

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case no: 98/LM/Oct05**

In The Large Merger Between:

**General Motors South Africa (Pty) Limited**  
**Firm**  
And

**Acquiring**

**Midas Group (Pty) Ltd**

**Target Firm**

**Reasons for Decision**

**Approval**

1. On 15 December 2005 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between General Motors South Africa (Pty) Ltd ("GMSA") and Midas Group (Pty) Ltd ("Midas"). The reasons for this decision follow.

**The merger transaction and its rationale**

2. The principal parties to this merger are GMSA and Midas. GMSA is a wholly owned subsidiary of Boco (Pty) Ltd ("Boco"), which in turn is an ultimate subsidiary of General Motors Corporation ("GM"), a public company listed on the New York Stock Exchange. No other firm directly or indirectly controls Midas and/or GM. GM controls a number of subsidiaries, worldwide which are unnecessary to detail for present purposes. GM's South African subsidiaries are Boco<sup>1</sup> and GM Plats (Pty) Ltd ("GM Plats"), the latter being an entity in South Africa through which GM acquires platinum group metals. Midas' only subsidiary is National Automobile Parts Association Ltd ("NAPA").<sup>2</sup>
3. The proposed transaction will take place in two phases: *firstly*, the acquisition by GMSA of a 25.1% of the issued share capital of Midas,<sup>3</sup> and *secondly* GMSA will exercise its

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1 Boco's subsidiaries in South Africa are GMSA; DMC Holdings (Pty) Ltd; Delmot Properties (Pty) Ltd; D.A.D. Holdings (Pty) Ltd; Stainless Precision Components (Pty) Ltd; Precision Exhaust Systems (Pty) Ltd; and Global Logistical Services (Pty) Ltd.

2 The shareholders in Midas are the Trustees of the Midas Investment Trust ("MIT") - 25%; Major Move 101 (Pty) Ltd ("Major Move") - 25%; Clidet 472 (Pty) Ltd ("Clidet") - 20%; the Trustees of the Midas Management Trust (MMT) - 15%; Mediro Industrial Holdings (Pty) Ltd ("Mediro") - 10%; and Midas Share Trust - 5%. Major Move is owned by franchisees, Clidet by Mr Jomo Sono, and Mediro by HDPs.

3 Upon conclusion of phase 1, the shareholdings in Midas will be as follows: MIT (22,5%); GMSA (25,1%); Major Move (22,5%); Clidet (14,9%); Midas Share Trust (5,0%); and Mediro (10,0%).

options and acquire an additional 25% shares in Midas.<sup>4</sup> Once the transaction is completed GMSA would own more than half (i.e., 50.1%) of Midas' issued share capital.<sup>5</sup>

4. From GMSA's perspective, the basic rationale for the merger is to enable it to effectively distribute its ACDelco brand in South Africa through Midas and hence enter

the non-branded or generic spare parts segment of the market, i.e., markets for customers that are no longer required or induced to use manufacturer specific parts and accessories.<sup>6</sup>

### The relevant market

5. **GM**, a holding company of GMSA, is one of the world's major vehicle manufacturers – with its headquarters at the General Motors Renaissance Center in Detroit.<sup>7</sup> Internationally, GM's automotive brands are Buick, Cadillac, Chevrolet, General MotorsC, Holden, HUMMER, Oldsmobile, Opel, Pontiac, Saab, Saturn, and Vauxhall. In some countries, GM's distribution network also markets vehicles, and it also sells parts and accessories under various brands.<sup>8</sup> It also markets its vehicle engines and transmissions through General Motors Powertrain. Through General Motors Acceptance Corporation, GM offers automotive and commercial financing along with an array of mortgage and insurance products. GM's Onstar Electro-Motive Division manufactures diesel-electric locomotives and commercial diesel engines whilst GM's Onstar is involved in vehicle safety, security and information services.
6. **GMSA** is mainly involved in the assembly and distribution of motor vehicles in South Africa. GMSA has two assembly plants in Struandale and Sidwell, Port Elizabeth. Its marketing and sales department is in Johannesburg, and its regional offices are in

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4 On completion of phase 2, the following shareholders will each have a stake in Midas respectively: MIT (10,0%); GMSA (50,1%); Major Move (10,0%); Clidet (14,9%); Midas Share Trust (5,0%); and Mediro (10,0%).

