

# COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO: 28/LM/Mar07

In the matter between:

**NA CO Ltd**

**Acquiring firm**

**And**

**Nissan Diesel Motor Company**

**Target firm**

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

Heard On : 16 May 2007

Decided on : 16 May 2007

Reasons Issued on : 30 May 2007

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## REASONS FOR DECISION

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### Approval

[1]. On the 16 May 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between NA CO Ltd and Nissan Diesel Motor Company unconditionally. The reasons appear below.

[2]. The primary acquiring firm is NA CO Ltd (“NA CO”).<sup>1</sup> NA CO is wholly owned by Swedish truck maker Aktienbolaget Volvo (publ) (“AB Volvo”). AB Volvo is a foreign corporation organized and existing under the laws of Sweden with its corporate headquarters and principal place of business in Gotenburg, Sweden.<sup>2</sup>

[3]. The target firm is Nissan Diesel Motor Company (“NDMC”), a company incorporated in the laws of Japan. AB Volvo holds 18.98% of common shares in NDMC.<sup>3</sup>

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1 NA CO is a special purpose vehicle incorporated under the laws of Japan for the purposes of entering into this transaction.

2 fn The following entities hold shares in AB Volvo; Renault SA- 21.3%;Svenska Handelsbanken- 6.5%;SEB Fonder/ Trygg Forsakrin- 5.5%;Violet Partners LP- 5.3% and; Second AP-Fund- 5%. AB Volvo controls among others Volvo South Africa.

3 No other shareholder controls more than 5% of the shares in NDMC. In South Africa the relevant NDMC's subsidiary for this transaction is Nissan Diesel South Africa (“NDSA”).

## **TRANSACTION**

[4]. In terms of the proposed transaction AB Volvo has made a public offer to acquire all the issued and outstanding shares in NDMC. The transaction would give AB Volvo full ownership of NDMC from the current 18.98% shares. The deal has an effect in South Africa because NDMC holds 80% of the entire issued share capital of Nissan Diesel South Africa (“NDSA”) with the balance of 20% being held by Mitsui & Co. Through the transaction, if approved, AB Volvo will acquire indirect control of NDSA.

## **RATIONALE**

[5]. AB Volvo considers the Japanese market to be strategically important and recognises NDMC’s positive operational and financial development in recent years. According to the parties NDMC has a solid position in Japan and the rest of Asia, where the Volvo Group foresees substantial growth potential. The transaction would also help AB Volvo to produce more environmentally friendly trucks by gaining access to the Japanese company’s expertise in hybrid technology.

## **ACTIVITIES OF THE PARTIES**

[6]. The acquiring firm is a special purpose vehicle specifically created for the purposes of this transaction. AB Volvo is an international manufacturer of commercial vehicles, construction equipment, drive systems for marine and industrial applications for aircraft engines. Volvo South Africa is involved in the marketing and distribution of medium and heavy commercial vehicles in South Africa.

[7]. The target firm, NDMC is involved in the manufacturing of sale of light, medium, heavy commercial diesel vehicles, buses, bus chassis, special-purpose vehicles and diesel engines. NDSA is involved in the importation of trucks and components manufactured by NDMC into South Africa.

## **RELEVANT MARKET**

[8]. In its analysis the Commission found that the proposed transaction results in horizontal overlap. According to the Commission the horizontal overlap in the activities of the merging parties occurs in the market for sale and distribution of light, medium, heavy, extra commercial vehicles and buses. The Commission identified five relevant markets affected by this transaction namely: the market for the sale and distribution of light commercial vehicles;

the market for the sale and distribution of medium commercial vehicles; the market for the sale and distribution of heavy commercial vehicles; the market for the sale and distribution of extra-heavy commercial vehicles and the market for the sale and distribution of buses.

[9]. The Commission has defined the geographic market as national. We agree with the Commission’s market definitions.

## **MARKET SHARES**

[10]. The Commission calculated market shares in line with the five relevant product markets it identified. The following tables contain market share data of each market participant in the respective markets.

