Merger Clearance Certificate

Date : 08 March 2023

To : Webber Wentzel Attorneys

Case Number: LM136Dec21

Sunside Acquisitions (Pty) Ltd And NBL Investment Holdings Ltd and Distell Group Holdings Ltd

You applied to the Competition Commission on **02 December 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

[ ] no conditions.

[x] the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
b) the approval was obtained by deceit.
c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebogo Mputle

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM136Dec21

In the matter between:

Sunside Acquisitions (Pty) Ltd	**Primary Acquiring Firm**
And	
NBL Investment Holdings Ltd and Distell Group Holdings Ltd	**Primary Target Firms**

Panel:	M Mazwai (Presiding Member) AW Wessels (Tribunal Member) L Mncube (Tribunal Member)
Heard on:	18, 19, 20, 23, and 24 January 2023
Last submission on:	07 March 2023
Decided on:	08 March 2023

Order

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto as Annexure A; and

2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

MMazwai

Presiding Member
Ms Mondo Mazwai

08 March 2023
Date

Concurring: Mr Andreas Wessels and Prof Liberty Mncube

ANNEXURE A

IN THE LARGE MERGER BETWEEN

SUNSIDE ACQUISITIONS PROPRIETARY LIMITED

AND

NBL INVESTMENT HOLDINGS LIMITED AND DISTELL GROUP HOLDINGS LIMITED

CASE NUMBER: LM136Dec21

CONDITIONS

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1. **DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions, the following words will, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) will bear corresponding meanings:

1.1.1 **"Affected Employees"** mean the maximum of 166 (one hundred and sixty six) combined employees of Heineken SA and Distell, all of whom are above Heineken SA's employment grade level 9 and Distell's Paterson employee grade level C3 and does not include any unskilled workers or workers below the aforesaid grades or workers whose roles involve working on production lines within the Production Operations as described in clause 6.1.2;

1.1.2 **"Approval Date"** means the date on which the Proposed Transaction is approved by the Tribunal;

1.1.3 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;

1.1.4 **"B-BBEE Codes"** mean the Codes of Good Practice issued in terms of the B-BBEE Act;

1.1.5 **"Business Days"** mean any calendar day that is not a Saturday, Sunday or public holiday in South Africa;

1.1.6 **"Calendar Days"** mean any day that includes a Saturday, Sunday or public holiday in South Africa;

1.1.7 **"Capevin"** means Capevin Holdings Proprietary Limited, South African company registration number 1997/020857/07;

1.1.8 **"Closing Date"** means the date on which the Proposed Transaction completes in accordance with its terms;

1.1.9 **"Commission"** means the Competition Commission of South Africa, established in terms of section 19 of the Competition Act;

1.1.10 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Commission;

1.1.11 "**Competition Act"** means the Competition Act, No. 89 of 1998, as amended;

1.1.12 **"Competitively Sensitive Information"** includes, but is not limited to, information relating to:

1.1.12.1 pricing including but not limited to pricing of specific products, prices/discounts offered to specific clients and planned price reductions or increases;

1.1.12.2 margin information by product or client;

1.1.12.3 cost information for particular products;

1.1.12.4 information on specific clients and client strategy, including information with respect to the sales volumes of clients; and

1.1.12.5 budgets, business plans, and marketing strategies;

1.1.13 **“Conditions”** mean these merger conditions to the approval of the Proposed Transaction issued by the Tribunal;

1.1.14 **“DDT”** means the Distell Development Trust (Master's reference number IT2118/2005);

1.1.15 **“Distell”** means Distell Group Holdings Limited, South African company registration number 2016/394974/06;

1.1.16 **“Distell Beverages”** mean Distell Beverages (RF) Proprietary Limited, South African company registration number 2005/005830/07, a wholly owned subsidiary of DDT;

1.1.17 **“Divestiture Period”** means 6 (six) months after the Closing Date;

1.1.18 **“DTIC”** means the Department of Trade, Industry and Competition of the South African Government;

1.1.19 **“Employees”** mean any South African citizen who is, in terms of South African labour law, an employee of any of the Merger Parties in South Africa, whether on a permanent or a fixed-term basis, and shall include the current employees of the business of the Out-of-Scope Assets, who will be transferred to Capevin in terms of the LRA pursuant to the Distell restructuring implemented as part of the Proposed Transaction;

1.1.20 **“ESOP”** means Employee Share Ownership Plan;

1.1.21 **“FABs”** mean flavoured alcoholic beverages;

1.1.22 **“HDP”** means a historically disadvantaged person as contemplated in section 3(2) of the Competition Act;

1.1.23 **“Heineken Group”** means the Heineken group of companies, comprising Heineken N.V. (incorporated in the Netherlands with registration number 33011433) and its subsidiaries from (time to time);

1.1.24 **“Heineken SA”** means Heineken South Africa (RF) Proprietary Limited, South African company registration number 2003/026165/07;

1.1.25 **“In-Scope Assets”** mean the FABs, wine and spirits businesses of Distell in South Africa, Namibia, ESwatini, Lesotho and Botswana, excluding the Out-of-Scope Assets;

1.1.26 "**Key Inputs**" mean key production inputs procured by the Merger Parties, being:

1.1.26.1 raw materials and ingredients: malt, grapes and wine, dairy, apple juice concentrate, sugar and sweeteners, compounds and flavours, maize, barley and hops; and

1.1.26.2 packaging materials: glass, cans, cartons, closures, crates and labels;

1.1.27 **“Licence”** means the trade mark licence for the Strongbow brand described in clause 2.1.2;

1.1.28 **“Licensee”** means the acquirer or holder of the Licence, with no less than 50%+1 shareholding held by HDPs and shall be independent and not directly or indirectly related to the Merger Parties, or to any other directly or indirectly affiliated member of the Heineken Group;

1.1.29 **“LRA”** means the Labour Relations, Act No. 66 of 1995;

1.1.30 **“Merger Parties”** mean the parties to the Proposed Transaction, being Newco, Distell and NIH;

1.1.31 **“Months”** mean calendar month and includes Saturday, Sunday and public holidays;

1.1.32 **“Newco”** means Sunside Acquisitions Limited, South African company registration number 2020/811071/06, which will become part of the Heineken Group on the Closing Date;

1.1.33 **“Newco Fair Wage Level”** means a fair wage necessary to constitute a living wage in South Africa;, as described in clause 6.2.33;

1.1.34 **“GEPF”** means The Government Employees Pension Fund;

1.1.35 **“NIH”** means NBL Investment Holdings Limited;

1.1.36 **“Out-of-Scope Assets”** mean the distillation, maturation, blending, bottling, distribution and marketing operations of *inter alia* the following Scotch whiskies and local brands which will be excluded from the In-Scope Assets: (i)

Black Bottle, (ii) Bunnahabhain, (iii) Burn McKenzie, (iv) Deanston, (v) Gordons Gin, (vi) Scottish Leader, (vii) Tobermory Gin (viii) Pimms No 1 Cup, and (ix) Ledaig, and will be held by Capevin after the Closing Date;

1.1.37 **"Prime Rate"** means the prime lending rate (predominant rate) as published from time to time on the website of the South African Reserve Bank at: https://www.resbank.co.za/en/home/what-we-do/statistics/key-statistics/current-market-rates;

1.1.38 **"Production Operations"** mean the current proprietary production and manufacturing operations of the Merger Parties in South Africa together with their productive capacity, as set out in **Annexure A**. This does not include production operations relating to the Out-of-Scope Assets transferred to Capevin pursuant to the Proposed Transaction;

1.1.39 **"Proposed Transaction"** means the merger of relevant businesses of Heineken SA, NIH and Distell (in respect of the In-Scope Assets) in South Africa, Namibia and in select markets;

1.1.40 **"Rand"** or **"R"** means the South African Rand, the lawful currency of the Republic of South Africa. For purposes of determining the value of any investments set out in these Conditions made by Newco in foreign currency, such amounts shall be converted to Rand value at the exchange rates applicable as at the time such investments are made;

1.1.41 **"Remgro"** means Remgro Limited, South African company registration number 1968/006415/06, a public company listed on the Johannesburg Stock Exchange;

1.1.42 **"SA Co"** means the company that will own and control the combined South African businesses of Newco on completion of the Proposed Transaction (expected to be Heineken SA);

1.1.43 **"SADW"** means South African Distilleries and Wines (SA) Limited, South African company registration number 1958/000725/06, a wholly owned subsidiary of Distell;

1.1.44 **"SMEs"** mean small and medium-sized businesses, as defined in the Competition Act;

1.1.45 "**Strongbow Business**" means, cumulatively:

1.1.45.1 the "STRONGBOW" trade marks for South Africa, Namibia, Botswana, Lesotho and Eswatini;

