COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 57/LM/May12
(015107)

In the matter between:

DHN Drinks (Pty) Ltd Acquiring Firm

And

Sedibeng Breweries (Pty) Ltd Target Firm

Panel	:	Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	18 July 2012
Order issued on	:	18 July 2012
Reasons issued on	:	08 August 2012

Reasons for Decision

Approval

1] On 18 July 2012 the Competition Tribunal ("Tribunal") unconditionally approved the merger between DHN Drinks (Pty) Ltd and Sedibeng Breweries (Pty) Ltd. Our reasons for approving the transaction are set out below.

Background

2] In 2003 Diageo Highlands, Heineken International and Namibian

Breweries Limited consolidated their sales, marketing and distribution functions by forming a cost-sharing joint venture known as Brandhouse Beverages (Pty) Ltd ("Brandhouse")[1] under which they currently market, distribute and sell their products in South Africa.

3] The merging parties and Competition Commission (the "Commission") agree that the present transaction is an 'internal restructuring'[2] to bring further effect to existing agreements between Diageo Highlands, Heineken and Namibian Breweries Limited.

The parties to the transaction

4] The acquiring firm is DHN Drinks (Pty) Ltd ("DHN"), a company incorporated in terms of the laws of the Republic of South Africa. DHN was formed through a transaction we approved in 2008[3] and is jointly controlled by:

i. Diageo Highlands[4] ("Diageo") 42.25%;

ii. Heinkeken International[5] ("Heineken") 42.25%; and

iii. Namibian Breweries Limited[6] ("NBL") 15%.

5] DHN, which is a brand holding and profit sharing company with no employees, was formed by Diageo, Heineken and NBL as a special purpose vehicle in order to continue their relationship after the successful implementation and operation of Brandhouse which is still in existence

1 Brandhouse's product portfolio includes brands such as Johnnie Walker, Smirnoff, J&B, Bell's, Captain Morgan, Jose Cuervo, Baileys, Heineken, Amstel, Windhoek and Guinness. http://www.brandhouse.co.za/BrandhouseStory.aspx
2 Transcript page 2.
3 Tribunal Case No: 17/LM/Feb08.
4 A public company incorporated in the Netherlands and listed on the both the New York Stock Exchange and the London Stock Exchange.
5 A public company incorporated in the Netherlands and listed on the Euronext Stock Exchange in Amsterdam.
6 A public company incorporated in Namibia and listed on the Namibian Stock Exchange.

today.

6] The target firm, Sedibeng Breweries (Pty) Ltd ("Sedibeng"), is a company incorporated in terms of the laws of the Republic of South Africa and operates as a brewery located in the south of Johannesburg. Sedibeng's current shareholders are Heineken (75%) and Diageo (25%). Sedibeng's entire output is dedicated to the DHN shareholders and is distributed by Brandhouse.

7] The Sedibeng brewery plant was established by Heineken and Diageo for the purpose of brewing their own products in South Africa and in order to effectively compete with the dominant South African Breweries Ltd ("SAB").

The transaction

8] The transaction entails DHN acquiring 100% interest in Sedibeng from Heineken and Diageo. Post merger, Diageo, Heineken and NBL will each own indirect shareholding in Sedibeng through their DHN shareholding.

9] NBL will therefore acquire 15% indirect shareholding in Sedibeng, Diageo will increase its shareholding in Sedibeng from 25% to 42.25% and Heineken's shareholding will reduce to 42.25%.

10] The proposed merger therefore results in Diageo, Heineken and NBL all having indirect shareholding in Sedibeng in direct proportion to their DHN shareholding.[7]

7 See paragraph 4 above.

Competition Analysis

11] At the hearing the Competition Commission ("the Commission") stated that "[the] parties have also submitted that the establishment of the Sedibeng Breweries has helped established them as a manufacturing presence in South Africa and can therefore compete effectively with SAB. Also, the merging parties have further indicated that the merger will enhance competition in the beer markets, as they may now effectively compete with SAB."[8]

12] Further, the parties herein are already marketing, selling and distributing their beer, ciders and ready to drink brands through their joint venture, Brandhouse, which we previously approved.[9]

13] DHN already holds the rights to the alcoholic beverage products brewed at Sedibeng. The Commission found that there is no overlap in the activities of DHN and Sedibeng. There is a vertical relationship between the merging parties but this existed pre-merger.

14] Further at the hearing, in reply to questions from Tribunal, the parties confirmed that they notified the 2008 transaction as a sales, marketing and distribution joint venture in terms of which their respective products would be pooled through Brandhouse and that Brandhouse would have discretion over their pricing.[10]

8 Transcript page 2.
9 *Ibid.*
10 Transcript page 5-6.

15] The present transaction does not change the structure and dynamics[11] of the markets in which the parties operate.

16] The Commission therefore found that the proposed merger is unlikely to lead to a substantial lessening or prevention of competition and recommends unconditional approval thereof.

Public Interest

17] The merging parties submit that they do not anticipate that any retrenchments will occur as a result of the proposed transaction as it is merely an internal restructuring of ownership in Sedibeng[12] by all three joint venture parties.

18] The establishment of Sedibeng has in fact lead to the creation of employment opportunities.

Conclusion

19] We accept the Commission's conclusions and their analysis of the above transaction. We further accept that, on the information submitted, the proposed transaction does not lead to any changes in market structure and that it is essentially a restructuring in line with the joint venture partners' agreements.

20] The above merger is therefore approved without conditions.

11 Form CC4(2) submitted by DHN at page 14 of the Merger Record.
12 Transcript page 2.

08 August 2012

Yasmin Carrim **DATE**

N Manoim and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Anthony Norton of Nortons Incorporated.

For the Commission: Thelani Luthuli and Grace Mohamed