



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM215Feb17

In the matter between:

**Government Employees Pension Fund Represented By
The Public Investment Corporation SOC Limited**

Primary Acquiring Firm

and

Distell Group Limited

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: Andiswa Ndoni (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 29 March 2017
Order Issued on : 29 March 2017
Reasons Issued on : 9 May 2017

Reasons for Decision

Approval

- [1] On 29 March 2017, the Competition Tribunal ("Tribunal") conditionally approved the merger between Government Employees Pension Fund, represented by the Public Investment Corporation SOC Limited ("GEPF") and Distell Group Limited ("Distell").
- [2] The reasons for approving the proposed transaction follow.

Background

- [3] This transaction arises from the Tribunal's conditional approval of an earlier large merger between Anheuser-Busch Inbev SA/NV and SABMiller PLC.¹ In that transaction Anheuser-Busch Inbev SA/NV ("ABInBev") acquired all the shares of SAB Miller PLC ("SABMiller"). In these reasons we refer to that transaction as the ABInBev merger. In terms of the conditions of the ABInBev merger, ABInBev was required to, subsequent to the approval of that transaction, dispose of its shareholding in Distell within a specified period of time to an independent third party.
- [4] ABInBev was also required to notify the disposal of Distell to the competition authorities regardless of whether such disposal constituted a notifiable transaction in terms of the Competition Act.
- [5] The transaction before us, which was approved on the 29 March 2017, is the fruition of the condition in the ABInBev merger²

Parties to transaction

Primary acquiring firm

- [6] The primary acquiring firm is the GEPP which is duly represented by the PIC.
- [7] The GEPP is a juristic person established and regulated in terms of the Government Employees Pension Law no. 21 of 1996. The GEPP manages and administers the pensions and other benefits of government employees. The PIC is owned by the South African Government and acts as an asset and investment portfolio manager for, among other entities, the GEPP.

¹ Case no LM211Jan16

² At the hearing of the matter we enquired whether interveners in the ABInBev merger were required to be notified of this merger and were satisfied with the Commission's indication that the divestment condition was a result of its own concerns and was not an issue raised by any of the interveners. In addition, the merging parties submitted that the divestment condition in the ABInBev merger only required it to notify the transaction to the competition authorities and did not oblige it to notify interveners of the ABInBev merger.

Primary target firm

[8] The primary target firm is Distell which is a public company incorporated in accordance with the laws of the Republic of South Africa. Distell is controlled by Remgro-Capevin Investments (Pty) Ltd which is in turn jointly controlled by Remgro Limited and Capevin Holdings Limited. The subject of this acquisition, is the non-controlling interest of 26.5% held by SABMiller as a subsidiary of ABInBev.

[9] Distell is a producer and marketer of wines, spirits, ciders and other ready-to-drink beverages. Its operations in South Africa include the manufacturing, distribution, sale and marketing of liquor products. Some of the brands owned by Distell include Nederburg, Durbanville Hills, Two oceans and J.C Le Roux.

Proposed transaction and rationale

[10] The proposed transaction involves the GEPPF acquiring the SABMiller shareholding in Distell of 26.5 %.

[11]. The PIC submitted that the investment provided it with an opportunity to support Distell's ongoing strategy whilst achieving acceptable financial returns for the GEPPF. For ABInBev the proposed transaction saw that it satisfied the divestment condition in the ABInBev merger.

Impact on competition

[12] According to the Competition Commission's ("the Commission") findings the proposed transaction does not result in a substantial lessening of competition in any market because the activities of the merging parties do not overlap. Further to this the Commission submitted that the proposed transaction does not result in a change of control and was only notified as notification was mandatory in terms of the conditional approval in the ABInBev merger.

[13] The Commission however identified that the PIC had a cross-shareholding in ABInBev. The Commission submitted that PIC's shareholding in ABInBev, which was

less than 0.1%, was only a nominal shareholding, with no special rights or influence, of publically traded shares. It therefore raised no competition concerns.

