

CONFIDENTIAL

“Annexure A”

Diageo South Africa Proprietary Limited / Brandhouse Beverages Proprietary Limited

CC CASE NUMBER: 2015Jul0438

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **“Acquiring Firms”** means Diageo SA, Heineken and NBL;
- 1.2. **“Approval Date”** means the date referred to in the Competition Tribunal's Merger Clearance Certificate (Form CT10);
- 1.3. **“Brandhouse”** means Brandhouse Beverages Proprietary Limited;
- 1.4. **“Commission”** means the Competition Commission of South Africa;
- 1.5. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6. **“Conditions”** means these conditions;
- 1.7. **“Diageo SA”** means Diageo South Africa Proprietary Limited;
- 1.8. **“DHN”** means DHN Drinks Proprietary Limited;
- 1.9. **“Heineken”** means Heineken International B.V.;
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the merger is implemented by the merging parties;
- 1.11. **“Joint Ventures”** means the three joint ventures in South Africa involving Diageo SA, Heineken and NBL;
- 1.12. **“LRA”** means Labour Relations Act, No. 66 of 1995;
- 1.13. **“Merging Parties”** means Diageo SA, Heineken and NBL (the Acquiring Firms) and Brandhouse, DHN and Sedibeng (the Target Firms);
- 1.14. **“NBL”** means Namibia Breweries Limited;

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- 1.15. **"Proposed Transactions"** mean the restructuring of the Joint Ventures in terms of which Diageo SA will exit from the DHN and Sedibeng Joint Ventures and Diageo SA will acquire 100% control of the Brandhouse Joint Venture. In respect of the DHN Joint Venture, Heineken and NBL will acquire Diageo's shareholding in this Joint Venture. In respect of the Sedibeng Joint Venture, NBL will acquire Diageo's shareholding in this Joint Venture;
- 1.16. **"Skilled employees"** as per **"Annexure B"** hereto;
- 1.17. **"Semi-skilled employees"** as per **"Annexure B"** hereto;
- 1.18. **"Sedibeng"** means Sedibeng Brewery Proprietary Limited;
- 1.20. **"Tribunal Rules"** mean the Rules for the Conduct of Proceedings in the Tribunal.

2. Recordal

- 2.1. On 30 July 2015, the Merging Parties filed a large merger transaction with the Commission. Following its investigation of the Proposed Transaction, the Commission is of the view that there are public interest issues which arise that relate to employment.
- 2.2. Pursuant to the Proposed Transactions, the Merging Parties will be restructuring the Joint Ventures.
- 2.3. As a result of the restructuring, Brandhouse (which will, after the Implementation Date, be integrated within Diageo SA) will reduce its staff complement with the potential loss of approximately between 429 and 451 employment positions.
- 2.4. Also as a result of the restructuring, DHN (which will, after the Implementation Date, be integrated with Sedibeng) will potentially create approximately between 503 and 530 new employment positions.

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- 2.5. Accordingly, on the basis of the current anticipated operational requirements of the Merging Parties, the Proposed Transactions will have a net positive impact on employment of approximately between 52 and 101 employment positions.
- 2.6. Given the above, the Commission has found that the Proposed Transactions are likely to raise public interest concerns as indicated in 2.3 above and therefore recommends the imposition of these Conditions as set out below.

3. Conditions to the approval of the Proposed Transaction

- 3.1. Brandhouse must not retrench more than 451 employees (which will consist of both Skilled and Semi-skilled employees as defined above) as a result of the Proposed Transactions for a period of 18 (eighteen) months from the Implementation Date.
- 3.2. DHN must ensure that the number of employment positions that will be created in DHN post-implementation will be a minimum of 451 employment positions (which will consist of both Skilled and Semi-skilled employees as defined above) as a result of the Proposed Transaction for a period of 18 (eighteen) months calculated from the Implementation Date.
- 3.3. DHN undertakes that there will be no retrenchments at the Sedibeng Brewery facility pursuant to the Proposed Transactions.
- 3.4. The Merging Parties confirm that they will act in accordance with clause 5 of the agreement concluded between Brandhouse, DHN and the Employees' Representative Group and signed on 7 October 2015.
- 3.5. Within the context of paragraph 3.1 above, retrenchments do not include voluntary separation arrangements, voluntary early retirement packages and unreasonable refusals to be redeployed in accordance with the provisions of the LRA as amended.
- 3.6. These conditions will not preclude the Merging Parties from taking the necessary steps in terms of section 189 of the LRA should operational requirements in the ordinary course of business that are not merger specific necessitate that such steps be taken.

4. Monitoring of compliance with the Conditions:

4.1. The Merging Parties shall

4.2. inform the Commission of the Implementation Date within five days of it becoming effective.

4.2.1. notify all of its employees and registered trade unions and/or employee-representatives, in writing of the conditions reflected in paragraph 3 above within 5 (five) business days of the Approval Date of the Proposed Transactions;

4.2.2. submit an affidavit attesting to the notification referred to in paragraph 4.1.2

business days of the Approval Date.

4.3. Twelve months after the Implementation Date:

4.3.1. Brandhouse shall submit a report to the Commission indicating the number of retrenchments as a result of the Proposed Transactions within Brandhouse including a description of the relevant job function and skill level which relate to the retrenchments in question; and

4.3.2. DHN shall submit a report to the Commission indicating the number of employment positions created at DHN as a result of the Proposed Transactions including a description of the relevant job function and skill level which relate to the positions in question

4.4. One month after a period of 18 (eighteen) months from the Implementation Date:

4.4.1. Brandhouse shall submit a further report to the Commission in accordance with clause 4.3.1 above; and

4.4.2. DHN shall submit a further report to the Commission in accordance with clause 4.3.2 above.

4.5. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, this will be dealt with in terms of Rule 39 of Commission Rules read together with Rule 37 of the Tribunal Rules.

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- 4.6. The Merging Parties may at any time, on good cause shown, approach the Tribunal for the conditions to be lifted, revised or amended.
- 4.7. All correspondence in relation to these Conditions should be forwarded to mergerconditions@compcom.co.za

