

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 62/LM/Sep09

In the matter between:

Dip Holdco

Acquiring Firm

and

New Delphi

Target Firm

Panel : Y Carrim (Presiding Member), N Theron (Tribunal Member) and A Wessels (Tribunal Member)
Heard on : 07 October 2009
Order issued on : 07 October 2009
Reasons issued on : 25 November 2009

Reasons for Decision

Introduction

[1] On 07 October 2009 the Tribunal unconditionally approved the acquisition by DIP Holdco LLP of New Delphi. The reasons follow below.

The parties

[2] The primary acquiring firm is DIP Holdco LLP ("DIP Holdco"), a partnership established in accordance with the laws of England. DIP Holdco is controlled by General Motors Company ("GM") with 50% shareholding. The remaining 50% shares in DIP Holdco are jointly held by Silver Point Capital L.P. and Elliot Management. GM controls several firms worldwide. In South Africa, GM controls Boco (Pty) Ltd, which in turn, controls General Motors South Africa (Pty) Ltd ("GMSA"). DIP Holdco is a newly established firm and therefore does not own or control any firm.

- [3] The primary target firm is NewDelphi. NewDelphi is made up of various assets which are housed or owned by subsidiaries of Delphi Corporation ("Delphi"). Delphi is a company incorporated in accordance with the laws of the United States of America.

Parties' Activities

- [4] DIP Holdco is a newly formed firm which has been established for the purposes of this transaction. GM is one of the world's major vehicle manufacturers and it produces motor vehicles and trucks in 34 countries. Its South African subsidiary, i.e. GMSA has two plants in Port Elizabeth which are active in inter alia, assembling Isuzu Pick-Ups and recreational vehicles, importing and distributing Opel and Corsa and Astra passenger vehicles, Opel Vivaro Panel vans and busses, Cadillac passenger vehicles, Chevrolet and SAAB passenger vehicles as well as manufacturing the Corsa Pick-Up. Through its automotive parts and accessories division, GMSA distributes Opel, Isuzu, SAAB and Chevrolet parts and accessories.
- [5] NewDelphi manufactures and distributes a range of products and components which are used in the automotive industry. These include wiring harnesses, gas/electronic control modules ("ECU's"), C&S Mechatronics, C&S Security Products, SF Occupant Sensing, Air conditioning Kits and Diesel Automotive Parts and accessories.

The transaction

- [6] In terms of the structure of the proposed transaction, DIP Holdco intends to acquire the remaining assets of Delphi, which are housed by NewDelphi. On completion, NewDelphi will be controlled by DIP Holdco. On completion of the transaction, New Delphi will be controlled by DIP Holdco.

Rationale

- [7] The parties submit that Delphi has been subject to Chapter 11 U.S. bankruptcy since 2005. The parties further submit that GM wishes to assist Delphi to successfully emerge from bankruptcy and become successful so

that it (Delphi) can continue supplying components critical to GM's manufacture of vehicles in the U.S.

Competition Analysis

- [8] The Commission found that there is no horizontal overlap in the activities of the merging parties in respect of the market for the manufacture of automotive parts and accessories as DIP Holdco only distributes these parts and accessories and does not manufacture them. The Commission also assessed whether an overlap exists in the activities of the merging parties in respect of the supply of branded (DIP Holdco) and non-branded (NewDelphi) automotive parts and accessories.
- [9] In this regard, the Commission relied on the Tribunal decision in the large merger between General Motors South Africa (Pty) Ltd and Midas Group (Pty) Ltd.¹ In this merger, the Tribunal held that branded spare parts do not fall in the same market as non-branded spare parts. Accordingly, the Commission concluded that there is no overlap in the activities of the merging parties as they do not operate at the same functional levels of the automotive parts and accessories supply chain.
- [10] There is a vertical relationship in the activities of the merging parties in that NewDelphi supplied GMSA with ECU's and C&S Mechatronics in the previous financial year. The parties submit that GMSA is the only OEM in South Africa that purchased ECU's and C&S Mechatronics from NewDelphi. The geographic market for the supply of these products has been defined by the Commission as international.
- [11] In the market for ECU's NewDelphi has a market share of 4.4% and competes with firms such as Bosch (30%), Denso (26%), Conti (11%) and Hitachi (9%). GMSA purchased ECU's from NewDelphi which represented about 1% of GMSA's turnover in the business of manufacturing motor vehicles. NewDelphi also supplied GMSA with C&S Mechatronics which represented about 5% of NewDelphi's total turnover in the business of supplying the products in South Africa. Its market share is 6% and it

¹ Case No: 98/LM/Oct05

competes with firms such as Tokia Rika (13%), Panasonic (12%) and Kostal (16%).

[12] Considering the aforementioned, it is unlikely that this vertical relationship will result in any foreclosure concerns. The Tribunal therefore finds that the transaction is unlikely to substantially prevent or lessen competition in the affected markets.

Public Interest

[13] The transaction does not raise any significant public interest concerns.

Y Carrim

25 November 2009
Date

N Theron and A Wessels concurring.

Tribunal Researcher : I Selaledi
For the merging parties : Bowman Gilfillan
For the Commission : X Nokele