[14] 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 as there is no overlap present. In addition we note that the notification is as a result of the requirement to notify in terms of the divestment condition in the ABInBev merger and that the proposed transaction does not result in a change of control as defined in the Competition Act.

Public interest

[15] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.³

[16] In terms of the conditional approval in the ABInBev merger, ABInBev in their disposal of the Distell shareholding were to prefer bids from Black Economic Empowerment Bidders. The Commission noted that during the period of divestment there were no BEE bidders who submitted bids for the purchase of the Distell shareholding. Based on this the Commission recommended that this merger be approved subject to the condition that the GEPP on-sell a percentage of the Distell shareholding to a BEE investment entity within a reasonable time subsequent to the mergers approval. The GEPP was amenable to such a condition. ⁴

[17] During the hearing of the matter, upon our enquiry, ABInBev explained the process it followed when tendering for bids and we are satisfied that the process adopted was reasonably fair and would not have excluded potential BEE bidders if there were any.

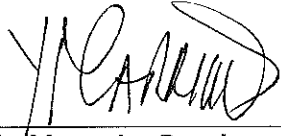
Conclusion

[18] 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, save for the Commission's

³ *Inter alia* merger record page 13.

⁴ Please see attached, the conditions to approval marked as Annexure "A"

recommendation about BEE entry. Accordingly, we approve the proposed transaction on the conditions of on-sell agreed between the Commission and the GEPF.



Ms Yasmin Carrim

09 May 2017
DATE

Ms Andiswa Ndoni and Ms Medi Mokuena concurring

Tribunal Researcher: Aneesa Ravat.

For the merging parties: Shawn Van Der Meulen of Webber Wentzel for ABInBev and Neo Moshimane of DM Fine Incorporated representing the PIC on behalf of the GEPF and Graham Wickins of Werksmans Attorneys representing Distell.

For the Commission: Amanda Mfuphi and Xolela Nokele.

ANNEXURE A: CONDITIONS

CC CASE NUMBER: 2017JAN003

CT CASE NUMBER: LM215Feb17

GOVERNMENT EMPLOYEES PENSION FUND REPRESENTED
BY THE PUBLIC INVESTMENT CORPORATION SOC LIMITED

Primary Acquiring Firm

and

DISTELL GROUP LIMITED

Primary Target Firm

PUBLIC CONDITIONS TO THE APPROVAL OF THE MERGER

1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings to the clauses of these Conditions are for reference purposes only and shall in no way govern or affect the interpretation of or modify or amplify the terms of these Conditions or any clause hereof.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings assigned to them and cognate expressions shall bear corresponding meanings -
- 1.2.1 **"AB InBev"** means Anheuser-Busch InBev SA/NV, a public limited company incorporated in the Kingdom of Belgium;
- 1.2.2 **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate (Form CT10) in relation to this Proposed Transaction;
- 1.2.3 **"BEE"** means black economic empowerment;
- 1.2.4 **"BEE Equity"** means the portion of the Distell shares constituting [REDACTED] of the Distell Shareholding [REDACTED] which will be sold to one or more Purchaser(s) in terms of these Conditions;

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- 1.2.5 **"Closing Date"** means the date on which the Proposed Transaction is completed in accordance with its terms. For avoidance of doubt, this date is the implementation date for the transfer of the Distell Shareholding from OBI to GEPF;
- 1.2.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.2.7 **"Competition Act"** means the Competition Act 89 of 1998;
- 1.2.8 **"Conditions"** mean the conditions set out herein, agreed to by the Parties and the Commission;
- 1.2.9 **"Distell"** means Distell Group Limited, an investment holding company listed on the JSE Limited securities exchange;
- 1.2.10 **"Distell Shareholding"** means the 26.5% shareholding interest in Distell held by OBI and to be acquired by the PIC;
- 1.2.11 **"Divestiture"** means the transfer of the BEE Equity to one or more Purchaser(s);
- 1.2.12 **"GEPF"** means the Government Employees Pension Fund, represented by the PIC;
- 1.2.13 **"OBI"** means Other Beverage Interests Proprietary Limited, an indirect subsidiary of AB InBev and current owner of the Distell Shareholding;
- 1.2.14 **"Merging Parties"** mean the GEPF and Distell;
- 1.2.15 **"Proposed Transaction"** means the proposed acquisition of the Distell Shareholding by the GEPF;
- 1.2.16 **"PIC"** means The Public Investment Corporation SOC Limited, as a duly authorised representative of the GEPF;
- 1.2.17 **"Purchaser"** means a purchaser of the BEE Equity in terms of these Conditions;
- 1.2.18 **"SABMiller"** means SABMiller plc (now SABMiller Limited);
- 1.2.19 **"Shareholders Agreement"** means the restated and amended shareholders agreement between The South African Breweries Proprietary Limited, Remgro

