

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 31/LM/Apr08

In the matter between:

Barloworld Investments (Pty) Ltd

Acquiring Firm

And

NMI DSM South Motors (Pty) Ltd

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member),
and M Mokuena (Tribunal Member)

Heard on : 11 June 2008

Order Issued : 11 June 2008

Reasons Issued: 13 August 2008

Reasons for Decision

Approval

[1] On 11 June 2008, the Tribunal unconditionally approved the merger between Barloworld (Pty) Ltd and NMI DSM Motors (Pty) Ltd. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is Barloworld Investments (Pty) Ltd ("Barloworld Investments"), a company incorporated in terms of the company laws of South Africa. Barloworld Investments is a wholly owned subsidiary of Barloworld Limited ("Barloworld"). Barloworld is a company listed on the JSE Securities Exchange and is not controlled by any single firm. The major shareholders of Barloworld are the Public Investment Corporation (with a 14.3% shareholding), SSB & Trust Co. (with a 2.3% shareholding), BNY Mellon Wealth Management (with a 1% shareholding), and STANLIB (with a 1.5% shareholding).

- [3] Barloworld has several subsidiaries worldwide and in South Africa has various subsidiaries which include Barloworld Equipment (Pty) Ltd, Barloworld Logistics (Pty) Ltd, and Barloworld Motors (Pty) Ltd.¹
- [4] Barloworld Investments has a 65% shareholding in Garden City Motors (Pty) Ltd (“Garden City Motors”), and a 50% interest in NMI Durban South Motors (Pty) Ltd, the primary target firm in the instant transaction.
- [5] The primary target firm is NMI Durban South Motors (Pty) Ltd (“NMI DSM”), a company duly incorporated in terms of the company laws of the Republic of South Africa. NMI DSM is a joint venture company, controlled by NH Partnership (which has a 50% shareholding), and Barloworld (which has a 50% shareholding).
- [6] NMI DSM controls Rapirop 174 (Pty) Ltd. It owns various dealerships which include Mercedes Durban; Mercedes Benz Umhlanga; Mitsubishi Motors Umhlanga; Chrysler Jeep Umhlanga; NMI DSM Pinetown; Mercedes Benz Commercial Vehicle Durban; Subaru Durban; and NMI DSM Commercial Vehicle Pinetown.

Description of the transaction

- [7] In terms of this transaction, Barloworld Investments intends to increase its current shareholding in NMI DSM from 50% to slightly in excess of 51%. As part of the transaction, Barloworld Investments and NH Partnership will simultaneously transfer their respective shareholding of 65% and 35% in Garden City Motors to NMI DSM.
- [8] On completion of the transaction, Garden City Motors will be wholly owned by NMI DSM and NMI DSM will be controlled by Barloworld Investments with NH Partnership having an interest slightly below 49% interest.²

Rationale for the transaction

- [9] The parties submitted that if Barloworld Investments increases its shareholding in NMI DSM, it will be in a position to consolidate NMI DSM for accounting purposes.³

¹ See appendix 2 of the record for complete list of Barloworld’s subsidiaries.

² See page 3 of the transcript.

The parties' activities

Barloworld

[10] Barloworld is an international industrial brand management company which represents many world brands including Caterpillar, Hyster, Avis, Budget, Mercedes, Chrysler, BMW, General Motors, Ford, Toyota, Subaru, and Volvo. Barloworld presents a link between the customer and the manufacturer, and adds value through sales and after sales support and solution to customers. Barloworld's core divisions are Equipment, Automotive, Handling and Logistics.

Barloworld Investments

[11] Barloworld Investments is an internal investment company of Barloworld and as such it does not have any business activities. Barloworld Investments has controlling shares in NMI DSM and Garden City Motors.

Garden City Motors

[12] Garden City Motors is active in the market for the retail sale and distribution of new and used motor vehicle and associated services through dealerships in the KwaZulu Natal area. Garden City Motors operates three dealerships in the KwaZulu Natal area namely Garden City Motors, Garden City Commercials and Garden City Ladismith. These dealerships sell brands which primarily include Chrysler, Dodge, Fuso, Freightliner, Jeep, Mercedes Benz and Mitsubishi. These dealerships sell various types of vehicles which include passenger vehicles, light, medium, and heavy commercial vehicles and buses.

[13] Garden City Motors also provides associated services relating to the maintenance of motor vehicles as well as the retail vehicle parts.

Barloworld Motors

[14] Barloworld Motors is a motor retailer selling new and used passenger, light, medium, and heavy commercial vehicles and buses. The brands it sells through

³ See record page 51.

its dealerships include Audi, BMW, Chevrolet, Chrysler, Ford, Freightliner, Isuzu, Jaguar(Botswana only), Jeep, Land Rover, Mazda, Mercedes Benz, Mini, Mitsubishi, New Holland, Nissan Opel, Smart, Subaru, Toyota, Volvo and Volkswagen.

