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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/02/17/2022**

**Decision<sup>1</sup> of the Eighty-Fifth (85<sup>th</sup>) Committee Responsible  
for Initial Determinations Regarding the Proposed Merger  
between B.G.I Ethiopia Private Limited and Meta Abo  
Brewery Share Company**

**ECONOMIC SECTOR: Alcoholic and Non-alcoholic Beverages**

**2 August 2022**

<sup>1</sup> In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

### **The Committee Responsible for Initial Determinations,**

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

determines as follows:

#### **Introduction and Relevant Background**

1. On 24 March 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving B.G.I Ethiopia Private Limited ("**BGI Ethiopia**") as the acquiring undertaking and Meta Abo Brewery Share Company ("**Meta Abo**") as the target undertaking, pursuant to Article 24(1) of the Regulations.
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.



## The Parties

### *BGI Ethiopia (the acquiring undertaking)*

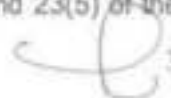
4. The parties submitted that BGI Ethiopia is a subsidiary of [REDACTED] [REDACTED] is the holding company of the Castel Group. [REDACTED]
5. The Castel Group is a beverages company founded in France in 1949 by Mr. Pierre Castel, out of a wine trading company. The Castel Group developed its activities in two main directions, the wine business on the one hand, and the beer, soft drink and water business on the other hand.
6. The products supplied by BGI Ethiopia in the alcoholic segment is beer and in the non-alcoholic segment is malt-based beverages, sold under the brand name of Sen'q.

### *Meta Abo (the target undertaking)*

7. The parties submitted that Meta Abo is a subsidiary of [REDACTED] [REDACTED], which is a holding company of Diageo Plc ("Diageo"). Diageo is a UK-headquartered global manufacturer and supplier of alcoholic beverages across spirits and beer, with net global sales of [REDACTED] in fiscal year 2021. It operates in more than 180 countries around the world and its sales are principally [REDACTED]. In addition to the activities of the target undertaking, which produces and sells beer and non-alcoholic malt beverages in Ethiopia, Diageo also [REDACTED]. [REDACTED] The parties submitted that Diageo's [REDACTED] is entirely out of scope of this transaction.
8. Meta Abo was established in Ethiopia in 2013 and operates a brewery business that produces and sells beer and non-alcoholic refreshment beverages (i.e., Malta). Its brewery is in Sebeta, Ethiopia, and has a production capacity of [REDACTED]. [REDACTED] The total sales for 2021 (between July 2020 and June 2021) amounted to [REDACTED] hectolitres of beer and [REDACTED] hectolitres of non-alcoholic refreshment beverages.
9. Meta Abo is engaged in the manufacture, distribution and sale of beer and malt-based non-alcoholic refreshment beverages in Ethiopia only and does not achieve any sales in the rest of the Common Market.

### **Jurisdiction of the Commission**

10. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of parties arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the



Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

*Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:*

- a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
- b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*

11. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value of more than USD 10 million in the Common Market. In addition, the merging parties do not hold more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

### **Details of the Merger**

12. The notified transaction involves BGI Ethiopia and [REDACTED] acquiring a 100% stake in Meta Abo from [REDACTED] (which is a company of Diageo group), and [REDACTED]

### **Competition Assessment**

#### *Relevant Product Market*

13. Both the acquiring group and the target undertaking are active in the markets for the production and sale of beer. The target undertaking is further active in the production and sale of malt-based non-alcoholic beverages.
14. In *SABMiller/Sabco Merger*<sup>2</sup>, the CID recognised that beverages can be categorised in two groups namely: alcoholic and non-alcoholic beverages. The CID identified the market for non-alcoholic beverages as distinct from the market

<sup>2</sup> Case File No. CCG/MER/03/03/2015



for alcoholic beverages, including beer, on the premise that the utility derived from consuming a non-alcoholic beverage is different from that derived from consuming an alcoholic beverage. The assessment in this merger also pondered on the high unlikelihood or improbability of consumers switching to consumption of an alcoholic beverage on account of a 5 – 10% increase in the price of a non-alcoholic beverage. Thus, alcoholic beverages were considered as distinct and separate from non-alcoholic beverages.

