



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM215Feb17/VAR037Apr18

In the application for variation of merger conditions:

Government Employees Pension Fund represented by

Applicant

The Public Investment Corporation SOC Limited

And

Competition Commission

Respondent

In re: the merger between:

Government Employees Pension Fund represented by

Primary Acquiring Firm

The Public Investment Corporation SOC Limited

and

Distell Group Limited

Primary Target Firm

Panel	:	AW Wessels (Presiding Member)
	:	E Daniels (Tribunal Member)
	:	F Tregenna (Tribunal Member)

Heard on	:	09 May 2018
Last submission received on	:	14 May 2018
Decided on	:	15 May 2018

ORDER: APPLICATION FOR VARIATION OF MERGER CONDITIONS

On application by the Public Investment Corporation SOC Limited and as agreed to by the Competition Commission, the Tribunal orders the following:

1. the conditions to the approval of the abovementioned merger imposed by the



Competition Tribunal in Case No: LM215Feb17 on 29 March 2017 are varied as per the amendments reflected in **Annexure A** attached hereto.

Presiding Member

Mr AW Wessels

Concurring: Mr Enver Daniels and Prof. Fiona Tregenna

15 May 2018

Date

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ANNEXURE A:

AMENDED CONDITIONS

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AMENDED CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings to the clauses of these Amended Conditions are for reference purposes only and shall in no way govern or affect the interpretation of or modify or amplify the terms of these Amended Conditions or any clause hereof.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings assigned to them and cognate expressions shall bear corresponding meanings -
- 1.2.1 **"AB InBev"** means Anheuser-Busch InBev SA/NV, a public limited company incorporated in the Kingdom of Belgium;

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- 1.2.2 **"Amended Conditions"** means the conditions set out herein, agreed to by the Parties and the Commission;
- 1.2.3 **"Approval Date"** means the date on which the Tribunal approves of these Amended Conditions;
- 1.2.4 **"BEE"** means black economic empowerment;
- 1.2.5 **"BEE Equity"** means such number of ordinary shares as may constitute 5.28% of the voting rights and economic interest in New Distell, pursuant to the implementation of the RIH / Capevin Transaction, and which will be sold to one or more Purchaser(s) in terms of these Amended Conditions;
- 1.2.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.2.7 **"Competition Act"** means the Competition Act 89 of 1998;
- 1.2.8 **"Distell"** means Distell Group Limited, an investment holding company listed on the JSE Limited securities exchange;
- 1.2.9 **"Distell Shareholding"** means the 26.5% shareholding interest in Distell held by OBI which was acquired by the GEPP subject to the Original Conditions;
- 1.2.10 **"Divestiture"** means the transfer of the BEE Equity to one or more Purchaser(s);
- 1.2.11 **"GEPP"** means the Government Employees Pension Fund, represented by the PIC;
- 1.2.12 **"OBI"** means Other Beverage Interests Proprietary Limited, an indirect subsidiary of AB InBev and current owner of the Distell Shareholding;
- 1.2.13 **"Merging Parties"** mean the GEPP and Distell;
- 1.2.14 **"New Distell"** means Business Venture Investments No. 1997 Limited, a special purpose vehicle created and controlled by RIH in terms of the proposed transaction filed under case number 2017Sep0023;
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- 1.2.15 **"New Distell Shareholding"** means the 31.3% shareholding interest in New Distell to be acquired by the GEPP pursuant to the RIH / Capevin Transaction;
- 1.2.16 **"Original Conditions"** means the conditions imposed by the Tribunal on 29 March 2017, in the Proposed Transaction, a copy of which is attached hereto as Annexure 1, and which required the GEPP to divest of 20% of its erstwhile 26.5% shareholding in Distell;
- 1.2.17 **"Parties"** means the parties to the Amended Conditions, namely, GEPP and New Distell;
- 1.2.18 **"Proposed Transaction"** means the GEPP's acquisition of 26.5% of the shareholding in Distell, which was approved by the Tribunal on 29 March 2017, subject to the Original Conditions;
- 1.2.19 **"PIC"** means The Public Investment Corporation SOC Limited, as a duly authorised representative of the GEPP;
- 1.2.20 **"Purchaser"** means a purchaser of the BEE Equity in terms of these Amended Conditions;
- 1.2.21 **"Remgro"** means Remgro Limited;
- 1.2.22 **"Remgro Beverages"** means Remgro Beverages Proprietary Limited;
- 1.2.23 **"RCI"** means Remgro Capevin Investments Proprietary Limited;
- 1.2.24 **"RIH"** means Remgro International Holdings Proprietary Limited;
- 1.2.25 **"RIH / Capevin Transaction"** means the series of inter-related steps as defined in the circular to shareholders and accompanying prospectus issued by Distell on 20 September 2017, which includes the acquisition of the sole control by Remgro Beverages in RCI and Capevin and ultimately control Distell. This transaction was approved by the Tribunal on 11 May 2018 under case number LM177SEP17;
- 1.2.26 **"SABMiller"** means SABMiller plc (now SABMiller Limited);
- 1.2.27 **"South Africa"** means the Republic of South Africa; and
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- 1.2.28 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.
- 1.3 In these Amended Conditions and its interpretation:
- 1.3.1 references to a statute or statutory provision include any subordinate legislation made from time to time thereunder and include that statute or statutory provision as modified, amended or re-enacted from time to time;
- 1.3.2 where any number of days is prescribed, those days shall include only ordinary business days (i.e. excluding Saturdays, Sundays and prescribed public holidays in South Africa). The number of days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.3.3 where reference to the GEPP is made it simultaneously refers to the PIC;
- 1.3.4 unless inconsistent with the context, the *eiusdem generis* rule shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 1.3.5 account shall be taken of the purpose of these Amended Conditions and the objectives listed in the Recordal.

