

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5411

11 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

VARUN BEVERAGES LIMITED
AND
THE BEVERAGE COMPANY (PTY) LTD

CASE NUMBER: 2023DEC0048

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

1. On 19 December 2023, the Competition Commission ("Commission") received notice of an intermediate merger wherein Varun Beverages Limited ("Varun India") intends to acquire the entire issued share capital of The Beverage Company (Pty) Ltd ("Bevco"). Upon implementation of the proposed transaction, Varun India will control Bevco.
2. The primary acquiring firm is Varun India. Varun India is incorporated in terms of the laws of India. Varun India is a public company which is listed on the National Stock Exchange of India Limited ("NSE"), as well as the Bombay Stock Exchange Limited ("BSE") and as such it is not controlled by any individual shareholders. Varun India controls a number of firms with only one subsidiary located in South Africa, namely Varun Beverages South Africa (Pty) Limited ("Varun SA").
3. Varun India does not have any ownership by Historically Disadvantaged Persons ("HDPs").
4. Varun India and all of the firms controlled by it will collectively be referred to as "the Acquiring Group".
5. The Acquiring Group manufactures, distributes and sells a wide range of carbonated soft drinks, as well as a large selection of non-carbonated beverages, including

packaged drinking water sold under trademarks owned by PepsiCo. The Acquiring Group is an important player in the beverage industry principally in India and is one of the largest franchisees of PepsiCo worldwide (outside of the USA).

6. The Acquiring Group does not have any activities or operations in South Africa. Varun SA, its only South African subsidiary, has been inactive since it was established and has never conducted any operations.
7. The primary target firm is Bevco, a company incorporated in terms of the laws of South Africa. Bevco is not controlled by any individual firm. Bevco directly and indirectly controls The Beverage Company BidCo (Pty) Ltd and Little Green Beverages (Pty) Ltd.
8. The merging parties submit that Bevco does not have direct shareholding held by HDPs. However, they indicate that on a flow through basis, **[Confidential]** of the shares in Bevco are held by HDPs. According to the merging parties, the **[Confidential]** reflects indirect interests held in Bevco by **[Confidential]**.
9. Bevco and all the firms it controls will collectively be referred to as “the Target Group”.
10. The Target Group is a South African beverage producer headquartered in Johannesburg and produces carbonated soft drinks primarily in 2-litre plastic pack sizes. The Target Group’s primary bottling operating facilities are located in Johannesburg and East London. The Target Group sells its own branded carbonated soft drink products called Refresh! and is also a significant private label carbonated soft drink bottler to various retailers in South Africa. Moreover, the Target Group also produces a range of mixers, energy drinks and water and is the registered bottler for Pepsi in South Africa.
11. The Commission considered the activities of the merging parties and found that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public Interest

12. To address employment, the parties tendered a condition that the merger will not result in any applications or job losses. To address other public interest issues, the parties tendered a package of conditions that includes: substantial capital expenditure over a period of 5 years post-merger; installing additional fridge coolers at various retail and

spaza outlets; increasing local procurement including from HDP owned firms; introducing an owner-driver scheme; and the implementation of a worker share ownership scheme.

13. The Commission considers that these conditions render the merger justifiable on substantial public interest grounds.
14. The Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A
VARUN BEVERAGES LIMITED
AND
THE BEVERAGE COMPANY
CASE NUMBER: 2023DEC0048

CONDITIONS

1. DEFINITIONS

- 1.1. The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings:
- 1.1.1. **“Approval Date”** means the date the Commission issues a Clearance Certificate in terms of the Competition Act;
- 1.1.2. **“Bevco”** means the Target Firm. Bevco is incorporated in terms of the laws of South Africa and has its principal place of business at 20 Anvil Street, Isando, Johannesburg, Gauteng, South Africa;
- 1.1.3. **“Business Days”** means any day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.4. **“Commission”** means the Competition Commission of South Africa;
- 1.1.5. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.6. **“Competition Act”** means the Competition Act 89 of 1998, as amended from time to time;
- 1.1.7. **“Conditions”** mean these conditions;
- 1.1.8. **“DTIC”** means the Department of Trade, Industry and Competition of South Africa;
- 1.1.9. **“ESOT”** means Employee Share Ownership Trust;
- 1.1.10. **“ESOT Implementation Period”** within 12 months post the Implementation Date;
- 1.1.11. **“HDP”** means historically disadvantaged persons as contemplated in the Competition Act;

