COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case Number: 29/LM/Mar00

In the large merger between

Distillers Corporation (SA) Ltd

and

Hygrace Holdings (Pty) Ltd

Reasons for the Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 4 April 2000 approving the joint venture between Distillers Corporation (SA) Ltd and Hygrace Holdings (Pty) Ltd without conditions. The reasons for our decision to approve the merger are set out below.

The merger transaction

The transaction entailed the creation of a 50/50 joint venture, which consists of the following transactions:

(a) The restructuring of the Hygrace operations into a new holding company, Lusan Holdings (Pty) Ltd, with 3 subsidiaries namely an operating company, Lusan Premium Wines (Pty) Ltd and two property owning companies, Hyfarm Investors (Pty) Ltd and Evergrace Farm (Pty) Ltd. South African Distilleries and Wines (SA) Ltd and Hygrace Holdings each hold 50% of the shares in Lusan Holdings (Pty) Ltd.

(b) The restructuring of Hygrace implied the disposal of all the shares in and claims on loan accounts against Neetlingshof Estate (Pty) Ltd, Olives farm, Hillendale farm and Stellenzicht Vineyards, including the land, stock, trade marks and fixed assets to the new holding company.

(c) In return for one half of the shares in Lusan Holdings (Pty) Ltd, South African Distilleries and Wines (SA) Ltd, disposed of the land, stock, trade marks, and fixed assets of Le Bonheur, Alto and Uitkyk, to companies in the Lusan Holdings Group.

(d) A distribution agreement was concluded in terms of which Distillers Corporation Limited will handle the sales, marketing and distribution of the trademarks of Lusan Holdings.

Background

Rembrandt and KWV jointly own Rembrand – KWV Investments. This company was created in 1979/80 as part of a Government sanctioned restructuring of the liquor industry. The sole purpose of the company was to manage the two companies' combined 60% interest in Distillers and South African Wine Farmers Limited (SFW). In an effort to promote competition the two companies were listed individually on the JSE, with KWV and Rembrandt retaining their 30% shares each in the listed entities.

Evaluating the merger

The Tribunal regards this joint venture as a merger in terms of section 12(1)(b) of the Competition Act, 1998.

The transaction entails a joint venture in the market for natural still wine in South Africa. In this narrow market Lusan (the joint venture) operates in a small sub-market, the market for high price natural wine. The parties have indicated that the purpose of the merger is to compete more effectively in international markets through the effective utilization of joint facilities such as storage space, bottling lines, distribution facilities and marketing. All employees were transferred to the joint venture.

As a result of the merger the two brands previously belonging to Hygrace, Stellenzicht and Neetlingshof, will form part of the brands comprising the broader Distillers/SFW grouping. These brands are Alto, Le Bonheur, and Uitkyk. Whilst we make no finding of fact that all these companies form one controlling group, for the purpose of evaluating this merger we have made this assumption.

The wine market has been deregulated and restructured over the past decade to such an extent that the joint market share of South African Wine Farmers Limited (SFW) and Distillers, according to the Cape Wine and Spirit Institute, decreased from 75% in 1979 to 35,5% in 1999. Moreover, approximately 60% of all wine sales were by suppliers such as producers, wine estates and co-operatives other than the four major producer wholesalers, SFW, Distillers, Gilbeys and Douglas Green Bellingham.

Furthermore, according to the Beverage Business Year Book 1999 "..producing wholesalers of leading brands [Graca (SFW), Chateau Libertas (SFW), Bellingham Johannesberger (Douglas Green Bellingham), and Nederburg Paarl Cabernet (SFW)] face growing competition from vibrant new entrants and value-for-money imports as well as the problem of continuity of supply of grapes largely from co-ops. Now that the markets are more flexible, more co-ops and former co-ops are producing and bottling under their own labels for the local and export markets".

Vertical integration is being controlled by the new Liquor Act 1998, which regulates the licensing of participants at the producer, intermediary and retail levels. However, indications are that SWF and Distillers are gradually exiting the retail market. They have already sold off a number of outlets and they jointly hold less than 5% of the retail market.

Furthermore, we agree with the Competition Commission that adequate countervailing power exists in the market in the form of large grocery store groups.

Therefore, in light of the above information and the fact that the merger does not raise any public interest concerns, the Tribunal finds that this merger will not substantially prevent or lessen competition in the South African market for natural still wine.

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D.H LEWIS	**Date**

Presiding member

Concurring: N.M. Manoim and S. Zilwa