1.1.45.2 the "Sale Assets", being all marketing and other materials relating to the brand held by Heineken SA at the effective date of the Licence, including but not limited to glass bottles, websites, social media accounts, event collateral, experiential toolkits, and miscellaneous merchandise assets relating to the Strongbow brand in South Africa; and

1.1.45.3 obligations on Heineken SA to support the Licensee with sales knowledge transfer and assistance for the re-contracting of distributor and client contracts (if and when required);

1.1.46 **"Tavern"** means a licensed business premise located in any township area in South Africa owned and controlled by HDPs where products of the Merger Parties are sold and consumed on the premises;

1.1.47 **"Territory"** means the territories in which the Licence will apply, being South Africa, Botswana ESwatini, Lesotho, and Namibia (and any other countries as applicable);

1.1.48 **"Transitional Services"** mean the transitional services that Newco will provide to the Licensee in respect of the Strongbow Business to the extent required by the Licensee, including but not limited to the following:

1.1.48.1 cider production and packaging services;

1.1.48.2 warehousing and logistics (primary and secondary logistics) services;

1.1.48.3 sales and marketing support services, including access to fridges within the distribution network; and

1.1.48.4 other transitional services (including services such as returnable bottle tracking, cash collection, IT and knowledge transfer);

1.1.49 **"Tribunal"** means the Competition Tribunal of South Africa established in terms of section 26 of the Competition Act;

1.1.50 **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal; and

1.1.51 **“Unions”** means Food and Allied Workers Union (FAWU), National Union of Food Beverage Wine Spirits and Allied Workers (NUFBWSAW), Inqubekelaphambili Trade Union (ITU), National Union of Metal Workers South Africa (NUMSA), and any other relevant trade unions.

1.2 In these Conditions, any definition, wherever it appears, will bear the same meaning and apply throughout these Conditions unless otherwise stated or where inconsistent with the context in which it appears.

2. STRONGBOW DIVESTITURE

2.1 Divestiture Overview

2.1.1 Heineken Group will divest its Strongbow Business in South Africa to the Licensee within the Divestiture Period.

2.1.2 The divestiture of the Strongbow Business will take the form of a perpetual, royalty-free Licence by Heineken Group to an independent Licensee to exclusively produce, market, distribute and sell the Strongbow brand in the Territory. For the avoidance of doubt, apart from the once-off licensing fee payable by the Licensee at the closing of the divestiture, no ongoing licensing fees or royalties shall be payable to Heineken Group.

2.1.3 From the Approval Date until the Strongbow Business is divested to the Licensee, Heineken Group, Heineken SA and/or Newco (as the case may be) undertakes to:

2.1.3.1 preserve and maintain the economic and competitive value, independence and marketability of the Strongbow Business and brand in the ordinary course of business;

2.1.3.2 ensure that the Strongbow Business and brand is managed in the ordinary course of business with reasonable care and skill, pursuant to good business and commercial practices; and

2.1.3.3 provide sufficient resources for the maintenance of the Strongbow Business and brand, including implementing ongoing promotion and advertising in accordance with any approved business plan, or any existing promotion and advertising expenditure budget for the Strongbow Business.

2.1.3.4 refrain from carrying out any act outside of the ordinary course of business that may be of such a nature as to, in a significant adverse way, alter the economic value or the competitiveness of the Strongbow Business and brand, or which could alter the commercial strategy in respect of such business in a significantly adverse way;

2.1.3.5 take all reasonable steps to not directly or indirectly discourage any employee of the Merger Parties from commencing, continuing or seeking employment with, or providing services to the Licensee; and

2.1.3.6 take all reasonable steps to ensure that effective on the date of divestiture, employees of the Merger Parties are released from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divested Business.

2.2 **Transitional Services**

2.2.1 Following the date that the Licence becomes effective, and to the extent required by the Licensee, Newco will provide Transitional Services relating to the production, marketing, distribution and sale of Strongbow in the Territory, in accordance with any Transitional Services Agreement to be entered into with the

Licensee, to preserve and maintain the economic and competitive value of the Strongbow Business and the Strongbow brand in the South African market.

2.2.2 The Transitional Services Agreements will specify the duration of each Transitional Service being supplied, with none of the services being provided for more than 24 (twenty four) months. Notwithstanding the above, and at the behest of the Licensee, the duration of each Transitional Service being supplied may be extended by a further 12 (twelve)-month period in consultation, collaboration and agreement with the Commission, the Licensee and Newco.

2.2.3 The Transitional Services will be provided by Newco to the Licensee, at a fee calculated on a cost plus and reasonable margin basis. The provisions of this clause shall apply, *mutatis mutandis*, to any agreement governing the provision of the services referred to in clause 2.2.6 below.

2.2.4 The terms of any Transitional Services Agreements will be subject to approval by the Commission.

2.2.5 The Licensee or Newco may, on good cause shown and on notice to the other party, approach the Commission for consent to vary any terms of any Transitional Services Agreements. For this purpose, “good cause” shall have its normal meaning as interpreted under the Competition Act and the common law.

2.2.6 For the duration of the Licence, and to the extent required by the Licensee, the Heineken Group will provide the Licensee with global marketing and innovation support services in respect of the Strongbow brand, on terms to be agreed with the Licensee, to preserve and maintain the economic and competitive value of the Strongbow brand in the Territory. Such support services should include, *inter alia*, written guidelines relating to the marketing of the Strongbow brand from time to time; the specifications and recipes for the Strongbow products that are being made by the Heineken Group in other markets; global designs and production and packaging revisions relating to Strongbow; and any global advertising campaign assets, at the time they are being developed by the Heineken Group.

2.2.7 The provisions of clauses to 2.2.4 to 2.2.5 above shall apply, *mutatis mutandis*, to any agreement governing the provision of the services referred to in clause 2.2.6 above.

2.2.8 In order to maintain the structural effect of the divestiture, Newco or any directly or indirectly affiliated member of the Heineken Group, will not subsequently terminate the Licence or otherwise directly or indirectly re-acquire influence or control over the Strongbow Business, without prior written consent of the Commission and/or merger control approval as required in terms of the Competition Act.

2.3 **Competitively Sensitive Information**

Transitional Services

2.3.1 For so long as Newco provides any Transitional Services as set out in the Transitional Services Agreements to a Licensee, Newco will implement measures to ensure that there is no exchange of Competitively Sensitive Information between the Licensee and Newco's executives and managers, as well as Newco's employees involved in the marketing, production, packaging, procurement, distribution and sale of Newco's FAB/cider brands (Hunter's and Savanna in particular) in South Africa. These measures include but are not limited to the following:

2.3.1.1 Newco executives and managers as well as employees of Newco involved in its FAB/cider brands marketing and sale operations in South Africa will not be the same employees involved in the provision of Transitional Services to the

Licensee (for the avoidance of doubt, separate sales and marketing teams will be established by the Merger Parties to provide the same level of sales and marketing support provided to the Strongbow Business and brand pre-merger);

2.3.1.2 Newco executives and managers, as well as employees of Newco involved in its FAB/cider brands marketing, production, packaging, procurement, distribution and sale operations in South Africa will sign undertakings not to share Competitively Sensitive Information with employees involved in the provision of Transitional Services to the Licensee and employees of the Licensee, and *vice versa*; and

2.3.1.3 Newco will implement internal training within 60 (sixty) Calendar Days to ensure that all its executives and managers, employees involved in its FAB/cider brands marketing, production, packaging, procurement, distribution and sale operations and all employees involved in the provision of any Transitional Services to the Licensee are aware of and understand the provisions of the Competition Act that are relevant to the exchange of Competitively Sensitive Information between competitors, including section 4 of the Competition Act (restricted horizontal practices) in particular.

2.3.1.4 Clause 2.3.1.3 shall apply to any new executives and managers and employees employed from time to time, who must undergo the competition law training within 60 (sixty) Calendar Days of appointment.

