DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

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Competition Commission of South Africa

COMPLETION AND PUBLICATION OF THE IMPACT ASSESSMENT REPORT ON THE SOUTH AFRICAN BREWERIES AND DIAGEO MERGER CONDUCTED IN TERMS OF SECTION 21A OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED)

16 February 2024

Notice is hereby given that the Competition Commission ("the Commission") has published the Impact Assessment report on the South African Breweries (Pty) Ltd (SAB) Diageo plc (Diageo) merger on its website and the report is gazetted in terms of section 21A(3) of the Competition Act, 89 of 1998, as amended ("the Act"). The Impact Assessment Report is available at https://www.compcom.co.za

The Competition Commission has formally undertaken an impact assessment in terms of Section 21A of the Competition Act, No. 89 of 1998 (as amended) ("the Act"). The impact assessment considers aspects of the transaction involving SAB and Diageo approved by the Tribunal on 05 September 2019 and implemented in October 2019.

The transaction involved a license agreement concluded between SAB and Diageo in terms of which SAB would (i) acquire the rights to manufacture, distribute, market, and sell the Smirnoff and Guinness brands ("Licensed Brands") and (ii) acquire 11 000 Diageo SA coolers ("License Agreement").[1] The Commission's finding at the time, which was ultimately accepted by the Tribunal, was that despite the substantial concentration in the flavoured alcoholic beverages (FABs) market that would have eventuated from the merger, the predicted benefits of SAB's distribution relative to Diageo's distribution at the time meant that there would be no post-merger incentive for SAB to unilaterally increase the price of Smirnoff branded products given that the key driver of this transaction is SAB's intension to grow the Smirnoff ready to drink (RTD) brands. The strength of the assessment of unilateral effects meant that no conditions were ultimately applied to the merger in this respect. The expected efficiencies from Smirnoff were expected to control the pricing increases on SAB's other brands.

The Impact assessment found that the Smirnoff brand performed well post-merger in most aspects. Post-merger, Smirnoff saw price increases below most of its competitors and below CPI. Under these circumstances, consumer welfare is enhanced in that consumers have benefitted from reduced real prices or price increases below inflation for Smirnoff. This is while Smirnoff volumes grew by a higher rate than most of its competitors and this also resulted in higher revenue growth for Smirnoff. This can be attributed to wider SAB distribution network and marketing strategy implemented by SAB for Smirnoff. Smirnoff also assisted SAB in gaining market share and growing in the market more broadly. The muted price increases for Smirnoff means that the merger likely did not result in any anticompetitive effects for Smirnoff,

[1] South African Breweries Pty Ltd and Diageo South Africa Pty Ltd (Competition Tribunal, Case No: LM187Oct19) paragraph 2.

and this validates the Commission and Tribunal's conclusion that higher prices for Smirnoff were unlikely post-merger.

The Impact assessment also assessed the inflation rates of Smirnoff and SAB's other brands to ascertain if the expectation that the anticipated efficiencies from Smirnoff will control the pricing increases on SAB other brands was correct. The analysis found that the prices of Brutal Fruit and Flying Fish increased by higher rates than Smirnoff but lower than the Savanna brand (Distell). This put the question on the expectation that controlling Smirnoff volumes will also control SAB's pricing for other FABs. Engagements with SAB revealed that it took a strategic decision to limit the price increases of Smirnoff which was priced higher than other FABs. This explains the lower price increases implemented for Smirnoff as compared to Brutal Fruit and Flying Fish implemented price changes.

As part of the conditions, SAB was to provide up to 10% of fridge space to South African owned and produced cider brands of competitors and independent FAB producers. As detailed in the report, the impact assessment found that this condition was ultimately not useful, as stakeholder submissions show it was not utilised or was utilised but not made a material difference to the competitive positions of others. Furthermore, the Impact assessment found that this condition was difficult to monitor, a point indicated by SAB and some competitors. It was thus difficult to determine if the fridge conditions were ultimately successful.

The SAB Diageo Impact Assessment report is available on the Commission's website.[2]

[2] http://www.compcom.co.za