



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM053Jun15

In the matter between:

VAPS Holdings (Pty) Ltd

Acquiring Firm

And

**Motorite Administrators (Pty) Ltd;
Engine Room (Pty) Ltd; and
Small Area Repair Technology Underwriting Managers (Pty) Ltd**

Target Firms

Panel	: Yasmin Carrim (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 28 October 2015
Order Issued on	: 29 October 2015
Reasons Issued on	: 4 November 2015

Reasons for Decision

Approval

- [1] On 29 October 2015, the Competition Tribunal ("Tribunal") conditionally approved the merger between VAPS Holdings (Pty) Ltd ("Newco") and Motorite Administrators (Pty) Ltd ("Motorite"), Engine Room (Pty) Ltd ("Engine Room") and Small Area Technology Underwriting Managers (Pty) Ltd ("SMART").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Transaction and their Activities

Primary acquiring firm

- [3] The primary acquiring firm is Newco, a newly formed entity incorporated specifically for the purpose of the proposed transaction. Newco will be jointly controlled by Newinvest 231 (Pty) Ltd ("Newinvest") (81.22%) and Sand Olive Investments (Pty) Ltd ("Sand Olive") (18.78%). Newinvest is ultimately controlled by First Rand Limited ("First Rand") whilst Sand Olive is controlled by Hollard Holdings (Pty) Ltd ("Hollard"). Relevant to the proposed transaction is FirstRand's Wesbank Division. Further, Hollard's controlling interest in Hollard Life Assurance Company (Pty) Ltd ("Hollard Life") and the Hollard Insurance Company ("HIC") are relevant to the proposed transaction. Hollard also controls SMART, one of the target firms in the present transaction.
- [4] At present, Newco is a shelf company and does not engage in any operations. Post-merger, Newco will act as the holding company of various subsidiaries which will perform certain services in relation to the distribution of value-added products ("VAPS") in the motor vehicle chain. In South Africa, FirstRand provides automotive financial services through WesBank which is a provider of vehicle and asset finance. More specifically, WesBank provides secured installment finance to retail, public sector and corporate markets as well as various related services which include insurance, fleet management and full maintenance retail. WesBank also acts as an intermediary and offers various insurance products. Hollard provides insurance products. Hollard Life offers a range of long-term insurance policies whilst HIC provides short-term insurance. HIC operates across eight product lines, one of which is motor insurance and includes VAPS.

Primary target firm

- [5] The primary target firms are Motorite, Engine Room and SMART. Motorite and Engine Room are controlled by the trustees for the time being of the Greenacres Trust which hold 55% of Motorite and Engine Room's shares respectively. SMART is ultimately controlled by Hollard (55%). Relevant to the proposed transaction is SMART's controlling interest in Streamline Repair Holdings Limited ("Streamline").

- [6] Motorite acts as the underwriting manager in respect of vehicle warranty products and provides full maintenance and service plans. Engine Room conducts telesales of VAPS products and will continue to do so post-merger. SMART acts as an underwriting manager in respect of bodyline insurance and (through Streamline) offers bodyline maintenance products.

Proposed Transaction and Rationale

- [7] The proposed transaction comprises a joint venture in terms of which Hollard and FirstRand will, through Newco, provide insurance and non-insurance VAPS in the motor vehicle chain.¹ It will take place in two steps. Firstly, Hollard and FirstRand will contribute their respective VAPS businesses and revenue streams to Newco.² Newco will then acquire sole control over the target firms.
- [8] Hollard and WesBank submit that the proposed transaction provides them with an opportunity to create a dedicated, integrated entity focused on VAPS in the motor vehicle chain so as to enable both companies to grow. They have a long-standing insurance relationship whereby WesBank would supply leads from its customer base whilst Hollard would act as the insurer and provide insurance expertise.
- [9] The target firms submit that the joint venture will facilitate the provision of all motor insurance VAPS (including warranty and bodyline products) through a single point of contact.

Relevant Markets

- [10] In determining the relevant market, the Competition Commission ("Commission") found that the merging parties offer services in the national market for short-term insurance.³ It further noted that a distinction must be made between insurance and

¹ These products will be offered as stand-alone insurance policies which can be purchased in addition to comprehensive motor insurance policies. They will need to be underwritten by a short-term licensed insurer.