Global support services

2.3.2 For so long as the Heineken Group provides any global marketing and innovation support services to the Licensee as contemplated in clause 2.2.6 above, the Heineken Group will implement measures to ensure that that there is no exchange of Competitively Sensitive Information in relation to the Strongbow

Business and brand or the operations of the Licensee between executives and managers of the Heineken Group as well as employees in the Heineken Group involved in the production, packaging, procurement, marketing, distribution and sale of Strongbow globally, and executives and managers of Newco and Newco employees involved in the production, packaging, procurement, marketing, distribution and sale of Newco's FAB/cider brands (*Hunter's* and *Savanna* in particular) in South Africa. These measures include but are not limited to the following:

2.3.2.1 employees in the Heineken Group involved in the global marketing and innovations as well as production, packaging, procurement, marketing, distribution and sale of FABs/ciders brands will not be the same employees involved in the marketing and innovation as well as production, packaging, procurement, marketing, distribution and sale of Newco's FAB/cider brands (*Hunter's* and *Savanna* in particular), nor should they have any financial incentive, bonus or targets directly or indirectly linked to the performance of Newco's FAB/cider brands – and *vice versa*;

2.3.2.2 employees in the Heineken Group involved in the global marketing and innovations as well as production, packaging, procurement, marketing, distribution and sale of FABs/ciders brands, will not participate in commercial forums or act on any boards which include employees involved in the marketing and innovation as well as production, packaging, procurement, marketing, distribution and sale of Newco's FABs/cider brands (*Hunter's* and *Savanna* in particular) – and *vice versa*;

2.3.2.3 to the extent that in the future, innovations and campaigns for *Hunter's* and *Savanna* are developed internationally with sight of

Strongbow's global positioning, these will not be shared with Newco;

2.3.2.4 executives and managers of the Heineken Group as well as employees involved in the production, packaging, procurement, distribution, marketing, innovations and sale of FABs/ciders brands globally will sign undertakings not to share Competitively Sensitive Information in relation to any FAB/cider brands innovation and campaign options available to the Strongbow brand or the operations of the Licensee with Newco's managers, executives, and employees involved in the production, packaging, procurement, marketing, distribution, innovations and sale of Newco's FAB/cider brands (*Hunter's* and *Savanna* in particular) in South Africa; and

2.3.2.5 the Heineken Group will implement at regular intervals internal training to ensure that its executives and managers as well as employees that are involved in the production, packaging, procurement, marketing, distribution and sale of FABs/ciders brands globally are aware of and understand the provisions of the Competition Act that are relevant to the exchange of Competitively Sensitive Information between competitors, including section 4 of the Competition Act (restricted horizontal practices) in particular. Any new executives and managers and employees employed from time to time, must undergo the competition law training within 60 (sixty) Calendar Days of appointment.

Capevin/Out-of-Scope

2.3.3 It is noted that the Heineken Group, while controlling Newco, will also hold a minority shareholding in Capevin (equal to or less than 36.9%). Given that Newco and Capevin will compete in the spirits market, the proposed transaction therefore creates structural links between competitors. To address any anti-competitive concerns (to avoid any potential flow of Competitively Sensitive Information) that might arise due to the structural links, Heineken Group and Remgro shall put in place measures to ensure that:

2.3.3.1 any representatives appointed to the board of directors of Newco will not sit on the board of Capevin;

2.3.3.2 board representatives of Newco and Capevin will sign non-disclosure agreements to ensure that any Competitively Sensitive Information received is not shared with representatives of the respective companies;

2.3.3.3 at the level of the respective holding companies, no Competitively Sensitive Information of a business will be made available or discussed unless any representatives on the board of a competing business are recused.

2.4 **Monitoring of divestiture condition**

2.4.1 Newco will inform the Commission of the successful bidder for the Licence in writing, no later than 60 (sixty) Calendar Days prior to the expiry of the Divestiture Period.

2.4.2 In respect of the notification provided for in clause 2.4.1 above, Newco will submit to the Commission all relevant information enabling the Commission to confirm that:

2.4.2.1 the Strongbow Business is being divested in a manner consistent with these Conditions;

2.4.2.2 the proposed Licensee is majority HDP-owned and independent and not directly or indirectly related to the Merger Parties, or to any directly or indirectly affiliated member of Heineken Group;

2.4.2.3 the proposed Licensee possesses the financial resources (including secured internal or third-party funding), proven relevant expertise and has the incentive and ability to maintain and develop the Strongbow Business (including the Strongbow brand in South Africa) as a viable and active competitive force in competition with the Merger Parties in the FAB/cider/ market in South Africa;

2.4.2.4 merchandising for the duration of the Transitional Service Agreements, the Licensee will be given access to space within fridges which will be in line with Strongbow's share in the 12 (twelve) months preceding the effective date, which for South Africa is c.39,500 fridges, a minimum of approximately 12% of fridge space.

2.4.2.5 the terms of the Licence, any Transitional Services Agreements and any agreement relating to the provision of the services identified in 2.2.6 above, are appropriate to establish and maintain the Licensee as a viable and active competitive force in competition with the Merger Parties in the cider/FAB market in South Africa.

2.4.3 Newco will provide the Commission with an affidavit deposed to by a senior official of the proposed Licensee confirming the accuracy of all information relating to the proposed Licensee.

2.4.4 The Commission will, within 30 (thirty) Calendar Days of receiving such notification, provide Newco with written approval or rejection of the proposed Licensee, which approval may not be unreasonably withheld.

2.4.5 In the event that the Commission rejects the proposed Licensee, it shall provide written reasons for such rejection, and Newco shall within 60 (sixty) Calendar Days notify the Commission of another proposed Licensee in writing for the Commission’s approval on the above basis, which approval may not be unreasonably withheld.

2.4.6 Once the Commission has granted its approval of a proposed Licensee, Newco will provide a copy of the signed Licence, any Transitional Services Agreements and any agreement relating to the provision of global marketing and innovation support services in respect of the Strongbow brand, within 15 (fifteen) Business Calendar Days of the conclusion of such agreements, to the Commission for its approval.

2.4.7 For the avoidance of doubt, any acquisition of the Licence must be notified to the Commission, in the prescribed manner and forms, as a merger filing, irrespective of whether the minimum merger notification thresholds contemplated in the regulations to the Competition Act are met.

2.5 **Appointment of a Trustee**

2.5.1 If Heineken Group is unable to implement the divestiture within the Divestiture Period, Heineken Group will, with the Commission's approval, appoint an independent Trustee to divest the Strongbow Business

2.5.2 The Trustee will be responsible for the conclusion of a Licence within 6 (six) months from the date of his/her appointment (the "**Trustee Divestiture Period**") to a Licensee approved by the Commission.

2.5.3 Heineken Group will propose a Trustee for the Commission's approval no later than 1 (one) month prior to the end of the Divestiture Period. The proposal must contain sufficient information for the Commission to determine whether the Trustee will be suitable to execute the Trustee's mandate and will include *inter alia* the proposed Trustee's contact details, experience, references and employment history.

2.5.4 The Trustee must be independent of Newco and its affiliated companies, possess the necessary qualifications to carry out his/her mandate, and will not have any conflicts of interest. The Trustee and his/her firm's relationship with the Merger Parties during the previous 12 (twelve) months must be disclosed to the Commission.

2.5.5 The Commission will approve or reject the proposed Trustee within 20 (twenty) Business Days of the proposal in clause 2.5.3. Newco will appoint the Trustee within 5 (five) Business Days of the Commission's written approval of the Trustee.

2.5.6 If the proposed Trustee is rejected by the Commission, the Heineken Group shall submit the names of at least 2 (two) more proposed Trustees within 5 (five) Business Days of being informed of the rejection. The Commission will choose which of these Trustees it wishes to have appointed, provided the Trustee is suitable for the position. If the Commission, acting reasonably, rejects all further proposed Trustees, the Commission may nominate a Trustee, who Heineken Group shall appoint within 5 Business (five) Days of being informed by the Commission of such Trustee's identity.

2.5.7 Heineken Group will provide a duly executed power of attorney to the Trustee effective from the date of the Trustee's appointment. The power of attorney, which will be consistent with the Trustee's mandate (including and subject to these Conditions) and acceptable to the Commission, must enable the Trustee to perform all actions which the Trustee considers necessary or appropriate, including the power to appoint advisors, to litigate for enforcement of this divestiture condition and to execute the Trustee's mandate. A certified copy of the power of attorney will be submitted to the Commission within 5 (five) Business Days of the Trustee's appointment.

2.5.8 All reasonable costs incurred by the Trustee or his/her firm will be for Heineken Group's account.

2.6 **The Trustee's mandate**

2.6.1 The Trustee will ensure that the divestiture is realised by way of the conclusion of a Licence for the Strongbow brand to a suitable Licensee. The provisions contained under “Monitoring of divestiture condition” in clause 2.4 (inclusive of sub-clauses) above shall apply *mutatis mutandis* to any divestiture process executed by the Trustee.

2.6.2 The Trustee's mandate will terminate on implementation of the Licence agreement the divestiture of the Strongbow Business following receipt of competition approval by the Commission or the Tribunal (as the case may be). The Trustee will however inform the Commission in writing of the termination of their mandate within 5 (five) Business Days of the implementation of the Licence.

3. NEW CAPITAL INVESTMENT AND PRODUCTION COMMITMENTS

3.1 The Merger Parties undertake that:

3.1.1 Newco shall spend a cumulative capital expenditure of R10 billion (ten billion Rand) over a period of 5 (five) years from the Closing Date to maintain or grow the aggregate productive capacity of the Production Operations and related facilities in South Africa;

3.1.2 In addition to the amount referred to in clause 3.1.1, Newco shall invest an amount of R3.8 billion (three billion eight hundred million Rand) to plan, develop, construct and commission a new greenfield brewery in South Africa within 5 (five) years of the Closing Date with an initial capacity of [redacted] and

3.1.3 Newco shall, on the basis contemplated in clause 3, procure that it or suitably qualified and experienced third parties (who will be identified within 12 (twelve) months and whose names and credentials it shall notify in writing to the DTIC once selected by Newco within 18 (eighteen) months) shall invest an amount of R1.7 billion (one billion seven hundred million Rand) in South Africa to develop, construct and commission within 5 (five) years of the Closing Date a greenfield maltery in South Africa with an initial capacity of [redacted] on the understanding that if such third parties fail to do so for any reason whatsoever, Newco shall make such investment itself (in addition to the amount referred to in clause 3.1.1) within 5 (five) years of the Closing Date.