### **Estimated market shares in the market for sale and distribution of light commercial vehicles in South Africa.**

<b>Market Participants</b>	<b>Brand Names</b>	<b>Estimated Market Shares</b>
Toyota	Toyota	23.6%
<b>Nissan Diesel</b>	<b>Nissan Diesel</b>	<b>17.7%</b>
FMCSA	Ford	16.3%
GMSA	Opel	12.8%
GMSA	Isuzu	11.9%
DaimlerChrysler	Mitsubishi	4.9%
FMCSA	Mazda	3.1%
Tata	Tata	2.8%
Volkswagen	VW	2.3%
Mahindra	Mahindra	1.2%
DaimlerChrysler	Mercedes Benz	0.5%
Chana	Chana	0.3%
<b>Renault</b>	<b>Renault</b>	<b>0.3%</b>
FMCSA	Land Rover	0.1%
<b>Total</b>		<b>100%</b>
<b>Merging Parties combined market shares</b>		<b>18%</b>

<b>Pre-Merger HHI</b>	<b>1500</b>
<b>Post-Merger HHI</b>	<b>1526</b>
<b>Change in HHI</b>	<b>26</b>

**Source: Competition Commission**

[11]. As can be seen in Table 1 above the merging parties' combined post-merger market share is relatively low at 18%, we are therefore agree with the Commission that the increments in market shares and changes in HHI are insignificant.

**Table 2: Estimated market shares in the market for the sale and distribution of medium commercial vehicles in South Africa**

<b>Market Participants</b>	<b>Brand Names</b>	<b>Estimated Market Shares</b>
Toyota	Toyota	20.1%
Tata	Tata	18.3%
DaimlerChrysler	Mercedes Benz	12.8%
<b>Nissan Diesel</b>	<b>Nissan</b>	<b>11.6%</b>
GMSA	Isuzu	10.5%
Iveco	Iveco	5.9%
DaimlerChrysler	Fuso	4.4%
Volkswagen	VW	4.3%
FMCSA	Ford	4.0%
<b>Nissan South Africa<sup>4</sup></b>	<b>Nissan</b>	<b>3.0%</b>
GAZ	GAZ	2.4%
Peugeot	Peugeot	1.7%
GMSA	Opel	0.5%
FASA	Fiat	0.3%
Tyco Trucks	Renault	0.0%
<b>Total</b>		<b>99.8%</b>

<sup>4</sup> According to the merging parties Nissan South Africa is a subsidiary of Nissan Motor Company ("NMCL") which is an entirely separate entity to Nissan Diesel South Africa ("NDSA") which is a subsidiary of Nissan Diesel Motor Company ("NDMC").

<b>Merging Parties Combined Market Share</b>	<b>11.6%</b>
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**Source: Competition Commission**

[12]. According to the Commission in this market the merging parties combined post merger market shares remain unchanged at 11.6%. The Commission found that there are other major competitors such as Toyota and Tata, having an estimated 20.1% and 18.3% market shares respectively. We agree with the Commission's conclusion that in this market the proposed transaction is unlikely to raise any serious competition concerns.

**Table 3: Estimated Market Shares in the market for the sale and distribution of heavy commercial vehicles in South Africa**

<b>Market Participants</b>	<b>Brand Names</b>	<b>Estimated Market Shares</b>
Toyota	Toyota	22.5%
<b>Nissan</b>	<b>Nissan</b>	<b>20.3%</b>
Tata	Tata	17.5%
GMSA	Isuzu	17.4%
GMSA	Isuzu	10.5%
DaimlerChrysler	Mercedes Benz	11.4%
MAN	MAN	4.2%
DaimlerChrysler	Fuso	5.4%
Iveco	Iveco	1.2%
<b>Volvo</b>	<b>Volvo</b>	<b>0.1%</b>
<b>Total</b>		<b>100%</b>
<b>Merging Parties Combined Market Share</b>		<b>11.6%</b>
<b>Pre-Merger HHI</b>		<b>1625</b>
<b>Post-Merger HHI</b>		<b>1641</b>
<b>Change in HHI</b>		<b>16</b>

**Source: Competition Commission**

[13]. The Commission investigation shows, as can be seen from table 3, that the merging parties will have a combined post merger market share of 20.4% with an increment of 0.1%.

