Media Statement
For Immediate Release
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THE SAB-Diageo SA TRANSACTION CONDITIONALLY APPROVED

The Commission has recommended that the Competition Tribunal approve with conditions the transaction between South African Breweries (Pty) Ltd (SAB) and Diageo South Africa (Pty) Ltd (Diageo SA) Ltd in which SAB will acquire the rights to a range of products and related assets.

The Diageo SA brands are collectively referred to as the Licensed Brands and comprise the licences to manufacture, market, distribute and sell the following brands in South Africa and other territories:

(i) Smirnoff ready-to-drink (RTD) products, including all RTDs related to the Smirnoff brand (including Smirnoff Storm, Guarana, Spin, Pine Twist and Berry Twist) (Smirnoff Brands) and, for the avoidance of doubt, excluding the Smirnoff Vodka brand; and

(ii) Guinness products, but excluding Guinness Foreign Extra Stout and Guinness Malta brands (Guinness Brands).

Diageo SA also owns 11 000 coolers that are to be acquired as a result of the proposed transaction. SAB is controlled by Anheuser-Busch InBev SA/NV (AB InBev), a company incorporated in accordance with the laws of Belgium. AB InBev is a public company listed on the Euronext Stock Exchange, with secondary listings on the Johannesburg and Mexico Stock Exchanges and it is not controlled by any firm or shareholder.

The Commission found that the merger raised a material competition overlap in the market for the manufacturing and supply of flavoured alcoholic beverages (FABs). The FABs market is a highly concentrated market in South Africa with Distell being the outright dominant player and the proposed merger will likely create further concentration in this market. The merger substantially alters the structure of the FABs market as it is essentially a combination of the second (SAB) and third (Diageo) largest players in the FABs market.
Given the relatively high post-merger market share of the merged entity, the Commission considered various factors in its unilateral effects assessment such as the structure of the market, closeness of competition, potential price increase, potential dampening of competition and barriers to entry.

In relation to closeness of competition, there is mixed evidence to the question of closeness of competition between the Smirnoff RTDs and the SAB FABs. From a pricing perspective, the Smirnoff RTDs appear, generally, to be priced significantly higher than the SAB FABs brands. On the other hand, the taste profile of the Smirnoff RTDs and SAB’s Brutal Fruit brand appear to be on the same spectrum. The Commission therefore proceeded on the basis that there is some degree of competition between the merging parties' brands that will likely be lost as a result of the proposed merger.

However, the Commission found, on the whole, that the proposed transaction is unlikely to distort competition and have any notable effect on the prices of Diageo and SAB’s FABs post-merger as the parties will still be constrained by other brands. The Commission found that the FABs market has high barriers to entry. The transaction is unlikely to substantially negatively affect the businesses of Diageo’s input suppliers because the Smirnoff RTD products account for approximately 10% of the market for the manufacture and supply of FABs.

The Commission also found that the merger may provide new opportunities for SAB to engage in exclusionary tying and bundling strategies since rivals would be unlikely to be a position to effectively imitate such a strategy given SAB’s dominance in the beer market and the relatively high market share that will accrue to it post-merger.

Nevertheless, there are tangible and significant efficiencies associated with the merger that will likely benefit consumers (including the increase in volume of the Smirnoff RTD products and the implementation of a returnable bottle policy) that influence against these concerns. Such increase in volume will benefit the consumers as the Smirnoff RTDs will be widely available and this will present better consumer choices.

The proposed returnable bottle policy for larger sized Smirnoff RTDs packs is likely to reduce the production costs of the Smirnoff RTDs, should SAB implement it akin to its own policy. Thus, the proposed transaction will ensure that the Smirnoff RTDs impose a better competitive constraint on the dominant Distell FABs brands and as such it is likely to increase competition in the FABs market.

To address any potential bundling and tying, the Commission imposed a condition requiring SAB to make a commitment that it will not engage in any bundling or tying strategies of its FABs and beer products in future. The merging parties are also required to make a commitment to ensure that there is no flow of competitively sensitive information as a result of the merger.
Further, the merging parties are required to make a commitment that competing third party FABs will obtain access to the 11 000 Diageo fridges acquired by the SAB in line with the conditions imposed in the AB InBev/SABMiller merger. The merging parties are also required to make firm commitments on the localisation and production of the Guinness beer brand in South Africa, including providing the expected timelines of the localisation of the Guinness brand in South Africa.

ENDS

Issued by:
Sipho Ngwema, Head of Communications
On behalf of: The Competition Commission of South Africa
Tel: 012 394 3493 / 081 253 8889
Email: SiphoN@compcom.co.za

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