15. The CID has taken a similar approach for the identification of the relevant product market of distinguishing the non-alcoholic beverages' market as a unique market from the alcoholic beverages.

*Alcoholic beverages*

16. The alcoholic drinks market comprises of various alcoholic beverages namely wine, beer, and spirits (whisky, gin and vodka) which tend to have varying levels of alcohol content, different physical characteristics and different prices as such they are considered distinct products. The CID considered that in the event of an increase of 5 -10% in the price of one type of alcoholic beverage, it is unlikely that a customer would shift to consume other alcoholic drinks. Among the reasons for limited substitution include the varying tastes of the different alcoholic products, their characteristics, chemical composition and the mode of consumption.
17. The CID observed that, in comparison with other alcoholic beverages, beer tends to have a lower alcohol content than spirits such as whisky, gin or rum. Further, beer is usually consumed directly without any mixtures whereas spirits are often consumed with mixtures such as water, soft drinks, or lemonade according to a person's taste. With respect to chemical composition, the CID considered that beer may be regarded as a light alcoholic beverage due to its low alcohol content as such it may be consumed at any time of the day for recreational purposes and even with meals. This is contrary to alcoholic drinks such as spirits whose alcohol content is high and often consumed on occasions. The CID also noted that the prices of the various alcoholic beverages may also vary suggesting that they may be part of different markets.
18. The CID noted that a distinction amongst alcoholic beverages can also be drawn from a supply-side perspective on account of the different raw materials and production processes that each entail. For instance, beer is brewed whereas rum and whisky are distilled. Beer is made from barley malt, water, hops, and yeast whereas whisky is made from water, yeast and grain. Rum is made from distilled alcohol obtain from molasses.
19. The CID further considered that beer comes in the form of clear beer or opaque beer. Clear beer is often made from malted cereal grains, water and yeast through



a process called fermentation<sup>3</sup>. The alcohol levels in clear beer would normally range from 2% alcohol by volume to as high as 15% alcohol by volume. On the other hand, spirits are produced from plant products that have been fermented and then distilled. The distillation process takes the fermented materials, often with a maximum alcohol content of 14 to 16 percent and increases it to 40 to 75 percent alcohol by vaporizing the alcohol together with flavour components and then condensing them in specialized equipment known as stills.

20. Traditional beer (or opaque beer), the other type of beer, is mainly made from sorghum malt and tends to have a biting taste due to continuous fermentation even after it is packaged. The brewing process uses a process called "yeast top fermentation"<sup>4</sup> and the fermentation continues after the opaque beer is packaged due to the presence of yeast in the beer. In terms of physical characteristics, opaque beer has a reddish-brown colour. As for the alcohol content by volume for opaque beer, the CID noted that this would range from 0.5% alcohol by volume when it leaves the brewery to up to 5% within 5 days while the beer is packaged.
21. Lastly, the CID noted that a key differentiating feature of wine is that it is made from the fermentation of fresh fruits usually grapes and its distinguishing taste.
22. In view of the foregoing, the CID considered that beer, including each of the different types of alcoholic drinks, constitute separate markets within the broad alcohol beverages market. Further, the CID observed that the broad beer market can be further segmented according to the type of beer, i.e., clear or opaque.
23. The CID recalled that the merging parties have overlapping activities in the production and supply of clear beer, thus the CID considered the clear beer market as follows.
24. Clear beer is an alcoholic beverage produced from malted cereal grains (such as barley, wheat, rye, corn or rice); hops<sup>5</sup>; and water that is fermented by adding yeast. Fermentation is when the yeast breaks down the sugar in the malt and produces carbon dioxide and alcohol. This process can take up to 7 to 10 days. At the end of the fermentation, the yeast is separated from the clear beer. The beer is then stored in a cold place for a period of one to three weeks after which it is filtered once or twice before it is ready for bottling. As already noted, the alcohol content in clear beer can range from 2% alcohol by volume to as high as 15% alcohol by volume as is the case in beer made from barley. The different types of clear beer include ales, lagers and stouts that differ based on different brewing processes, the type of yeast or malt used, the colour and taste of the final beer