- 1.1.12. **“Independent Owner Driver”** means firms who meet the Qualification Criteria and in respect of which the Merged Entity has no shareholding;
- 1.1.13. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.14. **“Labour Relations Act”** means Act 66 of 1995 (as amended);
- 1.1.15. **“Merged Entity”** means Bevco, subject to the control of Varun India;
- 1.1.16. **“Merger”** means the acquisition of control over Bevco by the Varun India;
- 1.1.17. **“Merger Parties”** means Varun India and Bevco and their respective subsidiaries;
- 1.1.18. **“Proposed transaction”** means the merger between Varun India and Bevco;
- 1.1.19. **“Qualification Criteria”** means Independent Owner Drivers who: (i) are HDPs or Firms which are owned or controlled by HDPs; (ii) hold all required permits, which have not previously been suspended for whatever reason; (iii) have police clearance; and (iv) have the necessary professional experience meaning that they: (a) own and/or operate a logistics business that complies with all applicable laws and regulations that provides transport services and can provide demonstratable proof of this; or (b) are employed by the Merged Entity.
- 1.1.20. **“Qualifying Workers”** means all permanently employees of Bevco for as long as they remain employed by Bevco.
- 1.1.21. **“SMME”** means Small, Medium and Micro Enterprises as defined in terms of section 1 of the Competition Act;
- 1.1.22. **“South Africa”** means the Republic of South Africa;
- 1.1.23. **“Varun India”** means the Acquiring Firm;

2. EMPLOYMENT

- 2.1. In the merger filing the merging parties undertake that the merger shall not result in any merger specific retrenchments as no merger specific retrenchments are contemplated and the merger does not result in any duplications.
- 2.2. For the sake of clarity, Merger specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement

packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements (for the purposes of the Labour Relations Act) unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3. IMPACT ON THE SPECIFIC INDUSTRIAL SECTOR AND LOCAL INVESTMENT

- 3.1. Varun India will ensure that Bevco or any subsidiary of Bevco or company under common control with Bevco shall invest a minimum of **[Confidential]** over a period of five years (“**Capital Expenditure Commitment**”), commencing on the Implementation Date, in order to expand the production capacity of Bevco. The current total production capacity of Bevco is currently approximately **[Confidential]** ounces per annum, split between **[Confidential]** production lines across five regional facilities, being Boksburg, Durban, Isando, Cape Town and East London.
- 3.2. For the avoidance of doubt, Varun India commits that its South African production facilities will remain in South Africa for at least a minimum period of five years post the Implementation Date.

4. EFFECT ON THE ABILITY OF FIRMS OWNED BY HDPS OR SMMEs TO ENTER INTO AND EXPAND IN THE MARKET

(i) *The HDP Suppliers Commitment*

- 4.1. Varun India will ensure that for a period of 36 months after the Implementation Date:
- 4.1.1. Bevco will continue to purchase from direct suppliers owned by HDPS or from alternative suppliers owned by HDPS or HDP firms, subject to supply occurring on reasonable commercial terms (including factors such as availability, price, quality, security of supply); and;
- 4.1.2. The annual aggregate purchases by Bevco from these HDP entities will be no less than **[Confidential]**, which is the aggregate purchases by Bevco from such entities in 2023 (subject to supply occurring on reasonable commercial terms including factors such as availability, price, quality, security of supply).

(ii) *Local Procurement Commitment*

- 4.2. Varun India will ensure that for a period of 36 months after the Implementation Date:

4.2.1. Bevco's aggregate purchases of raw materials and packaging from domestic South African based suppliers, (which include HDP suppliers), will increase by **[Confidential]**, which amount is **[Confidential]**% of Bevco's purchases from these entities in 2023 was **[Confidential]** billion and subject to supply occurring on reasonable commercial terms including factors such as availability, price, quality, security of supply. The raw materials sourced locally include **[Confidential]**.

4.2.2. At the end of the 3-year period Bevco's aggregate purchases of raw materials and packaging from domestic South African based suppliers will be no less than **[Confidential]**.

(iii) SMME Commitment

4.3. Varun India shall ensure that, over the five year period following the Implementation Date, Bevco or a related company installs cold storage refrigerators (called visi-coolers) in at least **[Confidential]** retail and spaza stores in South Africa.

