COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 56/LM/Jun06

In the matter between:

Kunene Finance Company (Pty) Ltd **Acquiring Firm**

And

Scarlet Ibis Investments 3(Pty) Ltd **Target Firm**

Panel	:	N Manoim (Presiding Member), L Reyburn (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	2 August 2006
Decided on	:	2 August 2006
Reasons issued:		25 August 2006

REASONS FOR DECISION

Approval

[1]. On 2 August 2006, the Competition Tribunal unconditionally approved the proposed merger between the abovementioned parties. The reasons for the decision follow.

Parties

[2]. The acquiring firm is Kunene Finance Company (Pty) Ltd ("KFC"). KFC is a subsidiary of Kunene Brothers Holdings (Pty) Ltd ("KBH"), which owns 42.8% shares in KFC[1]. Institutional Investors hold together 57% of the shares in KFC[2]. The primary target firm is Scarlet Ibis Investment 3 (Pty) Ltd ("Scarlet"). The Coca-Cola Export Company ("CCEC") holds all the shares in

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1 For a list on KBH shareholders see page 2 of the Commission's Report
2 The institutional investors are named on page 2 of the Commission's Report

Scarlet.

Transaction

[3]. The parties submitted in their filing that this transaction involves the second phase of The Coca-Cola Company's ("TCCC") strategy, which is to transfer control of shares held by Scarlet in TJC Holdings (Pty) Ltd ("TJC") to a BEE investor. According to the parties, the first phase involved the acquisition by Scarlet of the entire issued share capital of TJC with the intention of disposing of the control of TJC to a BEE company[3]. The Coca-Cola Export Corporation ("TCCEC") currently holds all the shares in Scarlet.

[4]. This transaction involves the acquisition of the issued shares capital in Scarlet from TCCEC by a BEE company ("KFC"). On the completion of the transaction, KFC will own 51% shares in Scarlet, and Kunene Beverages Holdings (Pty) Ltd ("KB") will acquire 20% of shares in Scarlet and TCCEC will remain with 30%.

Reasons for the transaction

[5]. According to the parties when Scarlet acquired the entire issued share capital of TJC, it was always the intention of TCCC to introduce a suitable BEE investor into the shareholding of Scarlet. The parties further submit that this transaction is intended to facilitate the transformation of Scarlet for BEE purposes.

The merging parties activities

[6]. KFC is a diversified holding company and it currently has four major

3 The Commission under case number 2005NOV 1969 approved this transaction.

areas of investment, being Coca-Cola Bottling and Distribution, Defence Electronics and Telecommunications, Financial Services and Motor Dealership. The financial investors, which are shareholders of KFC, are involved in financial products and services, which are banking, insurance and property. In addition, KFC and KB currently hold 13.4% and 6% of shares in Coca-Cola Fortune ("CCF"). After this transaction KFC and KB will dispose of their respective shareholding in CCF to Shanduka Beverages, a new company to be formed, and Khulile Beverages (Pty) Ltd. At the hearing it was submitted by Mr Daniel Mokwena from Coca Cola South Africa that the reason why KFC and KB are disposing of their respective shares in CCF to Shanduka Beverages is to enable them to acquire sufficient funds to be able to invest in Scarlet.

[7] The target firm ("Scarlet") is a bottler of TCCC trademarked beverages. It manufactures, prepares, packages, sells and distributes various TCCC brands in the market[4].

Effect on Competition

[8]. The transaction will not substantially prevent or lessen competition in any product market since there is no overlap in the activities of the merging parties. According to the Commission although the merging firms activities overlap in respect of bottling and distribution of beverages, this potential overlap is eliminated because simultaneously with this transaction KFC and KB will dispose of their respective shareholding in CCF. There is therefore no product overlap between the products and services provided by the parties to the merger.

Public Interest

4 For a list of the various brands manufactured and distributed by Scarlet see pages 19-20 of the Merger Filing

[9]. No public interest issues arise from this merger.

Conclusion

[10]. Having regard to the above, we conclude that the merger will not lead to a substantial lessening of competition. Accordingly we agree with the Commission's recommendation that the transaction be approved unconditionally.

________________ **25 August 2006**

N Manoim **Date**

Concurring: L Reyburn and M Mokuena

Tribunal Researcher : J Ngobeni

For the merging parties : Mondo Ntlha (Cliffe Dekker Attorneys)
For the Commission : Jeffrey Mudzanani and Makgale Mohlala