<sup>3</sup> <http://www.encyclopedia.com/sports-and-everyday-life/food-and-drink/alcoholic-beverages/alcoholic-beverages> accessed on 16 May 2022

<sup>4</sup> Yeast top fermentation is an alcoholic fermentation at a temperature high enough to carry the yeast cells to the top of the fermenting liquid and it uses a yeast that ferments at higher temperatures than that used for bottom fermentation.

<sup>5</sup> <https://www.drugs.com/npc/hops.htm> : hops is a type of flower used for flavouring and preserving beers.





(ales are often darker than lagers). A further distinction of clear beer can be made based on grading. Thus, locally produced beer is often referred to as mainstream beer whereas craft beer and imported beer are often regarded as premium.

25. The above notwithstanding, the CID observed that beer products in different segments compete against each other as consumers choose from a wide variety of clear beers in different segments when making their purchasing decisions. The CID therefore opined that there is a high level of porosity among the different segmentations of clear beer, which forms the basis for broadening the clear beer market.
26. The CID therefore concluded that the relevant product market was the market for the production and distribution of clear beer.

*Production and distribution of malt-based non-alcoholic beverages*

27. Malt based non-alcoholic beverages form part of the broad category of non-alcoholic beverages segment. The non-alcoholic beverages segment comprises all the ready to drink products with no alcoholic content. The products in the non-alcoholic beverage segments have traditionally been divided into carbonated and non-carbonated alcoholic drinks.
28. Carbonated non-alcoholic drinks are fizzy and rich in sugar or have a sugary taste. Carbonated drinks are consumed with fast foods and on occasions, for instance, when a customer is taking a meal in a restaurant. Carbonated non-alcoholic drinks bubble and fizz with carbon-dioxide and are made through a process called carbonation i.e., pumping carbon dioxide into the drink at high pressure then sealing the container or through natural carbonation as is the case with mineral water which absorbs carbon dioxide from the ground.
29. Non-carbonated non-alcoholic ready to drinks are non-fizzy or still beverages which comprises of a wide range of products, namely non-carbonated soft drinks, fruit juice, non-carbonated energy drinks, water, cold dairy products, iced tea, iced coffee and hot beverages such as tea and coffee. Each of the drink within the non-carbonated ready to drink product has its own characteristics, price and intended use. On the demand-side, customers demand each of the product depending on the personal taste, preferences and specific reason.
30. The CID noted that malt-based beverages are usually fizzy. The main ingredient in production of malt-based beverages is brewed malt and the beverage has a low sugar content. Further, malt-based beverages are usually consumed because of their high iron content and for the energy it gives to the consumer. The fizzy nature of malt-based beverages suggests it comprises carbon-dioxide and given that it does not contain alcohol, it can be considered to belong to the carbonated non-alcoholic beverages market. However, the additional unique features of the malt-



based beverages being the high iron and low sugar content, gives compelling reasons to narrow the market to malt-based beverages.

31. In this regard, the CID concluded that the relevant product market is the market for the production and distribution of malt based non-alcoholic beverages.

