

IN THE COMPETITION TRIBUNAL

THE REPUBLIC OF SOUTH AFRICA

TRIBUNAL CASE NO: 134/CR/Dec07

In the matter between

COMPETITION COMMISSION

Applicant

and

SOUTH AFRICAN BREWERIES LIMITED	1 st Respondent
AFRICA'S BEER WHOLESALERS (PTY) LTD	2 nd Respondent
BOLAND BEER DISTRIBUTORS (PTY) LTD	3 rd Respondent
ERMELO BEER WHOLESALERS (PTY) LTD	4 th Respondent
GREYTOWN BEER DISTRIBUTORS (PTY) LTD	5 th Respondent
MAKHADO BEER WHOLESALERS (PTY) LTD	6 th Respondent
MIDLANDS BEER DISTRIBUTORS (PTY) LTD	7 th Respondent
MKUZE BEER WHOLESALERS (PTY) LTD	8 th Respondent
SOUTHERN CAPE BEER DISTRIBUTORS (PTY) LTD	9 th Respondent
STEFQUO (PTY) LTD	10 th Respondent
VRYHEID BEER DISTRIBUTORS (PTY) LTD	11 th Respondent
MADADENI BEER WHOLESALERS (PTY) LTD	12 th Respondent
WESTONARIA BEER DISTRIBUTORS (PTY) LTD	13 th Respondent
THOHOYANDOU BEER DISTRIBUTORS (PTY) LTD	14 th Respondent

Panel : Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) and Medi Mokuena (Tribunal Member)

Heard on : 14 June 2010

Decided on : 15 June 2010

Order: Further and Better Discover

1. SAB is ordered to make further and better discovery of the following:

- 1.1 Minutes of meetings of the Board of Directors between 2003 and the date of this order including any strategy documents, board packs or presentations made at such meetings which relate to the subject of SAB's *differential pricing*.
- 1.2 For the period 01 January 2003 to the date of this order, all strategic documents, including minutes and board packs of meetings of the board of directors and any other management meeting, records of decision, policy papers and presentations, that mention or relate to any of the following:
 - 1.2.1 SAB's so called "*Channel Advocacy Strategy*" as well as SAB's decision/s not to support what it terms the "WHL and IRD channel", the reasons for such decisions, as well as changes to such decisions (see SAB's document titled 'Pricing F06'; dated 15 October 2004; under the heading 'Trading terms and credit policies' (extract from SAB's initial discovery, Schedule E, Item 31)).
 - 1.2.2 SAB's "bi-modal" distribution approach insofar as it relates to SAB's *differential pricing* (see SAB's 'SA Beverages Quarterly Management Report' presented at the Quarterly Management Review Meeting – Beer – of 28 October 2009 (extract from additional discovery file 1); as well as SAB's document titled 'DSD Secondary Distribution', under the heading 'Route to market' (extract from additional discovery file 19)).
 - 1.2.3 SAB's volumes sold to appointed distributors versus volumes sold to independent distributors.
 - 1.2.4 SAB's assessments of revenues and margins for independent distributors.
 - 1.2.5 Pricing and the awarding of (or not awarding of) all discounts including bulk beer to independent distributors and the appointed distributors.
 - 1.2.6 SAB's "Direct Store Distribution" strategy (see SAB's document 'SA Beverages Quarterly Management Report; 6 August 2007, under 5.3.4.2 'Distribution Strategy' (extract from additional discovery file 1)).
 - 1.2.7 Project "Khula" insofar as it relates to SAB's *differential pricing*.

- 1.2.8 Project “Gaudi” insofar as it relates to SAB’s *differential pricing*.
 - 1.2.9 SAB’s channel margins management.
 - 1.2.10 Policies regarding price discounting within key accounts and overall price management (see SAB’s document ‘Quarterly Management Review Meeting; April to June 2003, under 7.4.5 ‘Key Account Competitiveness’ (extract from additional discovery file 1)).
 - 1.2.11 Market Intelligence and Sales Information (MISI) studies.
 - 1.2.12 SAB’s allocation of territories between itself and the appointed distributors (e.g., the SLATAM model).
 - 1.2.13 The customized Tailored Service Packages (TSP’s) developed and implemented for IRD’s and URD’s (limited to the independent distributors in the 40 retailers identified by the Commission) for the period between 2003 and the date of this order.
- 1.3 Strategic documents, communications, and the agreements between SAB and retailers relating to the selling prices that it expects retailers to charge, including presentations made to retailers regarding selling prices (e.g., margin calculators), for the 40 retailers identified by the Commission for the period between 2003 and the date of this order.

For the purpose of this order:

Differential pricing means information that relates to differences in payment or remuneration between independent wholesalers and appointed distributors, as these terms are contemplated in the pleadings, and includes any rationale or analysis of the different treatment.

2. Tendered documents

It is recorded that SAB has tendered to produce the following documents and accordingly no order is made in respect of them:

- 2.1 The complete 2006 document entitled ‘Distribution Services: Working Doc’, as well as the final document and all similar ‘Distribution Services’ documents.
- 2.2 Documents relating to ‘distribution economics’ for the appointed distributors as well as consequential decisions taken by SAB.
- 2.3 Strategic documents, presentations and records of decisions taken relating to the ‘distributor set-up procedure’ being applied in practice, in relation to the second to fourteenth respondents.

2.4 BPTOS I & II elasticity studies and Marketing Impact Monitor (MIM) demand related studies (to the extent not already discovered).

3. Documents not in possession

If SAB has no document/s in its possession required to be produced in terms of this order it must furnish an affidavit from the relevant person with the requisite knowledge and authority confirming this.

4. Dates

SAB must make such further and better discovery, including documents tendered, and/or furnish such affidavits as ordered by 23 June 2010.

Norman Manoim
Presiding Member

Concurring: Andreas Wessels and Medi Mokuena