

SOUTH AFRICA / JUDGMENT

**Barloworld SA (Pty) Ltd v Anycar (Pty)
Ltd t/a Jaguar Land Rover (018531)
[2014] ZACT 89 (13 May 2014)
[2014] ZACT 89**

COURT
Competition Tribunal

BEFORE
N Manoim, Y Carrim, M Mokuena

CASE / FILE NUMBER
018531

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018531

In the matter between:

BARLOWORLD SA(PTY) LTD.....Primary Acquiring
Firm

And

ANYCAR (PTY) LTD T/A JAGUAR LAND ROVER.....Primary Target Firm

Panel: N. Manoim (Presiding Member)

: Y Carrim (Tribunal Member)

: M Mokuena (Tribunal Member)

Heard on: 9 April 2014

Order Issued on: 9 April 2014

Reasons Issued on: 13 May 2014

Reasons for Decision

Approval

[1] On 9 April 2014, The Competition Tribunal (“Tribunal”) unconditionally approved the acquisition by Barloworld SA (Pty) Ltd of a 51% of the issued shares in Newco (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow hereunder.

Parties to the transaction

- [3] The primary acquiring firm is Barloworld South Africa (Pty) Ltd (“Barloworld SA”), a wholly owned subsidiary of Barloworld Limited Group (“Barloworld Limited”). Barloworld Limited is listed on the Johannesburg Securities Exchange and is not controlled by any single shareholder. Barloworld SA controls a number of firms and is engaged in joint ventures.¹
- [4] The primary target firm is Anycar (Pty) Ltd t/a Jaguar Land Rover N4 Witbank (“Anycar”). Anycar is controlled by Newco (Pty) Ltd (“Newco”), which is in turn wholly controlled by Mr Craig Douglas White (“Mr White”) its sole shareholder. Anycar does not directly or indirectly control any firm in South Africa.

Proposed Transaction and Rationale

- [5] Barloworld SA intends to acquire 51% of the issued shares in Newco. The remaining 49% will be held by Mr White. Post-merger, Anycar will be jointly controlled by Barloworld SA and Mr White.
- [6] The proposed transaction will enable the acquiring company to extend its geographic coverage in Mpumalanga, its dealer network and its service and product offering to customers.
- [7] Anycar’s shareholder wants to recover his investment in the business and Barloworld has been identified as the best fit for that business.

Relevant Market and Impact on Competition

- [8] The merging parties are both active in the market of retail sale of new and used passenger vehicles. Barloworld Limited is a distributor of leading international brands providing integrated rental, fleet, management, product support and logistics solutions in 26 countries worldwide. In South Africa, the core divisions of Barloworld Limited comprise of (i) Barloworld Equipment, (ii) Barloworld Automotive, (iii) Barloworld Handling and (iv) Barloworld Logistics. What is relevant for this transaction is Barloworld Automotive, which inter alia, owns two dealerships in Middleburg and Witbank in Mpumalanga province. Anycar is a Land Rover and Jaguar franchised dealer and its business includes the sale and servicing of Jaguar and Land Rover motor vehicles in the Witbank area.
- [9] The Commission identified overlaps in the activities of the merging parties in respect of the markets for the retail sale of new and used passenger vehicles. In respect of the relevant geographic market the Commission used a 20 - 50 km radius (which includes the Witbank and Middleburg areas) from Anycar dealership for both markets.
- [10] In the market for the retail sale of new passenger vehicles the merging parties will have a post market share of between 17.96% to 22.04%. The Commission found that there are approximately 30 new passenger vehicle dealerships that directly compete with the merging parties, including Volkswagen Group SA Witbank, Volkswagen Group SA Middleburg, AMH Witbank AMH Middleburg and others. The Commission therefore concluded that the

proposed merger is unlikely to raise competition concerns as there remain numerous players in the Witbank and Middleburg areas that will continue to constrain the merged entity post-merger in this market.

- [12] The Commission also interviewed various competitors of the merging parties who indicated that this market is constrained by new vehicle market. None of the competitors interviewed raised any concerns about the proposed transaction. The Commission therefore concluded that this transaction is unlikely to substantially lessen or prevent competition as the market for used vehicles is competitive with almost all the dealerships in Witbank and Middleburg selling used passenger vehicles. At the hearing the merging parties confirmed that Barloworld SA does not presently distribute Land Rover or Jaguar products. The vehicles it distributes in the Witbank/Middelburg area are Barloworld Toyota and Hino and Barloworld Toyota and are thus not directly competitive with those of the target firm. The merging parties further confirmed that the nearest competing brand to the Witbank/Middelburg area was the BMW dealership in Pretoria.

Conclusion

- [13] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets for the retail sale of new and used passenger vehicles. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

13 May 2014

DATE

Norman Manoim

Yasmin Carrim and Medi Mokuena

Tribunal Researcher: Moleboheng Moleko

For the merging parties: Bowman Gilfillan Incorporated

For the Commission: Hardin Ratshisusu

¹See pages 130 and 131 of the record for a list of these firms.

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