# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM047Jun15**

In the matter between:

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| **BRAIT MAURITIUS LIMITED** | Acquiring Firm |
| And | |
| **DGB (PROPRIETARY) LIMITED** | Primary Target Firm |

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| Panel | : Norman Manoim (Presiding Member) |
| | : Andiswa Ndoni (Tribunal Member) |
| | : Yasmin Carrim (Tribunal Member) |
| Heard on | : 8 July 2015 |
| Order Issued on | : 8 July 2015 |
| Reasons Issued on | : 23 July 2015 |

## Reasons for Decision

### Approval

[1] On 8 July 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Brait Mauritius Limited ("Brait Mauritius") and DGB (Proprietary) Limited ("DGB").

[2] The reasons for approving the proposed transaction follow.

## Parties to Transaction and their Activities:

*Primary acquiring firm*

[3] The primary acquiring firm is Brait Mauritius, a company incorporated in Mauritius. Brait Mauritius is ultimately controlled by Brait S.E., a public company incorporated in Malta.[1] The shareholders holding more than 5% of the ordinary issued shares in Brait S.E are Christoffel Hendrik Wiese (34.6%) and The Government Employee Pension Fund (9.8%). In addition to Brait Mauritius, Brait S.E controls a number of other firms. Relevant to the proposed transaction is its interest in Consol Holdings Limited ("Consol").[2] Brait Mauritius controls a number of firms. Of relevance is its 40.84% shareholding in DGB, the primary target firm in the present transaction.

[4] The Brait Group is an international investment group that invests predominantly in privately owned companies. It has interests in a variety of sectors. The activities of Consol are relevant to the proposed transaction. Consol is a glass packaging manufacturer in Southern Africa. It manufactures and supplies glass packaging solutions for a number of industries including beverages (alcoholic and non-alcoholic).

*Primary target firm*

[5] The primary target firm is DGB, a company incorporated in accordance with the laws of the Republic of South Africa. DGB is jointly controlled by the following firms: Brait Mauritius (40.84%), the Cherub Staff Trust ("Cherub") (12.26%), Kangra Group (Pty) Ltd ("Kangra") (20.42%) and Pentus Nominees (Pty) Ltd ("Pentus") (26.48%). DGB controls a number of firms in South Africa.[3]

[6] DGB is a producer, wholesaler and distributor of wine, spirits and other alcoholic and non-alcoholic beverages. It is also the South African agent and distributor of international spirit and other beverage brands.

[1] Brait S.E has its primary listing on the Luxembourg Stock Exchange and a secondary listing on the Johannesburg Securities Exchange.
[2] Brait S.E owns 3.8% interest and indirectly has a 28.1% interest in Consol. These interests afford Brait minority shareholder protections.
[3] See page 10 of the record.

## Proposed Transaction and rationale:

[7] In terms of the proposed transaction, Brait Mauritius intends to acquire a further 20.42% of DGB's shares from Kangra. Post-merger, DGB's shareholding will be as follows: Brait Mauritius (61.26%), Cherub (12.26%) and Pentus (26.48%).

[8] Brait Mauritius submits that its investment portfolio is growing. Thus, it seeks to increase its interest in DGB and grow the business to a scale that justifies the continued investment therein. Kangra submits that the proposed transaction will enable it to liquidate its shareholding in DGB at an attractive price.

## Impact on competition:

[9] The Competition Commission ("Commission") found that there are no horizontal overlaps between the activities of the merging parties as none of the firms within the Brait Group are active in the production and supply of wine and spirits and as such do not compete with DGB.

[10] The Commission however found that a vertical relationship exists as Consol currently supplies DGB with wine and spirit bottle packaging. The Commission accordingly considered whether this relationship raised any foreclosure concerns.

[11] In relation to wine bottle packaging, the Commission found that Consol currently supplies 90% of DGB's packaging requirements, a position that is unlikely to change post-merger.[4] Further, DGB accounts for a mere 5% of Consol's annual sales of wine bottles and overall has less than 10% of the total market share for the production and supply of wine in South Africa. In addition, there are other firms such as Distell Group Limited ("Distell"), Robertson Winery (Pty) Ltd ("Robertson"), KWV South Africa (Pty) Ltd ("KWV") and Diageo Plc ("Diageo") that will procure wine bottle packaging from Consol's competitors should the merged entity adopt a customer foreclosure strategy post-merger.

[12] The Commission found that Consol also supplies 90% of DGB's spirit bottle packaging.[5] Further, DGB accounts for approximately 3.69% of Consol's annual

[4] The remaining 10% is predominantly supplied by Nampak Limited.
[5] The remaining 10% is predominantly supplied by Nampak Limited.

sales of spirit bottles and less than 10% of the total market share of the production and supply of spirit bottles. Further, there are numerous other firms such as Diageo, KWV, Distill and others that will continue to procure spirit bottle packaging from Consol's competitors post-merger. Thus, the Commission found that foreclosure was unlikely.

[13] On such basis, the Commission concluded that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

**Public interest:**

[14] The proposed transaction raises no other public interest concerns.

**Conclusion:**

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.

______________________ 23 July 2015

**Norman Manoim** **DATE**

**Yasmin Carrim and Andiswa Ndoni concurring**

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| Tribunal Researcher: | Ammara Cachalia |
| For the merging parties: | Hendrik Krog and Andrew Cadman, Read Hope Philips Thomas & Cadman |
| For the Commission: | Reabetswe Molotsi and Xolela Nokele |