



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM211Jan16/VAR136Oct16

In the matter between:

ANHEUSER-BUSCH INBEV SA/NV
SABMILLER PLC

("the merging parties")

Applicant
Second Applicant

And

THE COMPETITION COMMISSION OF SOUTH AFRICA
THE MINISTER OF ECONOMIC DEVELOPMENT
DISTELL GROUP LIMITED
HEINEKEN SOUTH AFRICA (PROPRIETARY) LIMITED
FOOD AND ALLIED WORKERS UNION
RE JA ROTLHE TAVERNERS ASSOCIATION
SOUTH AFRICAN SMME FORUM
AGENCY FOR NEW AGENDA AND
BLACK BUSINESS FORUM
GRAIN SA

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent

Eighth Respondent
Ninth Respondent

In re: the large merger between:

ANHEUSER-BUSCH INBEV SA/NV
And
SABMILLER PLC

Acquiring Firm

Target Firm

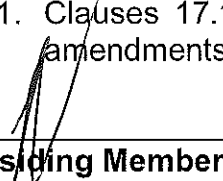
Panel : N Manoim (Presiding Member)
I Valodia (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 16 November 2016
Decided on : 16 November 2016

NON- CONFIDENTIAL ORDER¹

On application by the merging parties, in terms of section 66(1)(b) and (c) of the Competition Act, 89 of 1998, the Tribunal orders the following:

1. Clauses 17.1.1; 1.2.34; 7.3; 17.3; 20.3; 20.4; 20.6 are amended as per the amendments reflected in annexure SV1, attached hereto.


Presiding Member
Mr N Manoim

Concurring: Prof. I Valodia and Ms A Ndoni

16 November 2016
Date

¹ This is the second amendment to the order approved on 30 June 2016. The first amendment was approved on 4 August 2016.

SVI

ANNEXURE A: CONDITIONS

CC CASE NUMBER: 2015Dec0690

CT CASE NO: LM211JAN16(023282)

ANHEUSER-BUSCH INBEV SA/NV

Primary Acquiring Firm

and

SABMILLER plc

Primary Target Firm

**CONDITIONS TO THE APPROVAL OF THE MERGER (NON-CONFIDENTIAL
VERSION)**

1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings to the clauses of these Conditions are for reference purposes only and shall in no way govern or affect the interpretation of or modify or amplify the terms of these Conditions or any clause hereof.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings assigned to them and cognate expressions shall bear corresponding meanings -
- 1.2.1 **"AB InBev"** means the acquiring firm Anheuser-Busch InBev SA/NV, a public limited company incorporated in Belgium, or Newco, as the case may be; and where the context so requires, means the relevant South African businesses and companies forming part of the AB InBev group of companies after implementation of the Proposed Transaction;
- 1.2.2 **"AB InBev Investment"** has the meaning given to the term in clause 15.1;

- 1.2.3 **[CONFIDENTIAL];**
- 1.2.4 **"AmBev"** means Companhia de Bebidas das Américas a public limited company incorporated under the laws of the Federative Republic of Brazil listed on the Sao Paulo Stock Exchange and with American depositary receipts in the New York Stock Exchange. AmBev is a subsidiary of AB InBev;
- 1.2.5 **"Agreement"** means the written agreement entered into between AB InBev and Government in respect of the Proposed Transaction and signed by the Parties on or about the Signature Date, as amended from time to time by agreement reduced to writing;
- 1.2.6 **"AJC"** means apple juice concentrate;
- 1.2.7 **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate (Form CT10) in relation to this Proposed Transaction;
- 1.2.8 **"BBBEE"** means broad based Black economic empowerment as contemplated in the Broad Based Black Economic Empowerment Act, No. 53 of 2003;
- 1.2.9 **"Black"** shall have the meaning set out in the Broad Based Black Economic Empowerment Act, No. 53 of 2003;
- 1.2.10 **"Belgium"** means the Kingdom of Belgium;
- 1.2.11 **"Cider"** means a fermented alcoholic beverage with a minimum of 80% of fermentable sugars derived from apples or AJC;
- 1.2.12 **"Closing Date"** means the date on which the Proposed Transaction completes in accordance with its terms. For avoidance of doubt, this date is the implementation date of the overall transaction;
- 1.2.13 **"Cold Space"** means the coolers, cold-rooms and, refrigerators in Outlets;

- 1.2.14 **"Coleus"** means Coleus Packaging (Pty) Ltd, a private company registered in accordance with the company laws of the Republic of South Africa;
- 1.2.15 **"Coleus Conditions"** means the conditions of the Coleus Merger approval;
- 1.2.16 **"Coleus Merger"** means the merger whereby SABMiller established control over Coleus and notified under case number Tribunal Case No. 75/LM/Oct02;
- 1.2.17 **"Commercial Farmers"** mean established farmers who engage in the production of crops for sale, on a medium-to-large scale, and using advanced technology and methods and who are suppliers of SABMiller or may be contracted as suppliers to the Merged Entity;
- 1.2.18 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.2.19 **"Competition Act"** means the Competition Act 89 of 1998 as amended;
- 1.2.20 **"Competitively Sensitive Information"** includes, but is not limited to, any and all such information relating to:
- 1.2.20.1 pricing – including but not limited to pricing of specific products, prices/discounts offered to specific clients and planned price reductions or increases;
- 1.2.20.2 margin information by product or client;
- 1.2.20.3 cost information for particular products;
- 1.2.20.4 information on specific clients and client strategy, including information with respect to the sales volumes of clients; and

