COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no: 71/LM/DEC03

In The Large Merger Between:

Nedbank Limited

And

Retail Brands Interafrica (Pty) Ltd And Continental Beverages (Pty) Ltd

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Reasons for Decision

Approval

1. On 21 January 2003 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Nedbank Limited and Retail Brands Interafrica (Pty) Ltd and Continental Beverages (Pty) Ltd. The reasons for this decision follow.

The Parties

2. The primary acquiring firm is Nedbank Limited ("Nedbank"), a wholly owned subsidiary of Nedcor Limited, which is ultimately owned by Old Mutual plc, a company listed on the London Securities Exchange. No firm controls Old Mutual Plc.

3. The primary target firms are Retail Brands Interafrica (Pty) Ltd ("Retail Brands") and Continental Beverages (Pty) Ltd ("Continental Beverages"). Both were wholly owned subsidiaries of Rouxcor Holdings Limited ("Rouxcor"), a company in liquidation. At the time of the implementation of the merger, Rouxcor Holdings was controlled by Rouxcor Investments (Pty) Ltd, which in turn was controlled by Werenza Trust.

History

4. In September 2000, Rouxcor signed a Deed of Pledge and Cession in favour of Nedbank. Pursuant to the Deed, Rouxcor ceded and/or pledged to Nedbank the entire issued share capital of each of its five subsidiaries namely, Continental Beverages (Pty) Ltd, Retail Brands Interafrica (Pty) Ltd, Sunshine Sugar Specialities Limited, Swazico (Pty) Ltd and Quality Beverages (Pty) Ltd.

5. Rouxcor defaulted in its obligations to Nedbank and accordingly, Nedbank perfected the pledge in respect of the pledged subsidiaries during December 2000. Between January 2001 and March 2001, Nedbank disposed of three of them namely, Quality Beverages, Swazico and Sunshine Sugar Specialities, but was unable to dispose of the remaining two.

6. Nedbank has since sold Continental Beverages and Retail Brands to Ceres Fruit Juice (Pty) Ltd. This constituted an intermediate merger, which has been approved by the Commission.

We were advised however that this disposal was made subject to the condition that the Tribunal approves the prior Nedbank acquisition of the target firms.

7. The merging parties have conceded that the merger was implemented prior to their obtaining approval in terms of the Act. This matter is the subject of a separate investigation by the Commission and is therefore not relevant for the purpose of this decision.

The Parties' Activities

8. Nedbank is involved in the financial services industry providing *inter alia* individual banking, corporate banking, private and professional banking throughout South Africa. Old Mutual provides a broad range of financial services in South Africa, the US and the UK.

9. Both Retail Brands and Continental Beverages produce, market, sell and distribute alcoholic and non-alcoholic beverages. However, while Retail Brands mixes and blends the beverages for the owner of the brands, Continental Beverages does not mix or blend the beverages. Both firms are therefore in the bottling and packaging market.

Impact on competition

10. Neither Nedbank nor its controlling shareholder Old Mutual own a controlling interest in any firm competing with the target firms. The merger therefore leads to no overlap. Since the target firms have historically been part of the same group and thus subject to a single controller the merger does not alter this situation and we therefore need not consider if the firms are potential competitors of one another.

Public interest

11. The merger, which was implemented during 2000, has had an effect on employees of the target firms as following the acquisition thereof by the acquiring firm, large-scale retrenchments were undertaken.

12. Prior to the acquisition of control by Nedbank, Continental Beverages (Pty) Ltd had approximately 62 employees and Retail Brands had 106 employees. At the time of filing, Continental Beverages had 106 and Retail Brands has approximately 16 employees. Accordingly there has been an increase in employment at Continental Beverages, but a drastic decrease at Retail Brands. The net reduction in employment for both firms is 46 employees. The parties submit that the aforementioned retrenchments were undertaken in order to reduce costs in an attempt by Nedbank to save the target firms from liquidation. They argue that without the rescue, more jobs would have been lost.

13. The Commission is of the view that the retrenchments raise significant public interest concerns. However, as this occurred 25 months ago, the Commission recommends that the retrenchment issue be dealt with as an aggravating circumstance should the parties be prosecuted for implementing the merger with the requisite regulatory approval.

Conclusion

14. We conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

D. Lewis **<u>27 January 2004</u>**
Date

Concurring: N. Manoim and P. Maponya

For the merging parties: Justin Balkin (Edward Nathan & Friedland)

For the Commission: Makgale Mohlala (Mergers and Acquisitions)