

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 59/LM/Jul06

In the matter between:

Imperial Holdings Limited

Primary acquiring firm

and

Alert Engine Parts (Pty) Ltd

Primary target firm

Panel : DH Lewis (Presiding Member), Y Carrim (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 16 August 2006

Decided on : 16 August 2006

Reasons

Approval

- [1] On 16 August 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between Imperial Holdings Limited and Alert Engine Parts (Pty) Ltd. The reasons appear below.

The Parties

- [2] The acquiring firm is Imperial Holdings Limited ("Imperial"), a company duly listed on the JSE Securities Exchange. The

following are shareholders who hold more than 5% of the issued share capital of Imperial:

[2.1]	Public Investment Corporation	18.21%;
[2.2]	Old Mutual	11.23%;
[2.3]	Ukhamba	10.15%;
[2.4]	Sanlam	8.4%; and
[2.5]	Lereko Mobility	7.25%.

[3] Imperial has more than twenty subsidiaries but for the purposes of the current transaction, only Imperial Auto Parts (Pty) Ltd (“Imperial Auto”) is relevant since it is the only division of Imperial dealing in non-branded motor vehicle spare parts.¹

[4] The primary target firm is Alert Engine Parts (Pty) Ltd (“Alert”). There is no single entity that controls Alert. Alert’s shareholders and their respective shareholding are as follows:

[4.1]	The ANC Trust	25.31%;
[4.2]	Van Hoogstraten Family Trust	25.56%;
[4.3]	Antony Van Hoogstraten Family Trust	25.82%;
[4.4]	Bilton	4.31%;
[4.5]	Dennis Hoffe Trust	1%;
[4.6]	Louw	3%; and
[4.7]	Monteverdi	8%.

[5] Alert does not control any firms.

¹ On page 23 of the record Imperial submitted that save for Imperial Auto, the services of all the other divisions of Imperial are not interchangeable with or a substitute for, any product or service provided in, into or from South Africa by Alert.

The Merger Transaction

- [6] Imperial will acquire the entire issued share capital in Alert.² Post-merger, Alert will be a wholly owned subsidiary of Imperial.

Rationale

- [7] Imperial perceives the acquisition of Alert as an opportunity for expanding and growing its business.
- [8] Alert regards the acquisition by Imperial as enabling it to operate competitively and profitably.

The parties' activities

The acquiring firm

- [9] Imperial Group is involved in the transportation, warehousing and logistics services markets in Southern Africa, Europe and United Kingdom. Imperial's only relevant subsidiary in this transaction is Imperial Auto.
- [10] Imperial Auto sells non-branded motor vehicle spare parts and accessories.³ These include alternators, coils, hooters, distributors, ignition cables among others.
- [11] Imperial Auto also sells non-branded engine parts which include engine bearings, engine gaskets, engine valves, oil pumps, pistons and rings, ring gears, flywheels, sleeve kits, timing belts, timing gears, timing chains, timing tensioners, among others.

² The entire issued share capital of Alert is to be acquired by Imperial in terms of a sale of shares agreement on pages 81-105 of the record.

³ Non-branded motor vehicle spare parts and accessories are parts that are not branded by original equipment manufacturers ("OEMs"), but are alternatives or generic parts, produced by other parts manufacturers such as Bosch, Bosal and ArvinMeritor.

[12] Imperial is also involved in the sale of spare parts for original equipment manufacturers (“OEM’s). Apart from Imperial Auto, the other divisions of Imperial and the dealerships of Imperial are only involved in OEM’s parts and are not involved in non-branded parts.⁴

The target firm

[13] Alert procures, markets and distributes, for the aftermarket, an extensive range of quality internal combustion engine components for motor vehicles. Alert also sells non-branded motor spare parts which include timing components, filters, clutches, and lubricants, among others.

[14] The parties submitted that Alert only concentrates on non-branded engine spare parts and does not deal in general motor spare parts.⁵

The product market

[15] There is product overlap in the activities of the merging parties in the sale of non-branded motor vehicle spare parts and engine parts but as shall be seen below the product overlap is small and does not raise competition concerns. The Commission submitted that original/branded spare parts do not fall in the same market as generic/non-branded spare parts. In this regard the Commission relied on the case of Midas Group (Pty) Ltd and General Motors South Africa (Pty) Ltd.⁶In that case the Tribunal concluded that branded and non-branded spare parts are not in the same market. The parties submitted that original parts are

⁴ See page 23 of the record.

⁵ See page 22 of the record.

⁶ Tribunal Case number 95/LM/Oct05.

more expensive and target the higher income market as compared to non-branded spare parts which are cheaper and target the lower income market. The parties further submitted that original/branded spare parts cannot be substituted for generic/non-branded spare parts as they cater for a different customer base.

[16] Based on the submissions above, the Commission concluded that the relevant product market is the market for the distribution of non-branded motor vehicle spare parts.

[17] At the hearing the parties submitted that there is no supply side substitutability between the distribution of non-branded engine parts and the distribution of non-branded general spare parts since the former requires a lot more skill not readily available to a distributor of the latter.⁷ However, for the purposes of this transaction the parties accepted the Commission's definition and analysed the market as a consolidated market for non-branded general spare parts and non-branded engine parts.⁸

Relevant geographic market

[18] The Commission defined the geographic market as national because the merging parties and their competitors have outlets in major cities throughout South Africa.

[19] It is not necessary for us to make a finding on the relevant product market because on either version competition does not appear to be compromised by the merger. We accept the definition of the geographic market as national. We will follow the parties and utilise the consolidated market definition favoured by the Commission.

⁷ See page 4-5 of the Transcript.

⁸ See page 5 of the Transcript.

Effect on competition

[20] The merging parties and the Commission provided the following market share figures.⁹

Competitor	Market share (%)
Midas	20.07
Super Group	18.52
Alert Engine Parts	5.99
Gaydon	4.44
Engine Parts	4.44
Imperial Auto	1.85
Others	40.69
Total	100

[21] Pre-merger, Imperial has a market share of 1.85% and Alert has a market share of 5.99%. The merged entity will have a market share of 7.84% in the national market for non-branded motor vehicle spare parts. This market share is small and does not raise competition concerns in the relevant market. Moreover, the merged entity will continue to face competition from players such as Midas Group which has a market share of 24.07%, Supergroup with a market share of 18.52%, Gaydon's with a market share of 4.44% and Engine Parts with a market share of 4.44%.

Public Interest issues

[22] There are no public interest issues.

⁹ The merging parties provided the market shares in an e-mail dated 20 July 2006 on page 374 of the record.

Conclusion

[23] We conclude that the merger will not lead to a substantial lessening or prevention of competition. Nor are there public interest issues raised by this transaction. The merger was accordingly approved without conditions.

D H Lewis
Presiding Member

30 August 2006

Date

Concurring: Y Carrim and M Mokuena

Tribunal Researcher : **R Kariga**

For the merging parties : Safeera Mayet, TWB Attorneys

For the Commission : Edwina Ramohlola and Makgale Mohlala,
Mergers and Acquisitions