

# NON-CONFIDENTIAL

## Annexure A

Commission Case No: 2018Sep0049

Tribunal Case No: LM187Oct18

**THE SOUTH AFRICAN BREWERIES (PTY) LTD**

**Primary Acquiring Firm**

and

**DIAGEO SOUTH AFRICA (PTY) LTD**

**Primary Target Firm**

in respect of the license and rights for the manufacture, distribution, marketing and sale of specified brands and rights related to the brands

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## CONDITIONS

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### 1. DEFINITIONS

- 1.1 “**AB InBev**” means Anheuser-Busch InBev SA/NV, a public limited company incorporated in Belgium, and where the context so requires, means the relevant companies forming part of the AB InBev group of companies;
- 1.2 “**ABI Brands**” means all brands owned, controlled or operated by AB InBev prior to the Proposed Transaction and brands that may be acquired, controlled, or operated by AB InBev following the Proposed Transaction, but excluding the Licensed Brands;
- 1.3 “**Approval Date**” means the date referred to in the Tribunal’s merger clearance certificate (Form CT 10) in relation to this Proposed Transaction;
- 1.4 “**Cider**” means an apple fermented beverage as defined in the South African Liquor Products Act (No. 60 of 1989);
- 1.5 “**Closing Date**” means the date on which the Proposed Transaction completes in accordance with its terms. This date is the implementation date for the Proposed Transaction;
- 1.6 “**Commission**” means the South African Competition Commission a statutory body established in terms of section 19 of the Competition Act;

## NON-CONFIDENTIAL

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- 1.7 **“Competition Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.8 **“Conditions”** means, collectively, the conditions referred to in this document;
- 1.9 **“Diageo”** means Diageo plc., and/or any of its subsidiary companies including Diageo South Africa (Proprietary) Limited, Diageo North America, Inc., and Diageo Ireland, collectively or individually, as applicable in the context;
- 1.10 **“Diageo Coolers”** means the Diageo coolers that are being acquired by SAB as a result of the Proposed Transaction and includes any replacements and all new coolers that are installed at Outlets during the term of the Licensing Agreements;
- 1.11 **“Duration of the Licensing Agreements”** means the initial [REDACTED] term of the Licensing Agreements including any extension and/or renewal of such term;
- 1.12 **“FAB”** refers to the flavoured alcoholic beverage category of products. For the avoidance of doubt, the Smirnoff RTD brands fall within this category;
- 1.13 **“Guinness Brands”** means Diageo’s Guinness brands licensed to SAB in terms of the Guinness Licensing Agreement. For the avoidance of doubt, Diageo’s Guinness Foreign Extra Stout and Guinness Malta brands are excluded from, and do not form part of the Proposed Transaction;
- 1.14 **“Guinness Licensing Agreement”** means the agreement between SAB (as licensee) and Diageo (as licensor) in terms of which Diageo grants SAB rights in respect of the manufacture, marketing, distribution and sale of the Guinness Brands in South Africa;
- 1.15 **“Information Barriers Provisions”** means the information barriers provisions included in the Licensing Agreements regulating the flow of information between SAB and Diageo to avoid inappropriate exchanges of competitively sensitive information;
- 1.1 **“Independent FAB Producers”** means producers of South African owned and produced FABs brands with sales of 35 000 hectolitres or less annually in aggregate across all such brands;
- 1.2 **“Licensing Agreements”** means the Smirnoff Licensing Agreement and the Guinness Licensing Agreement;
- 1.3 **“Licensed Brands”** means the Smirnoff Brands and the Guinness Brands;
- 1.4 **“Outlet”** means licensed on- and off- consumption outlets;
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## NON-CONFIDENTIAL

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- 1.5 “**Parties**” means Diageo and SAB;
- 1.6 “**Proposed Transaction**” means the licensing by Diageo of the Licensed Brands to SAB, in accordance with the Licensing Agreements, and includes the transfer by Diageo to SAB of approximately 11,000 of Diageo’s branded coolers;
- 1.7 “**SAB**” means The South African Breweries (Proprietary) Limited, a private company incorporated in South Africa with registration number 1998/006375/07, and a subsidiary of ABinBev;
- 1.8 “**Specific Promotions**” means consumer-facing promotional offers available for a limited duration within a class of trade, not exceeding 2 (two) consecutive calendar months and with a minimum break from that promotional offer for 2 (two) consecutive calendar months thereafter;
- 1.9 “**Smirnoff RTD Brands**” means Smirnoff ready-to-drink brands licensed in terms of the Smirnoff Licensing Agreement, including Smirnoff Storm, Guarana, Spin, Pine Twist and Berry Twist;
- 1.10 “**Smirnoff Licensing Agreement**” means the agreement between SAB (as licensee) and Diageo (as licensor) in terms of which Diageo grants SAB the right to manufacture, market, distribute and sell the Smirnoff RTD Brands in South Africa;
- 1.11 “**South Africa**” means the Republic of South Africa;
- 1.12 “**Tribunal**” means the South African Competition Tribunal duly established in terms of section 26 of the Competition Act.

