

competitiontribunal
south africa

fax form

<i>to</i>	Mark Garden Edward Nathan Sonnenbergs Inc	<i>fax</i>	011 269 7899
	Legal Services Competition Commission		44283
<i>ref</i>	26/LM/Jan11	<i>date</i>	06 May 2011
<i>from</i>	Abigail Mashigo	<i>pages</i>	6 (including this page)
<i>re</i>	Reasons		

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Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Abigail Mashigo

CC: Lameez Vania - 44293



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:26/LM/Apr11

In the matter between:

Hosken Consolidated Investments Limited

Acquiring Firm

And

KWV Holdings Limited

Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	04 May 2011
Order issued on	:	05 May 2011
Reasons issued on	:	06 May 2011

Reasons for Decision

Approval

[1] On 4 May 2011 the Competition Tribunal ("Tribunal") approved the large merger between Hosken Consolidated Investments Limited ("HCI") and KWV Holdings Limited ("KWV"). The Tribunal's reasons for approving the transaction are set out below.

The Parties to the transaction

[2] The primary acquiring firm is Hosken Consolidated Investments Limited,¹ a public investment company listed on the Johannesburg Stock Exchange. HCI's major shareholder is the South African Clothing and Textile Workers Union ("SACTWU") with 37.9% of the issued share capital in HCI.

¹ <http://www.hci.co.za/>

[3] The target firm, KVV Holdings Limited,² is a JSE listed public investment company which owns and operates one of the leading wine and spirits producers in South Africa. HCI currently owns 34.95% of the issued share capital in KVV.

[4] HCI has been involved in a number of transactions increasing its stake in KVV with the goal of attaining sole control of KVV. This proposed transaction is a further step by HCI towards their goal.

The activities of the parties

[5] The Acquiring Firm:

HCI has investments in a diversified range of business areas and industries such as Media & Broadcasting, Casinos, Hotel & Leisure, Clothing & Textiles, Transport, Energy, Property and Technology:

Gaming Hotels and Leisure



TSOGO SUN GROUP
Hotels, Gaming & Entertainment

TSOGO INVESTMENT HOLDING COMPANY
74.7%



VUKANI GAMING CORPORATION
100%

Media and Broadcasting



MIDI TV (e.TV)
63%



YIRED
63%



E SAT.TV
63%



THREE BLIND MICE
COMMUNICATIONS
71.3%

Transport



GOLDEN ARROW BUS SERVICE
100%

Energy



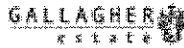
MONTAUK ENERGY CAPITAL
91.5%



HCI KHUSELA COAL
80%

² <http://www.kvv.co.za/>

Property and Exhibitions



GALLAGHER
100%

Industrial



FORMEX
90%

Services and Technology



Business Systems Group (Africa)
40%



Syntell
55%



Isilumko
30.1%



Limtech
58.9%

Clothing and Textiles



Seardel Limited
70%

The above Graphic Table is from the HCI website.³

[6] The Target Firm:

- a. KVV is essentially a vertically integrated wine and spirits business, owns a wine farm, and procures grapes and wine for the production of wine and spirits. KVV owns one of the largest premium brands of wine in the country and also has a non controlling interest in the Paarl Bottling Company.
- b. KVV controls the following subsidiaries:
 - KVV South Africa (Pty) Ltd;
 - KVV International (Pty) Ltd;
 - KVV Intellectual Property (Pty) Ltd;
 - KVV Projects (Pty) Ltd;
 - Kaapse Wynprodusente Vereniging (Pty) Ltd;
 - Wijngaarg Beleggings (Pty) Ltd;
 - Edward Cavendish and Sons (Pty) Ltd;
 - KVV International Holdings GmbH;
 - KVV International (Europe) Ltd; and
 - Golden Kaan South Africa (Pty) Ltd.

³ http://www.hci.co.za/corp_profile.htm

- [7] There is no overlap between the activities of the merging parties nor are there any firms in the broader acquiring firm in a vertical relationship with the target firm.

The Rationale

- [8] Through the present transaction, HCI intends acquiring 0.05% of the issued share capital of KVV as a further step in its goal of attaining sole control of KVV.
- [9] The result of the acquisition of the 0.05% will result in HCI owning 35% of the issued share capital of KVV and thereby become obliged, in terms of the Securities Regulation Panel ("SRP") Code to extend a mandatory offer to the other shareholders of KVV.
- [10] Depending on the extent of the acceptance of the mandatory offer by the other shareholders, HCI could be placed in a position to acquire the entire issued share capital of KVV.
- [11] HCI further states that by acquiring sole control of KVV, it would be in the position to employ its skilled management team in turning around KVV's underperforming business. This goal seems to correlate with HCI's role as an investment company.

The relevant market and the impact on competition

- [12] The parties and Commission agree that the relevant market is the market for the production and sale of bottled wine, bottled spirits, bulk spirits, contract for bottling and carbonated grape juice.
- [13] There is no overlap in the activities of the parties and the Commission is of the opinion that that this merger is unlikely to substantially prevent or lessen competition in the relevant market.

Public Interest

- [14] The merging parties have notified the Food and Allied Workers Union ("FAWU") in their capacity as the employees' representative and no employment issues were raised.

Conclusion

- [15] We agree with the Commission that as there is no overlap between the activities of the merging parties nor vertical integration, the merger does not raise any competition concerns. Furthermore no public interest grounds have been raised that would not justify approval of the merger.
- [16] Accordingly, the above merger is approved without conditions.



N Manoim

06 May 2011
DATE

Y Carrim and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Mark Garden and Ruthendo Hlatshwayo of
Edward Nathan Sonnenbergs,

For the Commission: Lameez Vania, Mfundo Ngobese, Marten van
Hoven

* * * Communication Result Report (6. May. 2011 9:40) * * *

1)
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Date/Time: 6. May. 2011 9:32

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
7274	Memory TX	44293	P. 6	OK	
	David	44283		OK	
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Reason for error

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