

SOUTH AFRICA / JUDGMENT

Diageo Africa B.V v Newshelf 1167 t/a United National Breweries SA (021196) [2015] ZACT 143 (28 May 2015)

[2015] ZACT 143

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Mondo Mazwai, Anton A Roskam

CASE / FILE NUMBER

021196

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 021196

In the matter between:

Diageo Africa B.V

Primary Acquiring Firm

And

Newshelf 1167 t/a United National Breweries SA Primary Target Firms

Panel

: Yasmin Carrim (Presiding Member)

: Mondo Mazwai (Tribunal Member)

: Anton A Roskam (Tribunal Member)

Heard on : 13 May 2015

Order Issued on : 13 May 2015

Reasons

Issued on : 28 May 2015

Non Confidential Reasons for Decision

Approval

[1] On 13 May 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Diageo Africa B.V ("Diageo") and Newshelf 1167 Va United National Breweries SA ("UNB").

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

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm Diageo is a firm incorporated and registered in Netherlands. It is listed on the New York Stock Exchange and the London Stock Exchange. It is not controlled by a single shareholder but its largest shareholder is BlackRock Investment Management (UK) Limited and Capital Research and Management Company.

[4] UNB is incorporated in South Africa and is jointly controlled by Diageo and Pestello Investments. UNB solely controls the following South African private companies, Reldann Investments No. 12 Proprietary Limited ("Reldann") and

Primary target firm

[5] The primary target firms in this group, the UNB Group is made up of UNB, Reldann and

[6] The UNB group manufactures traditional African sorghum beer (Umqombothi) and Mageu in South Africa. These products are distributed from four breweries and various distribution depots situated around South Africa with the exception of the Western Cape.

Proposed transaction and rationale

[7] The proposed transaction involves Diageo, who already holds 50% of UNB acquiring the remaining 50% from Pestello Investments.

[8] The target firms submitted that its intention to sell is due to the fact that this will be an opportunity to sell to a purchaser who intends to grow the business.

Impact on competition

[9] According to the Competition Commission's ("the Commission") findings the proposed transaction is unlikely to alter the existing competitive structure in the affected markets given Diageo's pre-existing shareholding of 50%.

[10] The Commission further found that the merging entity will be unable to unilaterally increase prices post-merger and it has limited incentives to do so considering the presence of other competitors such as SAB and Distillers that operate in the affected market.

[11] The Commission also investigated the possibility of coordinated effects. The Commission was of the view that coordination in this case may be difficult to sustain in a market which comprises of a large number of firms as it may be challenging for firms to align their individual behaviour and agree on common terms. Further, the products involved are non-

homogenous and the merger, from joint to sole control, does not assist in facilitating coordination as it does not alter the market. Based on these findings the Commission found that typical conditions to facilitate coordination are not present in this case.

- [12] We concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We further agree that it is unlikely that the transaction would result in coordination.

Public interest

- [13] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.[1] The proposed transaction further raises no other public interest concerns.

Conclusion

- [14] 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.

Yasmin Carrim

28 May 2015

DATE

Mondo Mazwai and Anton A Roskam concurring

Tribunal Researcher: Aneesa Raval For the merging parties: Antony Norton of Nortons Inc For the Commission: Daniela Bove and Grashum Mutizwa

- [1] Inter alia merger record page 7.

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