

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case no.: 92/LM/Dec02**

**In the large merger between:**

**Wesbank, a division of FirstRand Bank Ltd**

**and**

**Barloworld Leasing, a division of Barloworld Capital**

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**Reasons for Decision**

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**Approval**

On 6 February 2003 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Wesbank, a division of FirstRand Bank Ltd (“Wesbank”) and Barloworld Leasing, a division of Barloworld Capital (“Barloworld”). The reasons for this decision follow.

**The parties**

The primary acquiring firm is Wesbank, a division of FirstRand Bank, which owns and controls various companies operating in the financial services, asset management and insurance industries. For purposes of this merger analysis the only other relevant FirstRand subsidiary is the joint venture company, Avis Fleet Services (Pty) Ltd (“Avis”). Wesbank does not have any subsidiaries.

The primary target firm, Barloworld Leasing, is part of Barloworld Capital, a subsidiary of the international company Barloworld Limited. Barloworld leasing is involved in the motor vehicle business and does not have any subsidiaries.

## The transaction

The transaction is a sale of Barloworld's vehicle finance leasing book in terms of which Wesbank will acquire the "book" from Barloworld as a going concern.

In this instance the "book" comprises all the installment sale agreements, full maintenance contracts and similar vehicle financing agreements concluded by Barloworld leasing. All the rights, titles and interest on amounts owing to Barloworld will accrue to Wesbank.

Barloworld submits that the rationale for the transaction is the lack of economies of scale and that the vehicle finance-leasing book is not a strategic component of its offerings in the vehicle distribution market.

## Evaluating the merger

### The relevant market

#### *Product market*

The merging parties offer the following range of vehicle financing options to customers:

<b>Financing option</b>	<b>Definition</b>
1. Installment sale credit agreements	In terms of this credit agreement the vehicle is sold to the customer over a pre-determined period, at an agreed interest rate and is paid in monthly installments. Ownership only passes to the customer upon payment of the final installment.

2. Lease financing agreements	
21. lease agreement	These agreements provide the customer with uninterrupted use of the vehicle for the agreed period, at the end of which the customer may return the vehicle to the financier or take ownership of the vehicle.
2.2 full maintenance lease agreement	These agreements provide the customer with uninterrupted use of the vehicle for the agreed period, as well as guaranteed maintenance of the vehicle for a specific period. The customer does not have the option of taking ownership upon payment of the final installment.

Based on the above the parties submitted that the relevant product market is vehicle financing. On this definition, product overlaps occur in the financing of new and used minibuses and trucks.

However, the Commission, on its reading of the Tribunal decision in the New Republic Ltd/FBC Fidelity Bank Ltd<sup>1</sup> case, sought to narrow this definition according to the method of financing employed. Although competitors confirmed that supply side substitutability exists, the Commission was not convinced that from the consumer's perspective, the above methods of financing could be placed in the same market. This is because of the difference in the rights and obligations, which flow from each type of vehicle financing option.

Nonetheless the Commission did not definitively define the relevant market, since the transaction's competitive impact on the broader market of vehicle financing or the delineated markets according to the method of finance, is insignificant.

### *Geographic market*

Both parties have a presence throughout South Africa. The Commission thus concluded that the geographic market is national.

<sup>1</sup> Tribunal case no 42/LM/Jul00.

## **Impact on competition**

No independent market share data exists for the delineated markets according to the method of financing, however the Commission verified that the parties do not control a significant part of any segment of vehicle financing. These segments are:

- i. new vehicles
- ii. used cars
- iii. trucks and other land transport, and
- iv. total vehicle finance.

In each of these segments Barloworld's market share is insignificant and the change in concentration is does not raise competition concerns.

At the hearing of this matter the parties also confirmed that the transaction will not provide Wesbank with preferential access to future customers and contracts concluded within Barloworld outlets.

Thus we agree with the Commission that the transaction will not substantially alter competition in the vehicle financing market.

## **Conclusion**

The transaction does not result in a significant competitive change from the status quo. We conclude that the merger will not lead to a substantial lessening of competition. There are no public interest concerns, which would alter this conclusion. The merger is therefore unconditionally approved.

**N. Manoim**

9 April 2003  
**Date**

**Concurring: D. Lewis, P. Maponya**

For the merging parties: Adv. D Unterhalter instructed by Ms A Burger.
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For the Commission: L. Oliphant, Legal Services Division, Competition

Commission.