

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 11/LM/Jan09

In the matter between:

Clidet No 817 (Pty) Ltd

Acquiring Firm

And

Amalgamated Beverage Industries

Target Firm

Panel : D Lewis (Presiding Member) N Manoim, (Tribunal Member),
and Y Carrim (Tribunal Member)

Heard on : 4 February 2009

Order Issued : 4 February 2009

Reasons Issued: 27 February 2009

Reasons for Decision

Approval

- [1] On 4 February 2009, the Tribunal unconditionally approved the merger between Clidet No. 817 (Pty) Ltd and Amalgamated Beverages Industries. The reasons for approving the transaction follow.

The parties

- [2] The primary acquiring firm is Clidet No. 817 (Pty) Ltd ("Newco"), a company incorporated under the company laws of the Republic of South Africa. Newco is a wholly owned subsidiary of Waveside (Pty) Ltd, which is controlled by Coca Cola Africa (Pty) Ltd ("Coca-Cola Africa"). Coca-Cola Africa controls Coca-Cola Canners of Southern Africa (Pty) Ltd (Coca-Cola Canners").
- [3] Coca-Cola Africa is controlled by The Coca-Cola Export Corporation ("The Coca-Cola Export Corporation"), a company incorporated in the United States of America. The Coca-Cola Export Corporation is controlled by the Coca-Cola Company ("The Coca-Cola Company"). The Coca-Cola Company controls various subsidiaries worldwide.

- [4] The primary target firm is the Valpre Manufacturing Plant (“Valpre Plant”) which is currently owned by Amalgamated Beverages Industries (“ABI”), a division of the South African Breweries Limited (“SAB”). ABI controls Valaqua and SAB controls Appletiser (Pty) Ltd.

Description of the transaction

- [5] In terms of the proposed transaction, Waveside, through Newco, intends to acquire the assets comprising the Valpre Plant which is owned by ABI. On completing the transaction, the Valpre Plant will be controlled by Newco, which is ultimately controlled by The Coca-Cola Company.

Rationale for the transaction

- [6] The parties submitted that this transaction has been concluded pursuant to Waveside exercising its right of first refusal. In 2003, The Coca-Cola Company acquired the Valpre and Just Juice trademarks from SABMiller Finance B.V. (“SABMiller”). The Coca-Cola Company in turn licensed the trademarks to its subsidiary Waveside.¹ Waveside and Appletiser South Africa (Pty) Ltd (“Appletiser SA”) entered into a manufacturing agreement in terms of which Appletiser SA would continue to manufacture, on behalf of Waveside, both the Valpre and Just Juice trademarks for a period of five years. This agreement expired in April 2008.
- [7] The parties further submitted that in terms of the expired manufacturing agreement, Waveside has a right of first refusal to purchase the Valpre plant from ABI in the event that the parties are unable to reach an agreement on the terms of manufacture. The parties submitted that Waveside’s right of first refusal has been triggered as the parties failed to agree on the terms of manufacture. Waveside has opted to purchase the Valpre Plant from ABI

THE PARTIES’ ACTIVITIES

Primary acquiring firm

Newco

- [8] Newco is a newly formed company that has not traded before. It is a wholly owned subsidiary of Waveside.

¹ See transcript page 2.

Waveside

- [9] Waveside is the holder of a license to use the Valpre trademark pursuant to an agreement concluded between it and The Coca-Cola Company.

Coca-Cola Africa

- [10] Coca-Cola Africa conducts business as a provider of marketing, promotional, technical and quality control related services in relation to the manufacture, sale, distribution and marketing of products identified under trademarks of The Coca-Cola Company including, Valpre and Just Juice.

Coca-Cola Export Corporation

- [11] The Coca-Cola Export Corporation is an investment holding company, which holds certain of the assets and investments of The Coca-Cola Company around the world, including shareholding in Coca-Cola Africa.

The Coca-Cola Company

- [12] The Coca-Cola Company operates in non-alcoholic beverages and owns the brands and related intellectual property rights in various non-alcoholic beverages. It primarily manufactures and sells, either by itself or through designated suppliers, concentrates, beverage bases and syrups to authorised bottlers who are licensed to manufacture, sell, distribute and merchandise finished branded products to their customers.
- [13] The Coca-Cola Company's brands in South Africa include Coca-Cola; Fanta; Sprite; Coca-Cola Zero; Coca-Cola Light; Tab; Krest; Minute Maid; Bonaqua; Valpre; Bibo; Power Play; Powerade; Sparletta; Twist; and those brands licensed to The Coca-Cola Company or owned by The Coca-Cola Company's affiliate companies, such as Schweppes.

Primary target firm

Valpre Plant

- [14] The Valpre Plant produces and packages Valpre Still and Sparkling water on behalf of the Coca-Cola Company for exclusive supply to other licensed and authorised bottlers of The Coca-Cola Company in South Africa.

Competition analysis

[15] There is no overlap in the activities of the merging parties as they are in a supplier-customer relationship since ABI manufactures, packages and sells Valpre bottled water to the licensed bottlers on instructions for and on behalf of Waveside. There will, therefore, be no change in market shares or market concentration as a result of the proposed transaction.

[16] The Commission and the parties submitted that the proposed transaction will result in vertical integration as ABI's Valpre Plant currently prepares and packages Valpre water for Waveside in terms of a manufacturing agreement entered into between Waveside and Appletiser SA. However, the vertical integration is unlikely to raise any foreclosure concerns as the Valpre Plant presently produces and packages exclusively for Waveside. There will therefore be no change in the competitive landscape.

Public Interest

[17] There are no public interest issues.

Conclusion

[18] The merger is approved unconditionally.

Y Carrim

Tribunal Member

D Lewis and N Manoim concurring.

Tribunal Researcher : R Kariga

For the merging parties: Cliffe Dekker Hofmeyr Attorneys

For the Commission : K Mahlakoana (Mergers and Acquisitions)

27 February 2009

DATE