) Ltd (“NewCo”) intends to acquire the entire issued share capital of Bidvest Car Rental (Pty) Ltd (“BCR”), as well as all shareholder loan claims against BCR. Upon implementation of the proposed transaction NewCo will own and control BCR.
- [2] The acquiring firm is NewCo, a newly acquired firm and a consortium comprised of the following shareholders: (i) Mortimer Thesele Group (Pty) Ltd (“MTG”); (ii) Hallmark Motor Group (Pty) Ltd (“Hallmark”); and (iii) an SPV (yet to be established) to be controlled by certain individuals of the management team at BCR. MTG is jointly controlled by Mortimer Motors (Pty) Ltd (“Mortimer”) and Thesele Group (Pty) Ltd (“Thesele”). Hallmark is controlled by Cargo Carrier Holdings (Pty) Ltd (“Cargo Carrier”).
- [3] NewCo currently has no business activities. MTG operates two vehicle dealerships, namely, Mortimer Toyota, Dundee and UD Trucks, Queenstown. Mortimer is a multi-brand, franchised motor vehicle dealership group currently operating numerous dealerships primarily situated in KwaZulu-Natal and the

Free State. Thesele's activities relating to short- and long-term truck hire and related services are relevant for the competition assessment of the proposed transaction. Hallmark primarily owns and operates motor vehicle dealerships in various locations across South Africa.

- [4] The target firm is BCR, a wholly owned subsidiary of Bidvest Group Ltd ("Bidvest").
- [5] BCR provides the following services: (i) short-term vehicle rental services; (ii) van and truck rental services; (iii) door-to-door transfer services; (iv) chauffeur drive services; and (v) coach charter services. BCR also has limited involvement in the provision of long-term vehicle leasing solutions, which entails acquiring and leasing vehicles to corporate customers that have a need for a fleet of vehicles but wish to do so on an outsourced basis that does not entail vehicle ownership.

Competition assessment

- [6] The Competition Commission ("Commission") assessed the activities of the merger parties in the following (potential) relevant markets:
 - (i) the national (broad) market for the rental/leasing of all commercial vehicles;
 - (ii) the national market for the rental/leasing of light commercial vehicles; and
 - (iii) the national market for the rental/leasing of medium commercial vehicles.
- [7] In the (broad) product market for the rental/leasing of all commercial vehicles, and the (narrower) product market for the rental/leasing of light commercial vehicles, the Commission found that the merging parties will have estimated market shares of less than 25% in South Africa. In the (narrower) product market for the rental/leasing of medium commercial vehicles, the Commission found that the merging parties will have an estimated market share of [25-35]% in South Africa, with a small accretion as a result of the proposed transaction of approximately 1%.

- [8] We note that none of the customers and competitors contacted by the Commission raised any concerns with the proposed transaction.
- [9] Given the above market shares and that the merging parties will face competition from various other players in all the affected markets, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [10] The Commission further found that the proposed transaction presents a vertical overlap since the acquiring firms (Mortimer and Hallmark) purchase or intend to purchase second-hand car stock from BCR. The Commission however found that the proposed transaction is unlikely to result in input foreclosures since there are numerous alternative sources for used car stock. The Commission further found that the proposed transaction is unlikely to result in customer foreclosure because Mortimer and Hallmark largely rely on trade-ins and do not have any contracts in place for the supply of used vehicles.
- [11] Given the above, we concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

- [12] The merging parties submitted that there will be no adverse effect on employment as a result of the proposed transaction since there will be no merger-specific retrenchments.
- [13] However, the Commission noted that pre-merger BCR engaged in retrenchments. In total 663 permanent BCR employees out of a total permanent staff complement of 1168 were forcibly retrenched in the period September to December 2020. An additional 85 employees took voluntary retrenchment packages.

- [14] The Commission's investigation found that the above retrenchments are likely due to the impact of the Covid-19 pandemic on BCR. It considered the significant decline in the revenue of BCR and concluded that it is unlikely that these retrenchments are linked to the merger.
- [15] The Department of Trade, Industry and Competition ("DTIC") submitted that the pandemic induced downturn in the tourism and business travel sectors, both locally and internationally is likely to ease over the coming months as mitigation measures against the pandemic such as the vaccine roll-out programme are implemented. The DTIC suggested that the merging parties should institute as a commitment/condition of the merger that when suitable employment opportunities become available, the acquiring firm will in the first instance make offers of employment to suitably qualified retrenched employees of BCR from the date of approval of the merger and for a period of 24 months post the lockdown.
- [16] Following engagements between the merging parties and the Commission, the merging parties agreed to a commitment to offer employment opportunities, under certain conditions, to the retrenched BCR employees for a period of 12 months following the implementation of the merger. The Commission recommended that the transaction should be approved subject to this condition.
- [17] Given the number of recent retrenchments at the target firm and the current state of the economy due to the Covid-19 pandemic, the Tribunal requested the merging parties to give consideration to committing to the abovementioned employment condition for a period of 24 months instead of a period of 12 months.
- [18] The merging parties submitted that BCR has been instrumental in ensuring that the retrenched employees find alternative employment, facilitating that approximately 75 of retrenched workers were taken over by another service provider in the industry. Furthermore, BCR submitted that it has already, in just the past few months, re-employed a material number of employees. 37 of the retrenched employees have been recalled and given employment in the past

few months. The merging parties however, on a purely voluntary basis, agreed to if any employment opportunities arise within BCR, offer employment opportunities, under certain conditions (as set out in the Tribunal's order), to the retrenched BCR employees for a period of 24 months following the implementation date of the proposed transaction.¹

Other public interest considerations

[19] The proposed transaction does not raise any other public interest concerns.

Conclusion

[20] In light of the above, the proposed transaction was approved subject to the employment-related conditions attached hereto as "Annexure A".

Mr Andreas Wessels

13 August 2021

Date

Ms Yasmin Carrim and Mr Halton Cheadle concurring

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : P Cleland and S Rodze of Werksmans

For the Commission : B Mabatamela and R Maphwanya

¹ We note that the merging parties' undertakings exclude the affected employees who have found alternative employment and those who will have elected to opt out from receiving vacancy communications during the period of the undertakings' operation.