

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM268Mar19

In the matter between:

Kempster Sedgwick (Pty) Ltd

Primary Acquiring Firm

and

**The Honda, Citroen and Peugeot
Motor Dealership located in Umhlanga
Ridge and operated by Mekor
Umhlanga Ridge (Pty) Ltd**

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 29 May 2019
Order Issued on	: 29 May 2019
Reasons Issued on	: 26 June 2019

Reasons for Decision

Approval

- [1] On 29 May 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Kempster Sedgwick (Pty) Ltd and

the Honda, Citroen and Peugeot Motor Dealership located in Umhlanga Ridge and operated by Mekor Umhlanga Ridge (Pty) Ltd.

- [2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Kempster Sedgwick (Pty) Ltd (“Kempster Sedgwick”), a company incorporated in accordance with the laws of South Africa. Kempster Sedgwick is controlled by CMH Holdings (Pty) Ltd (“CMH Holdings”). CMH Holdings is controlled by Combined Motor Holdings Ltd (“CMH”).
- [4] The acquiring firm and all the firms controlling it are, henceforth, collectively referred to as the Acquiring Group.
- [5] The Acquiring Group operates approximately 65 motor dealerships involving 10 different original equipment manufacturers (“OEMs”) across the national market. In the KwaZulu Natal Province (“KZN”), where the target Honda dealership is also based, the Acquiring Group operates various motor dealerships, all of which are located within the eThekweni Metro.¹

Primary target firm

- [6] The primary target firm is the Honda, Citroen and Peugeot motor dealership operated by Mekor Umhlanga (“Mekor Umhlanga Dealership”). Mekor Umhlanga Dealership is incorporated in accordance with the laws of South Africa.
- [7] Mekor Umhlanga Dealership is controlled by Mekor Motors Umhlanga Ridge (Pty) Ltd (“Mekor Umhlanga”), which is, in turn, controlled by Mekor Motors Holdings (Pty) Ltd (“Mekor Holdings”). Mekor Umhlanga also controls the

¹ These dealerships include, amongst others, CMH Volvo Umhlanga, Land Rover Umhlanga, CMH Nissan and Datsun Ballito, Kempster Ford Umhlanga, Kempster Ford Durban and Volvo Umhlanga.

Mekor Amanzimtoti Dealership as well as the Mekor Motors Cape Town (Pty) Ltd.

- [8] The target motor dealership sells new Honda and Peugeot motor vehicles; new Honda motorcycles; used motor vehicles and motorcycles; Honda, Citroen and Peugeot branded parts and accessories. The target firm further acts as an intermediary in relation to the provision of finance and insurance services and repairs on Honda, Citroen and Peugeot branded vehicles in the eThekwini area.

Proposed transaction and rationale

- [9] In terms of the Sale Agreement concluded between Mekor Umhlanga and Kempster Sedgwick, Kempster intends to acquire the Mekor Umhlanga Dealership as a going concern. The target business comprises the plant and equipment, furniture, fixtures and fittings, computers, leasehold improvements, corporate signage and other movable assets; inventory of new vehicles, demonstration vehicles, used vehicles and parts and accessories; all workshop work in progress; and all ongoing contracts.
- [10] In terms of the rationale, Kempster is purchasing the target firm because it will complement Kempster's existing range of dealerships, in particular, its Honda dealership in Pinetown.
- [11] Mekor Umhlanga, owning only two dealerships in KwaZulu-Natal, intends to concentrate its efforts in the Western Cape.

Relevant markets and impact on competition

- [12] The Commission considered the activities of the merging parties and found that the proposed transaction presents multiple horizontal overlaps. As such, the Commission assessed the competition effects in the following markets:

- a) The sale of new passenger vehicles within the identified² eThekwini Metro;

² The relevant geographic market is identified as being within an 80km radius of the merging parties' activities and is henceforth referred to as "eThekwini Metro". The Commission has identified the 80km radius as being the place encompassing all areas within the eThekwini Metro, but excluding Maritzburg.

- i. Within this market, the Commission found that the merged entity will account for 16% of the market, with a market share accretion of 1.7%. It further found that the CMH Group will continue to face competition from other competitors, such as Alpine Motors, McCarthy, Supertech, Barons and others operating within the eThekweni Metro.
- b) The sale of new passenger vehicles in the KZN Province;
 - i. Within this market, the Commission found that the merged entity will account for 10.9% of the market, with an accretion of 1.1%.³ Again, it found that the CMH Group will continue to face competition from several other dealerships, including Alpine Motors, Barons and Hoopers.
- c) The provision of scheduled vehicle services on Honda branded passenger vehicles within approximately 35 km radius of the merging parties;
 - i. The Commission found that the Acquiring Group will be responsible for the provision of scheduled services to the majority (up to 89.6%) of the Honda vehicles purchased in 2018, within the eThekweni Metro.⁴
- d) The provision/sale of automotive parts of Honda branded passenger vehicles within approximately 35km radius of the merging parties.
 - i. The Commission relied upon the same information as the market above and drew the same conclusion in relation to this market, as such, this will not be discussed further.

[13] In light of its findings, the Commission was of the view that the proposed transaction is unlikely to lead to a substantial change in the structure of the market. The Commission further indicated that Mekor Honda Amanzimtoti, a competitor located within an approximate 35km radius of the merging parties, would continue to constrain CMH Honda dealerships, post-merger.