3.2 Newco shall keep the DTIC and the Commission informed of all significant milestones reached during each stage of the planning, development, construction and commissioning of the brewery and maltery referred to in clauses 3.1.2 and 3.1.3 and promptly and fully respond to all queries that the DTIC and the Commission may reasonably raise in respect thereto.

3.3 In relation to the investments contemplated in this clause 3, the Merger Parties commit to ensure that Newco shall maximise where reasonable, and practically and technically feasible, having regard to the technical nature of the products and services required, the procurement of services and input materials from SMEs and HDPs in South Africa.

4. **ENTERPRISE AND SUPPLIER DEVELOPMENT, LOCALISATION AND GROWTH**

4.1 **Local Procurement**

4.1.1 During their most recent financial years Heineken SA and Distell procured a combined 80.3% (eighty point three per centum) ("the

Local Procurement Benchmark Ratio") of their Key Inputs (measured by the Rand value of supplies against the Rand value of total inputs) from suppliers, producers and farmers located in South Africa, equivalent to approximately R12.5 billion (twelve billion five hundred million Rand), as set out in **Annexure C**.

4.1.2 For each of the first 5 (five) full financial years after the Closing Date, Newco shall at least maintain the Local Procurement Benchmark Ratio in respect of its annual local procurement of Key Inputs and shall take every possible step to increase the Local Procurement Benchmark Ratio. Thereafter, Newco shall take every possible step to at least maintain the Local Procurement Benchmark Ratio. In addition, Newco intends to reduce its annual foreign procurement of Key Inputs during such period. The commitments set out in this clause 4.1.2 are made subject to the provision that such Key Inputs are available at appropriate quality standards and on reasonably competitive commercial terms. Reports on such steps shall be included in the annual reports made by Newco to the DTIC and the Commission in terms of clauses 8.74 and 8.5.

4.1.3 Notwithstanding the above, Newco shall decrease, through production efficiencies generated by the Proposed Transaction and increasing the capacity at Heineken SA's Sedibeng brewery and building the intended new greenfield brewery referred to in clause 3.1.2, the share of imports of finished products below 20% (twenty per centum), after such projects have been implemented and as far as practicable and commercially feasible, and acknowledging that short-term market fluctuations and unforeseen circumstances may temporarily prevent or delay such decrease. Reports in regard to such percentage shall be included in the annual reports made by Newco to the DTIC and the Commission in terms of clauses 8.7 and 8.5.

4.1.4 Newco shall train and upskill its South African-based managers and employees to foster integration with and use of local procurement by Newco in South Africa.

4.1.5 Where reasonably possible, in cases where third parties supply goods and services into Newco's South African value chain, Newco shall engage with such third-party suppliers to encourage them to commit to sourcing their inputs from South African based suppliers of goods and services.

4.2 **HDP business procurement**

4.2.1 Distell and Heineken SA have had a total local procurement from HDPs amounting to R4.7 billion (four billion seven hundred million Rand) during their most recent financial year(s) (measured by the Rand value of such procurement against the Rand value of combined total local procurement), which equates to approximately 27.1% (twenty seven point one per centum) of their combined total local procurement ("the HDP Procurement Benchmark Ratio").

4.2.2 For each of the first 5 (five) full financial years of Newco after the Closing Date, Newco undertakes to at least maintain the HDP Procurement Benchmark Ratio in respect of total local procurement from HDPs in South Africa and shall take every possible step to increase the HDP Procurement Benchmark Ratio. Thereafter, Newco shall take every possible step to at least maintain the HDP Procurement Benchmark Ratio. Newco's commitments are subject to such inputs being available from HDPs at the appropriate quality standards and on reasonably competitive commercial terms. Reports in regard to such ratio shall be included in the annual reports made by Newco to the DTIC and the Commission in terms of clause 8.4 and 8.5.

4.3 **Supplier Development Fund**

4.3.1 Newco shall establish a new ringfenced Supplier Development Fund and contribute R 400 million (four hundred million Rand) over 5 (five) years from the Closing Date to that Fund for investment in SMEs and HDP-controlled suppliers to Newco (for the avoidance of doubt, this may include programmes that extend beyond the 5 (five)-year period, e.g., long-term loans / funding opportunities subsidised by Newco to promote longevity of the Fund), with a focus on:

4.3.1.1 **agriculture** – Newco shall work in partnership with the Department of Agriculture, Land Reform and Rural Development to support HDP farmers to join and increase their participation in the agricultural value chain in South Africa including the barley value chain, introducing new varieties and supporting farmers to increase efficiency and yields which will include the establishment of 2 (two) model farms to empower and upskill HDP farmers and other local commercial farmers in the area of best-in-class crop management in order to improve their yields, incomes and to reduce greenhouse emissions and water usage;

4.3.1.2 **research and development ("R&D")** – in order to strengthen the South African technological and innovation base, Newco shall invest in and utilise R&D and technology developed by, in or for South Africa, to improve the productivity of emerging farmers, working in collaboration with universities and/or other institutions within South Africa's innovation system;

4.3.1.3 **complementary businesses** – Newco shall investigate and implement new business opportunities which will serve to complement the activities of Newco's model farms, HDP farmers and commercial farmers, including agro-production, processing, storage, logistics and transportation, marketing, and seed /

fertilizer / chemical distribution, or any other activities of Newco's business; and

4.3.1.4 **Black women-owned and controlled businesses** – Newco shall support development in Newco's value chains, including technical coaching and business development support, with particular regard to local agricultural production, processing and manufacturing, to assist Black woman-owned and controlled businesses to benefit from the planned increase in procurement from HDP businesses referred to in clause 4.2.2.

4.3.2 Responsibility for the administration and management of the Supplier Development Fund will vest in Newco. Newco shall report annually to the Commission on the investment in SMEs and HDP-controlled suppliers to Newco.

4.3.3 Newco shall design and implement projects and identify beneficiaries in line with the objectives of the Supplier Development Fund and consistent with the principles of long-term sustainability. Newco shall however actively consult with the DTIC to ensure that funds are directed to strategically important projects.

4.3.4 To this end, Newco, the Unions and the DTIC shall establish a consultative board ("SD Consultative Board"), comprising representatives of Newco, the Unions and the DTIC having sufficient expertise to give guidance in relation to the specific types of programmes referred to in this clause.

4.3.5 The SD Consultative Board shall:

4.3.5.1 be comprised of 2 (two) representatives appointed by each of Newco and the DTIC; and 1 (one) representative appointed by the Unions. Newco, the DTIC and the Unions may remove and replace their own respective appointees;

4.3.5.2 meet as and when it so determines, but not less than once per annum, with a view to consult and make recommendations on the implementation of the Supplier Development Fund as well as advise Newco on the means and mechanisms to fulfil the objectives of the Fund;

4.3.5.3 be a forum for consultation between the South African Government and Newco and provide guidance to Newco on which programmes the Supplier Development Fund shall support. When considering any programmes to be supported by the Supplier Development Fund, the SD Consultative Board shall be guided by the achievement of the objectives of the fund and the best long-term interests of South Africa; and

4.3.5.4 be entitled to call for and receive reports and presentations from Newco regarding the investments and programmes supported by the Supplier Development Fund.

4.3.6 The amounts in the Supplier Development Fund shall be made available to be disbursed in equal annual portions over the 5 (five)-year period from the Closing Date (i.e., R 80 million (eighty million Rand) per annum).

4.3.7 For the avoidance of doubt, the amounts to be invested into and disbursed by the Supplier Development Fund shall be incremental to any committed expenditure on the part of Newco. In particular, such expenditure shall be over and above any pre-existing planned corporate social investment expenditure on the part of the Merger Parties, as set out in **Annexure B**.

4.3.8 No administration fees or other costs may be deducted from the aggregate value of the Supplier Development Fund.

4.3.9 The Supplier Development Fund shall be entitled to use a combination of instruments to support individual projects in the most appropriate way, building on the work already done by the

Merger Parties in these areas. These instruments may include development funding loans, commercial loan guarantees, direct grants and technical assistance, skills development and training, including measures to extend the Supplier Development Fund beyond the 5 (five)-year period.