- 1.2.20.5 business plans and marketing strategies;
- 1.2.21 **"Conditions"** means the conditions set out herein, agreed to by the Merging Parties and the Commission;
- 1.2.22 **"DAFF"** means the Department of Agriculture, Forestry and Fisheries of South Africa;
- 1.2.23 **"DGB"** means DGB (Pty) Ltd, a private company registered in accordance with the company laws of the Republic of South Africa;
- 1.2.24 **"DGB Distribution Agreement"** means the distribution agreement between AB InBev and DGB concluded on 31 January 2015, as amended from time to time;
- 1.2.25 **"Distell"** means Distell Group Limited, an investment holding company listed on the JSE;
- 1.2.26 **"Distell Shareholding"** means the 26.5% shareholding interest held by SAB South Africa in Distell which shall be indirectly acquired by AB InBev post implementation of the Proposed Transaction;
- 1.2.27 **"Divestiture"** means the transfer of the Distell Shareholding to one or more Purchaser(s);
- 1.2.28 **"DTI"** means the Department of Trade and Industry of South Africa;
- 1.2.29 **"EDD"** means the Economic Development Department of South Africa;
- 1.2.30 **"Emerging Farmers"** mean subsistence farmers or small-scale farmers who are attempting to become Commercial Farmers or such additional category of farmers as may be approved by the Implementation Board for purposes of any additional programmes and who are contracted as suppliers to SABMiller or may be contracted as suppliers to the Merged Entity;

- 1.2.31 **"Government"** means the Government of the Republic of South Africa; in particular the EDD, DAFF and DTI, duly represented by their respective Directors General;
- 1.2.32 **"Hay Grade 12"** means grade 12 in terms of the grading system utilised and developed by the Hay Group, a job evaluation consultancy firm. The Hay Grade 12 includes the following: specialised, skilled, technical specialist and senior supervisory. The range of salaries for employees in Hay Grade 12 in 2016 is from R211 618 to R317 427, with a mid-point of R264 523;
- 1.2.33 **"Implementation Board"** has the meaning given to the term in clause 16.3;
- 1.2.34 **"Input Products"** includes but is not limited to glass bottles, cans, ends, crowns, paper labels, packaging, crates, kegs and raw materials required for beer and cider production such as malted barley, hops and other grains;
- 1.2.35 **"JSE"** means the JSE Limited;
- 1.2.36 **"Merger" or "Proposed Transaction"** means the acquisition of control over SABMiller by AB InBev of the entire issued and to-be-issued share capital of SABMiller, as contemplated in the transaction notified to the Commission under Commission case number 2015Dec0690;
- 1.2.37 **"Merged Entity"** means the enlarged group post implementation of the Proposed Transaction comprising Newco and all subsidiaries of AB InBev and SABMiller for which Newco will be the holding company;
- 1.2.38 **"Merging Parties"** means AB InBev and SABMiller;
- 1.2.39 **"Newco"** means the Belgian limited liability company to be formed for purposes of the Proposed Transaction, which will be the surviving entity pursuant to a merger of AB InBev and Newco in terms of

Belgian Companies Code and the new holding company for the combined AB InBev-SABMiller group;

- 1.2.40 "Outlet" includes licensed on- and off- consumption outlets;
- 1.2.41 "Parties" means the parties to the Agreement with Government, being EDD, the DAFF, the DTI and AB InBev and their respective successor bodies and/or permitted transferees;
- 1.2.42 "Pepsi" means PepsiCo, Inc. a United States publically registered company listed on the New York Stock Exchange;
- 1.2.43 "Private Sale" means [CONFIDENTIAL];
- 1.2.44 "Purchaser" means an independent third party, which is not directly or indirectly related or affiliated to the Merged Entity;
- 1.2.45 "R" or "rand" means the lawful currency of South Africa;
- 1.2.46 "R&D" means research and development;
- 1.2.47 "SABBI" means the South African Barley Breeding Institute;
- 1.2.48 "SABMiller" means SABMiller plc, a public limited company incorporated in England and Wales with company number 03528416;
- 1.2.49 "SAB South Africa" means The South African Breweries Proprietary Limited, a private company incorporated in South Africa with registration number 1998/006375/07, and its successor body and/or permitted transferee after the Closing Date and includes its subsidiaries;
- 1.2.50 "Shareholders Agreement" means the current shareholders agreement in respect of Distell;
- 1.2.51 "Signature Date" means the date on which the last of the Parties signed the Agreement, being 4 May 2016;

- 1.2.52 **"Small Beer Producers"** means producers of South African owned and produced beer brands with sales of 200,000 hectolitres or less per annum and includes craft beer brewers;
- 1.2.53 **"South Africa"** means the Republic of South Africa;
- 1.2.54 **"Suppliers"** include but are not limited to South African farmers and South African manufacturers of Input Products;
- 1.2.55 **"TCCC"** means The Coca-Cola Company, a United States publically registered company listed on the New York Stock Exchange;
- 1.2.56 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.2.57 **"Zenzele Scheme"** means the BBBEE scheme established by SABMiller in South Africa in 2010.
- 1.3 In these Conditions and its interpretation:
- 1.3.1 references to a statute or statutory provision include any subordinate legislation made from time to time thereunder and include that statute or statutory provision as modified or re-enacted from time to time;
- 1.3.2 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.3.3 unless inconsistent with the context, the *eiusdem generis* rule shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 1.3.4 account shall be taken of the purpose of these Conditions and the objectives listed in the Recordal and the long term best interest of South Africa.