² These products include: SMART Bodyline Insurance, Motorite Warranty Insurance, Credit Life Insurance, Coverplus/Extended Cover and others such as deposit protector, return to invoice, retrenchment and tyre and rim cover.

³ The Tribunal has previously accepted that the broad market for the provision of automotive financial services can be segmented into a narrow market for short-term insurance. See Combined Motor Holdings Limited and Forza (Pty) Limited, case no: 64/LM/Apr06. See also Volkswagen, Financial

non-insurance products which form separate markets.⁴ In this regard, it is pertinent to note that Newco will merely facilitate the distribution of insurance and non-insurance products but will not itself have an insurance license. Conversely, SMART and Motorite will act as underwriting managers in relation to certain licensed insurance products and will issue certain other non-insurance products. Significantly, SMART and Motorite both offer non-insurance bodyline products. The Commission accordingly assessed the effects of the proposed transaction on the national market for the provision of non-insurance bodyline products as this is the narrowest possible market where the merging parties' activities overlap.

- [11] The Commission also considered the impact of the proposed transaction on the national market for the provision of vehicle finance in which WesBank operates.⁵

Impact on Competition:

Unilateral Effects:

- [12] The Commission found that a horizontal overlap exists in the market for the provision of non-insurance bodyline products as both Motorite and Streamline offer these products. The merging parties estimated that the merged entity's post-merger market share would be 28.57%.⁶ The Commission contacted market participants for further market share estimates but was unable to independently verify the figures provided. Ultimately, it was satisfied that the merged entity will face significant competition from other players such as Trafficc, Impac, CCV and Liquid Capital post-merger.

- [13] The Commission further found no evidence to suggest that Newco would change the terms and prices of its current offerings as a result of its alignment with WesBank

Services South Africa (Pty) Ltd and Volkswagen Financial services South Africa, A division of WesBank, a division of FirstRandBank, case no: 016774.

⁴The difference between insurance and non-insurance products is that only authorised insurance companies are permitted to offer licensed insurance products whereas non-insurance products do not require a licensed insurer and are unregulated. Further, non-insurance products are not high risk as they are financed for a specific time period.

⁵ The Commission followed previous decisions by the Tribunal where it was held that the broad financial services market can be divided into the following narrow markets: (i) motor vehicle finance; (ii) industrial equipment; and (iii) Property finance. More specifically, in the merger between WesBank, a division of FirstRand Bank Ltd and Barloworld Leasing, a division of Barloworld Capital (Pty) Ltd (case no: 2002Nov300), the relevant market identified was the market for the provision of vehicle finance.

⁶ The merging parties estimate that Streamline's 24.11% whilst Motorite's market share is 4.46% in this market.

post-merger. Significantly, the merging parties submitted that SMART and Motorite would continue to conduct business on the same terms and conditions. It was further submitted that SMART is already a partner of WesBank and Hollard in the market for bodyline products as all bodyline products that they sell are provided by SMART.

- [14] The Commission accordingly concluded that the proposed transaction was unlikely to result in unilateral effects.

Vertical Effects:

- [15] The Commission identified a vertical relationship between the merging parties in the market for vehicle finance. The relationship arises from the fact that SMART, Streamline and Motorite offer various VAPS that require financing from vehicle financiers such as WesBank. The Commission considered whether this vertical relationship would lead to potential foreclosure effects.
- [16] The Commission found that WesBank is the leading provider of vehicle finance in the country with a market share of approximately 38.8% in the vehicle finance market. On this aspect, the Commission received concerns from a number of market participants regarding the relative position of WesBank in the market for vehicle finance and its potential influence over the VAPS offered to consumers post-merger. The concerns were *inter alia* that the merger would enable WesBank to exert an unfair influence over the Finance and Insurance Representatives (F&I's) and the dealerships themselves by incentivising them to sell Newco's VAPS to the exclusion of the products of competitors. The Commission investigated these concerns and made the following findings.
- [17] In relation to the role of F&I's, the Commission noted that WesBank employs its own F&I's in various dealerships and that this situation could potentially result in Newco's products being promoted and sold over those of its competitors. However, the Commission found that F&I's have to comply with the Financial Advisory and Intermediary Services Act 37 of 2002 as well as the Treating Customers Fairly Regulation which requires them to offer all available products to the customer. It follows that the customer has the discretion to determine which VAP it would like to purchase and is not obliged to choose any particular VAP. The Commission was

however alert to the fact that there are practical challenges with ensuring that F&I's comply with their regulatory obligations.