- [15] Barloworld Motors also provides motor vehicle associated services, including motor vehicle finance and insurance services under the optimum brands, parts distribution centres, and maintenance service centres for vehicles.

NMI DSM

- [16] NMI DSM is a retailer of new and used passenger motor vehicles. The brands that its dealerships sell include Chrysler, Dodge, Fuso, Freightliner, Jeep, Mercedes Benz and Smart.

- [17] NMI DSM is also active in the retail sale of new and used light, medium, heavy and extra heavy commercial vehicles. NMI DSM also provides associated services including the sale of automotive parts and accessories and the repairs. NMI DSM also arranges motor vehicle finance and insurance services for purchasers of its motor vehicles.

Rapirop 174 (Pty) Ltd

- [18] Rapirop 174 (Pty) Ltd, a subsidiary of NMI DSM, is active in the property market.

Relevant market

- [19] The merging parties proposed that the relevant market is that of retail of new motor vehicles and associated services; and the market for the retail and distribution of used motor vehicles and associated services. We find that a better approach would be to look at the overlap in the activities of the merging parties. The parties are both active in the retail of new and used passenger and light commercial vehicles; and in the sale of new and used medium commercial vehicles and heavy commercial vehicles.⁴

⁴ Garden City Motors and NMY DSM are both active in these markets.

[20] While the parties submitted that the geographic market for passenger vehicles is local or regional (KwaZulu Natal region), the Commission stated that the market for the medium and heavy commercial vehicles is national.⁵

Competition analysis

[21] At the hearing, and in their competitiveness report, the parties stated that the transaction does not result in the accretion of Barloworld's market share or give rise to any competition concerns since the transaction is technically a re-arrangement of shares between Barloworld and the NH Partnership and does not result in an increase in Barloworld's economic interest.⁶ The Commission has nevertheless considered the impact of the transaction on competition, if any, in the relevant markets.

Passenger vehicles and light commercial vehicles

[22] The proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the market for new and used passenger vehicle and light commercial vehicles, as barriers to entry are low and there is sufficient competition since all dealerships can buy new or second hand vehicles and resell them to any end customer. There are a number of firms active in this market.

Medium and heavy commercial vehicles

[23] The proposed transaction is unlikely to prevent or lessening of competition in the market for commercial motor vehicles and in the market for heavy commercial vehicles. In previous cases, the Tribunal has stated that the market for commercial vehicles is national as commercial vehicle buyers are not constrained by the dynamics within a geographic location but are concerned about getting the best commercial deal.⁷ The post merger national market

⁵ See page 56 of record and page 8 of the Commission's recommendations.

⁶ See page 4 of transcript and page 56 of the record.

⁷ See page 8 of Sandown Motor Holdings and McCarthy and Others 33/LM/May02 where the Tribunal accepted that "...the market for commercial vehicles is national because the customer profile of commercial vehicle buyers are different from that of passenger vehicles in that the typical commercial vehicle customer would be a firm buying several vehicles for its fleet and which is not inconvenienced by sourcing from anywhere in the country. Given that commercial vehicles are considerably expensive on average than passenger vehicles, customers are not reluctant to spend extra time in travelling to source the best deal".

shares of the merging firms remain low and do not raise competition concerns. The merging parties will have a post merger market share of 8.8% in the market for new and used commercial motor vehicle market and will continue to face competition from dealerships such as Imperial Commercial, Alpine Motors and Unitrans. The merging parties will have a post merger market share of 6.3% in the market for new and used heavy commercial vehicles and the merged entity will continue to face competition from other competing dealerships such as Unitrans, McCarthy and Super Group.

Vertical issues

[24] A vertical relationship exists in that Garden City Motors, a subsidiary of the acquiring firm has supplied used motor vehicles to NMI DSM (representing 3.7% of Garden City Motors' used vehicle sales and 0.8% of DSM's used vehicles purchase) and NMI DSM has supplied used vehicles to Barloworld companies (representing 0.5% of total NMI DSM total supply of used vehicles and 0.2% of Barloworld's purchase of used vehicles. This transaction is unlikely to raise any foreclosure concerns as the figures involved are miniscule. Thus there is no incentive to foreclose.

Public Interest

[25] There are no public interest issues.

Conclusion

[26] The merger is approved unconditionally.

Y Carrim

Tribunal Member

13 August 2008

DATE

N Manoim and M Mokuena concur in the judgment of Y Carrim

Tribunal Researcher : R Kariga

For the merging parties: Bowman Gilfillan Attorneys.

For the Commission : K Mahlakona and T Mahlangu (Mergers and Acquisitions)