



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: **LM196Jan17**

In the matter between:

SAMSUNG ELECTRONICS CO. LTD

Acquiring Firm

and

HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED

Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Enver Daniels (Tribunal Member)
Heard on	: 8 March 2017
Order Issued on	: 8 March 2017
Reasons Issued on	: 24 March 2017

Reasons for Decision

Approval

- [1] On 8 March 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Samsung Electronics Co. Ltd ("Samsung") and Harman International Industries, Incorporated ("Harman").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Samsung, a public company incorporated in accordance with the laws of South Korea. It is not controlled by any one shareholder. Samsung operates in South Africa through Samsung Electronics South Africa (Pty) Ltd ("Samsung SA"), a company incorporated in accordance with the laws of South Africa.
- [4] Samsung is a worldwide manufacturer and distributor of electronics and information technology products as well as high tech electronics and digital media products.

Primary Target Firm

- [5] The primary target firm is Harman, a public company incorporated in accordance with the laws of Delaware, United States of America and is not controlled by any one shareholder. Harman controls a number of firms internationally but does not have any subsidiaries operating in South Africa.
- [6] Harman designs and engineers electronic products and solutions for automakers, consumers and enterprises worldwide. The majority of Harman's business is focused on automotive electronics.¹

Proposed Transaction and Rationale

- [7] The proposed transaction entails the acquisition of Harman by Samsung and will be made through Samsung Electronics America Inc. ("Samsung USA"), a wholly-owned subsidiary of Samsung. Samsung USA has formed a new entity which will merge with Harman. Post-transaction, Samsung will exercise sole control over Harman which will operate as a wholly-owned subsidiary of Samsung.

¹ Page 56 of the Merger Record.

- [8] In terms of the rationale, the proposed transaction will allow Samsung to expand into new markets and enhance certain of its products. Furthermore, the proposed transaction will provide the merged entity with a broad range of capabilities, expertise and experience, which will allow for growth and innovation.

Relevant Market and Impact on Competition

- [9] The Commission considered the activities of the merging parties and found that there is a potential horizontal overlap in the provision of home and mobile electronics products. These products can be further delineated into the provision of audio home systems, speakers and headphones.² The Commission analysed these as three separate markets.

- [10] Further, the Commission found that the proposed transaction gives rise to a vertical overlap as Samsung is engaged in the upstream provision of DRAM and NAND semiconductors as well as display panels that could be used by downstream manufacturers in various automotive electronics applications where Harman is active.³ As such, the Commission identified three relevant vertical markets, namely (i) the upstream market for the provision of NAND and DRAM semiconductors (ii) the upstream market for the provision of display panels and (iii) the downstream market for the provision of automotive electronics.

Horizontal Overlap

- [11] In the horizontal assessment the Commission considered both global and national markets. In the global market the Commission found that the merged entity would have less than 20% in each of the relevant markets and that these market shares are minimal to confer power on the merged entity.

- [12] In respect of the national markets, the Commission was unable to obtain accurate data on market shares as most players in the affected markets are international

² Page 2 of the Transcript.

³ Page 2 of the Transcript.

players that apply their products in South Africa through distributors and are unable to segment their revenues by specific products.⁴ However, the Commission was able to show that there are viable competing brands sold and available in South Africa including LG, Sony, Panasonic and Yamaha that would continue to compete with the merged entity.

- [13] Furthermore, the Commission found that the products of Samsung and Harman do not closely compete with each other as Harman's products are premium audio products which compete against other high end audio electronic products. The premium audio products are sold at higher prices and are distributed through different distribution channels. As such the products of Harman and Samsung typically target different segments of customers.

Vertical Overlap

- [14] In respect of the vertical assessment the Commission found that the vertical overlap is unlikely to result in any input foreclosure concerns as Samsung is not dominant in the upstream market for the provision of DRAM and NAND semiconductors and display panels. It accounts for less than 5% in each of the upstream markets and is therefore unlikely to have the ability to foreclose any downstream rivals.
- [15] With regards to potential customer foreclosure concerns, the Commission found that the downstream market shares of Harman in the market for the provision of automotive electronics are less than 2% and that the merged entity will continue to face competition from large global players. In the narrower markets for infotainment systems and information displays Harman will have a market share of at most 15% and will continue to face competition.
- [16] Furthermore, the Commission found that Harman does not purchase any semiconductor or display products from Samsung or any other entities in South

⁴ Pages 3 and 8 of the Transcripts.

Africa. As such, the Commission concluded that any potential foreclosure concern is unlikely to generate effects in South Africa.

[17] Accordingly the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the horizontal or vertical markets identified.

[18] The Commission did receive a number of concerns regarding the merger from market participants. These included concerns about tying and bundling products in the home audio markets, restricting the interoperability of products against rivals, and/or incentivising dealers not to deal with rival products, and about termination of co-partnership agreements and the sharing of competitor information with Samsung obtained from those co-branding partnerships.

[19] However, the Commission maintained that the merged entity is not acquiring any market power in any of the affected markets and therefore concerns of bundling, interoperability restrictions and incentivising dealers to exclude are unlikely to arise post-merger. Regarding the impact of the merger on Harman's business relationships the Commission is of the view that Samsung has publically committed to maintaining existing relationships and that Harman is prevented from sharing information by contractual confidential provisions.

[20] We concur with the Commission's conclusion that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

[21] The merging parties submit that the proposed transaction is unlikely to negatively affect employment as Harman does not have any employees in South Africa.⁵

[22] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

⁵ Page 77 of the Merger Record

Conclusion

[23] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

24 March 2017

DATE

Ms Andiswa Ndoni and Mr Enver Daniels concurring

Tribunal Researcher:	Hayley Lyle
For the merging parties:	John Oxenham of Nortons Inc
For the Commission:	Portia Bele