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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM033APR18

In the matter between:

The Beverage Company Bidco (Pty) Ltd — Primary Acquiring Firm

And

SoftBev (Pty) Ltd — Primary Target Firm

Panel	: Mr. Enver Daniels
	: Ms. Yasmin Carrim
	: Prof. Fiona Tregenna
Heard on	: 11 July 2018
Order Issued on	: 11 July 2018
Reasons Issued on	: 24 July 2018

REASONS FOR DECISION

APPROVAL

[1] On 11 July 2018 the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving The Beverage Company Bidco (Pty) Ltd ("**BevCo**") and SoftBev (Pty) Ltd ("**SoftBev**").

[2] The reasons for approving the transaction are as follows.

Parties to the Proposed Transaction

Primary Acquiring Firm

[3] The primary acquiring firm is BevCo, which is ultimately controlled by Ethos Private Equity Fund VI ("Ethos Fund VI"). Ethos Fund VI is a private equity investment fund that is advised by Ethos Private Equity (Pty) Ltd ("Ethos"). Ethos is not directly or indirectly controlled by any single shareholder.

[4] BevCo controls a number of firms. Of particular focus to this transaction is Little Green Beverages (Pty) Ltd ("Little Green Beverages"). Little Green Beverages is involved in the production, packaging and distribution of branded and private label non-alcoholic beverages in Southern Africa. In addition to manufacturing its own brand, 'Refreshhh', BevCo also manufactures brands on behalf of third parties and house brands.

[5] BevCo is also involved in the packaging of non-alcoholic beverages which includes bottling, shrink wrapping and palletising. BevCo only bottles the beverages it manufactures and does not provide bottling/canning services to third parties.

Primary Target Firms

[6] The primary target firm is SoftBev. SoftBev is jointly controlled by MIF Holdings (Pty) Ltd and Bowler Metcalf Limited. SoftBev controls a number of wholly owned subsidiaries.

[7] SoftBev is involved in the manufacturing, selling and distribution of non-alcoholic drinks, including carbonated non-alcoholic or 'soft' drinks and energy drinks, throughout South Africa and certain neighbouring countries. SoftBev's carbonated soft drinks brands include 'Jive' and 'Coo-ee'. SoftBev also produces, markets and distributes carbonated soft drinks for third party brand owners, such as PepsiCo Inc, Seven-Up International and Capri-Sun. In

addition, SoftBev produces private label brands for Shoprite Checkers, Pick 'n Pay and Boxer. In respect of the energy drinks category, SoftBev manufactures and distributes its own brands, 'Reboost' and 'Punch'.

Proposed Transaction and Rationale

[8] BevCo intends on acquiring 100% of the equity and shareholder loans of SoftBev. Upon implementation of the proposed transaction, BevCo will control SoftBev. SoftBev will, thereafter, be consolidated into BevCo's wholly owned subsidiary, Little Green Beverages.

[9] The proposed transaction is viewed as an attractive investment opportunity which will complement BevCo's current operations and product range. It will further enable BevCo to better serve the South African beverages market and customers as a whole. The transaction also makes it possible for Bowler Metcalf, a substantial shareholder of SoftBev, to exit the soft drinks market.

Relevant Market and Impact on Competition

[10] BevCo and SoftBev are both involved in the manufacture, distribution and sale of non-alcoholic beverages (NAB's). NABs can be broadly divided into carbonated soft drinks ("CSDS") and non-carbonated soft drinks ("NCSDS"). The Competition Commission ("Commission") found that a horizontal overlap exists in CSDS. However, the Commission delineated narrower markets for the merging parties' NAB activities, namely (i) the national market for the manufacture, distribution and sale of carbonated soft drinks (excluding energy drinks) and (ii) the national market for the manufacture, distribution and sale of energy drinks.

[11] The Commission considered the estimated market shares and share accretions of the narrow markets for the manufacture, distribution and sale of carbonated soft drinks (excluding energy drinks) as well as the manufacture, distribution

and sale of energy drinks and found that the merged entity would have post-merger market shares and share accretions of 10.2% and 5.3% respectively and 7.7% and 6.8% respectively. The Commission also found that the merged entity would continue to face competition from numerous competitors, including Coca-cola, Chillbev, Kingsley, Redbull and Twizza.

