

BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case no. 02/LM/Jan10

In the matter between

THE COMPETITION COMMISSION

Applicant

and

SOUTH AFRICAN BREWERIES LIMITED

First Respondent

and

BOLAND BEER DISTRIBUTORS (PROPRIETARY) LIMITED

Second Respondent

Panel : Lawrence Reyburn (Presiding Member), Medi Mokuena (Tribunal Member), and Takalani Madima (Tribunal Member)

Heard on : 4 April 2011

Decided on : 8 April 2011

Order in application to compel further and better discovery

The order of the Tribunal following the hearing on 4 April 2011 is as follows:

1. The late filing of the application by the Competition Commission (the Commission) to compel further and better discovery is condoned.
2. The Tribunal's rulings at the pre-trial conference held on 1 February 2011 are hereby supplemented, with effect from the date of this order, by the inclusion of the following ruling:
 - 2.1 The respondents in this application are collectively required, in terms of rule 35(3) read with rules 22(1)(c)(iii) and 22(2) of the rules for the conduct of proceedings in the Competition Tribunal, to provide a statement identifying those parts of the merger referral notice (Form CC17) and attached report and recommendation issued by the Commission (the applicant in this application) on 9

December 2009 which either or both of the merging parties will contest at the merger hearing set down to commence on 6 May 2011. The statement will be regarded as sufficient if it identifies individual paragraphs or sentences which the merging parties will contest.

2.2 The statement by the merging parties referred to in paragraph 2.1 above will be provided to the Commission and to the Tribunal by not later than 09h00 on 14 April 2011.

3.

3.1 The Commission, after receiving the statement referred to in paragraphs 2.1 and 2.2 above, is required to notify the merging parties and the Tribunal whether it intends to continue to pursue discovery in respect of all of the categories of documents provided for in paragraph 4.4 below, or whether it abandons the pursuit of discovery in respect of any one or more of such categories. In respect of any category comprised in such abandonment, the obligation of the merging parties to provide discovery will thereupon lapse.

3.2 The Commission's notification in this respect must be provided to the merging parties and to the Tribunal by no later than 09h00 on 15 April 2011, being a day after receipt by the Commission of the statement provided for in paragraphs 2.1 and 2.2 above.

4.

4.1 Subject to the provisions of paragraph 3 above, the merging parties are required to make further and better discovery of the categories of documents set out in paragraph 4.4 below.

4.2 The discovery will apply to all documents created in the period from 1 January 2006 to the date of this order.

4.3 In respect of all categories of documents set out in paragraph 4.4 below, documents already in the possession of the Commission because they were included in the merging parties' merger notification or were supplied to the Commission during the course of its investigation of the proposed merger or subsequently are to be excluded.

4.4 Further and better discovery will apply to the following categories of documents:

- 4.4.1 Documents explaining or setting out the manner of calculation, whether by a formula or otherwise, of fees, discounts and any other financial benefits offered or provided by the first respondent to its distributors in the Western Cape, Northern Cape, and Eastern Cape provinces (collectively 'the Cape Region') for the warehousing and delivery of products.
- 4.4.2 Documents explaining or setting out the manner of calculation, whether by a formula or otherwise, of the first respondent's charges for delivering products to its distributors in the Cape Region outside free delivery zones.
- 4.4.3 Documents explaining or setting out the manner of calculation, whether by a formula or otherwise, of the second respondent's charges for delivering products to its customers and others in a territory which is exclusive to it in terms of its contractual relationship with the first respondent outside free delivery zones.
- 4.4.4 Documents explaining or setting out the manner of calculation, whether by a formula or otherwise, of the following in the Cape Region:
- i. The price of products sold by the respondents;
 - ii. Discounts granted by the respondents in respect of products sold or services rendered;
 - iii. The cost of marketing and promotional activities undertaken by or for the respondents in respect of products sold or offered for sale by them or services rendered by them, including cost-sharing arrangements.
- 4.4.5 Management accounts reflecting revenue, expenditure, profits, profit margins and costs in the first respondent's manufacturing operations in the Cape Region.
- 4.4.6 Management accounts reflecting revenue, expenditure, profits, profit margins and costs in the second respondent's distribution activities in the Cape

Region, including costs of warehousing, handling, and
fleet management.

4.4.7 Market research and customer surveys conducted by
or for the respondents in relation to the beer market in
the Cape Region.

4.5 References in paragraph 4.4 to the respondents mean the
respondents singly and collectively.

4.6 Discovery and production of the documents referred to in
paragraph 4.4 will be made by 09h00 on 18 April 2011.

5. No order as to the costs of the application is made.



Lawrence Reyburn

Presiding Member

Concurring: Madi Mokuena and Taki Madima