



MERGER DECISION NO 25: 2023

Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

DECISION ON THE ASSESSMENT OF THE PROPOSED TERMINATION OF A DISTRIBUTION AGREEMENT BETWEEN DIAGEO SOUTH AFRICA (PTY) LTD AND THE GORDON'S LONDON DRY GIN AND PIMM'S NO.1 CUP PRODUCTS RELATING TO THE SALE AND DISTRIBUTION OF THE SAID TARGET PRODUCTS

Introduction of the Merging Parties

Pursuant to section 53(4)(a)(ii) of the Competition Act 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in relation to the proposed termination of a distribution agreement between Diageo South Africa (Pty) Ltd ("Diageo South Africa" or the "Acquiring Enterprise") and Castle Wine & E K Green Limited ("Castle Wine" or the "Target Enterprise") relating to the sale and distribution of The Gordon's London Dry Gin ("Gordon's Gin") And Pimm's No.1 Cup ("Pimm's") products (collectively, the "Target Products"). The transaction was notified to the Authority on 30th May 2023 and the merger assessment was completed on 28th June 2023.

The Acquiring Enterprise, Diageo South Africa is a company incorporated in terms of the Laws of South Africa and it is controlled by Diageo Great Britain Limited and ultimately wholly owned by Diageo plc ("Diageo"). Diageo is a public company incorporated in terms of the Laws of the United Kingdom with a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange. Diageo is not controlled by any one shareholder. Diageo South Africa and Diageo do not control any enterprises in Botswana.

The Target Products, Gordon's London Dry Gin ("Gordon's Gin") and Pimm's No.1 Cup Products ("Pimm's") are licensed by Diageo Brand BV ("Diageo Brands"), to United Distillers Southern Africa (Pty) Ltd ("United Distillers") in order to enable the Target Products to be sold in Southern Africa. Diageo Brands is a Diageo Group's company which is the brand owner and the licensor of the brands. United Distillers is a Diageo Group's company incorporated under the Laws of South Africa.

On the other hand, Castle Wine is incorporated in terms of the Laws of South Africa and is controlled by South African Distilleries and Wines (SA) Ltd ("SADW"), a company incorporated in accordance with the Laws of South Africa. Castle Wine has a branch office in Botswana which is not active and is thus effectively dormant.

Relevant Markets

The Merging Parties are companies duly incorporated in accordance with the Laws of South Africa.

The findings of the assessment indicate that the Diageo Group's production activities in South Africa are primarily channelled through its local subsidiary, Diageo South Africa. The Diageo Group brews, markets and distributes beer products worldwide. The Diageo group's beer sold in South Africa include Guinness Extra Stout (bottled), Guinness Draught (cans and kegs), and Kilkeny Irish Ale (cans and kegs). The Diageo group sells Guinness FES, Guinness ES and Malta Guinness (beers) in other parts of Africa.

Diageo also produces, markets and distributes several spirits globally and in South Africa, such as Johnnie Walker Scotch whisky, Captain Morgan rum, Tanqueray gin and Smirnoff vodka. Diageo also markets a number of "ready-to-drink" or "RTD" drinks, such as Smirnoff Spin and Smirnoff Storm. In terms of the Target Products, Diageo owns the brands and trademarks both internationally and in South Africa. United Distillers manufactures/ distills the base over proof spirit of the Target Products in South Africa. In Botswana, Diageo's brands are distributed through an appointed distributor.

On the other hand, Castle Wine is not a fully operationalised business, hence Distell Limited performed Castle Wine's obligations in terms of the distribution agreement with United Distillers. The Distell Group owned South African brands such as Klipdrift, Savanna, Hunters, Durbanville Hills, Amarula, Three Ships and Old Buck. Based on the aforementioned, though the Merging Parties' activities overlap with respect to the manufacture and distribution of alcoholic beverages, it is noted that there are no competitive effects anticipated as a result of this transaction as the market structure is not expected to substantially change post implementation of the proposed transaction.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed a horizontal product overlap in the activities of the Merging Parties since both Enterprises are in the manufacture and distribution of alcoholic beverages. However, for the purposes of this transaction, the termination of the agreement will only result in Diageo re-establishing sole day-to-day control over its own products, and assuming sole responsibility for the distribution, marketing and sale of the Target Products in South Africa.

The assessment has revealed that there are various alternative gin brands in Botswana which accounts to approximately 25 gin brands. Therefore, Gordon's London Dry Gin will continue to compete with other well-known gin brands which include Belgravia, Stretton's and Cruxland (KWV). Furthermore, there is a wide range of aperitifs and flavored spirits that compete with Pimm's in Botswana. Popular brands supplied in Botswana include Clubman Mint Punch, Copperband Aperitif, Mokador and Martini Bianco. The transaction under assessment is therefore not expected to substantially lessen competition or restrict trade or the provision of services or to endanger the continuity of supplies in the relevant market or in any market in Botswana.

In terms of Acquisition of Dominance, the approval of the proposed transaction is not expected to result in any market accretion which may result in the acquisition of a dominant position but it will only lead to an acquisition of the market share of the Target Enterprise by the Acquiring Enterprise. Furthermore, Diageo South Africa is expected to face strong competition from the existing well-established gin brands and aperitifs.

The Authority does not anticipate any public interest concerns to arise as a result of the implementation of the proposed merger. Specifically, the marketing and sales of the Target Products which are managed by Distell Botswana, with the logistics and physical distribution being outsourced to CA Sales, the Merging Parties have submitted that, pursuant to the proposed termination of the Distribution Agreement, Diageo will not take over any aspect of Distell Botswana or CA Sales' business i.e. no assets, employees, or contracts will be transferred as a result of the termination of the Distribution Agreement, and the status quo will be maintained.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not expected to significantly change upon the implementation of the proposed merger, as the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market under consideration. Furthermore, the proposed merger will not have any negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act 2018.

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed termination of a distribution agreement between Diageo South Africa (Pty) Ltd and Castle Wine & E K Green Limited relating to the sale and distribution of The Gordon's London Dry Gin and Pimm's No.1 Cup products.

However, as stated under section 61 of the Act, this approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to this merger must comply with under the Laws of Botswana.

Dated at Gaborone on this 28th day of June 2023.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority, P/Bag 00101, Gaborone, Plot 28, Matsitama Road, Tel: 3934278 Fax: 3121013