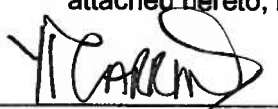
- [18] In relation to whether WesBank would have the incentive not to approve the financing of competitors' products, WesBank indicated that it has an internal process whereby various VAPS have been screened and placed on an approved list. Where a customer selects a VAP that is on this list, it will automatically be approved subject to certain exclusions. The Commission further found that WesBank is focused on the vehicle finance market and is unlikely to refuse to finance competitors' VAPS as it would run the risk of losing finance deals of a much higher value.
- [19] Of further significance is the merging parties' submission that WesBank, SMART and Motorite are already engaged in a commercial relationship thus the merger does not change the existing market structure. In addition, the merging parties maintained that WesBank will continue to finance competitors' products post-merger.
- [20] Notwithstanding these factors, the Commission was of the view that the various third party concerns were valid. Particularly when considering WesBank's prominent position and the fact that the same concerns were raised by a substantial number of the merging parties' competitors.
- [21] The merging parties and the Commission were able to reach agreement on certain conditions remedying these vertical effects. The merger has accordingly been approved subject to these conditions.

Public Interest

- [22] The proposed transaction does not raise any public interest concerns.

Conclusion:

- [23] In light of the above, we agree with the Commission's analysis and conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market and that the merger should be approved subject to the conditions attached hereto, marked "Annexure A".


Yasmin Carrim

04 November 2015
DATE

Andiswa Ndoni and Anton Roskam concurring

Tribunal Researcher: Ammara Cachalia
For the merging parties: Andries Le Grange, Cliffe Dekker Hofmeyr
For the Commission: Portia Bele

ANNEXURE A

VAPS HOLDINGS (PTY) LTD

AND

MOTORITE ADMINISTRATORS (PTY) LTD AND ENGINE ROOM (PTY) LTD AND SMALL AREA REPAIR TECHNOLOGY UNDERWRITING MANAGERS (PTY) LTD

CASE NUMBER: LM053Jun15

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below –

- 1.1 **“Acquiring firm”** means VAPS Holdings Proprietary Limited, a joint venture that will ultimately be jointly controlled by FirstRand Limited and Hollard Holdings (Pty) Ltd;
- 1.2 **“Approval Date”** means the date referred to in the Competition Tribunal’s merger clearance certificate (Form CT 10);
- 1.3 **“Commission”** means the Competition Commission of South Africa;
- 1.4 **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- 1.5 **“Competitors”** means firms in the market offering Motor VAPS Products in competition with Newco;
- 1.6 **“Conditions”** means these conditions;
- 1.7 **“Engine Room”** means Engine Room (Pty) Ltd forming part of the Target Firm;
- 1.8 **“FAIS”** means the FAIS Act 37 of 2002;
- 1.9 **“Finance and Insurance Representatives” or “F&I”** means the

personnel offering vehicle finance and insurance advise at Motor Dealerships;

- 1.10 **“Floorplan Financing Agreements”** means a short-term loan agreement entered into by WesBank and Motor Dealerships as a credit facility to purchase vehicle stock on the Motor Dealership’s floor.
- 1.11 **“Implementation Date”** means the date, occurring after the Approval date, on which the Merger is implemented by the Merging Parties;
- 1.12 **“Life Insurance Policy”** means a life insurance policy issued under the Long Term Insurance Act;
- 1.13 **“Merger”** means the acquisition of control of Motorite, Engine Room and SMART by Newco notified to the Commission under case number 2015Jun0343;
- 1.14 **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.15 **“Motor Dealerships”** means the motor dealerships through which Newco’s VAPS Products will be sold and/or dealerships in which WesBank has Floorplan Financing Agreements and/or dealerships in which WesBank has own F&I;
- 1.16 **“Motor VAPS Products”** means insurance and non-insurance value-added products in the motor value chain sold by or through Newco and its subsidiaries;
- 1.17 **“Motorite”** means Motorite Administrators (Pty) Ltd forming part of the Target Firm;
- 1.18 **“Newco”** means the Acquiring Firm;
- 1.19 **“SMART”** means Small Area Repair Technology Underwriting Managers (Pty) Ltd forming part of the Target Firm;
- 1.20 **“Streamline”** means Streamline Repair Holdings Limited, which is

controlled by SMART and forms part of the Target Firm;

1.21 **“Target Firm”** means Motorite, Engine Room and SMART.