**Relevant Geographic Market**

32. The CID noted that the acquiring group is active in DRC, Ethiopia, Madagascar, Malawi and Tunisia while the target undertaking operates in Ethiopia only and does not achieve any sales in the rest of the Common Market.
33. The CID noted the parties' submission that the market for the manufacture and sale of clear beer in Ethiopia is generally considered as nation-wide as confirmed by the non-significant level of imports or exports which are generally below 1%. The CID further noted the parties' submission that the market for the manufacture and sale of non-alcoholic refreshment beverages is also generally considered as nation-wide.
34. In line with its previous decisional practice<sup>6</sup>, the CID considered that the relevant geographic market for clear beer and malt based non-alcoholic beverages was national in scope.
35. The CID noted that the distribution channels or consumption patterns in Member States may make the national market distinct. Beer and malt-based non-alcoholic beverages from international brands are priced higher as compared to local brands and so are the brands of non-alcoholic not ready to drink products.
36. The CID also considered that the income levels and consumption patterns direct the choice of purchase, and the price differences can make the local brands and international brands distinct, whereby the higher the level of income of consumers, the more the level of substitutability between local and international brands increases. This may therefore suggest that international brands may be seen as distinct from local brands. Given that the target operates in Ethiopia and the overlap of activities of the merging parties is in Ethiopia only, the relevant geographic markets is considered as Ethiopia.
37. For the purposes of assessing the proposed transaction only, and without prejudice to future cases, the CID has identified the relevant markets as follows:
- a. the market for the production and distribution of clear beer in Ethiopia; and
  - b. the market for the production and distribution of non-alcoholic malt-based beverages in Ethiopia.

<sup>6</sup> Decision of the 31<sup>st</sup> Committee for Initial Determinations regarding the Proposed Merger between B.I.H. Brasseries Internationales Holdings Limited and Carlsberg Malawi Limited

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**Market Shares and Concentration**

38. Tables 1 and 2 below provide the market share estimates for the target business and competitors in Ethiopia.

**Table 1 – Estimated Market Share for suppliers of clear beer in Ethiopia**

Supplier	Market Shares based on sales volume (%)
Castel Group	●
Heineken	●●
Dashen	●●●
Habesha Breweries	●●●
Target	●

**Table 2 – Estimated Market Share for suppliers of non-alcoholic refreshment beverages in Ethiopia**

Supplier	Market Shares (%)
Heineken	●●
Target	●
Habesha Breweries	●●●
Castel Group	●

39. The CID noted the high market share of BGI Ethiopia in the market for the production and distribution of clear beer in Ethiopia which positions it as a market leader with ● market share. The CID noted however that limited market share accretion will occur as a result of the proposed transaction given that the market share of the target business is only ●%. The CID noted that the merged entity will still face competition from other market players where any attempt by the merged entity to exploit its high market shares in that market in terms of increased prices or reduced quality of its clear beer may result in it losing market shares to other competitors.
40. The CID observed that the combined market shares of the merged entity in the broad market for non-alcoholic refreshment beverages in Ethiopia will be ●%, while the other players will retain the remaining ●%.
41. The CID considered the respective pre-merger HHI (3150) and post-merger HHI (3399) in the market for the production and distribution of clear beer in Ethiopia, with a delta of 249. Further, the three-firm concentration ratio for the clear beer market was observed to be at 90%. The CID considered that given that the HHI is beyond 2500, the market for the production and distribution of clear beer in Ethiopia is highly concentrated. Further, a delta of more than 200 points at 249 may be taken as a sign of a concentrated market.

42. The CID noted that the HHI in the broad market for the supply of non-alcoholic refreshment beverages in Ethiopia was 4098 with a delta of 296. Further, the three-firm concentration ratio was noted to be 98%. The CID noted that this indicated that the broad market for the supply of non-alcoholic refreshment beverages in Ethiopia is highly concentrated. The CID was concerned that such a market structure is prone to coordinated effects. However, the CID observed that the market was already concentrated such that the merger will not significantly alter the market structure.
43. Further, the CID observed that the merged entity will continue to face credible competition from other players and in an event that coordinated effects arose, the same will be handled under the relevant provisions of the Regulations.
44. The CID further noted that as at 8 March 2022, the Ethiopian brewery market comprised 14 brewers producing an increasingly varied selection of beers and non-alcoholic malt beverages<sup>7</sup>, where the introduction of new local breweries and multinational investors entering the market may lead to increased competition in Ethiopia's clear beer industry<sup>8</sup>.
45. The CID noted that the Ethiopian Government introduced a complete ban on the advertisement of alcohol in 2018, which is likely to make entry and expansion difficult. This notwithstanding, the CID noted that the ban on advertising of alcohol is not an insurmountable barrier because manufacturers still find other ways to make customers aware of their products.
46. In view of the foregoing, the CID concluded that significant competition concerns were unlikely to arise as a result of the merger.