5 It is submitted that the current application is meant for the approval of both *de facto* and legal control of Midas.

6 See page 3 of the transcript as well as page 101, para 4, of the merger record.

7 GM has minority interests in Fuji Heavy Industries Ltd, Isuzu Motors Ltd and Suzuki Motor Corporation of Japan. General Motors Daewoo Auto & Technology Co. of South Korea ("GM DAT") is a subsidiary of GM.

8 These are vehicles manufactured by GM DAT, Isuzu, Subaru and Suzuki. Parts and accessories are under brands such as the General Motors, General Motors Goodwrench and ACDelco through GM Service and Parts Operations.

Durban and Cape Town. GMSA is involved in a number of activities.<sup>9</sup> GMSA distributes the motor vehicles it manufactures and imports by means of a network of independent dealers, in the various regions of Southern Africa.<sup>10</sup> GMSA also has dealers in Botswana, Lesotho, Namibia, Swaziland, Zimbabwe, Malawi, Mauritius, Mozambique and Zambia. GMSA also distributes motor vehicle parts to dealerships, which provides service, and maintenance to motor vehicles. These parts are in almost all instances fitted to GMSA vehicles, which falls under a warranty period (service and maintenance plan) after the sale of the vehicle.

7. **GM Plats** is an entity through which GM acquires and sells platinum group metals.
8. **Midas** is leading distributor and value-added provider of a wide range of automotive parts, services and accessories from global and local manufacturers to the end-user in South Africa. Midas focuses on the “non-captive market” – that is, the provision of automotive parts and accessories for vehicles, which are no longer, covered by warranty i.e. parts and accessories for motor vehicles that are in the region of 2 years and older.<sup>11</sup> Midas operates 329 franchised outlets, which are segmented into a number of brands.<sup>12</sup> Midas also sells these products to the independent spare part shops, workshops, fleets, chain stores, engineering shops, etc. The Commission has been advised that approximately 70% of the products sold by Midas are sourced locally and only 30% are imported. According to the parties, about 50% Midas’ sales are derived through its franchisees<sup>13</sup> and the other 50% from independent motor vehicles repair or service workshops. **NAPA**, Midas’ only subsidiary, is a marketing and buying co-operative for locally sourced products.
9. Assessed horizontally it seems that GMSA and Midas do not operate at the same

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9 Assembling of Isuzu pickups and recreational vehicles under licence from LAAM Holdings and LLC (“GM LAAM”); Assembles medium and heavy trucks under licence from Isuzu Motors Ltd and Opel Corsa and Astra passenger vehicles under licence from GM LAAM; Distribution of imported Suzuki vehicles in South Africa; Distributes Chevrolet brand in South Africa; Distributes Saab motor vehicles in South Africa; Exports vehicles and vehicle components from South Africa; through its subsidiary Precision Exhaust System, GMSA manufactures and supplies catalytic converters and pressed stainless steel components; and through its subsidiary, Stainless Precision Components, GMSA manufactures high quality stainless steel exhaust components.

10 That is, 20 dealers in the Eastern Cape, 14 in the Free State, 47 in Gauteng, 23 in KzN, 11 in Mpumalanga, 10 in the North West, 9 each in Limpopo and Northern Cape, and 31 in the Western Cape. The parties submit that although GMSA utilises a network of independent dealers to distribute its motor vehicles in South Africa, there are occasions where such distributors are not used. This generally occurs when vehicles are sold by GMSA to the Government or when fleet purchases are made.

11 These are the vehicles that are no longer required to be repaired/serviced by authorised dealers/workshops using “in-house” parts and accessories approved by the motor vehicle manufacturers/importers/assemblers.

12 Midas Parts Centres (which sells general automotive parts); Motolek (which specialises in electrical parts); Adco (which sells diesel parts); and CBS (which sells parts for heavy duty equipment).