[14] In addition to the above, the Commission analysed the inter-brand and

³ The market share estimates were calculated based on the data provided by NAAMSA.

⁴ The Commission considered the sales units of Honda branded passenger vehicles as a proxy for the level of competition within this market.

intra-brand competition faced by the merging parties within the relevant geographic markets, being the eThekwin Metro and the broader KZN Province.⁵

Inter-brand competitive analysis

[15] The Commission found that there are more than 80 (eighty) dealerships in competition with those of the CMH Group in the eThekwin Metro. Furthermore, under a broader market of the KZN Province, the Commission found that there are many other dealerships located in areas, such as Richards Bay, Empangeni, Newcastle and Ladysmith which add to the competitive restraint.

[16] In view of the above, the Commission concluded that the proposed transaction is therefore unlikely to lead to a loss of inter-brand competition, post-merger.

Intra-brand competitive analysis

[17] The Commission identified Honda as the only brand affected by intra-brand competition in the instant transaction, as CMH Honda Pinetown (the CMH Group's only Honda dealership in the broader KZN province) does not handle new Peugeot passenger vehicles, whereas, the target firm, Mekor Umhlanga Dealership, is primarily active in both the Honda and Peugeot brands.

[18] In its recommendation, the Commission considered the average prices of the merging parties' various entry level models of Hondas offered by their respective Honda dealerships as well as the extent of the presence of other alternative Honda dealerships within the geographic markets in which the merging parties compete.

[19] In its report, the Commission indicated that the average prices for Honda models offered by the target firm were lower than those offered by the acquiring firm. This would suggest that intra-brand competition was weak and that a post-merger price increase in Honda vehicles was likely.

⁵ In Hallmark Motor Group (Pty) Ltd and Mekor Motors Sandton (Pty) Ltd and Mekor Motors Umhlanga (Pty) Ltd, the Commission identified a radius of approximately 80km between the activities of the merging parties as the relevant geographic market for the sale of new passenger vehicles and new light commercial vehicles.

- [20] At the hearing, Ms Cleland, who represented the merging parties, explained that the figures they had provided to the Commission had been based on a misunderstanding. The Acquiring Group had calculated average prices across all the ranges of vehicles within each of the relevant Honda models, namely the Amaze, Brio and Jazz. The target firm, on the other hand, had calculated its average prices based on the entry level vehicles within each of the aforementioned models.
- [21] A new set of calculations was sent to the Tribunal which indicated that the pricing variation was insignificant and in one instance, the target firm's prices were higher than that of the Acquiring Group's.⁶ Furthermore, the Commission found that CMH Group maintains its pricing within the range of the recommended retail prices published by Honda OEMs.
- [22] With respect to the extent of the presence of alternative competing Honda dealerships within an 80km radius of the merging parties, the Commission noted that post-merger, the merging parties will continue to face competition from Honda Amanzimtoti and Honda Pietermaritzburg.
- [23] On a broader geographic market level involving the rest of the KZN Province, the Commission found that the merging parties will face competition from four other dealerships, namely Honda Ladysmith, Honda Newcastle, Honda Richards Bay and Honda Shelly Beach. The Commission noted that the distance between the merging parties and the aforementioned dealerships ranges between 137km and 352km and concluded that intra-brand competition on a broader KZN scope is weak.

⁶ Transcript p11, lines 4 – 14 and p13, lines 3 – 12.

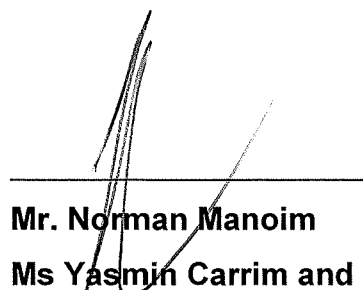
- [24] Although the merger reduces intra-brand competition between CMH Honda Pinetown and Mekor Umhlanga Dealership, it does not change the number of dealerships owned by rival groups. Mekor retains one outlet post-merger (Mekor Honda Amanzimtoti) and thus dilutes from two to one, whilst the Acquiring group moves from one to two.⁷

Public interest analysis

- [25] The merging parties submitted that there will be no retrenchments of any employees as a result of the proposed transaction.
- [26] The Commission is of the view that the proposed transaction is unlikely to raise employment concerns as the target firm is acquired as a going concern in accordance with section 197 of the Labour Relations Act 66 of 1995, and the merging parties have confirmed to the employee representative that all employees will be transferred with their benefits. In addition, there are no public interest issues emanating from the proposed transaction.

Conclusion

- [27] In light of the above, although the transaction does lead to a dilution in intra-brand competition amongst Honda dealerships, we ultimately concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and raised no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.



Mr. Norman Manoim
Ms Yasmin Carrim and Prof Imraan Valodia concurring

26 June 2019

DATE

⁷ Mr Krynauw, a representative of the target firm, submitted that pricing is ultimately determined by the customer, who is free to shop around and compare quotes. It was further explained that no group policy exists amongst dealerships under a common ownership, each dealership has a responsibility to meet certain factory targets and to maintain its own market share. See transcript p21, lines 17 – 20; p22, lines 10 – 19; p23, lines 12 – 20; p24, lines 9 – 14 and lines 18 – 20.

Case Manager: Helena Graham
For the merging parties: Louise Cleland
For the Commission: Rakgole Mokolo and Thabelo Masithulela