### Public Interests Consideration

47. The consideration of public interest under Article 26(4) of the Regulations focuses on ensuring that competition is maintained and promoted between persons producing or distributing commodities and services in the Common Market; promote the interests of consumers, purchasers, and other users in the Common Market in regard to prices, quality and variety of such commodities and services; and promoting through competition, the reduction of costs and the development of new commodities and facilitating the entry of new competitors into existing markets. The CID observed that pro-competitive mergers should result in the increase of employment opportunities in the Common Market pursuant to Article 1 of the Regulations. Therefore, any merger that has potential anti-competitive concerns and threatens the creation or maintenance of jobs may be contrary to public interest.

<sup>7</sup>Asokoinight, "Ethiopia's Breweries" [www.asokoinight.com/content/market-insights/ethiopia-breweries](https://www.asokoinight.com/content/market-insights/ethiopia-breweries)

<sup>8</sup> *Ibid*

48. While the CID arrived at a conclusion that the transaction would not raise significant competition concerns, they were concerned that there is a risk that post-merger, the products of the target may be discontinued by the acquiring group. Further, there is a risk that post-merger, the quality and variety of the products may be negatively affected.
49. The CID also took note of the concerns raised by the Trade Competition and Consumer Protection Authority of Ethiopia ("TCCPA") on the risk of job losses post-merger.

### **Third-Party Views**

50. The submissions received from the national competition authorities of Madagascar and Malawi did not raise any competition concerns as a result of the transaction. However, the TCCPA raised competition and public interest concerns as discussed in the preceding paragraphs.
51. With regards to likely public interest concerns, the CID has concluded that there is a likelihood that the transaction will raise public interest concerns in relation to the retention of target's employee contracts and continuation of supply of the target's product brands in Ethiopia.

### **Determination**

52. Based on the foregoing analysis and conclusions, the CID determined that while the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, it is likely to raise public interest concerns.
53. The CID therefore approved this transaction subject to the following commitments by the Merged Entity:
- a) the Merged Entity will continue to build capacity of the current employees of Meta Abo Brewery business in key operations of the company.
  - b) For a period of 24 months, from the date of approval of the transaction by the CID, the Merged Entity will not terminate any employment contract of Meta Abo Brewery business as a result of the merger, except for positions at Senior Management Level. Termination of contract does not include:
    - i. voluntary retrenchment and/or voluntary separation arrangements;
    - ii. separation upon the agreement with employees;
    - iii. voluntary early retirement offers;
    - iv. termination for unreasonable refusals to be redeployed;
    - v. termination lawfully effected for operational requirements unrelated to the Transaction; and



- vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- c) There shall be no merger-specific termination of contracts for suppliers of the Meta Abo Brewery business, unless for commercial reasons it is unwarranted or reasonably unjustifiable to maintain such contracts.
- d) The Meta brand or the Malta Guinness brand of the Meta Abo Brewery business should not, as a direct result of this transaction, be discontinued and that the quality of the products should remain the same, unless (i) a significant deterioration in the market conditions occurs, or (ii) if the volume of, or demand for, the Meta brand or the Malta Guinness brand declines or remains unduly low or (iii) for commercial reasons that are warranted or reasonably justifiable.
- e) The above Undertakings shall be effective for a period of two (2) years from the date of approval of the transaction by the CID.
- f) Within thirty (30) days of each anniversary of the merger clearance decision of the Commission, for the next two (2) years, a comprehensive report detailing compliance with the above Undertakings will be submitted to the Commission. This Undertaking does not however stop the Commission from conducting periodic review of the market to assess compliance.

54. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 2<sup>nd</sup> day of August 2022



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Commissioner Brian Muletambo Lingela (Chairperson)



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Commissioner Islam Tagelsir Ahmed Alhasan



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Commissioner Lloyds Vincent Nkhoma