



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

**Case No:
CR174Feb22/SA058Jul25**

In the matter between:

The Competition Commission

Applicant

and

FirstRand Bank Ltd;

First Respondent

WesBank, a Division of FirstRand Bank Ltd;

Second Respondent

Toyota Financial Services South Africa Ltd;

Third Respondent

Toyota Motor Corporation;

Fourth Respondent

Toyota Financial Services UK PLC;

Fifth Respondent

Toyota South Africa Ltd

Sixth Respondent

Panel	:	G Budlender (Presiding Member)
	:	T Vilakazi (Tribunal Member)
	:	A Ndoni (Tribunal Member)

Heard on	:	29 July 2025
Last submission	:	21 August 2025
Decided on	:	25 August 2025

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and FirstRand Bank Ltd; WesBank, a Division of FirstRand Bank Ltd; Toyota Financial Services South Africa Ltd; Toyota Motor Corporation; Toyota Financial Services UK PLC; Toyota South Africa Ltd annexed hereto.

25 August 2025

Presiding Member
Adv. Geoff Budlender SC

Date

Concurring: Prof. Thando Vilakazi and Ms Andiswa Ndoni

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT Case No: CR174FEB22

CC Case No: 2021JAN0008

2022FEB0015 & 2025JUN0035

In the matter between

COMPETITION COMMISSION

APPLICANT

and

FIRSTRAND BANK LIMITED	FIRST RESPONDENT
WESBANK, A DIVISION OF FIRSTRAND BANK LIMITED	SECOND RESPONDENT
TOYOTA FINANCIAL SERVICES SOUTH AFRICA LIMITED	THIRD RESPONDENT
TOYOTA MOTOR CORPORATION	FOURTH RESPONDENT
TOYOTA FINANCIAL SERVICES (UK) PLC	FIFTH RESPONDENT
TOYOTA SOUTH AFRICA LIMITED	SIXTH RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION, WESBANK, TOYOTA FINANCIAL SERVICES SOUTH AFRICA LIMITED, AND THE TOYOTA RESPONDENTS IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission, WesBank, Toyota Financial Services South Africa Limited and the Toyota Respondents hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of an alleged contravention of section 4(1)(b)(ii) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1. **"Act"** means the Competition Act, No. 89 of 1998, as amended.
- 1.2. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
- 1.3. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act.
- 1.4. **"Complaint"** means the complaints submitted to the Commission in terms of section 49B(2)(b) of the Act under case numbers: **2021JAN0008** and **2022FEB0015** and the complaint initiated by the Commissioner in terms of section 49B(1) and investigated under the Commission case number **2025JUN0035**.
- 1.5. **"Consent Agreement"** means this Agreement duly signed and concluded between the Parties in full and final settlement of Tribunal Case Number: **CR174FEB22** and the Complaints.
- 1.6. **"FirstRand Bank Limited"** means a public company with that name duly registered and incorporated in accordance with the laws of the Republic of South Africa with its principal place of business situated at, 4 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton Gauteng.

- 1.7. **"Parties"** means the Commission, WesBank, TFSSA and the Toyota Respondents.
- 1.8. **"Referral"** means the Commission complaint referral against WesBank and TFSSA and the Toyota Respondents filed under Competition Tribunal case number: **CR174FEB22**.
- 1.9. **"Respondents"** means WesBank, TFSSA and the Toyota Respondents cited and/or joined in the Referral.
- 1.10. **"Shareholders Agreement"** means the shareholders agreement made and entered into by FirstRand Bank Limited, TSA Investment Holdings Limited (a wholly owned subsidiary of TSA) and Toyota Motor Finance (UK) PLC (which has been renamed Toyota Financial Services (UK) PLC) on 17 April 2000 and, where the context so requires, the agreements referred to therein.
- 1.11. **"TFSSA"** means Toyota Financial Services South Africa Limited, a private company duly registered in accordance with the laws of the Republic of South Africa with its place of business situated, 15 Spartan Crescent and Old Pretoria Road, Wesco Park, Sandton.
- 1.12. **"Toyota South Africa"** means Toyota South Africa Limited, a public company duly registered and incorporated in accordance with the laws of the Republic of South with its place of business situated at Stand 1, Wesco Park, Old Pretoria Road, Gauteng.
- 1.13. **"Toyota Respondents"** means the Fourth to Sixth Respondents.
- 1.14. **Toyota vehicles**, means new Toyota, Hino and Lexus vehicles sold by Toyota South Africa Motors (Pty) Ltd through Toyota dealerships and used vehicles sold through Toyota dealerships.
- 1.15. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd

Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

- 1.16. "**WesBank**" means Wesbank, a division of FirstRand Bank Limited, with its place of business situated at, 1 Enterprise Road, Fairland, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 06 January 2021, the Commission received a complaint from Ms Nerine Koch in terms of section 49B (2) of the Act, against WesBank, TFSSA and ROLA Motor Group ("ROLA") for allegedly dividing the market in that WesBank failed to provide her with a motor finance quote for purchasing a Toyota vehicle at ROLA.. This complaint was investigated under case number: **2021JAN0008**. A further complaint of a similar nature was lodged by Mr Peter Burger under case number **2022FEB0015**.
- 2.2 The Commission's investigation of the complaints in 2.1 found that when TFSSA was established in 2000, WesBank became a one third shareholder of TFSSA and the Shareholders Agreement was then entered into to govern the relationship between the Parties vis-à-vis TFSSA. In terms of the Shareholders Agreement the Respondents would not compete with each other in the provision of wholesale and retail financing of Toyota vehicles. This non-compete agreement ("the Restraint") is contained in clause 31.2 of the Shareholders Agreement entered into by the Respondents on 17 April 2000. WesBank referred Ms Koch's and Mr Burger's application for vehicle finance to TFSSA in line with this agreement.
- 2.3 The Commission concluded that this conduct amounts to market division by allocating customers and/or suppliers in contravention of section 4(1)(b)(ii) of the Act. On 02 February 2022, the Commission referred the matter against the Respondents to the Tribunal for adjudication.
- 2.4 The Respondents denied the allegations and defended themselves before the Tribunal against the allegations by filing answering statements and an expert report in their defence.
- 2.5 The Commissioner initiated a new complaint on 10 June 2025 under case

number:2025JUN0035, against the Respondents for alleged market division in the provision of wholesale vehicle finance pursuant to the Restraint . This complaint was never referred to the Tribunal as it was overtaken by the settlement negotiations between the Parties.

- 2.6 These developments, together with the fact the Parties have been entangled in a costly and protracted litigation prompted the Parties to engage in settlement discussion to resolve the matter amicably. These discussions culminated in the Consent Agreement.

3 NO ADMISSION OF LIABILITY

- 3.1 The Respondents do not admit liability or a contravention of the Competition Act in respect of the alleged prohibited conduct described in paragraph 2 above.
- 3.2 The Respondents enter into this Consent Agreement purely for purposes of settlement and to bring an end to protracted, costly and time-consuming litigation between the Parties.

4 AGREEMENT REGARDING FUTURE CONDUCT.

- 4.1 The Respondents agree and undertake to amend the Restraint to create an exception to the Restraint, as recorded in 4.2 below. The Restraint is therefore limited to the Toyota dealership floors, but allows a level of flexibility and customer choice set out below.
- 4.2 The Respondents agree that while TFSSA will remain the preferred supplier of retail and wholesale financing at Toyota dealerships and WesBank shall not actively promote financing options at and to Toyota dealerships nevertheless:
- 4.2.1 WesBank may offer vehicle finance to any retail customer wishing to purchase a Toyota vehicle through a Toyota dealership and who indicates that he or she wishes to obtain a quotation directly from WesBank in addition to or in lieu of a TFSSA quotation. WesBank shall ensure that its electronic platforms do not divert such retail customer's request for a finance quote to TFSSA where such customer elects on the platform not to receive a quote from TFSSA.
- 4.2.2 WesBank shall at all times ensure that TSA is provided with its contact details

which shall be passed on to the dealerships;

- 4.2.3 if a Toyota dealer approaches WesBank directly out of its own volition for a quote for a finance facility to finance its purchases from Toyota South Africa Motors Pty Ltd of Toyota vehicles (also known as a floorplan facility), and indicates to WesBank that it prefers not to deal with TFSSA, WesBank shall be entitled to provide a quote to such customer and conclude a contract with such customer pursuant to such quote.
- 4.3 TSA shall use its reasonable endeavours to ensure that where the scenario in clause 4.2.1 arises, the Toyota dealership's staff will direct the customer to approach WesBank directly for a quote by giving the customer the contact details of WesBank.
- 4.4 WesBank and TFSSA agree and undertake to:
 - 4.4.1 refrain from engaging in any conduct contrary to what has been agreed in this Consent Agreement;
 - 4.4.2 prepare and circulate a statement summarizing the content of this agreement to its relevant employees, managers, directors and Toyota dealerships (who shall be requested to inform its employees, Finance and Insurance Managers and, as far as practicable, dealership customers accordingly) within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
 - 4.4.3 review its current competition law compliance programme to ensure that it complies with this Consent Agreement.;

