COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 17/LM/Feb08

In the matter between

BrandCo, Currently Heineken (Pty) (Ltd)

and Diageo South Africa Primary Acquiring Firms

And

Brandhouse Beverages (Pty) Ltd

And Amstel Licence Primary Target Firms

Panel	: Y Carrim (Presiding Member); U Bhoola (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on	: 09 April 2008
Decided on	: 09 April 2008
Reasons Issued	: 14 May 2008

Reasons

Approval

[1] On 09 April 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between BrandCo, Currently Heineken (Pty) (Ltd) and Diageo South Africa and Brandhouse Beverages (Pty) Ltd and Amstel Licence unconditionally. The reasons appear below.

Parties

[2] The primary acquiring firm is BrandCo, Currently Heineken (Pty) (Ltd) ("BrandCo") and Diageo South Africa (Pty) Ltd ("SpiritsCo").[1] BrandCo is currently a wholly owned subsidiary of Heineken International B.V. ("Heineken").[2] BrandCo is a special purpose vehicle utilised specifically for this transaction.

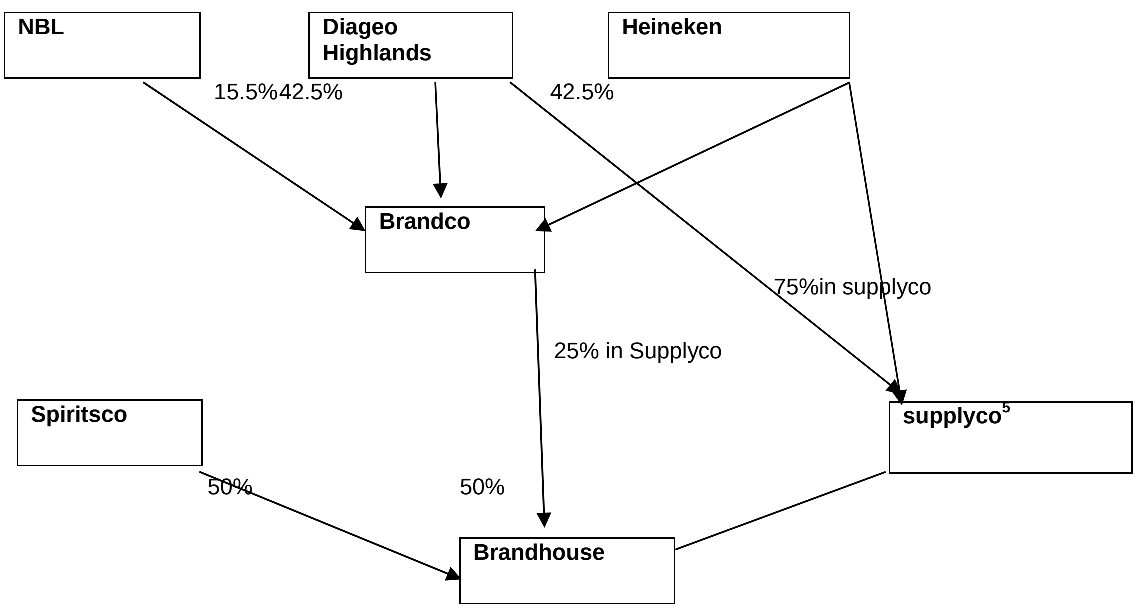
[1] SpiritsCo does not control any firm. SpiritsCo is a wholly owned subsidiary of Diageo Great Britain Ltd ("Diageo GB"). Diageo GB is a wholly owned subsidiary of Grand Metropolitan Public Limited Company, which is in turn a wholly owned subsidiary of Diageo Holdings Ltd. Diageo Holdings Ltd is wholly owned subsidiary of Diageo Plc. Diageo Plc controls Highlands Holding B.V. ("Diageo Highlands")

[2] BrandCo do not control any firm. Heineken is a wholly owned subsidiary of Heineken N.V. which is in turn controlled by Heineken Holding N.V. ("Heineken Holding"). Heineken Holding is ultimately controlled by L'Arche Holding SA ("L Arche"), a Swiss holding wholly owned by the Heineken family

[3] The target firm is Brandhouse Beverages (Pty) Ltd ("Brandhouse") and the Amstel Licence. Brandhouse is jointly controlled by Heineken International B.V. ("Heineken"); SpiritsCo and Namibia Breweries Ltd ("NBL").[3]

Transaction

[4] The parties to the proposed transaction have decided to restructure their existing cost sharing joint venture relationship and establish a new profit sharing arrangement.[4] In terms of the proposed transaction, Diageo Highlands and NBL will each acquire shares in BrandCo from Heineken with the resultant shareholding in BrandCo being as follows: Diageo Highlands 42.25%; Heineken 42.25% and NBL 15.5%. BrandCo will then acquire half of the share currently held by NBL in Brandhouse and the remaining half of the share in Brandhouse will be acquired by SpiritsCo. On completion of the transaction the shareholding in Brandhouse will be BrandCo and SpiritsCo, each having a 50% shareholding in Brandhouse. The structure post transaction can be depicted as follows:



