

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: 99/LM/Oct05

In The Large Merger Between:

Barloworld Coatings (Pty) Ltd

Acquiring Firm

And

Prostart Investments (Pty) Ltd t/a Marouns

Target Firm

Reasons for Decision

Approval

1. On the 15th December 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Barloworld Coatings (Pty) Ltd and Prostart Investments (Pty) Ltd t/a Marouns. The reasons for this decision follow.

The Transaction

2. The primary acquiring firm is Barloworld Coatings (Pty) Ltd ("Barloworld Coatings"),¹ a wholly owned subsidiary of Barloworld Ltd ("Barloworld"). Barloworld is listed on the JSE Securities Exchange South Africa.²
3. The primary target firm is Prostart Investments (Pty) Ltd trading as Marouns ("Marouns").³ The shareholders of Marouns are J and V Trust, AMM Family Trust and CMW Family Trust and who hold 100% between themselves.
4. Barloworld Coatings is acquiring 85% of the issued share capital of Marouns. Barloworld Coatings will then dispose of between 10% and 15% of its shares in Marouns to a BEE partner. According to the parties, it is envisioned that the BEE partner will directly or indirectly take up a stake of up to 25% + 1 of the issued shared capital of Marouns in the near future.
5. For Barloworld Coatings, the transaction appears to be a defensive strategy since it is acquiring its largest distributor in order to secure future distribution of its automotive paint brands to the refinish segment of the market.⁴

¹ A list of Barloworld Coatings' subsidiaries and associate companies can be found on page 250-1 of the record.

² A list of shareholders who hold more than 1% of Barloworld's shareholding can be found on page 3 of the Commission's Report. Barloworld controls a number of subsidiaries, a list of which can be found on page 238 of the record.

³ A list of Prostart's subsidiaries can be found on page 257 of the record.

⁴ Page 10 of the economic report submitted by the merging parties.

6. For Marouns, the acquisition will “realize a succession plan and ensure stability for the business” and will secure the jobs of its 300 employees countrywide.

The merging parties’ activities

7. Barloworld has nine main operating divisions: Equipment, Industrial Distribution, Motor, Cement and Lime, Scientific, Coatings, Steel Tubes, Financial Services and Logistics.
8. Through its subsidiaries, Barloworld Coatings is active in the following segments of the coatings industry: decorative paint, automotive paint, industrial coatings, furniture coatings, colourants and complementary products such as paintbrushes and paint rollers. Barloworld Coatings is licensed to manufacture automotive paint branded “Spies Hecker” and “Standex” on behalf of Du Pont Performance Coatings, an international paint manufacturer.
9. Marouns is a distributor of refinish paint, ancillaries such as masking tape, plastic covers and polishing compound, and paint application and equipment products such as spray guns, extraction filters, bumpers and bonnets to panel shops. Marouns owns seven distribution outlets: five in Gauteng, one in KZN and one in the Western Cape.

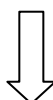
Competition analysis

10. Both parties are active in the automotive paint industry. Below is a diagram of the supply chain in this industry.

Importers and manufacturers of refinish coatings



Distributors: Technical and Sales service



Panel shops and Panel beaters

11. The transaction is a vertical merger at two levels in this industry. The acquiring firm, Barloworld Coatings, is both an importer and a manufacturer of refinish coatings and thus operates in the upstream market. The target firm, Marouns, is a refinish paint distributor and thus operates at the next level downstream. However the acquiring group is also active in the last tier namely panel shops. Barloworld’s panel shops procure all their refinish requirements from Marouns.
12. The Commission identified following markets:
 - 12.1. Upstream National market for the manufacture and/or supply of refinish coatings
 - 12.2. Downstream Regional market for the distribution of refinish coatings to panel shops and other customers
 - 12.3. Downstream market for the provision of panel beating services

The market for the manufacture and/or supply of refinish coatings

13. Even though an examination of the market shares provided by the parties shows that Barloworld coatings has a 27% market share, this market does not raise any vertical concerns as firstly, the Commission's investigations revealed that there are a number of credible alternate suppliers, and secondly, the parties have informed us that pre merger Marouns procured nearly all of its refinish coatings requirements from Barloworld Coatings, anyway.

The market for the distribution of refinish coatings to panel shops and other customers

14. According to the parties, Marouns owns 7 out of the 185 distribution outlets in South Africa. Of the seven, five are situated in Gauteng. The parties submit that market share information is not readily available but that Marouns accounts for not more than 30% of this market. Pre-merger, Barloworld's panel shops sourced refinish coatings entirely from Marouns.

The market for the provision of panel beating services

15. According to the parties, there are approximately 3000 panel shops in South Africa, of which Barloworld owns only eight. We agree with the Commission that Barloworld is a very small player in this market and that the merger is unlikely to change the competitive landscape of this market.

Third Party Concerns

16. Some distributors had complained to the Commission *inter alia* that post merger Barloworld Coatings would use additional sales margins to gain market share thereby foreclosing some distributors. According to Commission, the majority of distributors who complained, supply other brands that are in direct competition with those of Barloworld Coatings and don't procure refinish coatings from Barloworld Coatings at all. Barloworld Coatings has nevertheless, undertaken to retain all of its current distributors and focus on appointing new ones and treat such distributors and its on a non-discriminatory basis.⁵
17. The Tribunal invited the complainants to the hearing held on 15 December 2005. Only Mr IP Ferreira from Balco Auto Colour Pretoria ("Balco") attended⁶ although he requested Mr S Singh MD of Ducol, to make submissions on his behalf.⁷
18. It would appear that the main concern of Balco and Ducol was that the merger would change "the business model in the refinish industry"⁸ due to the fact that Barloworld Coatings was entering the distribution level of the industry. Mr Singh also placed on record their concern that Marouns would have a pricing advantage.
19. We are not convinced that these are valid competition concerns. Firstly both Balco and Ducol exclusively sell brands, which compete with those manufactured by Barloworld Coatings. Secondly, Mr Singh conceded that consumers might be "better off" as a result of

⁵ At paragraph 8 on Page 502 of the Commission's Record. See letter from Barloworld Coatings to Commission.

⁶ Balco is a competitor of Marouns, with franchises operating nationally.

⁷ Mr Singh had assisted Mr Ferreira in the preparation of his submission.

⁸ Page 5 of the transcript.

the merger. Thirdly, he further acknowledged that there were a number of suppliers, that competition was fierce in this market and that numerous new players had entered recently.

Conclusion

20. In light of the above, we are of the view that the transaction will not have an adverse effect on competition in any of the identified markets. There are no public interest issues which would alter our view. We therefore approve the transaction without conditions.

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23 March 2006
Date

Concurring: Y Carrim and M Mokuena

For the merging parties: L Donaldson (Sonnenberg Hoffmann and Galombik Attorneys)

For the Commission: H Ratshisusu and K Theron (Mergers and Acquisitions)