

SOUTH AFRICA / JUDGMENT

## Hosken Consolidated Investments Ltd v KWV Holdings Ltd (26/LM/Apr11) [2011] ZACT 26 (6 May 2011) [2011] ZACT 26

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER

26/LM/Apr11

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:26/LM/Apr11

In the matter between:

Hosken Consolidated Investments Limited .....Acquiring Firm

And

KWV Holdings Limited .....Target Firm

Panel : Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member)

Andreas Wessels (Tribunal Member)

Heard on : 04 May 2011

Order issued on : 05 May 2011

### Reasons

issued on : 06 May 2011

Reasons for Decision

Approval

On 4 May 2011 the Competition Tribunal (“Tribunal”) approved the large merger between Hosken Consolidated Investments

Limited (“HCI”) and KWV Holdings Limited (“KWV”). The Tribunal’s reasons for approving the transaction are set out below.

#### The Parties to the transaction

The primary acquiring firm is Hosken Consolidated Investments Limited,<sup>1</sup> a public investment company listed on the Johannesburg Stock Exchange. HCI’s major shareholder is the South African Clothing and Textile Workers Union (“SACTWU”) with 37.9% of the issued share capital in HCI.

The target firm, KWV Holdings Limited,<sup>2</sup> is a JSE listed public investment company which owns and operates one of the leading wine and spirits producers in South Africa. HCI currently owns 34.95% of the issued share capital in KWV.

HCI has been involved in a number of transactions increasing its stake in KWV with the goal of attaining sole control of KWV. This proposed transaction is a further step by HCI towards their goal.

#### The activities of the parties

##### The Acquiring Firm:

HCI has investments in a diversified range of business areas and industries such as Media & Broadcasting, Casinos, Hotel &

Leisure, Clothing & Textiles, Transport, Energy, Property and Technology:

Gaming Hotels and Leisure TSOGO INVESTMENT HOLDING COMPANY74.7% VUKANI GAMING CORPORATION100%

Media and Broadcasting MIDI TV (e.TV)63% YIRED63% E SAT.TV63% THREE BLIND MICE COMMUNICATIONS71.3%

Transport GOLDEN ARROW BUS SERVICE100%

Energy MONTAUK ENERGY CAPITAL91.5% HCI KHUSELA COAL80%

Property and Exhibitions GALLAGHER100%

Industrial FORMEX90%

Services and Technology Business Systems Group (Africa)40% Syntell55% Isilumko30.1% Limtech58.9%

Clothing and Textiles Seardel Limited70%

The above Graphic Table is from the HCI website.<sup>3</sup>

##### The Target Firm:

KWV is essentially a vertically integrated wine and spirits business, owns a wine farm, and procures grapes and wine for the production of wine and spirits. KWV owns one of the largest premium brands of wine in the country and also has a non controlling interest in the Paarl Bottling Company.

KWV controls the following subsidiaries:

KWV South Africa (Pty) Ltd;

KWV International (Pty) Ltd;

KWV Intellectual Property (Pty) Ltd;

KWV Projects (Pty) Ltd;

Kaapse Wynprodusente Vereniging (Pty) Ltd;

Wijngaarg Beleggings (Pty) Ltd;

Edward Cavendish and Sons (Pty) Ltd;

KWV International Holdings Gmbh;

KWV International (Europe) Ltd; and

Golden Kaan South Africa (Pty) Ltd.

There is no overlap between the activities of the merging parties nor are there any firms in the broader acquiring firm in a vertical

relationship with the target firm.

#### The Rationale

Through the present transaction, HCI intends acquiring 0.05% of the issued share capital of KWV as a further step in its goal of attaining sole control of KWV.

The result of the acquisition of the 0.05% will result in HCI owning 35% of the issued share capital of KWV and thereby become obliged, in terms of the Securities Regulation Panel ("SRP") Code to extend a mandatory offer to the other shareholders of KWV.

Depending on the extent of the acceptance of the mandatory offer by the other shareholders, HCI could be placed in a position to acquire the entire issued share capital of KWV.

HCI further states that by acquiring sole control of KWV, it would be in the position to employ its skilled management team in turning around KWV's underperforming business. This goal seems to correlate with HCI's role as an investment company.

#### The relevant market and the impact on competition

The parties and Commission agree that the relevant market is the market for the production and sale of bottled wine, bottled spirits, bulk spirits, contract for bottling and carbonated grape juice.

There is no overlap in the activities of the parties and the Commission is of the opinion that that this merger is unlikely to substantially prevent or lessen competition in the relevant market.

## Public Interest

The merging parties have notified the Food and Allied Workers Union (“FAWU”) in their capacity as the employees’

representative and no employment issues were raised.

## Conclusion

We agree with the Commission that as there is no overlap between the activities of the merging parties nor vertical integration, the merger does not raise any competition concerns Furthermore no public interest grounds have been raised that would not justify approval of the merger.

Accordingly, the above merger is approved without conditions.

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06 May 2011

N Manoim DATE

Y Carrim and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Mark Garden and Ruthendo Hlatshwayo of Edward Nathan Sonnenbergs,

For the Commission: Lameez Vania, Mfundo Ngobese, Marten van Hoven

1<http://www.hci.co.za/>

2<http://www.kwv.co.za/>

3[http://www.hci.co.za/corp\\_profile.htm](http://www.hci.co.za/corp_profile.htm)

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