2. RECORDAL

- 2.1 The Merging Parties notified a large merger to the Commission on 14 December 2015 in terms of which AB InBev intends to acquire the entire issued and to-be-issued share capital of SABMiller. The Proposed Transaction will be implemented by means of the acquisition of the entire issued and to-be-issued share capital of SABMiller by Newco, a Belgian company to be formed for purposes of the transaction and a merger of AB InBev into Newco.
- 2.2 Newco (as the surviving entity pursuant to the merger) will be the new holding company of the enlarged group (comprising AB InBev's former subsidiaries and subsidiary undertakings and SABMiller and its subsidiaries and subsidiary undertakings). Upon implementation of the Proposed Transaction, AB InBev will have sole control over SABMiller.
- 2.3 Upon analysis of the Merger, the Commission has identified several competition and public interest concerns. These concerns relate to *inter alia* the following:
- 2.3.1 AB InBev's shareholding in Distell may aid and facilitate tacit collusion post-merger in that it creates a platform for the exchange of Competitively Sensitive Information and dampening of potential competition that would occur between AB InBev and Distell in the ciders market in South Africa. SAB South Africa currently owns the Distell Shareholding, which will be indirectly acquired by AB InBev post implementation of the Proposed Transaction. Arising from this shareholding the Commission is concerned that AB InBev would have access to Distell's Competitively Sensitive Information. The Commission is further concerned that this Competitively Sensitive Information would be used by AB InBev, who post-merger will have more cider products in its portfolio, to either chill competition in the market or against Distell;
- 2.3.2 the potential exchange of Competitively Sensitive Information arising from the bottling arrangements between the Merged Entity and

TCCC; and AB InBev (through AmBev, a subsidiary of AB InBev based in Brazil) and Pepsi elsewhere in the world particularly in South America. The Commission has found that AB InBev bottles for Pepsi through AmBev whilst SABMiller bottles for Coca-Cola in the global market. Post-merger, AB InBev will bottle for both firms. There is therefore a potential for collusion via the exchange of Competitively Sensitive Information;

2.3.3 the Proposed Transaction may be used to foreclose downstream rivals of the Merged Entity who require tin plate metal crowns which are supplied by Coleus (a subsidiary of SAB South Africa which is a dominant producer of tin metal plate crowns);

2.3.4 local Suppliers of Input Products including glass bottles, cans, ends, crowns, paper labels, kegs and raw materials required for beer production such as malted barley, hops and other grains may be foreclosed in light of the fact that SAB South Africa is a substantial purchaser and post-implementation of the Proposed Transaction AB InBev may invest in its own inputs or resort to imports thereby terminating agreements with Suppliers;

2.3.5 the Proposed Transaction may have an adverse effect on the security of supply of hops and malt to Small Beer Producers. The Commission found that SAB South Africa is the only domestic supplier of hops and malt. The only alternative is imports which are not economically viable especially in respect of hops. Small Beer Producers rely heavily on SAB South Africa for the supply of hops and malt;

2.3.6 the Proposed Transaction will affect the local supply of AJC;

2.3.7 foreclosure concerns relating to competing third parties and Small Beer Producers' access to cold storage and refrigerator space. In particular there is concern that Small Beer Producers would be foreclosed from accessing cold storage and refrigerator space owned by the Merged Entity. Post-implementation of the Proposed

Transaction, the Merged Entity may require additional cold storage and refrigerator space.

2.3.8 the Proposed Transaction may have a negative impact on agreements with owner-drivers through the termination and/or the change in terms and conditions of such agreements with SAB South Africa;

2.3.9 the dilution of shares held by Black economic empowerment participants in the Zenzele Scheme; and

2.3.10 public interest concerns relating to potential job losses arising from the Merger. In addition to job losses within the Merged Entity, the Commission is concerned that AB InBev may cancel its existing distribution agreement with its sole distributor DGB as a result of the Proposed Transaction. This may lead to DGB's employees also being retrenched.

2.4 In order to remedy the competition and public interest concerns arising from the Proposed Transaction as identified by the Commission (although the Merging Parties do not concede that these concerns are valid), the Merging Parties hereby agree to these Conditions.

2.5 In addition, AB InBev has engaged with the Minister of Economic Development ("the Minister"), pursuant to his public interest mandate in terms of section 18(1) of the Competition Act, which allows the Minister to participate in merger proceedings. The Minister raised a variety of public interest concerns with the merger. Subsequently EDD, together with DAFF and the DTI entered into an agreement with the aim of addressing these public interest concerns. The Agreement was filed with the Commission as a joint submission by the Merging Parties and the abovementioned government departments.