4.4 **Localisation and Growth Fund**

4.4.1 In addition to, and distinct from the Supplier Development Fund, and to ensure that the Proposed Transaction will have a positive impact on the relevant industrial sectors and regions, and advance the inclusion and expansion of HDPs and SMEs in the market(s), Newco will support the South African Government's economic recovery plan (tabled by the President in Parliament in October 2020) by contributing R 200 million (two hundred million Rand) over 5 (five) years from the Closing Date to a ringfenced Localisation and Growth Fund with the objective to support further localisation initiatives that will drive future economic growth in South Africa. For the avoidance of doubt, this may include programmes that extend beyond the 5 (five)-year period, e.g., long-term loans / funding opportunities subsidised by Newco to promote longevity of the Fund.

4.4.2 The Localisation and Growth Fund will prioritise HDP businesses and be open to businesses beyond Newco's direct value chain.

4.4.3 The amounts in the Localisation and Growth Fund shall be made available to be disbursed in equal annual portions over the 5 (five)-year period (R 40 million (forty million Rand) per annum).

4.4.4 Responsibility for the administration of the Localisation and Growth Fund will vest in Newco. The Localisation and Growth Fund shall be managed by the SD Consultative Board as contemplated in clauses 4.3.4 and 4.3.5, *mutatis mutandis*, save that the SD Consultative Board's decisions as to which strategically-important programmes and projects are to be funded by the Localisation and Growth Fund, shall be taken jointly and consensually by Newco, the Unions and the DTIC, and shall therefore be binding on Newco.

4.4.5 For the avoidance of doubt, the amounts to be invested into and disbursed by the Localisation and Growth Fund shall be incremental to any committed expenditure on the part of the Merger Parties. In particular, such expenditure shall be over and above any pre-existing planned corporate social investment expenditure on the part of the Merger Parties.

4.4.6 No administration fees or other costs may be deducted from the aggregate value of the Localisation and Growth Fund.

4.5 **Tavern Transformation Programme**

4.5.1 Newco shall invest R 175 million (one hundred and seventy-five million Rand) incremental to the planned expenditure by Distell and Heineken SA prior to entering into the Proposed Transaction in an amount of [redacted] over a 5 (five) year period from the Closing Date to support around 1 000 (one thousand) Tavern owners to create safe, responsible and sustainable businesses with a positive impact for consumers and society.

4.5.2 The focus areas will be to support Taverns with the following:

4.5.2.1 investment to significantly improve facilities at the Taverns to ensure safety of patrons (including sanitation);

4.5.2.2 converting of Taverns into higher quality, multi-occasion outlets offering consumers an experience centred around moderation of consumption of alcoholic beverages;

4.5.2.3 supporting the introduction of multiple income streams at Taverns including food and non-alcoholic alternatives to improve the sustainability of Taverns while supporting responsible consumption;

4.5.2.4 ensuring that sale and/or consumption of alcoholic beverages by under-age individuals do not take place at Taverns.

4.5.3 Newco must within 90 (ninety) Calendar Days of the Closing Date, submit a detailed plan to the Commission and the DTIC setting out how it intends to implement the Tavern Transformation Programme and achieve its objectives.

4.5.4 Newco will aim to leverage the investment referred to in clause 4.5.1 through partnerships with other suppliers and service providers to the Taverns to bring additional value-add support to Tavern owners including food service, training, business skills coaching, digital infrastructure; and money market services to reduce costs.

4.5.5 Newco estimates this investment could support the creation of around 1 500 (one thousand five hundred) new jobs as these Taverns are able to add additional value, increase their revenue streams and grow their businesses.

4.5.6 Newco shall proactively engage with liquor licensing authorities whose support will be critical to achieving these positive impacts.

4.5.7 Newco shall not require any Tavern which receives funds or investments in terms of Newco's Tavern Transformation Programme to purchase exclusively from Newco or favour the purchase of Newco's products to the exclusion of Newco's competitors.

4.5.8 Newco shall maintain ongoing detailed records of the expenditure of the investment referred to in clause 4.5.1 and the improvements at Taverns that have resulted from such expenditure. Such reports shall be included in the annual reports made by Newco to the DTIC and the Commission in terms of clauses 8.4 and 8.5.

4.5.9 **Tavern supply chain opportunities** – Newco shall investigate and implement new business opportunities for HDP and SME owned suppliers to minimise any risk of displacement of existing HDP and SME distributors to Taverns, with the aim of *inter alia* promoting HDP and SME involvement in distribution to outlets, and/or supporting Taverns in negotiating terms with other third-party suppliers to Taverns.

4.6 **Innovation, Research and Development Hub**

4.6.1 Newco commits to the establishment of an Innovation, Research and Development Hub for the Africa region based in South Africa ("the Innovation Hub") within 5 (five) years of the Closing Date. The Innovation Hub will be a centre for excellence for Newco and the wider Heineken Group's innovation in spirits and fruit-based beverage products.

4.6.2 The purpose of the Innovation Hub is to accelerate and scale the Heineken Group’s capability. The Innovation Hub will focus on:

4.6.2.1 product and technical R&D for wines, spirits, ciders and non-alcohol containing beverages;

4.6.2.2 extended commercialisation opportunities for the above-mentioned categories into new Heineken Group markets outside of Southern Africa; and

4.6.2.3 development of new business opportunities for the region outside of its current core business.

4.6.3 The Innovation Hub will function using an agile resourcing model and will contract specific expertise for key projects and initiatives. This will be achieved through a partnering approach with specific subject matter experts, research institutions, start-up incubators and individual start-ups with access to proprietary technology.

4.7 **Export promotion**

4.7.1 In order to ensure that the Proposed Transaction will have a positive impact on the ability of national industries to compete in international markets, Heineken SA will make Newco an export hub in South Africa for Newco's products supplied to 10 (ten) markets in Africa beyond South Africa and, Namibia and Kenya, thereby benefiting production and procurement in South Africa. In this regard, Newco commits to increase exports of South African manufactured products within a period of 5 (five) years from the Closing Date. Reports on such endeavours shall be included in the annual reports made by Newco to the DTIC and the Commission in terms of clauses 8.4 and 8.5.

5. **TRANSFORMATION AND OWNERSHIP**

5.1 **The DDT**

5.1.1 Pre-merger, Distell has a B-BBEE ownership scheme in place, in terms of which Distell Beverages holds a 15% (fifteen per centum) shareholding in SADW, a Distell subsidiary that holds, *inter alia*, all of Distell's South African business, as well as a 1.2% (one point two per centum) direct shareholding in Distell.

5.1.2 In relation to the In-Scope Assets, as soon as practicable following implementation of the Proposed Transaction, the DDT, via Distell Beverages, will obtain a fully voting shareholding interest in SA Co. The exact shareholding of the DDT though Distell Beverages in SA Co will be determined as part of the closing mechanics for the Proposed Transaction but shall, when combined with the shareholding of the ESOP referred to in clause 5.2, not be less than 15% (fifteen per centum) and is expected to be approximately 9% (nine per centum) which equates to a value of approximately R4.8 billion (four billion eight hundred million Rand). Such shareholding and voting rights shall not be reduced or diluted for a period of no less than 5(five) years after the Closing Date.

5.1.3 For the avoidance of doubt, as a result of the DDT retaining its 15% (fifteen per centum) shareholding in SADW, the Out-of-Scope Assets will continue to have a 15% (fifteen per centum) B-BBEE ownership scheme which will not be negatively impacted or diluted as a result of the Proposed Transaction.

5.1.4 The DDT / Distell Beverages shall be entitled to appoint 1 (one) person to the board of directors of SA Co.

5.1.5 No additional funding will be required from the DDT as a result of the Proposed Transaction. Newco shall use its best endeavours to restructure the current funding structure of the DDT within 12 (twelve) months after the Closing Date, which will increase the trickle dividend and cash flow to the DDT from SA Co. Newco shall report to the DTIC and Commission on such restructuring in its annual reports referred to in clauses 8.4 and 8.5.

5.2 **Employee Share Ownership Plan ("ESOP")**

5.2.1 Within 3 (three) months after the Closing Date, the Merger Parties shall establish a new evergreen/perpetual ESOP that will hold a fully voting shareholding of approximately 6% (six per centum) in SA Co (which equates to a value of approximately R3.5 billion (three billion five hundred million Rand), for the benefit of the South African Employees of SA Co (a majority of which shall always be HDPs).

5.2.2 For avoidance of doubt, the Employees of the Merger Parties who will be transferred (in terms of the LRA) to Capevin with the Out-of-Scope Assets, pursuant to the Distell restructuring implemented as part of the Proposed Transaction, will benefit from the ESOP.

5.2.3 The Employees of the Merger Parties who will be transferred to Capevin with the Out-of-Scope Assets, will not lose any benefits of the ESOP by virtue of the transfer.

5.2.4 The new ESOP and the existing DDT shall together achieve a B-BBEE effective ownership and voting interest in SA Co of no less than 15% (fifteen per centum). Such shareholding and voting rights shall not be reduced or diluted for a period of no less than 5 (five) years after the Closing Date.