Limited, Capevin Holdings Limited, Remgro-Capevin Beleggings Proprietary Limited and OBI dated 19 August 2013, regulating their relationship as shareholders in Distell, as may be amended from time to time;

1.2.20 **"South Africa"** means the Republic of South Africa; and

1.2.21 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

1.3 In these Conditions and its interpretation:

1.3.1 references to a statute or statutory provision include any subordinate legislation made from time to time thereunder and include that statute or statutory provision as modified, amended or re-enacted from time to time;

1.3.2 where any number of days is prescribed, those days shall include only ordinary business days (i.e. excluding Saturdays, Sundays and prescribed public holidays in South Africa). The number of days shall be reckoned exclusively of the first and inclusively of the last day;

1.3.3 unless inconsistent with the context, the *eiusdem generis* rule shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and

1.3.4 account shall be taken of the purpose of these Conditions and the objectives listed in the Recordal.

2. RECORDAL

2.1 The Merging Parties notified a large merger to the Commission on 31 January 2017, in terms of which the GEPP intends to acquire the Distell Shareholding from OBI. The GEPP is duly represented by the PIC.

2.2 The Proposed Transaction follows the Tribunal's decision on 30 June 2016 to approve the acquisition of SABMiller by AB InBev. The Tribunal approved the AB InBev / SABMiller merger subject to several conditions, including that the merged entity dispose of the Distell

Shareholding to an independent third party.

- 2.3 The acquisition of the Distell Shareholding by the GEPP has been notified to the Commission in compliance with the Tribunal's conditions, which require notification of a third party's acquisition of the Distell Shareholding regardless of whether or not competition approval for the Proposed Transaction is or would be required. The Proposed Transaction is not a "merger" as defined in the Competition Act, as the GEPP will not acquire any form of control over the whole or part of Distell's business post transaction. The GEPP is simply acquiring a minority interest in Distell.
- 2.4 The Commission considered the activities of the Merging Parties and found that the Proposed Transaction does not result in a horizontal overlap because the GEPP does not supply products or services which are similar or substitutable to the products supplied by Distell in South Africa. The Commission further found that the Proposed Transaction will not result in any retrenchments or job losses.
- 2.5 In approving the GEPP as the purchaser of the Distell Shareholding in terms of the Tribunal conditions imposed in the **AB InBev / SABMiller merger**, and in view of the Commission's objectives to promote the participation of firms controlled by historically disadvantaged persons in the South African economy, the Commission and the GEPP have agreed that a portion of the Distell Shareholding should be divested to a BEE-controlled entity/ies in terms of these Conditions. The GEPP accepts such Conditions.

3. DIVESTITURE OF THE BEE EQUITY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 Within 5 (five) days after the Closing Date, the GEPF shall notify the Commission in writing of the Closing Date.
- 4.2 The Commission may request any additional information from the GEPF which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.
- 4.3 In the event that the Commission receives a complaint regarding non-compliance by the GEPF with these Conditions, or otherwise determines that there has been an apparent breach by the GEPF or Distell of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 4.4 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

5. VARIATION

- 5.1 The Merging Parties shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Conditions.