COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 37/LM/Apr04

In the large merger between:

Wesbank, a division of FirstRand Bank Ltd

and

The Industrial Machinery Finance Book, owned by Barloworld Equipment Finance, a division of Barloworld Capital (Pty) Ltd

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Reasons

Introduction

On 11 August 2004 the Tribunal approved the acquisition by Wesbank, a division of FirstRand Bank Ltd, of Barloworld Equipment Finance's Industrial Machinery Book, a division of Barloworld Capital (Pty) Ltd. The reasons follow below.

The Competition Commission's recommendation

Although the Commission found that the transaction would not substantially lessen or prevent competition it nevertheless recommended that the transaction be approved subject to the condition that if customers are unable to secure finance for Barloworld Industrial Equipment from financial institutions, Barloworld will retain the right to facilitate the financing, either in its own name, or in the name of Barloworld Equipment Finance.

The Commission's rationale for suggesting this condition, which it accepts is technically not needed because it is reflected in a clause in the parties' Joint Venture Agreement, is to facilitate transparency, since the joint venture agreement is claimed confidential.

However, we decided to approve the merger unconditionally. Firstly, we found the condition to be vague. For example, if a disgruntled customer complained to the Tribunal that Barloworld has breached the condition the Tribunal would have difficulty in establishing whether such a broadly stated notion as “to facilitate financing” has been violated. Would Barloworld be in breach if it could not find an institution to finance the deal, or put another way, to what lengths must Barlow go in assisting its customers? Must it provide the finance itself? [1]

Secondly, a condition is usually recommended to address any competition loss as a result of the merger. In this case we found, as did the Commission, that competition would not be substantially lessened or prevented because, inter alia, there were four large players, including Wesbank, in the market and the Financial Services Charter placed an obligation on Wesbank, as a signatory, to achieve targets set for Empowerment financing and to report and comment on its specific SME customers. In fact, Wesbank has a specific business unit that focused on the areas of empowerment finance and SME, called Enterprise Solutions.

The transaction

Wesbank, a division of FirstRand Bank Ltd will acquire the Industrial Machinery Finance Book owned by Barloworld Equipment Finance, a division of Barloworld Capital (Pty) Ltd. Barloworld Capital is a wholly owned subsidiary of Barloworld Ltd.

In terms of the transaction a joint venture will be formed between Wesbank and Barloworld Equipment (Pty) Ltd (“Barloworld Equipment”) a subsidiary Barloworld Ltd. The joint venture will operate as a division of Wesbank and will be controlled by Wesbank. Barloworld Equipment will be entitled to a percentage of the profit.

According to Barloworld asset financing is no longer regarded as being part of Barloworld’s core business and is therefore being sold to Westbank.

Effect on competition

The relevant market is the market for the provision of equipment finance in a national market. Both Wesbank and Barloworld provide a full range of equipment finance services to customers in South Africa.

Barloworld Equipment Finance offers in-house finance to Barloworld Equipment’s customers and focuses on the equipment finance needs of its customers that purchase its industrial machinery brands such as Caterpillar, Hyster, Perkins and Ditch Witch. It is only when one of its existing customers approaches it for financing for a non-Barloworld brand that it would supply equipment financing in the open market. According to

[1] According to the merging parties this clause in the joint venture agreement merely means that should the joint venture not finance a customer for some reason, Barloworld would, through its own contacts, be able to put this customer in touch with some other financial institution so as not to loose the sale. It would not provide the finance itself.

Barloworld it financed 55% of its brand sales of industrial machinery in-house while other asset financing institutions financed the balance of 45%.

Wesbank, on the other hand, offers equipment-financing services to a broad spectrum of customers in South Africa.

The parties estimate that Barloworld Equipment Finance's market share in the equipment finance market is 13.2%. Its main competition comes primarily from other banks and financial institutions. The largest competitors in this market, pre-the merger, are Wesbank with a market share of 6.9%, ABSA Asset Finance with 10.2%, Standard Bank Vehicle and Asset Finance with 38% and Nedbank with 15.4%. Post the transaction the merged entity will have a market share of approximately 20%.

Many of Barloworld's customers are small to medium sized businesses and businesses controlled or owned by previously disadvantaged individuals. During the Competition Commission's investigation some of these customers expressed concern about the transaction. Their main concerns related to issues such as the fact that other financial institutions did not have specialized divisions that dealt with yellow-equipment financing such as earth moving equipment, that their interest rates would be higher and that, being traditional banks, their credit policy might not be as flexible as Barloworld who understands the industry.

In reply to these concerns we were told that Wesbank has offered Barloworld's management and sales team, which currently work with the equipment financing business, employment. Therefore, the same people who understand the market and the special needs of Barloworld's customers will be providing them with finance after the transaction.

Secondly, the interest rates charged by Wesbank to its clients are market based. According to Barloworld, historically, the average interest rate charged by Barloworld to its clients has been between 30 and 50 basis points higher than the average interest rate charged by Wesbank because of its higher cost of capital. Barloworld also applied the same criteria as other financial institutions do, in assessing customers credit risk. Mr Day, of Barloworld explained that the phenomenon of customers preferring Barloworld's less competitive financing could be ascribed to "a perception of a better transaction because of the level of customer service".

There will also be no compulsion on Barloworld's customers to use Wesbank as financier of their purchases and customers would be able to source their financing anywhere that they are able to obtain the best deal. According to Barloworld its main objective is to sell equipment and it would not jeopardise a sale, if a customer chooses to use its own financial source. The joint venture will thus not lead to customer foreclosure and Wesbank would still have to compete for the customers of Barloworld by offering more competitive rate and service packages than those of its competitors. Since the joint venture agreement is non-exclusive the customers of Barloworld's competitors would also not be foreclosed from using Wesbank as financier.

In light of the above we find that the merger would not substantially lessen or prevent competition.

Public interest

The transaction does not raise any public interest issues.

______________ 25 August 2004

D Lewis **Date**

Concurring: N Manoim, T Orleyn