5.2.5 Employees that form part of senior management will not be eligible to join the ESOP.

5.2.6 The Merger Parties shall ensure that the ESOP shall be structured in accordance with the B-BBEE Codes and incorporate the following principles:

5.2.6.1 Equal allocation (all Employees treated equally in terms of voting and economic participation with no differentiation across Employee grades).

5.2.6.2 The funding of the ESOP shall be fully facilitated through a notional vendor funding mechanism, with the funding rate being no more than the Prime Rate minus 1.5% (one point five per centum).

5.2.6.3 No upfront contribution to be required from Employees to participate in the ESOP.

5.2.6.4 A fixed trickle dividend of 55% (fifty-five per centum) shall be paid out on an annual basis.

5.2.6.5 The ESOP will be entitled to appoint 1 (one) person to the board of directors of SA Co.

5.2.6.6 The trustees of the ESOP shall be selected by the Employees of SA Co, except for 1 (one) trustee who shall be appointed by the board of directors of SA Co.

5.2.6.7 The ESOP and DDT shall enter into good faith negotiations with Newco, to be completed within 6 (six) months of the Closing Date, to execute a shareholders' agreement in respect of SA Co to provide for appropriate minority protection for the ESOP and DDT (with no veto rights and without impeding the day-to-day operations of SA Co and any of its commercial or growth initiatives).

5.2.7 The costs of establishing and administering the ESOP and implementing the acquisition of the SA Co shareholding shall not be borne by the ESOP but shall be borne by SA Co. For the avoidance of doubt, the reasonable costs of expert advisors and representatives of the Unions in relation to establishing and administering the ESOP will be borne by the SA Co/Newco.

6. EMPLOYMENT AND EMPLOYMENT-RELATED CONDITIONS

6.1 Employment guarantee

6.1.1 For a period of 5 (five) years following the Closing Date, Newco shall maintain the total aggregate number of all employees of the Merger Parties in South Africa as at the Approval Date which number Newco shall advise the Commission, the Unions and the DTIC within 7 (seven) Calendar Days of the Closing Date. Compliance with this condition shall be annually measured from the second to the fifth anniversary of the Closing Date.

6.1.2 No Employees, whether South African citizens or not, as at the Approval Date other than the maximum number of Affected Employees may be retrenched. Without derogating from clause 6.1.1, no employees of the Merger Parties whose roles, as at the Approval Date, involve working on production lines within the

Production Operations, shall be retrenched as a result of the Proposed Transaction. For the sake of clarity, the roles that involve working on production lines include machine technicians.

6.1.3 Subject to clauses 6.1.1 to 6.1.2 above, to the extent that any retrenchments of the Affected Employees (above the specified job grades and not involved in working in the abovementioned production lines) are required as a result of the Proposed Transaction, such retrenchments shall not exceed a maximum of 166 (one hundred and sixty six) Affected Employees within a period of 5 (five) years from the Closing Date, and such retrenchments will be effected in line with applicable labour legislation. For the sake of clarity, Newco shall replace the number of retrenched Affected Employees within 6 (six) months of the retrenchment in order to maintain the aggregate employee headcount of the Merger Parties in terms of clause 6.1.1.

6.1.4 In maintaining the aggregate employee headcount of the Merger Parties during the 5 (five) year period following the Approval Date as required in clause 6.1.1, Newco shall use its best endeavours to replace the number of any Affected Employees who were employed on a permanent basis or on a fixed-term contract, with permanent employees of the Merger Parties. Newco shall report on these endeavours to the Commission, the Unions and DTIC in terms of clauses 8.4, 8.5 and 8.6.

6.1.5 Prior to retrenching any Affected Employees, the Merger Parties must provide the Commission in writing with a detailed description of the Affected Employees to be retrenched, a detailed explanation of how the duplications arose and why retrenchments are necessary.

6.1.6 Newco must put in place suitable and appropriate measures to mitigate the consequences of any potential retrenchments of the Affected Employees by:

6.1.6.1 offering potentially Affected Employees voluntary separation arrangements, early retirement packages, and transfers to other reasonable alternative positions, to limit the need for involuntary retrenchments;

6.1.6.2 providing funding to re-skill any Affected Employees in an amount of R40 000 (forty thousand Rand) per retrenched Affected Employee;

6.1.6.3 providing counselling and guidance on applying for alternative employment; and

6.1.6.4 for a period of 3 (three) years following their retrenchment, offering any Affected Employees preferential consideration for re-employment by Newco or its subsidiaries subject to final agreement on terms and conditions of employment.

6.1.7 The Merger Parties shall in its annual reports to the Commission report *inter alia* the following:

6.1.7.1 Of the maximum number of Affected Employees, the number of Affected Employees that:

6.1.7.1.1 accepted voluntary separation arrangements;

6.1.7.1.2 accepted early retirement packages; and

6.1.7.1.3 were transferred to other reasonable alternative positions.

6.1.7.2 The ultimate number of involuntary retrenchments in terms of clause 6.1.11;

6.1.7.3 the number of Affected Employees that received reskilling, and the nature and cost of that reskilling per Affected Employee.

6.1.8 For the avoidance of doubt, "retrenchments" as contemplated in clause 6.1.3 do not include:

6.1.8.1 voluntary separation arrangements;

6.1.8.2 voluntary early retirement packages;

6.1.8.3 unreasonable refusals to be redeployed in accordance with the provisions of the LRA;

6.1.8.4 resignations or retirements in the normal course;

6.1.8.5 terminations in the normal course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and

6.1.8.6 necessary steps taken by Newco in terms of section 189 of the LRA, should operational requirements in the ordinary course of business that are not merger-specific (i.e. not related to or as a result of the Proposed Transaction) necessitate that such steps be taken.

6.1.9 Distell employees currently involved in the "Out-of-Scope Assets" (excluding those based overseas) will have an election to transfer to Capevin's South African operations, or to remain with the Merged Entity. Until Heineken potentially acquires a minority stake in Capevin, there will be no negative effect on any employees who elect to transfer to Capevin's South African operations.

6.1.10 Distell employees involved in the "Out-of-Scope Assets" who elect to transfer to the South African operations of Capevin will transfer in terms of section 197 of the LRA and, therefore, on terms and conditions of employment that are, on the whole, not less favourable than their existing terms.

6.1.11 Other than the retrenchments of Affected Employees contemplated in clause 6.1.3, where Newco retrenches any Employee in South Africa within a period of 5 (five) years after the Closing Date, the retrenchment will be presumed to be as a result of the Proposed Transaction, unless Newco can demonstrate otherwise. Any retrenchments after 5 (five) years after the Closing Date will not be presumed to be as a result of the Proposed Transaction and the normal rules of evidence applicable in the Tribunal will apply in the event of a dispute.

6.2 **Fair wages**

6.2.1 Newco shall adopt a policy of paying fair wages (in line with the spirit and purport of the Basic Conditions of Employment Act, No. 75 of 1997 and the LRA) for all employees of Newco using an independent and transparent measure (such as that of the Fair Wage Network (FWN)[1] - See https://fair-wage.com/) to ensure that the amount needed to afford a decent standard of living is guaranteed and is not dependent on variable factors like working overtime or incentives.

6.2.2 Heineken SA and Distell will use their best endeavours to ensure that seasonal workers, outsourced, permanent, and temporary employees of any independent contractors to which it outsources any of its services are paid fair wages, as set out more fully below.

6.2.3 **Newco Fair Wage Level and Newco Employees**

6.2.3.1 Within 3 (three) months of the Closing Date, Newco will conduct an internal assessment to determine whether all employees of Newco or its subsidiaries are paid at or above the Newco Fair Wage Level. Following this assessment, Newco will take immediate steps to ensure that no employee of Newco or its subsidiaries will be paid below the Newco Fair Wage Level.

[1] FWN is an independent, international non-government organisation, which provides data on fair wage benchmarking over approximately 200 countries. They have over 12 years of experience, are widely published, and seen as the benchmark by Fair Wage Association and International Labour Organisation (ILO).

6.2.4 **Newco Fair Wage Level and Outsourced Service Providers**

6.2.4.1 Within 3 (three) months, where Heineken SA contracts directly with Outsourced Service Providers (“OSPs”), it will apply the following to Newco and its subsidiaries:

6.2.4.1.1 Identify all OSPs that supply labour-based services to sites owned, managed, or controlled by Newco or its subsidiaries, and corresponding Non-Employee Workers ("NEWs") for example, catering, cleaning, security, or store merchandisers;

6.2.4.1.2 Request payroll data of all NEWs, validated through external social compliance audits, including confidential interviews with NEWs;

6.2.4.1.3 Compare existing NEWs annual base salaries, fixed guaranteed allowances, and cash equivalent of benefits against a fair wage necessary to constitute a living wage in South Africa; and

6.2.4.1.4 where any deficiencies are found, discuss the delta between current compensation and the Newco Fair Wage Level with the OSP and encourage the OSP to pay its employees a fair wage necessary to constitute a living wage in South Africa.