5 SETTLEMENT AMOUNT

- 5.1 For purposes of settlement and without admission of any contravention of the Competition Act, the Respondents agree and undertake to jointly or severally pay a settlement amount of R30 000 000 (**Thirty million rands only**) within 1 (one) month from the date of the confirmation of the Consent Agreement as an order of the Tribunal.

- 5.2 The payments shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank
Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: CR174FEB22/ Toyota Financial Services

- 5.3 The settlement amount will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act. This amount does not exceed 10% of the Respondents' affected turnover.

6 MONITORING

- 6.1 All reports and proof of payments in relation to the conditions set out in this Consent Agreement shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7 FULL AND FINAL SETTLEMENT

- 7.1 This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Parties in relation to the establishment of TFSSA, the conclusion of the Shareholders Agreement and the Restraint, including the conduct that is the subject of the Commission's investigations under Case Numbers: **2021Jan0008**, **2022FEB0015** and **2025JUN0035**, or alleged in the Referral, and any other matters covered by the undertakings contained herein. Upon confirmation of this Consent Agreement as an order of the Tribunal, no further action will be brought by the Commission against the Respondents in respect of the abovementioned conduct and the Commission's complaint referral under Tribunal case number: **CR174FEB22** will not proceed; furthermore, the matters under Commission case number **2025JUN0035** and **2022FEB0015** will not be referred to the Tribunal.

8 Variation

8.1 The Respondents may, at any time, and on good cause shown, apply to the Tribunal for the terms (except the quantum of the settlement amount which shall be non-variable) of the consent order following from this Consent Agreement to be waived, relaxed, modified and/or substituted. The Commission shall be entitled to oppose such an application.

9 Counterparts

9.1 The signature by a Party of a counterpart of this Consent Agreement shall be as effective as if that Party had signed the same document.

For FirstRand Bank Limited

Dated and signed at _____ on the _____ day of 2025-08-19 2025.

Signed by: Harry Kellan
Signed at: 2025-08-19 12:07:30 +02:00
Reason: Witnessing Harry Kellan

Name in Full: Hetash S. Kellen

Designation: CEO of FNB and Retail and Commercial

For WesBank, a division of FirstRand Bank Limited

Dated and signed at _____ on the _____ day of 19/08/25 2025.

Signed by: Ghana Msibi
Signed at: 2025-08-19 12:12:07 +02:00
Reason: Witnessing Ghana Msibi

Name in Full: Ghana Msibi

Designation: Chief Executive Officer of Wesbank

For Toyota Financial Services South Africa Limited

Dated and signed at SANDTON on the 13 day of AUGUST 2025.

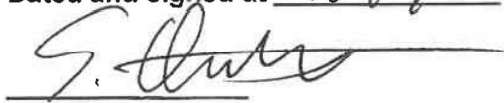


Name in Full: Thabo Manaka

Designation: CEO

For Toyota Motor Corporation

Dated and signed at Tokyo on the 18 day of August 2025.

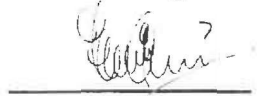


Name in Full: Shinichiro Otsuka

Designation: General Manager, Africa Support Division

For Toyota Financial Services (UK) PLC

Dated and signed at Herstmonceux on the 18 day of August 2025.



Name in Full: Francis Kenny

Designation: Director

For Toyota South Africa Limited

Dated and signed at DURBAN on the 19 day of AUGUST 2025.

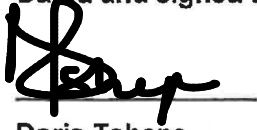


Name in Full: Andrew Kirby

Designation: CEO

For the Commission

Dated and signed at PRETORIA on the 20 day of AUGUST 2025.

A handwritten signature in black ink, appearing to read 'Doris Tshepe', is written over a horizontal line.

Doris Tshepe
Commissioner