(iv) Owner-Driver Commitment

4.4. For a maximum period of 5 (five) years from the Implementation date, the Merged Entity shall provide financing on terms to be agreed between Bevco and Independent Owner Drivers who meet the Qualification Criteria to purchase trucks, bikes and push-carts with preference being granted by the Merged Entity to those HDPs employed by it as drivers.

4.5. Subject to the Merged Entity's operational needs and the ability of Independent Owner Drivers to service those, the Merged Entity will offer -

4.5.1. preferential option based on BEE rating, Black Ownership and previously disadvantaged groups with respect to volume and load allocation in bulk transport.

4.5.2. participation in route to market through a minimum of **[Confidential]** push carts to create and support small business development.

4.6. This is provided that the services to be provided by Independent Owner Drivers are available on reasonable, practical and competitive terms which comply with the Merged Entity's requirements.

4.7. The value of the commitment in Clause 4.4 is anticipated to be **[Confidential]** over a

period of five years.

5. PROMOTING A GREATER SPREAD OF OWNERSHIP

- 5.1. Varun India will, within the ESOT Implementation Period introduce an ESOT for Qualifying Workers which shall hold at least 5% of the current share capital of Bevco. The ESOT shall be established in accordance with the design principles set out in Annexure B.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1. The Merging Parties shall notify the Commission in writing of the Implementation Date within 5 (five) Business Days of it becoming effective.
- 6.2. Within 5 (five) Business Days post the ESOP Implementation Period, the Merging parties shall notify the Commission in writing of the following:
- 6.2.1. The total number of ESOT beneficiaries;
- 6.2.2. The total number of ESOT beneficiaries falling under the category of: (i) HDPs; (ii) Females; (iii) Youths (i.e. individuals under the age of 35 years).
- 6.3. The Merging Parties shall circulate a copy of the employment conditions to their employees, and employee representatives within 5 (five) Business Days of the Approval Date.
- 6.4. As proof of compliance with paragraph 6.3 a senior executive of Varun India shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees and their employee representatives.
- 6.5. Within 45 (forty-five) Days of each anniversary of the Approval Date up until the 5th anniversary of the Implementation Date, the Merged Firm shall provide the Commission and the Minister with an appropriately detailed report regarding the Merged Firm's compliance with the Conditions.
- 6.6. The report referred to in clause 6.45 shall be accompanied by an affidavit attested to by the chief executive officer of the Acquiring Firm confirming the accuracy of the annual report and full compliance of these Conditions in the year to which the reports relate.

- 6.7. The Commission may request any additional information from the Merger Parties which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

7. VARIATION

- 7.1. The Merging Parties and/or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived or relaxed, including any including any resultant modification or substitution thereof.

8. APPARENT BREACH

- 8.1. If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

9. GENERAL

- 9.1. All correspondence in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B - CONFIDENTIAL

Design Principle	Applicable Criteria
Structure	<ul style="list-style-type: none"> ○ Will be a trust to be established , and Qualifying Workers will be beneficiaries of the trust.
Cost to Workers	<ul style="list-style-type: none"> ○ The mechanism through which the shares in Bevco will be acquired by the ESOT will be developed by the parties taking account of these principles. If the acquisition funded through a loan, the loan agreement will provide that when a dividend is declared by the board of Bevco, at least [confidential]% of the value of the declared dividends (less withholding tax and after liabilities have been paid) will be used for the benefit of the beneficiaries with the remaining [confidential]% used to service the loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOT (after liabilities have been paid) will be distributed to the beneficiaries by the trustees in accordance with the terms of the Trust Deed (making provision for the trust to be able to discharge its liabilities until the payment of the next dividend). "Liabilities" for the purposes of this annexure include costs (administration costs, rental, fees of third party service providers such as auditors) and taxes. ○ No cost to workers: Workers will not be required to pay to be beneficiaries of the ESOT. ○ The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOT establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to workers and must not impact any dividend flows due to workers. ○ Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.
Governance	<ul style="list-style-type: none"> ○ The board of trustees must be balanced and workers must be represented on the board, e.g., [Confidential]. ○ The independent trustee will be appointed by agreement between the other two trustees, subject to the candidate being acceptable to the Merged Entity and appropriately qualified.
Duration	<ul style="list-style-type: none"> ○ The ESOT is evergreen.

<i>Participants</i>	<ul style="list-style-type: none">○ ESOT – All Qualifying Workers will be beneficiaries of the ESOT○ Maternity leave will have no adverse impact on qualifying criteria.