6.2.4.1.5 Using its best endeavours and influence, Newco will work with OSPs on an ongoing basis to ensure that OSPs pay their employees a fair wage necessary to constitute a living wage in South Africa.

6.2.5 **Workers employed or contracted on farms and cooperatives supplying inputs to Newco**

6.2.5.1 On third-party farms and cooperatives directly supplying Newco, products to Newco ("direct sourcing farms and cooperatives"), the Merger Parties lack direct control to define contractual agreements between the farms and the OSPs who supply permanent, temporary, or seasonal labour to those farms. However, the Merger Parties recognise the opportunity to positively influence the lives and livelihoods of these workers and labour practices in the industry more broadly. Newco will on an ongoing basis:

6.2.5.1.1 work with all direct sourcing farms and cooperatives to share best practice and benefits of paying a fair wage necessary to constitute a living wage in South Africa, including the prevailing Newco Fair Wage Level as a reference, and tools to calculate total compensation of employees (annual based salary, fixed allowances, and cash equivalent of benefits, such as accommodation and transport); and

6.2.5.1.2 update all sourcing agreements, stipulating the expectation that direct sourcing farms and cooperatives strive to pay labour employed directly or indirectly a fair wage necessary to constitute a living wage in South Africa.

6.3 **Merger Parties' commitment to safe and dignified work**

6.3.1 Both Heineken and Distell have comprehensive and well-established Human Rights Policies which guide them to understand, avoid and address human rights-related risks. Heineken's policy will be applied to Newco.

6.3.2 In compliance with international standards including the Universal Declaration of Human Rights, the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization, the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development and the United Nations Guiding Principles on Business and Human Rights. Newco will on an ongoing basis:

6.3.2.1 work with Distell farms and all direct sourcing farms and cooperatives to understand, avoid and address risks associated with human rights; and

6.3.2.2 to update all sourcing agreements to reflect a commitment to human rights standards, including providing for adequate sanitation facilities in the vineyards for workers, protection of farm workers from highly hazardous pesticides, adequate personal protective equipment (PPE) and safe transportation.

6.3.3 **Investigation of allegations regarding OSP's conduct**

6.3.3.1 Within 3 (three) months of the Closing Date, Newco will undertake an investigation into the allegations raised by witnesses before the Tribunal regarding distribution OSPs (being Liquor Runners and Vericon), and take all action required to ensure that these suppliers comply with all service level agreements and Heineken Human Rights Policy (and future Newco policies), to ensure a safe and dignified working environment for all temporary workers connected to Newco. Where any other complaints against other OSP's treatment of outsourced, seasonal and temporary workers are raised with Newco, these will also be investigated. In line with policy and industry standards, following an investigation appropriate action will be taken proportionate to the findings. This may include, where applicable, disciplinary measures against an implicated person, termination of supply agreements and support for victims.

6.3.4 **Inventory assessment of Newco's operations and labour-based procurement practices**

6.3.4.1 Within 3 (three) months of the Closing Date, Newco will conduct an inventory assessment of all Newco owned, managed, or leased operations (including farms), and the labour-based procurement practices currently in place at its operations. This inventory assessment will help to understand the (i) recruitment; (ii) management; (iii) workplace; and (iv) termination procedures of all labour, and labour-based services, be it permanent, temporary seasonal, or outsourced labour.

6.3.5 **Audit of compliance in farms owned by and supplying to Newco to continue to raise industry standards**

6.3.5.1 Within 3 (three) months of the Closing Date, Newco shall provide the Commission with a list of all farms that it directly and indirectly sources from.

6.3.5.2 Within 6 (six) months of the Closing Date Newco shall:

6.3.5.2.1 conduct an audit of the working conditions of all permanent employees, non-employee workers employed by OSPs who deliver labour-based services on these sites, and any other temporary or seasonal workers, where applicable, on farms wholly owned by Distell (currently, the JC Le Roux and Nederburg wine farms). This audit will assess working conditions on Distell farms against legal requirements and international standards, in particular (i) a fair wage necessary to constitute a living wage in South Africa (as provided for in clause 6.2), (ii) reasonable working hours, (iii) safe and dignified work environment, and (iv) health and safety standards; and

6.3.5.2.2 conduct a representative sample audit of other South African wine farms which directly or indirectly supply products to Newco. This audit will assess conditions for employees and temporary workers against Newco's Supplier Code of Conduct and the recommendations of the audit of its owned farms and will include an assessment of the most effective measures to improve security of employment for outsourced, temporary, and seasonal workers at Distell and third-party farms.

6.3.5.3 The audits will be conducted in partnership with a highly respected and independent third-party organisation, accredited by the Association for Professional Social Compliance Auditors.

6.3.5.4 Newco will ensure that its policies and practices meet the highest industry standards possible and, in partnership with industry bodies, be used as best practice to be shared and supported in the broader wine industry. To ensure this Newco will publish a summary of its findings and recommendations to raise awareness of issues and promote higher standards across the industry on its website. Newco will also provide the findings and recommendations to the Commission. Newco will also engage with all its direct suppliers in the wine value chain and continue to work with longstanding partners, the Sustainable Agriculture in South Africa (SIZA) initiative and the Wine & Agricultural Ethical Trade Association (WIETA) and other stakeholders, including the Women on Farms Project (WFP), to collectively work towards ensuring safe and dignified work for all people in the industry.

6.3.6 **Anonymous reporting line:**

6.3.6.1 Newco will work with its OSPs in educating outsourced, seasonal and temporary workers on their rights, and establish and promote an anonymous communication line for reporting any instances of wrong-doing. Newco will not tolerate any form of retaliation against people for speaking up about potential misconduct.

6.3.6.2 Where any non-compliance, deficiencies or abuses in respect of payment of fair wages, working conditions and/or respect for workers' Human Rights are identified, Newco will take appropriate corrective actions to rectify these as soon as practicable, where these are in the direct control of Newco. In the case of indirect activities of OSPs, Newco will ensure compliance from its OSPs and direct sourcing farms.

6.3.7 **Support for outsourced, temporary and seasonal workers**

6.3.7.1 Newco will further propose to the SD Consultative Board that female HDPs – who are outsourced, temporary and seasonal farm workers, or employees of other OSPs to Newco benefit directly or indirectly from the Supplier Development Fund (referred to in clause 4.3.1) to support its suppliers to maintain the highest industry standards. Newco will further work with the DDT on its existing and future projects that directly benefit female HDPs.

6.3.7.2 Newco will report to the Commission, the DTIC and the Unions on all investigations, audits and substantive actions taken in terms of this clause 6.3, in its annual reports in terms of clause 8.

6.4 **Harmonisation**

6.4.1 Any employees of the Merger Parties transferred to Newco following the merger shall be transferred on terms and conditions of employment (including wages, working conditions and benefits) that are as a whole no less favourable than their current terms and conditions of employment, in accordance with the provisions of the LRA.

6.4.2 Newco shall use its best endeavours to complete all collective bargaining processes within 12 (twelve) months of the Closing Date, to harmonise wages, working conditions and benefits across the different entities forming part of Newco. The harmonisation process shall be undertaken in consultation with the Unions.

6.4.3 Newco will report to the Commission and DTIC on all actions taken in terms of this clause 6.4, within 20 (twenty) Calendar Days of the completion of the harmonisation process.

6.5 **Head office**

Newco shall remain incorporated and headquartered in South Africa and place operational and strategic responsibility in the hands of local management in South Africa, while benefiting from the scale and support of Heineken Group's global operations. Newco shall remain a tax resident of South Africa.

7. **HEINEKEN GROUP'S "BREW A BETTER WORLD" INITIATIVES**

7.1 Newco will continue to accelerate the sustainability efforts of both Distell and Heineken SA to protect the environment, support local communities and make a positive contribution to society and make a greater impact in the next decade.

7.2 Newco will implement the following initiatives:

7.2.1 **Carbon Neutrality** – aiming for net zero emissions in production by 2030 and carbon neutrality across the value chain by 2040. Heineken SA is investing at scale to build renewable energy capacity, with Sedibeng due to become Africa’s largest solar brewery with the construction of a 6.5MW (six point five MegaWatt) solar project by mid-2022, supporting up to approximately 200 (two hundred) jobs during the construction phase. In addition to reducing Heineken SA’s carbon footprint, the project will substitute significant power requirements from the wider public electricity grid. This investment builds upon the strong track record of Distell on solar energy including the recent completion of four new solar photovoltaic (PV) facilities. Newco will continue to invest in renewable energy technology to meet the net zero emissions target across combined production facilities and with its value chain partners.