Source: Merging Parties

[3] Heineken, Diageo SA and NBL each hold 33.33% shares in Brandhouse. NBL is controlled by NBL Investment Holding Ltd ("NBLIH"). NBLIH is jointly controlled by O&L Beverages (Pty) Ltd ("O&L Beverages") and Diageo Heineken Namibia B.V ("Diageo Heineken Namibia"). O&L Beverages is controlled by Ohlthaver & List Finance and Training Corporation Ltd ("Olfitra"). Diageo Heineken Namibia is jointly controlled by Heineken and Diageo Highlands.

[4] In 2004 Diageo plc, Heineken International B.V and Namibia Breweries Ltd established a joint venture company in South Africa called Brandhouse Beverages (Pty) Ltd. Each parent company holds one third of the issued share capital of Brandhouse and therefore jointly controls Brandhouse. The objective of Brandhouse was to operate as a cost sharing joint venture, for the purpose of consolidating the marketing, sales, physical distribution and other administrative functions of certain brands of the parent companies in South Africa.

[5] Supplyco to design, build and operate a brewery in South Africa for supply of certain Brandco brands to Brandhouse.

Parties Activities

[5] BrandCo is a special purpose vehicle to be utilised for the purposes of this transaction and as such it has no activities. The Heineken Group is active on a world wide basis in the brewing, commercialisation and distribution of beer. The main Heineken brands which are sold on a world wide basis are Heineken and Amstel. The Diageo group brews, markets and distributes beer on a world wide basis. The Diageo group beer brands sold in South Africa include Guinness Extra Stout (bottled), Guinness draught (cans and kegs) and Killarney Irish ale (cans and kegs). In addition to beer products, the ready to drink spirit based products ("RTD products") which Diageo sells in South Africa include Smirnoff Spin, Smirnoff Storm, Smirnoff Twist and Archers Aqua. The Diageo brand which is sold in South Africa is Foundry.

[6] Brandhouse is a cost sharing joint venture established for the purpose of consolidating the sales, marketing and distribution functions of the parent companies, being Heineken, Diageo and NBL. Brandhouse currently markets, sells and distributes beer and Scotch whisky in South Africa.[6] The joint venture was established in 2003.

Rationale of transaction

[7] The parties submit that in order to build on the commercial success of Brandhouse, their joint venture company, they have decided to restructure their arrangements in advance of the expiry of the initial term.[7] Additionally, in order to incentivise each party's commitment to the existing cost sharing arrangement, the parties have decided to enter into the Brandco joint venture under which each party will share in the profits of the combined sales of all the parties' beer, cider and RTD brands in South Africa. The parties submit that the transaction will also result in various synergies for them including incremental sales volumes from investing in the route to market, long term distribution savings and enhanced brand quality and a deeper penetration of the market.

Competition Analysis

[8] The Commission found that there is an overlap in the activities of the merging firms in respect of the supply of beer in South Africa. In line with the European Commission decision in Heineken and Bayerische Brau Holdings/JV the Commission defines the market as the

[6] The Beer includes Windhoek, Heineken, Guinness and Kilkenny. The Scotch whisky includes Johnnie Walker, Bells, and J&B, White Horse and Dimple as well as a broad selection of single malt whiskies. Brandhouse also markets, sells and distributes other products in South Africa such as Smirnoff Vodka, Jose Cuervo Tequila, Tanqueray Gin, Captain Morgan Black Label, Spiced Gold Rum, Foundry Cider as well as RTDs including Smirnoff Spin, Smirnoff Storm, Smirnoff Twist and Archers Aqua.

[7] The initial term of the existing cost-sharing Brandhouse joint venture arrangement expire in July 2009.

market for the supply of beer. The Commission's investigation revealed that the effect of combining the merging firms' beer operations in South Africa is that they will have 9.9% post-merger market share. This 9.9% market share would be made up of 7.5% of Heineken, 1% of Diageo plc and 1.4% market share of NBL. The Commission is of the view that the proposed transaction is unlikely to raise any competition concerns, as the market is dominated by SABMiller with approximately 90% of the market. Furthermore the Commission submits that the proposed transaction is likely to create a firm whose ability to compete with SABMiller will be enhanced, particularly in the area of distribution of beer. We agree with the Commission's conclusion that the merger is pro competitive.

Public interest

[9] There are no public interest issues.

Conclusion

[10] Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

__________________ **<u>14 May 2008</u>**

Y Carrim **Date**

U Bhoola and M Mokuena Concurring

Tribunal Researcher : J Ngobeni

For the Merging Parties : Webber Wentzel Bowens

For the Commission : Makgale Mohlala