



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM177Sep17

In the matter between:

Remgro International Holdings (Pty) Ltd

Primary Acquiring Firm

And

Capevin Holdings Limited

Primary Target Firm

Panel : Mr AW Wessels (Presiding Member)
: Mr Enver Daniels (Tribunal Member)
: Prof Fiona Tregenna (Tribunal Member)
Heard on : 9 May 2018
Order Issued on : 11 May 2018
Reasons Issued on : 18 June 2018

REASONS FOR DECISION

Conditional approval

- [1] On 9 May 2018, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction involving Remgro International Holdings (Pty) Ltd ("RIH") and Capevin Holdings Limited ("Capevin").
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is RIH, a firm incorporated according to the company laws of the Republic of South Africa. RIH is controlled by Remgro Limited ("Remgro"). Remgro is a public company listed on the Johannesburg Stock Exchange ("JSE") and is not controlled by any single firm. RIH jointly controls Remgro-Capevin Investments (Pty) Ltd ("RCI"). RCI controls Distell Group Limited ("Distell").
- [4] Remgro is an investment holding company that does not sell any products or provide any services. Remgro holds a number of strategic interests in a range of companies that operate across a broad spectrum of industries including banking, healthcare, industrial, infrastructure, media, sport, food and home care.
- [5] Of relevance to the analysis of the proposed transaction is Remgro's interest in the liquor industry through an indirect controlling shareholding in Distell. Distell is a producer and marketer of wines, spirits, ciders and other ready-to-drink beverages.

Primary Target Firm

- [6] The primary target firm is Capevin, a firm incorporated according to the company laws of the Republic of South Africa. Capevin is an investment holding company that holds, as its sole asset, an indirect investment in Distell.

Proposed transaction

- [7] The proposed transaction entails the restructuring of Distell's multi-tiered ownership structure. The proposed transaction takes place through a series of interrelated steps. Business Venture Investments No. 1997 Limited ("New Distell"), a special purpose vehicle, will be created and listed, and will hold

shares directly and indirectly in Distell.¹ Through the proposed transaction, Remgro, through New Distell, will increase its shareholding in Capevin from 19% to 100%, thereby increasing its shares in RCI from 50% to 100%. Pursuant to the implementation of the proposed transaction, Remgro, through New Distell, will have sole control over Capevin and RCI and will thereby attain control over Distell. Distell will be controlled by RCI (52.8%) and New Distell (47.2%).

Impact on competition

- [8] The Competition Commission (“Commission”) investigated the activities of the merging parties and found no horizontal overlap between their activities since none of the firms within the acquiring group, apart from what is stated in paragraph 5 above, provide or have interests in businesses that provide alcoholic beverages.
- [9] The Commission furthermore found that there is an existing vertical relationship between the acquiring group and Distell because the acquiring group provides liquid carbon dioxide, packaging facilities and overnight funding facilities to Distell that uses liquid carbon dioxide and packaging facilities as an input in the production of alcoholic beverages. The Commission however found that the proposed transaction is unlikely to result in any foreclosure concerns. This is because there are other suppliers of liquid carbon dioxide, packaging facilities and overnight funding facilities. The Commission further found that other market players in the provision of alcoholic beverages such as Undefined, Namaqua Wines, Robertsons and Orange River Cellars source liquid carbon dioxide, packaging facilities and overnight funding facilities from various suppliers.
- [10] Given the above, the Commission concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. We have no reason to disagree with the Commission’s competition assessment.

¹ Upon implementation of the proposed transaction, New Distell will be renamed Distell Group Holdings Limited.

Public interest

- [11] The merging parties confirmed that the proposed transaction will not give rise to any negative effects on employment.²
- [12] The Commission was, however, concerned that this proposed transaction could negatively impact the Divestiture Conditions placed on the approval of a previous transaction involving *Government Employees Pension Fund Represented by the Public Investment Corporation SOC Limited (PIC)* and *Distell Group Limited*³. In the latter case the Tribunal approved the PIC's acquisition of a 26.5% stake in Distell provided that the PIC divests of 20% of its 26.5% stake in Distell (i.e. 5.28%) to a Black Economic Empowerment ("BEE") purchaser by a certain date ("Divestiture Conditions"). The Commission, more specifically, was concerned that the instant proposed transaction could undermine the Divestiture Conditions' original intention to promote the participation of firms controlled by historically disadvantaged persons in the South African economy. Thus, as part of its investigation, the Commission assessed how this proposed transaction would impact the fulfilment of the Divestiture Conditions.
- [13] The Commission's investigation found that the abovementioned Divestiture Conditions would not be implementable upon the implementation of this proposed transaction, for the following reasons:
- a. The PIC would no longer hold shares in Distell, but in New Distell. The Divestiture Conditions pertain specifically to the PIC's shareholding in Distell and not New Distell. Moreover, the PIC had confirmed in writing that the PIC would not be in a position to fulfil the Divestiture Conditions prior to the implementation of this proposed transaction;
 - b. That this proposed transaction may result in a dilution of the PIC's voting rights in New Distell, and consequently, a reduction in the voting rights that can be divested to a BEE purchaser upon fulfilment of the

² Merger Record, pages 9 and 82.

³ Tribunal case no: LM215Feb17; conditionally approved on 29 March 2017.

Divestiture Conditions, post the implementation of this proposed transaction; and

- c. That the BEE purchaser would no longer hold shares directly in Distell, but indirectly through New Distell, thus affecting the Divestiture Conditions' original intention to promote the participation of firms controlled by historically disadvantaged persons in the South African economy.

[14] In light of the above, and in order to facilitate the expeditious implementation of the proposed transaction, the merging parties and the Commission agreed that the proposed transaction should be approved subject to conditions. We have approved the proposed transaction subject to the agreed remedy between the Commission and the merging parties, which states the following:

- a. RIH agrees to the Waiver⁴ in order to enable the PIC to fulfil its obligations under the Divestiture Conditions and/or any amendments thereto.
- b. RIH and New Distell shall not oppose the PIC's efforts to amend the Divestiture Conditions before the Tribunal, such that, *inter alia* –
 - (i) the Divestiture Conditions shall apply to the PIC's shareholding in New Distell; and
 - (ii) the BEE Equity will mean such number of ordinary shares as may constitute 5.28% of the voting rights and economic interest in New Distell, which the PIC will sell to one or more BEE Purchaser(s).

[15] We are satisfied that the above conditions adequately remedy the Commission's identified public interest concern. Apart from the above, the proposed transaction raises no other public interest concerns.

⁴“Waiver” means the undertaking by RIH to waive the exercise of any pre-emptive rights that it may enjoy over certain of the PIC's shareholding in New Distell, in order to facilitate the PIC's ability to fulfil its obligations under the Divestiture Conditions and/or any amendments thereto.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. The Commission's public interest concern is adequately addressed by conditions as agreed between it and the merging parties. Accordingly, we approve the proposed transaction subject to the agreed public interest conditions marked as 'Annexure A'.



Mr Andreas Wessels

18 June 2018

Date

Mr Enver Daniels and Prof. Fiona Tregenna concurring

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : D Chetty of ENS Africa

For the Commission : W Gumbie and L Mabidikane