7.2.2 **Maximise Circularity** – committing to zero waste to landfill by 2025 and to increasing the use of returnable packaging;

7.2.3 **Towards Healthy Watersheds** – committing to continued improvements in water efficiency to reduce water use in production. By 2030 Newco will fully balance all the water used in its products in water stressed areas (i.e. Newco will return to the local watershed the water that it uses in the production of products);

7.2.4 **Always a Choice** – ensuring that consumers always have a choice through broadening the availability of zero alcohol beverages;

7.2.5 **Harm Reduction** – continuing Heineken SA and Distell's current spend on projects and partnerships with a proven impact on behavioural change and reducing alcohol related harm, alongside investment in responsible consumption campaigns. This is equivalent to an investment of R400 million (four hundred million Rand) over a period of 5 (five) years;

7.2.6 **Social impact projects** – committing to community support investments including Water Sanitation & Hygiene (WASH) projects; and

7.2.7 **Inclusion and diversity** – participating in Heineken Group's initiative to increase the number of women represented in senior management in South Africa.

8. MONITORING

8.1 Newco will circulate a non-confidential version of the Conditions to all employees of the Merger Parties, employees' representatives, and Unions within 10 (ten) Calendar Days of the Approval Date.

8.2 As proof of compliance with clause 8.1, the Merger Parties will within 5 (five) Business Days of circulating the Conditions, submit to the Commission an affidavit by a senior official of Newco attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees, employees' representatives and the Unions.

8.3 Newco will notify the Commission in writing of the implementation of the merger within 10 (ten) Calendar Days of the Closing Date. This notice will include an affidavit attested to by a senior official of Newco which provides the total number of Employees that are employed by Newco in South Africa as at the Closing Date.

8.4 Within 45 (forty-five) Calendar Days of each anniversary of the Closing Date up until the 6th (sixth) anniversary of the Closing Date, Newco shall provide to the Commission a suitable and appropriately detailed annual report regarding Newco's compliance with these Conditions.

8.5 Within 45 (forty-five) Calendar Days of each anniversary of the Closing Date up until the 6th (sixth) anniversary of the Closing Date, Newco shall provide to the DTIC a suitable and appropriately detailed annual report regarding Newco's compliance with clauses 3, 4, 5, 6 and 7 of these Conditions.

8.6 Within 45 (forty-five) Calendar Days of each anniversary of the Closing Date up until the 6th (sixth) anniversary of the Closing Date, Newco shall provide to the Unions a suitable and appropriately detailed annual report regarding Newco's compliance with clauses 5 and 6 of these Conditions.

8.7 Within 45 (forty-five) Calendar Days of each anniversary of the Closing Date, Newco shall provide the Commission, the Unions and the DTIC with a suitable and appropriately detailed annual report regarding any projects funded in terms of clauses 5.3 and 5.4 of these Conditions for as long as these project and/or programmes remain in operation.

8.8 The reports referred to in clause 8.4 to 8.7 above shall be accompanied by an affidavit attested to by the chief executive officer of Newco confirming the accuracy of the annual report and full compliance with the Conditions or otherwise in the year to which the reports relate.

8.9 Newco shall within a reasonable time after request by the Commission, the DTIC and the Unions respond to any queries that the Commission, the DTIC and the Unions may have in respect of the abovementioned annual report and its compliance with the relevant Conditions, including by providing the Commission, the DTIC and the Unions with all such information and documentation as may be reasonably required by them.

9. VARIATION

9.1 Should Newco seek to vary the Conditions, it shall make a proposal to the Commission, and the DTIC to consent to a waiver, relaxation, modification and/or substitution of any aspect of the Conditions on good cause.

9.2 For the purpose set out in clause 9.1, "good cause" shall have its normal meaning as interpreted under the Competition Act and the common law.

9.3 In the event of the Commission, the DTIC and Newco agreeing to the waiver, relaxation, modification and/or substitution of any aspect of the Conditions, Newco shall make application, with the support of the Commission, and DTIC, to the Tribunal for confirmation by it of such waiver, relaxation, modification or substitution of any one or more of the Conditions.

9.4 In the event of the Commission, and/or DTIC withholding its consent to a waiver, relaxation, modification and/or substitution of any one or more of the Conditions, Newco shall be entitled to apply to the Tribunal for an order waiving, relaxing, modifying and/or substituting any one or more of the Conditions. The Commission, the DTIC, shall be entitled to oppose such application.

9.5 The Commission shall be entitled to apply to the Tribunal, on good cause shown, for the relaxation, modification, or substitution of any aspect of the Conditions.

10. **IMPACT OF THE PROPOSED TRANSACTION ON THE PIC'S DIVESTITURE OF 5.28% IN DISTELL TO ONE OR MORE B-BBEE-CONTROLLED ENTITY/IES**

10.1 The Merger Parties acknowledge that the Public Investment Corporation (PIC), on behalf of the GEPF, is under an obligation in terms of existing merger conditions and order of the Tribunal (Tribunal Case No. LM215Feb17/VAR037Apr18) to dispose of a 5.28% shareholding in Distell to a new B-BBEE controlled shareholder (the "PIC Divestiture Conditions").

10.2 The Proposed Transaction is subject to a condition precedent in terms of the transaction agreements and scheme that all (or the majority) of the PIC's shareholding in Distell be exchanged for shares to be held by PIC in Newco. The Merger Parties and Commission acknowledge that the PIC Divestiture Conditions should be varied to allow the PIC to dispose of its obligation in Newco pursuant to the implementation of the Proposed Transaction. This amendment will require a separate variation application by the PIC and/or the Commission to the Tribunal for its consideration. The amendment application is to be instituted within 60 (sixty) Calendar Days of the Closing Date.

10.3 Newco shall not oppose the PIC and Commission's efforts to amend the PIC Divestiture Conditions before the Tribunal, such that, *inter alia*, the PIC Divestiture Conditions shall apply to the PIC's shareholding in Newco.

10.4 The Merger Parties shall provide any appropriate assistance to the PIC and Commission, to ensure that the disposal of PIC's shares in Newco to a new B-BBEE shareholder is implemented in accordance with applicable timeframes and the order(s) of the Tribunal. As is customary in such transactions, such assistance will include, but is not limited to, the prompt provision of information regarding Newco (including any due diligence process) to potential B-BBEE shareholders (subject to an appropriate confidentiality regime), the waiver of any pre-emption rights, the facilitation of any site visits by potential B-BBEE shareholders, the facilitation of engagement with management by potential B-BBEE shareholders and the passing of any resolutions and the undertaking of any corporate actions necessary for the implementation of this disposal.

11. **APPARENT BREACH**

11.1 Any person who believes that the Merger Parties have failed to comply with these Conditions may approach the Commission with a complaint.

11.2 If the Merger Parties appear to have breached these Conditions or if the Commission determines that there has been an apparent breach by the Merger Parties of any of these Conditions, this will be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

12. **GENERAL**

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

ANNEXURE A - MERGER PARTIES' EXISTING PRODUCTION OPERATIONS AND PRODUCTIVE CAPACITY

	Capacity (mHL per annum)
Heineken SA (pre-merger) brewery	[redacted]
Distell distilleries, cideries and wineries	[redacted]
Combined	[redacted]

ANNEXURE B - PRE-EXISTING PLANNED CORPORATE SOCIAL INVESTMENT EXPENDITURE OF THE MERGER PARTIES

	Total planned expenditure
Heineken SA (pre-merger)	[redacted]
Distell	[redacted]
Combined	[redacted]

ANNEXURE C - MERGER PARTIES' HDP PROCUREMENT EXPENDITURE

Summary of HDP Procurement	Total Local Procurement (all products and services, including Key Inputs)	HDP Spend	HDP Procurement Benchmark Ratio (clause 4.2.1)
	R'bn	R'bn	
Distell	[redacted]	[redacted]	[redacted]
Heineken	[redacted]	[redacted]	[redacted]
Combined	[redacted]	[redacted]	27.2%

Summary of Local Sourcing of Key Inputs Procurement	Total Procurement of Key Inputs	Local Sourcing of Key Inputs	Local Procurement Benchmark Ratio (clause 4.1.1)
	R'bn	R'bn	
Distell	[redacted]	[redacted]	[redacted]
Heineken	[redacted]	[redacted]	[redacted]
Combined	[redacted]	[redacted]	80.3%

Notes
1 - To ensure an accurate alignment of information between the parties, Distell's information represents a 12 month rolling estimate to June 2022 (per May 2022 data) and Heineken SA's information represents FY2021 i.e. 12 months to December 2021.
2 - HDP spend is measured against Measurable Spend as defined per third party verification requirements.
3 - Local sourcing inputs: Raw materials & ingredients: such as malt, grape and wine, dairy, apple juice concentrate, sugar and sweeteners, compounds & flavours, maize, hops and barley; Packaging materials: such as glass, cans, cartons, closures and labels.