2.6 Against the background of the foregoing:

2.6.1 AB InBev places on record that it –

- 2.6.1.1 has a long term commitment to its investment in the South African economy; and
- 2.6.1.2 wishes to advance the well-being of South Africa.
- 2.6.2 AB InBev acknowledges the importance of promoting growth, development and competition in South Africa and protecting the interests of the various stakeholders of SAB South Africa including –
 - 2.6.2.1 the South African employees;
 - 2.6.2.2 the South African suppliers, distributors and consumers;
 - 2.6.2.3 the South African Emerging Farmers and Commercial Farmers;
 - 2.6.2.4 South African small businesses; and
 - 2.6.2.5 the South African society in general including complying with the letter and spirit of South African tax laws.
- 2.6.3 AB InBev has, accordingly, agreed to provide numerous undertakings to achieve the objectives listed in clauses 2.6.1 and 2.6.2 above.
- 2.6.4 AB InBev specifically acknowledges that, in implementing the various undertakings it has given in terms of these Conditions, such undertakings shall be implemented –
 - 2.6.4.1 in the spirit in which they have been given and in order to ensure that these Conditions achieve the objectives of Government as recorded in these Conditions and acknowledged by AB InBev;
 - 2.6.4.2 so as to ensure that the Proposed Transaction will be of nett benefit to South Africa.
- 2.7 Furthermore, and specifically as a commitment to fundamental values with regard to the undermentioned matters:

- 2.7.1 in the context of localisation of supply inputs, AB InBev commits to maximizing local inputs used in the production of beer and cider to deepen the industrialisation of South Africa and help create employment;
- 2.7.2 in the context of BBBEE, AB InBev commits to endeavouring to ensure that Black South Africans find opportunities as investors, suppliers and employees in South Africa. Further, AB InBev recognises and supports the Zenzele Scheme and its objective of providing long-term economic benefits to a broad range of previously disadvantaged South Africans;
- 2.7.3 in the context of employment, AB InBev commits to endeavouring to protect and develop a South African supplier base and build constructive relationships with representatives of employees and recognise fair labour practices; and
- 2.7.4 in the context of South African small business and youth, AB InBev commits to seeking appropriate opportunities to harness their potential and to enhance their participation in the South African economy.
- 2.8 AB InBev undertakes to make investments (as set out in clause 15 below, referred to as the "AB InBev Investment") to be disbursed on programmes in South Africa having the following objectives:
 - 2.8.1 agricultural development;
 - 2.8.2 enterprise development by establishing and managing an enterprise development programme;
 - 2.8.3 promoting local manufacturing, exports and jobs;
 - 2.8.4 contributing to the improvement of society in general through sustainability and educational initiatives; and

- 2.8.5 such additional or alternative programmes as may be approved from time to time by the Implementation Board to be constituted in terms of clause 16.3 below.

3. Soft Drinks Business

It is recorded that the soft drinks operations of SAB South Africa, presently conducted by ABI Bottling (Pty) Ltd, are about to be merged with various other soft drinks bottling interests under a transaction approved by the Competition Tribunal on 10 May 2016, under case number LM243Mar15, (the "**Bottling Transaction**"). In terms of the Bottling Transaction, a new firm, Coca-Cola Bottling Africa (Pty) Ltd ("**CCBA**") will be created, with South African subsidiaries, Coca-Cola Bottling Southern Africa (Pty) Ltd ("**CCBSA**") and Appletiser (SA) (Pty) Ltd ("**Appletiser**"). SABMiller will exercise a controlling interest in CCBA. It is recorded and acknowledged that the Bottling Transaction has been approved by the Competition Tribunal, subject to its own separate conditions, and accordingly that the conditions contained in clauses 6, 7, 9, 10 and 11 of these Conditions only apply to the beer and cider businesses of SAB South Africa, and shall not in any way apply to the activities conducted by CCBA, CCBSA and Appletiser.

CONDITIONS

4. DIVESTITURE OF DISTELL SHAREHOLDING

4.1 *Divestiture*

- 4.1.1 The Merged Entity shall divest of the Distell Shareholding
[CONFIDENTIAL]

5. EXCHANGE OF COMPETITIVELY SENSITIVE INFORMATION

- 5.1 For as long as AB InBev bottles for TCCC in Africa and AmBev bottles for Pepsi elsewhere in the world, AB InBev shall apply measures to ensure that there is no exchange of Competitively Sensitive Information between TCCC and Pepsi.

5.2 The measures referred to in clause 5.1 above include but are not limited to the following:

5.2.1 employees of the Merged Entity that are involved in the Merged Entity's bottling operations for TCCC in South Africa shall not also be involved in AmBev's bottling operations for Pepsi, and *vice versa*;

5.2.2 employees of the Merged Entity involved in its bottling operations in relation to TCCC shall sign undertakings not to share Competitively Sensitive Information with employees of the Merged Entity involved in its bottling operations in relation to Pepsi, and *vice versa*; and

5.2.3 the Merged Entity will implement internal training to ensure that its employees that are involved in its bottling operations in relation to TCCC and Pepsi are aware of and understand the provisions of the Competition Act that are relevant to the exchange of Competitively Sensitive Information between competitors, including section 4 of the Competition Act (restricted horizontal practices) in particular.