## **2. INFORMATION EXCHANGE**

- 2.1.1 The Parties shall honour and observe the terms of the Information Barriers Provisions for the Duration of the Licensing Agreements.
- 2.1.2 For clarity, the Information Barriers Provisions provide, inter alia, that:
- 2.1.2.1 the Parties shall limit the scope of confidential information disclosed to that which relates to the Licensed Brands and is reasonably required to achieve the objectives of the Licensing Agreements;
- 2.1.2.2 ABinBev and SAB and its employees, servants, agents, professional advisors or sub-contractors shall not disclose to Diageo any confidential information in respect of AB InBev and SAB's business, operations, brands or products beyond the scope of the Licensed Brands;
- 2.1.2.3 Diageo shall not disclose to ABinBev and SAB any confidential information in respect of Diageo's business, operations, brands or products outside the scope of the Licensed Brands; and
- 2.1.2.4 The Parties shall procure that any of their respective employees, servants, agents, professional advisors or sub-contractors that receive or disclose confidential information pursuant to the Licensing Agreements complies with the confidentiality provisions of the Licensing Agreements.

## **3. ACCESS TO COLD STORAGE AND REFRIGERATOR SPACE BY CIDER BRANDS**

- 3.1 SAB shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators are free until 10 October 2021 to provide at least 10% (ten percent) of the capacity of one such beverage cooler or refrigerator in such Outlets to South African owned and produced Cider brands of competing third parties.
- 3.2 This obligation shall include the Diageo Coolers.
- 3.3 The reservation of space in terms of this obligation is at the sole discretion of the Outlet owner or operator.

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**4. ACCESS TO COLD STORAGE AND REFRIGERATOR SPACE BY INDEPENDENT FAB PRODUCERS**

4.1 SAB shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators (including the Diageo Coolers) are free for the Duration of the Licensing Agreements to provide at least 10% (ten percent) capacity of each such beverage cooler or refrigerator in such Outlets to Independent FAB Producers. The reservation of space in terms of this obligation is at the sole discretion of the Outlet owner or operator.

**5. TYING OR BUNDLING**

5.1 For the Duration of the Licensing Agreements, SAB shall not engage in tying, bundling and/or incentive strategies that would require or induce a customer to purchase any Licensed Brands on condition that the customer also purchase clear beer ABI Brands, or vice versa.

5.2 Notwithstanding, SAB shall not be precluded from offering Specific Promotions in which the Licensed Brands and ABI Brands may be sold and promoted as part of a combined offering to consumers related to a specific marketing campaign.

**6. LOCAL PRODUCTION OF GUINNESS BRANDS**

6.1 SAB shall commence local draught production of the Guinness Brands if the feasibility threshold of [REDACTED] hectolitres per annum is reached within the first three years of the implementation of the Guinness Licensing Agreement.

**7. NOTICE OF CONDITIONS**

7.1 SAB shall provide a non-confidential copy of these Conditions within 1 (one) month of the Closing Date to all its customers and all the Outlets solely supplied by it with beverage coolers or refrigerators (including the Diageo Coolers).

7.2 SAB shall, within 1 (one) month of the Closing Date, publish a non-confidential version of the Conditions on its website for the Duration of the Licensing Agreements.

7.3 Within 3 (three) months of the Closing Date, and annually thereafter on 31 January for the Duration of the Licensing Agreements, SAB shall provide the Commission with an affidavit by a senior official of SAB attesting to compliance with clauses 7.1 and 7.2 of the Conditions and attach proof of such compliance.

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## NON-CONFIDENTIAL

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### 8. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 8.1 The Parties shall inform the Commission of the Closing Date within 5 (five) days of it becoming effective.
- 8.2 For the Duration of the Licensing Agreements, SAB shall on or before 31 January of each year provide a suitable and appropriately detailed annual report to the Commission regarding its compliance with these Conditions as follows:
- 8.2.1 In relation to Conditions 3 and 4 the detailed annual report must include the total number of coolers and refrigerators supplied by SAB (including the Diageo Coolers) countrywide with a provincial and/or regional breakdown, the amount of cooler or refrigerator space used by SAB's competitors and whether any third party has raised complaints to the Parties regarding access to fridge space.
- 8.2.2 In relation to Condition 5.2, the detailed annual report must include but is not limited to the number, type, duration, product categories and outlets within which the Specific Promotions have been run by SAB.
- 8.3 The Commission may request any additional information from the Parties that the Commission from time to time deems necessary from the monitoring of compliance with these Conditions.
- 8.4 An apparent breach by the Parties of the Conditions shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal, read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 8.5 All correspondence in relation to the Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).

### 9. VARIATION

- 9.1 Either or both of the Parties may at any time, on good cause shown, apply with or without the Commission's consent to the Tribunal for any of the conditions to be waived, relaxed, modified and /or substituted, provided that "good cause" shall not include any circumstances giving rise to the request for variation which are reasonably capable of being mitigated in another manner or which could reasonably have been foreseen at the Approval Date of these Conditions. The Commission shall be cited as a respondent in any such application and shall not be precluded from opposing such application.

## NON-CONFIDENTIAL

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- 9.2 The Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted. The merger parties shall be cited as respondents in any such application and shall not be precluded from opposing such application.