

SOUTH AFRICA / JUDGMENT

CA Sales Holdings (Pty) Ltd v SMC Brands SA (Pty) Ltd (017715) [2013] ZACT 105 (29 October 2013) [2013] ZACT 105

COURT
Competition Tribunal

BEFORE
Norman Manoim, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER
017715

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no.: 017715

In the matter between:

CA Sales Holdings (Pty) Ltd Primary Acquiring Firm

and

SMC Brands SA (Pty) Ltd Primary Target Firm

Panel

Norman Manoim (Presiding Member)

Yasmin Carrim (Tribunal Member)

Andreas Wessels (Tribunal Member)

Heard on

01 October 2013

Order issued on

01 October 2013

Reasons

issued

29 October 2013

DECISION

Conditional approval

Panel

Norman Manoim (Presiding Member)

Yasmin Carrim (Tribunal Member)

Andreas Wessels (Tribunal Member)

Heard on

01 October 2013

Order issued on

01 October 2013

Reasons

issued

29 October 2013 DECISION

1. On 01 October 2013, the Competition Tribunal (“Tribunal”) approved the proposed acquisition by CA Sales Holdings (Pty) Ltd of SMC Brands SA (Pty) Ltd subject to a condition.
2. The reasons for approving the proposed transaction follow.

Parties to transaction

The primary acquiring firm

3. The primary acquiring firm is CA Sales Holdings (Pty) Ltd (“CA Sales”).
4. CA Sales is the parent company of a group of companies which acts as agents for manufacturers of fast-moving consumer goods (“FMCG”).

CA Sales provides sales, merchandising, warehousing and distribution services in South Africa, Lesotho, Botswana, Namibia and Swaziland.

5. Through its subsidiaries in Botswana and Swaziland, CA Sales offers sales, warehousing and distribution services to manufacturers of FMCG products. This full line service is not offered in South Africa.¹

6. CA Sales owns four subsidiaries which are active in South Africa.² One such subsidiary is an investment-holding company, whilst another is a sales and merchandising business which operates in retail and wholesale stores representing FMCG manufacturers. The other two companies provide dedicated sales and merchandising services of Spar's house brand products in specific provinces in South Africa.

The primary target firm

7. The primary target firm is SMC Brands SA (Pty) Ltd ("SMC"). Taeuber & Corssen SA (Pty) Ltd, the Annerine Smith Trust, Rian Smit and Herman Smith are its current shareholders. Although SMC is a South African company, it does not conduct business in South Africa and it only provides in-house management services to its wholly-owned subsidiaries operating in Botswana, Namibia and Swaziland. The management fee which SMC gets in return for its services is, however, remitted back into South Africa.
8. SMC has a licence agreement with Diageo Pic in terms of which SMC distributes its premium beverage alcohol products in Botswana,

Namibia and Swaziland. These products include inter alia Smirnoff vodka, Johnnie Walker whiskey, Guinness stout and Captain Morgan. Brandhouse Beverages (Pty) Ltd distribute the Diageo products in South Africa.³

Proposed transaction

9. The merging parties have notified the Commission of CA Sales' intention to acquire 100% of SMC. However, in terms of the proposed transaction, SMC will initially only purchase 49% of SMC. CA Sales has been granted an irrevocable right and option to purchase the remaining 51%. The timing of the exercise of this option is uncertain as it depends on the approval of SMC's audited financial statements for the period ending in June 2014.
10. As a result of this call option, the Commission took the view that both the initial transaction and the exercise of the call option in substance form part of a single yet interrelated transaction to acquire 100% of SMC. It analysed the transaction on the assumption that CA Sales was acquiring sole control. However, as market conditions may have changed if the option is exercised at a later date than that presently anticipated, the Commission sought a condition that if the option was exercised later than October 31 2014, the transaction would have to be re-notified.
11. The Tribunal, with the agreement of the Commission and the merging parties, added some clarity to the condition by amending the wording thereof. As a result, the transaction was approved subject to the condition set out in Annexure A which we released on 1 October 2013.

Competition assessment

Overlaps

12. Although both CA Sales and SMC's subsidiaries distribute alcohol, neither operates in South Africa.
13. CA Sales operates as an alcoholic beverage distributor in Botswana only, whilst SMC distributes alcohol in Swaziland, Botswana and Namibia. Furthermore, the merging parties do not have a licence to distribute alcoholic beverages in South Africa.
14. The proposed transaction will not result in any vertical or horizontal effects in the South African market.⁴

Public Interest

15. The merging parties confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction
- 5 No other public interest issues arise as a result of this transaction.

CONCLUSION

16. Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. We approve the proposed transaction subject to the conditions set out in the attached "Annexure A".

NORMAN MANOIM

29 October 2013

DATE

Yasmin Carrim and Andreas Wesseis concurring

Tribunal Researcher: Nicola Ilgner

For the Commission: Tshegofatso Radinku

For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr Inc.

ANNEXURE A

In the large merger involving:

CA Sales Holdings (Pty) Ltd I SMC Brands SA (Pty) Ltd

CT CASE NUMBER: 017715

CONDITIONS

1. The acquisition of 49% of the total issued share capital of SMC Brands SA (Pty) Ltd by CA Sales Holdings (Pty) Ltd, be approved

unconditionally in terms of section 16(2)(a) of the Act; and further

2. The acquisition of sole control is approved in terms of section 16(2)(b) of the Act, provided that CA Sales exercises its option to purchase the remaining issued share capital of SMC ("Call Option") on or before 31 October 2014. Should CA Sales exercise

its Call Option at a date later than 31 October 2014, the parties will be required to obtain a new approval prior to implementation.

1 See page 30 of the merger record.

2 Pack 'n Stack Investment Holdings (Pty) Ltd, Pack 'n Stack (Pty) Ltd, Monteagle Merchandising Services (Pty) Ltd and Monteagle Merchandising Services KZN (Pty) Ltd.

3 See page 25 of the merger record.

4 See page 25 of the merger record.

5 See pages 27 and 28 of the merger record.

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