1.22 **“WesBank”** means WesBank a division of FirstRand Bank Limited;

2. **RECORDAL**

2.1 On 23 June 2015, the Merging Parties filed a large merger transaction with the Commission. The Merger constitutes the formation of a joint venture by Hollard and FirstRand (WesBank) which will provide insurance and non-insurance Motor VAPS Products.

2.2 The Commission received concerns in relation to the Merger as follows:

2.2.1 WesBank will be in a position to refuse the inclusion of Competitors' motor VAP products in its Vehicle Financing Arrangements as WesBank will have its own internal Motor VAPS Products. Competitors that rely on WesBank to finance their motor VAPS product will therefore be at a disadvantage;

2.2.2 Motor Dealerships rely on WesBank to fund their businesses through the Floorplan Financing Agreements. WesBank would be in a position to incentivise Motor Dealerships to only sell Newco's Motor VAPS Products through the Floorplan Financing Agreements; and

2.2.3 The F&Is employed by WesBank will be incentivised to only sell the products of Newco. Currently, WesBank has its own F&I in some Motor Dealerships that are facilitating the vehicle finance and insurance offerings.

2.3 In order to remedy the abovementioned competition concerns, the

Commission hereby recommends the imposition of the Conditions as set out in paragraph 3 below.

3. CONDITIONS

- 3.1 WesBank shall not incentivise or require the F&I employed by it and operating on Motor Dealership floors to promote the sale of Motor VAP Products sold by or through Newco and its subsidiaries on a more favourable basis than the products sold by the Competitors.
- 3.2 WesBank shall not, through Floorplan Financing Agreements entered into with Motor Dealerships, oblige Motor Dealerships to promote the sale of Motor VAP Products sold by or through Newco and its subsidiaries to the exclusion of the Competitors.
- 3.3 WesBank shall not require or oblige a customer to purchase a Motor VAP Products sold by or through Newco or its subsidiaries, as a condition to providing motor vehicle finance to such customer, with the exception that WesBank may require a customer to enter into credit insurance as provided for under Section 106 of the National Credit Act, its regulations and any amendments to the aforementioned Act or any other legislation that may be applicable..
- 3.4 WesBank shall not require or oblige Motor Dealerships and/or F&Is to remove or exclude Competitors VAPS Products from the list of Motor VAPS Products sold in particular Motor Dealerships, provided that (1) WesBank may refuse to finance a Competitor VAPS Products, in general, where the Competitor VAPS Product has not been approved by it in terms of its reasonable approval requirements applicable to Motor VAPS Products (including, without limitation, the financial standing of the Competitor, its claims administration procedures and ability to refund premiums, its compliance with legislation and with the rules and determinations under FAIS), or (2) WesBank may refuse to finance a Competitor VAPS product in a particular instance where the inclusion of the Competitor VAPS Product exceeds the credit limits or credit approval requirements applicable to the particular customer or transaction or

the pricing of the Competitor VAPS Product is excessive in terms of the Treat your Customer Fairly rules, as prescribed by the Financial Services Board or (3) where another justifiable basis exists for the exclusion or removal of the Competitor VAPS Product from the aforementioned list of Motor VAPS Products (as approved by the Competition Commission in writing from time to time).

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merging Parties shall circulate a copy of the Conditions to Motor Dealerships and F&Is within 10 days of the Approval Date.
- 4.2 As proof of compliance thereof, WesBank shall within 10 (ten) business days of circulating the Conditions, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the notice that was sent to Motor Dealerships and F&Is.
- 4.3 The Commission shall forward the Conditions to the Competitors that raised concerns during the investigation. A copy of the Conditions may be published on the Tribunal's website together with the reasons.
- 4.4 WesBank shall inform the Commission of the Implementation Date within five (5) business days of it becoming effective.
- 4.5 In the event that the Commission receives any complaint in relation to non-compliance with the above conditions, or otherwise determines that there has been an apparent breach by WesBank of the conditions, the breach shall be dealt with in terms of Rule 39 of the Competition Commission Rules of Conduct.
- 4.6 All correspondence in relation to this merger must be submitted to the Commission's email address: mergerconditions@compcom.co.za.

5. Duration of the Conditions

- 5.1 The above undertakings shall apply for the duration of the Newco joint venture.