5.3 The measures referred to in clause 5.1 above are to be incorporated into a compliance programme to be submitted to the Commission with 1 (one) month of the Closing Date.

6. SUPPLY OF TIN METAL CROWNS

6.1 For as long as the Merged Entity controls Coleus, and subject to the Coleus Conditions, the Merged Entity shall ensure that Coleus will continue to supply third parties with tin metal crowns on reasonable, non-discriminatory and market-related terms.

6.2 The Merged Entity shall not enter into any exclusive agreements with Coleus for the supply of tin metal crowns.

6.3 The Merged Entity shall not in any way induce Coleus not to deal with or supply third parties with tin metal crowns.

7. ACCESS TO COLD STORAGE AND REFRIGERATOR SPACE

- 7.1 It is hereby recorded that the allocation of space within Outlets is the sole discretion of the outlet owner or operator.
- 7.2 The Merged Entity will not preclude or induce any Outlet from offering non-Merged Entity owned ambient and Cold Space and non-Merged Entity owned refrigerator space to competing third parties (Ambient space to include shelving, floor space and storage). This restriction shall not apply to an event sponsored by the Merged Entity, for the duration of such event.
- 7.3 The Merged Entity shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators are free for a period of 5 (five) years from the Closing Date to provide at least 10% (ten percent) capacity of one such beverage cooler or refrigerator in such Outlets to South African owned and produced cider brands of competing third parties.
- 7.4 The Merged Entity undertakes to develop and implement an internal compliance programme to ensure that all of its employees responsible for the formulation and operation of its beverage refrigerator and cooler policies in South Africa after the implementation of the Proposed Transaction, are aware of and understand the provisions of the Competition Act including sections 5 (restrictive vertical practices) and 8 (abuse of dominance) of the Competition Act in particular.
- 7.5 The compliance programme will be developed in conjunction with external competition lawyers and economists, within 90 (ninety) days of the Closing Date. The compliance programme shall be submitted to the Commission within 6 (six) months after the Closing Date. The first compliance programme will be implemented within 1 (one) year of the Closing Date.

8. EMPLOYMENT

- 8.1 The Merged Entity shall not retrench any employee in South Africa as a result of the Merger.
- 8.2 Where the merging parties retrench any employee in South Africa:
- 8.2.1 at any time after the Signature date, but within a period of 5 years after the Closing Date, the retrenchment will be presumed to be as a result of the Merger, unless the Merged Entity can demonstrate otherwise; or
- 8.2.2 after 5 years of the Closing Date, the retrenchment will be presumed not to be as a result of the Merger, unless the employee concerned can demonstrate otherwise.
- 8.3 It is recorded that retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.
- 8.4 In light of the fact that the employment levels within the Merged Entity may change as a result of *inter alia* voluntary separation arrangements and non-merger specific retrenchments, the Merged Entity shall ensure, for a period of 5 (five) years as from the Closing Date, that it will maintain in its beer and cider business in South Africa at least the number of SABMiller group employees that are permanently employed in its beer and cider businesses in South Africa as at the Closing Date.
- 8.5 Without derogating from the provisions of clause 8.4 above, any voluntary separation arrangements with employees of the Merged Entity in its beer and cider businesses in South Africa during this period of 5 (five) years as from the Closing Date will be within the category of Hay Grade 12 and above.
- 8.6 In respect of DGB, the Merged Entity shall offer employment to those employees of DGB that may be retrenched as a direct result of AB InBev's

termination of the DGB Distribution Agreement. For the avoidance of doubt, such employees shall not be counted towards the number of employees referred to in clause 8.4 above.

- 8.7 With regard to clause 8.6 above, the Merged Entity shall provide the Commission with a report within 1 (one) year from the Closing Date and thereafter on an annual basis for a period of 5 (five) years, setting out the number of DGB employees that have lost their jobs and been employed by the Merged Entity as a result of this Merger.

9. SUPPLIERS OF INPUT PRODUCTS

- 9.1 The Merged Entity shall continue SAB South Africa's policy and practice of maximizing local production of beer and cider and local sourcing of related inputs into such production. To this end, the Merged Entity shall ensure that SAB South Africa maintains or improves at least the same ratio of local production and procurement of Input Products in South Africa as applies at the Approval Date, provided that products can be procured at the appropriate quality and on reasonably competitive commercial terms. For purposes of the procurement of barley, the ratio of local production and procurement as applies at the Approval Date, shall be determined by having regard to the procurement levels attained in any of the 2014, 2015 and 2016 seasons and using the highest.
- 9.2 The Merged Entity shall comply with the terms and conditions of SABMiller's existing supply agreements with Suppliers. For the avoidance of doubt this shall apply to both written and oral supply agreements.
- 9.3 The Merged Entity shall not enter into new exclusive supply arrangements in favour of the Merged Entity (or renew existing exclusive supply agreements) with raw material Suppliers (including Emerging Farmers or Commercial Farmers referred to in clause 17.1) which prohibits those Suppliers from dealing with Small Beer Producers.

