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south africa

# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM080Jun17**

In the matter between:

**LIBSTAR OPERATIONS (PTY) LTD** Primary Acquiring Firm

and

**KHOISAN TEA IMPORT AND EXPORT (PTY) LTD** Primary Target Firm

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| Panel | : AW Wessels (Presiding Member) |
| | : Medi Mokuena (Tribunal Member) |
| | : Andiswa Ndoni (Tribunal Member) |
| Heard on | : 23 August 2017 |
| Order Issued on | : 23 August 2017 |
| Reasons Issued on | : 27 September 2017 |

## Reasons for Decision

### Approval

[1] On 23 August 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Libstar Operations (Pty) Ltd ("Libstar") and Khoisan Tea Import and Export (Pty) Ltd ("Khoisan Tea").

[2] The reasons for approving the proposed transaction follow.

### Parties to the proposed transaction

*Primary acquiring firm*

[3] The primary acquiring firm is Libstar, a private company incorporated in accordance with the laws of the Republic of South Africa.

[4] Libstar is directly controlled by private equity funds namely Abraaj Private Equity Fund IV Limited (managed by Abraaj General Partner VIII Limited ("Abraaj GP")) and Abraaj Africa Fund III Limited Partnership (managed by Abraaj Africa Fund III General Partner Limited ("Abraaj IM")). These funds are ultimately controlled by Abraaj Holdings Limited ("Abraaj Holdings"), a private equity fund management company incorporated in Dubai, United Arab Emirates. Abraaj Holdings is controlled Mr. Arif Masood Naqvi.

[5] Libstar is a holding company and controls a number of firms directly or indirectly. It has interests in firms that manufacture, import and distribute fast moving consumer goods in the food and beverage, household and personal care segments. The Libstar group focuses on supplying the food service industry, private label segments of larger retailers and on the manufacturing of products for brand owners as well as its own branded products.

[6] Abraaj GP, Abraaj IM and Mr. Arif Masood Naqvi do not control any other firm that operates in South Africa apart from Libstar.

*Primary target firm*

[7] The primary target firm is the tea and spice manufacturing and supply business ("Khoisan Tea Business") of Khoisan Tea. Khoisan Tea is a private company incorporated in accordance with the laws of the Republic of South Africa. Khoisan Tea's shares are held by the Rosenheim Properties Trust and the Gress Family Trust, collectively referred to as the "Sellers".

[8] The Khoisan Tea Business and Khoisan Tea do not control any firm/s in South Africa.

[9] Khoisan Tea is a packer and supplier of natural and organic speciality teas and a variety of spices, primarily for export markets and to a lesser extent to local tea producers and boutique stores. Bulk loose teas constitute the majority of its revenue.

**Proposed transaction and rationale**

[10] In terms of the proposed transaction, Libstar will establish a special purpose limited liability private company incorporated in South Africa, Newco. Upon completion of certain steps, Newco and Khoisan Tea will enter into a Sale of Business Agreement, wherein Khoisan Tea will sell the Khoisan Tea Business to Newco as a going

concern. On completion of the proposed transaction, Libstar will control the Khoisan Tea Business.

[11] Libstar submitted that the proposed transaction provides it with an opportunity to acquire an established business that will complement the existing lines of fast moving consumer goods supplied through exports.

[12] The current shareholders of the target business submitted that they wish to realise their investments in the business.

**Impact on competition**

[13] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction results in horizontal overlaps in the manufacture and supply of various tea products, as well as the supply of herbs and spices.

[14] The Commission also identified a vertical relationship between the parties since the Khoisan Tea Business is active in the (upstream) supply of bulk tea whereas Libstar is active in the (downstream) manufacturing, packaging and distribution of various tea products.

[15] The Commission assessed the competition effects of the proposed transaction in the following markets:

(i) in a broad sense, the manufacture and supply of tea products in South Africa;
(ii) the manufacture and supply of green tea products in South Africa;
(iii) the manufacture and supply of rooibos tea products in South Africa; and
(iv) the supply of herbs and spices in South Africa.

[16] There is however no need for us to take a definitive view on the exact market delineation in this matter since it does not alter our ultimate conclusion.

[17] In all the markets investigated by the Commission it found that the merged entity will have post-merger estimated national market shares of less than 5%, except in the market for the manufacture and supply of packaged green tea products wherein the merged entity will have an estimated national market share of less than 20%. The

Commission further found that there are a number of alternative suppliers in all these markets that will constrain the merged entity.

[18] The Commission further found that the merged entity will have an estimated national market share of less than 15% in the supply of bulk tea. The Commission also found that there are alternative suppliers of bulk tea such as Rooibos Limited, Cape Natural Tea Products, Carmien Tea and a number of other smaller players.

[19] Given that the Khoisan Tea Business outsources its manufacturing activities of tea whereas Libstar does its manufacturing activities of tea in-house, the Commission further considered if the proposed transaction could result in potential input foreclosure. The Commission however received a commitment from the merging parties that the arrangements between the Khoisan Tea Business and its contract manufacturers will not change in any way post-merger. This is due to the fact that the Khoisan Tea Business will continue to operate as an independent, self-standing business post-merger.

[20] Given the above, the Commission concluded that (input or customer) foreclosure was unlikely as a result of the proposed transaction.

[21] The Commission ultimately concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We concur with this finding.

**Public interest**

[22] In relation to employment the merging parties indicated that the target firm will continue to operate as an independent, self-standing business post-merger and confirmed that the proposed transaction will not result in any negative effects on employment.[1]

[23] Furthermore, the proposed transaction raises no other public interest concerns.

**Conclusion**

[24] 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

[1] Merger Record, pages 11 and 64.

public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

**Mr AW Wessels**

27 September 2017
DATE

**Ms Medi Mokuena and Ms Andiswa Ndoni concurring**

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| Tribunal Case Manager: | Busisiwe Masina |
| For the merging parties: | Mr Shawn van der Meulen from Webber Wentzel |
| For the Commission: | Mr Billy Mabatamela |