

In the large merger between:

AVI Limited

and

Denny Mushrooms (Pty) Limited

Reasons for Decision

Approval

1. On 11 August 2004 the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between AVI Limited ("AVI") and Denny Mushrooms (Pty) Ltd ("Denny"). The reasons for this decision follow.

The merging parties

2. The primary acquiring firm is AVI, a public company listed on the JSE Securities Exchange. AVI does not have any controlling shareholder/s. It controls a number of subsidiaries none of which are relevant for purposes of this transaction.

3. The primary target firm is Denny, a privately owned South African company which controls Dining-In (Pty) Ltd ("Dining-In") and Khowa Investments (Pty) Ltd ("Khowa"). According to the parties MCA Investments Trust ("MCA") holds 50.57% and 64.65% of the issued share capital and the voting rights in Denny respectively.¹ MCA is in turn controlled by Anglo American Corporation ("ACC") and Mitsubishi Corporation ("Mitsubishi"). MCA does not control any other firm. The parties further stated that MCA is disposing of its interest in Denny.

The Merger Transaction

4. The proposed transaction entails the acquisition by AVI of the entire issued share capital of Denny. The transaction will result in AVI acquiring control over Denny.

Rationale for the transaction

5. AVI wishes to enter the branded perishable grocery business. It considers Denny as a viable opportunity as Denny has a long operating history, well established markets as well as strong brands.

¹ Horizon International Investments Ltd, Horizon Equity Partners (Pty) Ltd, The Denny Mushrooms Management Trust, The Denny Mushrooms Trust and Khowa hold the remaining shares and voting rights in Denny.

The activities of the merging parties

6. **AVI** operates three main business segments, viz., *branded consumer goods, packaging & logistics*. Its key business interests lie in seafood, non-perishable groceries, beverages, glass packaging & cosmetics. Some of AVI's leading brands include: the I & J brand of fish products; Consol glass; Five Roses tea, Ciro coffee, Bakers, Baumann's Pyotts, Yardly of London, Lenthéric, Coty & Rimmel; and the Real Juice brand of fruit juice.² AVI's main businesses appear in a table below.

Business	Type of product	Brands
Consumer goods	Coffee	Ciro Coffee, House of Coffees
	Tea	Five Roses tea
	Biscuits	Bakers, Baumann 's, Pyotts
	Cosmetics	Yardley of London, Coty and Rimmel
	Food	I & J
Packaging	Glass packaging	Consol
Logistics	Logistic services	Vector Logistics

7. **Denny** provides a range of fresh mushrooms, processed mushrooms, a range of mushroom soups and also value added mushroom products produced by Dining-In under the Woolworths "house brands".³

The relevant market

Product market

8. The parties are broadly involved in the food and beverage industry, but are not active in the same markets. According to the parties Denny's customers can be divided into two distinct categories, i.e., customers in the food service industry and customers in the retail trade industry.

9. Having found that no product overlap exists in the present transaction the Commission did not define and analyse a relevant market.

Geographic market

10. The parties stated that Denny presently supplies fresh and processed mushroom products to the whole of South Africa. In addition, fresh mushrooms can cost-effectively be sold to the SADC region whilst canned and other value-added mushroom products can cost-effectively be sold internationally depending on the exchange rate prevailing at the time.

11. In light of the above, the parties submitted that the relevant market comprises the production and sale of fresh mushrooms within South Africa and the SADC and the production and sale of processed and value-added mushroom products internationally, respectively to customers in both the food service and retail trade industries.

² See page 273 of the record.

³ See the Record (pages 41-42).

Impact on competition

12. It is clear from the above that no product overlap exists between AVI and Denny because no company within the AVI Group of Companies operates in the market in which Denny conducts its business and *vice versa*. The parties contended that the proposed transaction would not result in the aggregation of market share or in the increase in concentration in any market whatsoever. No significant vertical integration concerns arise from this transaction. According to the parties, the South African mushroom industry is fragmented with approximately twenty-five players competing therein.⁴

13. Thus the transaction is unlikely to result in the substantial lessening or prevention of competition in any relevant market.

Public interest issues

14. The merging parties intimated that no job losses are anticipated as a result of the merger.⁵

15. We agree with the Commission's submission that this transaction is unlikely to result in the substantial lessening or prevention of competition. We accordingly approve this merger unconditionally.

David Lewis

27 August 2004
Date

Concurring: ***Norman Manoim and Thandi Orleyn***

For the merging parties:	Justin Balkin & Lee Mendelsohn (<i>Edward Nathan & Friedland Corporate Law Advisers</i>)
For the Commission:	Kathija Ramathula (<i>Mergers & Acquisitions</i>)

⁴ See the Record (page 52).

⁵ See page 57 of the record.