2. **RECORDAL**

- 2.1 The Merging Parties notified the Proposed Transaction to the Commission on 31 January 2017.
- 2.2 The Proposed Transaction was approved by the Tribunal on 29 March 2017, subject to the Original Conditions.
- 2.2.1 In approving the GEPP as the purchaser of the Distell Shareholding in terms of the Tribunal conditions imposed in the AB InBev / SABMiller merger, and in view of the Commission's objectives to promote the participation of firms controlled by historically disadvantaged persons in the South African economy, the Commission and the GEPP agreed that a portion of the Distell Shareholding should be divested to a BEE-

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controlled entity/ies in terms of the Original Conditions. The GEPF accepted such Original Conditions and the Tribunal approved the Proposed Transaction subject to the GEPF disposing of approximately 20% of the acquired shares to a Purchaser.

- 2.3 However, subsequent to the Tribunal's approval of the Proposed Transaction, the Commission was notified of the RIH / Capevin Transaction, a large merger, on 11 September 2017. In its assessment, the Commission had particular regard to the impact that the implementation of the RIH / Capevin Transaction would have on the GEPF's ability to fulfil its obligations under the Original Conditions.
- 2.4 The Commission's investigation found that the Original Conditions would not be implementable because, *inter alia*, GEPF would no longer hold shares in Distell, but in New Distell. In addition, the PIC has confirmed in writing that the GEPF would not be in a position to fulfil the Original Conditions prior to the implementation of the RIH / Capevin Transaction.
- 2.5 In order to facilitate the fulfilment of the Divestiture Remgro has agreed that if it acquires pre-emptive rights in respect of GEPF's shareholding in New Distell, it would be willing to waive certain of such pre-emptive rights until such time as the GEPF fulfils its obligations under these Amended Conditions. In addition, Remgro and New Distell have agreed not to oppose the PIC's application to the Tribunal to amend the Original Conditions such that the Divestiture applies to the GEPF's shareholding in New Distell, as envisaged in these Amended Conditions.
- 2.6 In light of the above, the Commission and the PIC have agreed to these Amended Conditions to ensure that the GEPF remains in a position to fulfil the obligations required of it under the Original Conditions.

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3. DIVESTITURE OF THE BEE EQUITY

- 3.1 The GEPF shall divest of the BEE Equity within 18 (eighteen) months from 1 August 2018 (the "**Divestiture Period**") to one or more BEE-controlled entity/ies.
- 3.2 The PIC and the GEPF shall be under no obligation to provide, procure or facilitate funding to any potential Purchaser/s to acquire the BEE Equity.
- 3.3 The purchase consideration to be paid by the Purchaser/s shall be determined with reference to commercially viable terms on the date on which the BEE Equity is sold to the Purchaser/s.
- 3.4 The PIC shall inform the Commission in writing within 5 (five) days after implementation of the Divestiture, being the point in time at which the securities register of New Distell is updated to reflect the BEE Equity in the name of one or more Purchaser(s).

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The PIC shall furnish the Commission with an initial progress report on or before 31 December 2018, and thereafter quarterly progress reports (i.e. every three months) during the Divestiture Period, concerning the Parties' efforts to identify a suitable Purchaser/s for the BEE Equity and progress made in concluding the Divestiture.
- 4.2 The Commission may request any additional information from the PIC which the Commission from time to time deems necessary for the monitoring of compliance with these Amended Conditions.
- 4.3 In the event that the Commission receives a complaint regarding non-compliance by the GEPF with these Amended Conditions, or otherwise determines that there has been an apparent breach by the GEPF or New Distell of the Amended Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 4.4 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

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5. VARIATION

- 5.1 The Merging Parties and/or the Commission shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Amended Conditions.