10. SMALL BEER PRODUCERS

- 10.1 The Merged Entity shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators are free to provide at least 10% (ten percent) capacity of 1 (one) such beverage cooler or refrigerator in such Outlet, to the beer products of Small Beer Producers. For the avoidance of doubt, such 10% (ten percent) capacity shall be additional to the 10% (ten percent) capacity referred in clause 7.3 above, for the 5 (five) year period referred to in such clause.
- 10.2 The Merged Entity shall support and promote Small Beer Producers. In order to address any concerns raised by Small Beer Producers regarding the supply of Input Products, the Merged Entity shall:
- 10.2.1 continue to supply hops that are currently supplied by SABMiller to Small Beer Producers on the same terms and conditions as currently offered by SABMiller or otherwise on reasonable commercial terms; and
- 10.2.2 in respect of other Input Products, the Merged Entity shall, for a period of 5 (five) years from the Closing Date, continue to supply other Input Products that are currently supplied by SABMiller to Small Beer Producers on the same terms and conditions as currently offered by SABMiller or otherwise on reasonable commercial terms.
- 10.3 For the avoidance of doubt, the condition in clauses 10.1 and 10.2.1 above shall endure in perpetuity.

11. AJC

- 11.1 Should the Merged Entity require AJC for the local production (including local fermentation) of any alcoholic beverage products to be sold under existing AB InBev brands or new Merged Entity brands, in excess of an amount of 1 (one) million litres of AJC per annum, the Merged Entity shall procure any such excess AJC requirements for the production of such products from imports of AJC, or from local sources of AJC derived from

any incremental apple production in South Africa brought about by the investment of the Merged Entity.

11.2 The amount of 1 (one) million litres is to grow on a linear basis by equal annual increments to a maximum of 3 (three) million litres after a period of 5 (five) years and 5 (five) million litres after a period of 10 (ten) years from the date of first production of any of these alcoholic beverage products in South Africa.

11.3 From the 11th (eleventh) year after the date of first production of these alcoholic beverage products, there shall be no further restriction on the Merged Entity's procurement of AJC.

12. AGREEMENTS WITH OWNER DRIVERS

The Merged Entity shall comply with the terms and conditions of the current agreements that exist between SAB South Africa and owner-drivers.

13. ZENZELE SCHEME

The Merged Entity shall, by no later than 2 (two) years after the Closing Date, present to Government (through the office of the EDD) and the Commission an outline of its Black economic empowerment plans to be adopted following the maturation of the Zenzele Scheme in 2020 (or such other date as agreed to by the parties to the Zenzele Scheme), with the objective of maintaining Black participation, including equity, but subject always to taking into account prevailing Government policy and legislation at the time.

14. REGIONAL HEAD OFFICE

Consistent with AB InBev's long term commitment to invest in the South African economy, AB InBev agrees that its regional head office for Africa will be located in, and its operations will be managed and directed from, South Africa.

15. THE AB INBEV INVESTMENT

15.1 AB InBev shall make available over a 5 (five) year period commencing on the Closing Date an aggregate amount of R1,000,000,000.00 (one billion

rand) (the "AB InBev Investment") for investment in the programmes in South Africa provided for in these Conditions or such additional or alternative programmes as may be approved by the Implementation Board.

15.2 The AB InBev Investment shall be disbursed equally over 5 (five) years.

15.3 The AB InBev Investment shall be disbursed to investments in the following programmes:

15.3.1 Agricultural Development (referred to in clause 17 below) in the amount of R610,000,000.00 (six hundred and ten million rand);

15.3.2 Enterprise Development (referred to in clause 18 below) in the amount of R200,000,000.00 (two hundred million rand); and

15.3.3 South African Societal Benefits in the amount of R190,000,000.00 (one hundred and ninety million rand) which shall include without being limited to -

15.3.3.1 supporting the development of alternative energy for use in AB InBev's South African operations;

15.3.3.2 supporting education around and the use of alternative energy by South African communities;

15.3.3.3 promoting a more comprehensive sustainability programme aimed at reducing waste, encouraging recycling, and preserving water in South Africa;

15.3.3.4 funding 40 (forty) scholarships for South African engineering and agronomy students;

15.3.3.5 sponsoring 200 (two hundred) additional learnerships to support South African individuals who have no formal education and are unemployed, which will allow them to grow in the business;

- 15.3.3.6 introducing and promoting new no-alcohol and lower alcohol products to the South African market to encourage consumers to make lower alcohol choices, including through brewing these products locally.
- 15.4 Subject to the provisions of these Conditions, the entire AB InBev Investment shall be utilised in accordance with these Conditions.
- 15.5 For the avoidance of doubt, the Merged Entity shall utilise the full AB InBev Investment within 5 (five) years.
- 15.6 The AB InBev Investment referred to in clause 15.1 above will be in addition to the R1,100,000,000.00 (one billion one hundred million rand) which SABMiller has already estimated as being the projected spend on transformation and development initiatives in South Africa over the next 5 (five) financial years.