[12] For completeness sake, the Commission also assessed the broader market for the manufacture, distribution and sale of NABs, which includes carbonated soft drinks and energy drinks, juice, bottled water and ice tea. The Commission found that the merged entity will have a market share and share accretion of approximately 9.2% and 5.1% respectively. Post-merger, the merged entity will continue to face competition from other players such as Coca-cola, Chillbev, Kingsley, and Twizza. It was further established by the Tribunal during the hearing that the market specifically related to that of flavoured carbonated soft drinks as opposed to that of "cola".

[13] The Commission did receive a concern from Twizza, a competitor of the merging parties in the market for the manufacture, distribution and sale of NAB's. The concern was centred on the possibility that, post-merger, the merged entity will have the incentive and ability to engage in a predatory pricing strategy to the detriment of competition in the market for non-alcoholic beverages in the Western Cape.

[14] However, the Commission reiterated that the merged entity will have a market share of less than 10% in the market for the manufacture, distribution and sale of NAB's. The Commission is therefore of the view that the merged entity is unlikely to command market power and accordingly, it is unlikely that the merged entity would have the ability and incentive to engage in any predatory pricing strategy as alleged. The merging parties further reiterated that they would not be able to recover the losses suffered from the implementation of a predatory pricing strategy as they would still face competition from dominant market players, such as Coca-cola.

[15] In light of the aforementioned, the Commission is of the view that the proposed transaction is unlikely to prevent or lessen competition in any of the abovementioned markets.

[16] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public Interest

[17] The merging parties have submitted that the proposed transaction will not result in any job losses or negative impact on employment. The merging entity further submitted that the rationalisation of the plants was not a foreseeable event as each plant is equipped with their own specialised machinery and is responsible for the manufacturing, distribution and sale of different kinds of non-alcoholic beverages. The merger will therefore not result in any kind of restructuring which could potentially result in any job losses.

[18] In spite of the aforementioned assertion, a number of concerns were raised by the representatives of the unionised employees of both BevCo and SoftBev.

[19] The employees of BevCo, the acquiring firm, are represented by Target Orientated Trade Union of South Africa ("TOTRUSA"), and the non-unionised employees are represented by employee representatives. The employee representatives did not raise any concerns in respect of the transaction. TOTRUSA, on the other hand, raised a number of concerns which, according to the Commission, fell outside of the scope of the Competition Act and were not merger specific. None of their concerns constituted objections to the merging parties' unequivocal statement that the merger would not result in any job losses or negative impact on employment. TOTRUSA raised no further concerns.

[20] The employees of SoftBev are represented by Food & Allied Workers Union ("FAWU"), Federal Council of Retail and Allied Workers ("FEDCRAW") and Professional Transport & Allied Workers Union ('PTAWU").

[21] FAWU sought confirmation that the merger would not result in any job losses but was ultimately satisfied by the party's commitment that no employees will lose their positions.

[22] FEDCRAW raised a number of concerns relating to seasonal workers, employee working terms and conditions and provident fund. The merging parties responded to and satisfied their concerns by reiterating that the transaction would occur under section 197 of the LRA, thereby ensuring that the employee working conditions would remain unchanged after the merger. The arrangements pertaining to seasonal workers, wage negotiations and shifts would also remain unaltered. FEDCRAW raised no further concerns.

[23] PTAWU also indicated to the Commission that they do not have a problem with the merger as long as employees were continued to be employed on the same terms and conditions

[24] All concerns raised by the trade unions have been resolved. The Commission is of the view that the proposed transaction is unlikely to have negative effects on employment given that the merging parties have submitted that there will be no retrenchments as a result of the proposed transaction.

CONCLUSION

[25] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

Mr Enver Daniels

24 July 2018

Date

Ms Yasmin Carrim and Prof. Fiona Tregenna concurring

Tribunal Case Managers	: Ms Aneesa Ravat
For the Merging Parties	: Shawn van der Meulen and Alice Vertue of Webber Wentzel.
For the Commission	: Zintle Siyo and Wiri Gumbie.