13 According to the parties these franchisees are expected to purchase minimum levels from Midas, but do not have any contractual obligations to buy only from Midas. (*See the merger record, page 100, para 2.2.6*).

functional levels of the market – GMSA is a distributor whereas Midas is a retailer. The distinctive feature is that GMSA currently distributes its automotive parts and accessories solely through its dealer network (which are downstream and independent firms to GMSA) whereas Midas focuses on the so-called “non-captive market” for automotive parts and accessories. Put simply, Midas distributes and sells generic motor vehicle parts through its franchisees and directly to motor vehicle workshops and chain stores. The parties advised us that these workshops are shops which service a wide variety of motor vehicles and are not limited to any particular brands.<sup>14</sup>

10. The merging parties submitted that the proposed merger should be characterised as a vertical merger because following the merger GMSA as manufacturer would be moving down the supply chain to sell its ACDelco service range of products such as batteries and filters through Midas, a parts distributor.<sup>15</sup> In its assessment, the Commission identified a broad market (i.e., the market for the retail of motor vehicles spare parts) as well as a narrow one (i.e., the market of branded (GMSA spare parts) and non-branded spares (Midas)).

### **Effect on competition**

11. Within the Commission’s broad market definition, the Commission identified a number of players with distinct market shares. That is, Midas (25%); Super Group (Autozone) – 25%; Engine Parts – 4%; Imperial Group – 3%; Diesel Electric – 11%; Gaydons – 4%; Sparepro – 2%; and Others – 25%. The latter figures exclude GMSA.<sup>16</sup> The Commission contended that should GMSA be viewed as a competitor to Midas then other Original Equipment Manufacturers also need to be included in the analysis – thus resulting in the dilution of market shares. In such instance the post-merger market shares of the merging parties would be 26%.<sup>17</sup>
12. The Commission’s view with regard to its narrow market is that although both GMSA and Midas distribute motor vehicle parts and accessories they are active at two different functional levels of the market – that is, the GMSA branded spare parts may be seen to target a different segment of the broader market than those products sold by Midas. The Commission contends that no competition issues could arise given that GMSA spare parts are presently sold through GMSA contracted distributors and also that Midas does not currently compete with these dealerships.<sup>18</sup>

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<sup>14</sup> See Commission Report, page 6.

<sup>15</sup> See pages 2-3 of the transcript.

<sup>16</sup> According to the Commission the broad market suggests that all motor vehicle spares sold form part of the market. However, the Commission contended that it should be considered that GMSA is a distributor and supplies independent dealerships that sell to consumers – which dealerships determine their own prices. In light of this, the Commission contended that GMSA could not be seen to be part of this broad market.

<sup>17</sup> The diluted figures include Midas (18%); GMSA (8%); VWSA (10%); Toyota South Africa (11%); Super Group (Autozone) (18%); Engine Parts (3%); Imperial Group (2%); Diesel Electric (8%); Gaydons (3%); Sparepro (2%); and Others (18%).

<sup>18</sup> For a comprehensive discussion on the narrow market, see Commission Report, page 9.

13. The Commission stretched its analysis further by considering a worst case scenario where parties could be viewed as competing with each other in the distribution and retail of automotive spare parts. In such event the Commission found that Midas would enjoy 30% market share whilst GMSA only 2%.<sup>19</sup>
14. It was submitted that Midas' ultimate customers are at liberty to acquire parts and accessories from other distributors, and are able to switch between distributors as they require. The merging parties contend that upstream suppliers of Midas will be able to continue to distribute their products to customers either through Midas or by alternative and viable means as they currently do. We were informed that no upstream suppliers are dependent on distribution via Midas for their survival. The merging parties further advised us that neither party exclusively supplies any technology, know-how, products and/or services which are required by any third party in order to operate in any of the affected markets. They further argue that although Midas operates through a network of franchisees that have a close relationship with Midas and expects minimum levels of purchases from them, however the franchisees have no contractual obligation to buy from the company.
15. We are satisfied that no substantial lessening or prevention of competition would arise in any of the relevant markets.

## **Conclusion**

13. There are no substantial public interest issues, which militate against the approval of this transaction. The proposed transaction is therefore unconditionally approved.

**Y. Carrim**

**28 March 2006**

Concurring: **N. Manoim, M. Mokuena**

For the merging parties: Derek Lotter (Bowman Gilfillan)

For the Commission: Edwell Mtantato and Maarten van Hooven (Mergers and Acquisitions).

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<sup>19</sup> Other players are VWSA (2%); Toyota South Africa (2%); Super Group (Autozone) (30%); Engine Parts (5%); Imperial Group (4%); Diesel Electric (13%); Gaydons (5%); Sparepro (3%); and Others (3%). *Ibid*, page 10, as well as the merger record, page 104, para 6.3.