16. MANAGEMENT OF THE AB INBEV INVESTMENT

- 16.1 Responsibility for the management of the AB InBev Investment shall vest in AB InBev, subject to the provisions of these Conditions.
- 16.2 The AB InBev Investment shall be utilised for the specific types of programmes referred to in clause 2.8 above, subject to the potential introduction of such additional or alternative programmes as may be approved by the Implementation Board (described in clause 16.3 below).
- 16.3 An implementation board (referred to as the "**Implementation Board**"), comprising representatives of the Parties having sufficient expertise to give guidance in relation to the specific types of programmes referred to in these Conditions, shall be constituted within 60 (sixty) days after the Closing Date as follows:
- 16.3.1 3 (three) representatives appointed by AB InBev (which may remove and replace such appointees); and

- 16.3.2 3 (three) representatives appointed by Government, originally being 1 (one) appointee of each of EDD, DAFF and the DTI, or their successor departments with responsibility for economic development, agriculture and trade and industry respectively, with Government being entitled to remove and replace each such appointee.
- 16.4 The chairperson of the Implementation Board shall be jointly agreed between the Parties. The Parties shall appoint a chairperson who is independent and non-voting in respect of decisions of the Implementation Board.
- 16.5 The Implementation Board shall meet as and when it so determines, but not less than once per annum, and shall:
- 16.5.1 be entitled to call for and receive reports from AB InBev regarding the implementation of these Conditions in respect of the AB InBev Investment;
- 16.5.2 consult with and make recommendations to AB InBev on the implementation of these Conditions in respect of the AB InBev Investment;
- 16.5.3 give guidance into which programmes the AB InBev Investment shall be invested and approve any additional or alternative programmes to be funded by the AB InBev Investment as envisaged in clause 16.2 above; and
- 16.5.4 when considering matters, at all times be guided by the achievement of the objectives listed in these Conditions and the best long term interests of South Africa.
- 16.6 At least fourteen days' written notice of a meeting of the Implementation Board shall be given by any member. The quorum required for a meeting shall be at least one representative of Government and one from AB InBev.

- 16.7 Decisions of the Implementation Board shall ideally be taken by unanimous consent but may be taken by simple majority vote. In the event of a vote, each member of the Implementation Board shall have 1 (one) vote. The chairperson shall not have a vote. In the event that the Implementation Board does not approve any decision proposed by any member of the Implementation Board or any Party, any three members of the Implementation Board shall be entitled by written resolution to escalate such proposal for resolution in accordance with the terms of the Agreement.
- 16.8 AB InBev shall ensure that, within 4 (four) months of each financial year end of AB InBev, a performance report is prepared by an independent chartered accountant and submitted to the Implementation Board and the Commission reporting on the investments made by AB InBev in terms of these Conditions. This report shall include statements on whether the expenditure incurred was aligned with the objectives of the AB InBev Investment and whether the spending did attain or assist materially in meeting the objectives of these Conditions.

17. AGRICULTURAL DEVELOPMENT

- 17.1 AB InBev shall invest R610,000,000.00 (six hundred and ten million rand) of the AB InBev Investment:
- 17.1.1 to develop the capacity of 800 (eight hundred) new Emerging Farmers, and further develop the capacity of 20 (twenty) new Commercial Farmers to increase local barley production in South Africa to add 475,000 (four hundred and seventy five thousand) tonnes of barley to be malted (in contrast to the *status quo* in 2015 where South Africa was a nett importer of 75,000 (seventy five thousand) tonnes of barley), with the strategic intent of creating at least 2,600 (two thousand six hundred) new jobs in South Africa in the businesses of such new Emerging Farmers and Commercial Farmers;

- 17.1.2 to expand Emerging Farmer participation across barley, maize and hops production in South Africa from 120 (one hundred and twenty) Emerging Farmers in 2015 to 920 (nine hundred and twenty) Emerging Farmers by 2020;
- 17.1.3 to expand Commercial Farmer participation across barley, maize and hops production in South Africa from 520 (five hundred and twenty) Commercial Farmers in 2015 to 540 (five hundred and forty) Commercial Farmers by 2020;
- 17.1.4 in order to strengthen the South African technological and innovation base, to invest in and utilise R&D and technology developed by, in or for South Africa, to improve the productivity of Emerging Farmers and Commercial Farmers (including, by way of example, partnering with the SABBI);
- 17.1.5 to increase barley and hops production and processing capacity in South Africa and include alternate crops through necessary rotation with a focus on maize; and
- 17.1.6 to create new business opportunities complementary to the activities of AB InBev's model farms, Emerging Farmers and Commercial Farmers, including agro-production, processing, storage, logistics and transportation, marketing, and seed/fertilizer/chemical distribution. Where possible, the AB InBev Investment will be aligned with Government's policy in respect of rural development and land reforms, such as Government's current objective to establish Agri-Parks in all of South Africa's District Municipalities, as part of its Rural Economic Transformation imperative and the agro-processing strategy of the Industrial Development Corporation Limited.
- 17.2 The Parties agree that in order for AB InBev to implement certain of the initiatives referred to in clauses 17.1.1 to 17.1.6 of these Conditions, various deliverables may have to be facilitated by the Government (which may include the provision of adequate land, water rights and irrigation and power infrastructure to the farmers included in the programmes).