We therefore agree with the Commission that in this market as well, the proposed transaction is unlikely to raise any serious competition concerns as the market share increments and changes to the HHI are insignificant.

**Table 4: Estimated market shares in the market for the sale and distribution of extra heavy commercial vehicles in South Africa**

<b>Market Participants</b>	<b>Brand Names</b>	<b>Estimated Market Shares</b>
DaimlerChrysler	Mercedes Benz	19.8%
MAN	MAN	16.5%
<b>Nissan Diesel</b>	<b>Nissan</b>	<b>10.0%</b>
Tyco Trucks	International	9.1%
Tata	Tata	8.1%
DaimlerChrysler	Freightliner	7.6%
<b>Volvo</b>	<b>Volvo</b>	<b>7.4%</b>
Scania	Scania	5.4%
Tyco Trucks	DAF	3.8%
Toyota	Toyota	3.7%
GMSA	Isuzu	2.6%
Iveco	Iveco	2.4%
BMC	BMC	0.1%
<b>Volvo</b>	<b>Mack</b>	<b>0.1%</b>
<b>Total</b>		<b>99.9%</b>
<b>Merging Parties Combined Market share</b>		<b>17.5%</b>
<b>Pre-Merger HHI</b>		<b>1060</b>
<b>Post Merger HHI</b>		<b>1090</b>
<b>Change in HHI</b>		<b>30</b>

**Source: Competition Commission**

[14]. In this market the Commission's investigation revealed that the merging parties combined post merger market share is 17.5% and the market is moderately concentrated

with pre merger HHI of 1060 as a post merger HHI of 1090 resulting in a change in HHI of 30.

**Table 5: Estimated market share in the market for the sale and distribution of buses in South Africa**

<b>Market Participants</b>	<b>Brand Names</b>	<b>Estimated Market Shares</b>
MAN	MAN	35.2%
DaimlerChrysler	Mercedes Benz	28.4%
Scania	Scania	17.0%
<b>Volvo</b>	<b>Volvo</b>	<b>13.4%</b>
Tyco Trucks	DAF	3.3%
Iveco	Iveco	1.0%
BMC	BMC	0.7%
Volkswagen	Volkswagen	0.6%
<b>Nissan Diesel</b>	<b>Nissan</b>	<b>0.5%</b>
ERF	<b>ERF</b>	<b>0.0%</b>
<b>Total</b>		<b>100%</b>
<b>Merging Parties' Combined Market Share</b>		<b>13.9%</b>

**Source: Competition Commission**

[15]. The Commission found that in this market the merging parties will have a low market share of 13.9% with an insignificant increment of 0.5%. We therefore agree with the Commission that the proposed transaction is unlikely to raise any serious completion concerns.

### **COMPETITION ANALYSIS**

[16]. An examination of the transaction by the Commission showed that although there is a horizontal overlap in the activities of the merging firms, the proposed transaction is unlikely to raise serious competition concerns. The Commission's investigation revealed that in the markets for sale and distribution of light, medium, heavy, extra commercial vehicles and buses the combined firm would continue to face a number of strong, effective competitors notably Toyota, Tata, DaimlerChrysler, MAN and others throughout the country. Therefore

the Commission concluded that the transaction would not significantly impede effective competition.

### **Public Interest Issues**

[17]. There are no public interest issues.

### **Conclusion**

[18]. Based on the above, we find that the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

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Y Carrim  
Tribunal Member

**30 May 2007**

**Date**

N Manoim and D Lewis concurring.

Tribunal Researcher : J Ngobeni  
For the merging parties : Veronica Cadman (Bowman Gilfillan)  
For the Commission : Leonard Lamola and HB Senekal (Mergers and Acquisitions)