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**Thursday, 30 June 2016**

**Anheuser-Busch InBev merger with SAB Miller approved with conditions**

Today the Competition Tribunal approved the merger between beer giants Anheuser-Busch InBev SA/NV (AB InBev) and SABMiller plc (SABMiller) subject to wide ranging conditions designed to address both public interest and competition concerns arising from the merger.[[1]](#footnote-1)

These conditions are for the most part similar to those proposed by the Competition Commission in its recommendation and those contained in an earlier agreement between the merging parties and three government ministries, namely Economic Development, Trade and Industry and Agriculture, Forestry and Fisheries.

The conditions have, however, been changed in some respects as a result of submissions the Competition Tribunal received from third parties in the course of hearings which ran for three days at the end of last week.[[2]](#footnote-2)

The material changes to the conditions relate to:

* the mechanism for the timing and mechanics of the disposal of the SABMiller interest in Distell; (This is, however, confidential and not contained in the public version of the conditions attached.)
* access rights of rivals to fridge space supplied to outlets by the Merged firm; (See clauses 7.2; 7.3 and 10.1)[[3]](#footnote-3)
* access of competitors to metal bottle crowns supplied by the SABMiller controlled entity Coleus Packing has been altered from a limited period of five years, to an unlimited period as long as the Merged entity continues to control Coleus. (See clause 6)
* supply conditions of input suppliers, particularly in respect of barley farmers; ( See clause 9.1)[[4]](#footnote-4)
* the evergreen restriction on merger related retrenchments whilst retained has been clarified with a provision which shifts the burden of proving the retrenchment is a result of the merger to the employee after a period of five years; (See clause 8.2)
* a provision relating to an employee share scheme known as Zenzele, which was the subject of contention between the union Food and Allied Workers Union (FAWU) and the merging parties, has been removed at the request of both parties.[[5]](#footnote-5) ( clause 13)

The Tribunal will be providing reasons for its approval in due course.

A copy of the public version of the conditions is attached.

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1. In the proposed transaction AB InBev will acquire control of SABMiller. The companies are vertically integrated with their operations spanning manufacturing and the distribution of alcoholic beverages, particularly beer products, but AB InBev, while it has expansive brewing operations around the world, does not have brewing operations in South Africa or Africa. SABMiller, on the other hand, has significant brewing operations in South Africa and several other African countries. [↑](#footnote-ref-1)
2. At the hearing of this matter the Tribunal heard submissions from the Competition Commission, merging parties, the Minister of Economic Development, Heineken, the Black Business Forum, Grain SA, the Tavern Owners Association, as well as Distell. SABMiller has a significant holding in Distell, which is the largest producer of ciders in South Africa, followed by SABMiller. [↑](#footnote-ref-2)
3. Outlet owners can reserve up to 10% of one Merged party supplied fridge for rival Small Beer producers. This provision is not subject to a time limit. An additional 10%, over and above the already allocated 10% for Small Beer producers, may be allocated to rival cider producers, but this provision for cider producers only applies for five years. [↑](#footnote-ref-3)
4. Barley farmers are concerned about whether an existing industry pricing mechanism will change post- merger given the international sourcing power ABI brings to SAB. The conditions do not provide a pricing mechanism but require that the Merged entity does not reduce the existing ratio of local purchases pre-merger without a commercial justification. The condition clarifies how the base year is selected. [↑](#footnote-ref-4)
5. The Zenzele Scheme is set to mature in 2020. The issue raised by FAWU was that in terms of the conditions proposed by the Commission the Zenzele shareholders were being treated differently to the holders of other classes of shares. The parties agreed during the course of the hearing that these provisions would be excised from the Conditions and would be dealt with in another forum. [↑](#footnote-ref-5)