17.3 Should any deliverables required in order for AB InBev to implement certain of the initiatives referred to in clauses 17.1.1 to 17.1.6 of these Conditions not be available, AB InBev will develop alternative initiatives to achieve the original strategic intent after consultation with the other Parties. Failing agreement between AB InBev and the other Parties on the nature and scope of such alternative initiatives within 30 (thirty) days of AB InBev initiating such consultations, the matter will be referred to the Implementation Board for a decision by majority vote within a further 30 (thirty) days. Failing such a decision by the Implementation Board, the matter will be referred to for resolution in accordance with the terms of the Agreement, it being understood that no decision ~~in that clause~~ taken pursuant to such resolution shall have the effect of changing the overall financial commitment of AB InBev in terms of these Conditions.

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18. ENTERPRISE DEVELOPMENT

- 18.1 AB InBev shall invest R200,000,000.00 (two hundred million rand) of the AB InBev Investment to:
- 18.1.1 establish a dedicated business incubator facility;
 - 18.1.2 provide existing South African suppliers, new South African suppliers and certain South African entrepreneurs in adjacent businesses with training to develop skills in accounting, finance, planning, strategy, communications, advertising and human resources;
 - 18.1.3 employ 10 (ten) dedicated business coaches to support existing South African suppliers and new entrepreneurs;
 - 18.1.4 employ 10 (ten) dedicated engineers to support supplier development activities in South Africa;
 - 18.1.5 stimulate existing and new supplier development in South Africa to support local production to maximise exports from South Africa and minimise imports into South Africa;

- 18.1.6 provide online and interactive training and course work in South Africa focused on key functional skill requirements; and
- 18.1.7 create sustainable new and convert existing industrialised suppliers to Black ownership.

19. TRANSITIONAL ARRANGEMENTS

- 19.1 With regard to those brands which AB InBev disposes of pursuant to its commitments made to the European Union Commission which are produced in South Africa, the Merged Entity undertakes, if requested by the purchaser(s), to make available to the purchaser(s) of those brands for up to 3 (three) years after the Closing Date –
 - 19.1.1 transitional production, sales, administrative and distribution services from the Merged Entity in South Africa;
 - 19.1.2 barley and hops for the production of their competing products, at reasonable market-related prices, to the extent that such raw materials are not readily available in South Africa.

20. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 20.1 Within 5 (five) days after the Closing Date, the Merged Entity shall notify the Commission in writing of the Closing Date.
- 20.2 For a period of 5 (five) years from the Closing Date, the Merged Entity shall, within 30 (thirty) days of each anniversary of the Closing Date provide a suitable and appropriately detailed annual report to the Commission regarding its measures to comply with these Conditions, together with any reports and audited accounts.
- 20.3 After the expiry of the (5) five year period referred to in clause ~~10.2~~ 20.2 above, for purposes of monitoring compliance with the conditions referred to in clauses 8.1, 10.1 and 10.2.1 above which endure in perpetuity, the Commission shall be entitled from time to time to request, and the Merged Entity shall supply, further reports.

- 20.4 The reports referred to in clause ~~19-220.2~~ above shall be accompanied by an affidavit attested to by the chief executive officer of the Merged Entity confirming accuracy of the annual report and full compliance of these Conditions in the year to which the reports relate.
- 20.5 The Commission may request any additional information from the Merged Entity which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.
- 20.6 A copy of the annual report referred to in clause ~~19-220.2~~ and the other reports referred to in 20.3 above shall simultaneously be furnished to the EDD. Nothing in this clause shall derogate from the monitoring and enforcement role of the Commission in terms of the Competition Act.
- 20.7 The Merged Entity shall circulate non-confidential versions of the Conditions to their employees, the employee representatives and trade unions (including but not limited to the Food and Allied Workers Union), the Suppliers and customers within 7 (seven) business days of the Closing Date.
- 20.8 As proof of compliance herewith, the Merged Entity shall within 5 (five) business days of circulating the Conditions, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the notices public version that were circulated to the employees, employee representatives, trade unions, producers and customers as envisaged in clause ~~19-720.7~~ above.
- 20.9 In the event that the Commission receives a complaint regarding non-compliance by the Merged Entity with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 20.10 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

21. VARIATION

- 21.1 The Merged Entity shall be entitled, upon good cause, to make a proposal to the Commission to consent to the waiver, relaxation, modification and/or substitution of one or more of the Conditions, which consent shall not be unreasonably withheld. "Good cause" shall have its normal meaning as interpreted under the Competition Act and the common law, save that 'good cause' shall additionally mean that the circumstances giving rise to the Merged Entity's request in terms of this clause 21.1 shall require that the circumstances that could not reasonably have been foreseen by the Merged Entity at the time of the Tribunal's approval of the Merger and which cannot reasonably be mitigated or addressed in another manner.
- 21.2 In the event of the Commission and Merged Entity agreeing upon the waiver, relaxation, modification or substitution of any aspect of these Conditions, the Commission and Merged Entity shall apply to the Tribunal for confirmation by it of such waiver, relaxation, modification or substitution of any one or more of the Conditions.
- 21.3 In the event of the Commission withholding its consent to a waiver, relaxation, modification and/or substitution of any one or more of the Conditions, the Merged Entity shall be entitled to apply to the Tribunal for an order waiving, relaxing, modifying or substituting of any one or more of the conditions. The Commission shall be entitled to oppose such application.