



Common Market for Eastern  
and Southern Africa

**CASE FILE NO.: CCC/ACBP/5/3/2021**

**DECISION OF THE COMMITTEE RESPONSIBLE FOR INITIAL  
DETERMINATIONS ON THE INVESTIGATION INTO ALLEGED ANTI-  
COMPETITIVE BUSINESS PRACTICES BY CASTEL GROUP**

**ECONOMIC SECTOR: Alcoholic Beverages**

**5 December 2025**



**Reference:** CASE NO. CCC/ACBP/5/3/2021

**Parties:** COMESA Competition Commission Secretariat (the Commission)  
Castel Group (Castel)

**In the matter:** Investigation into alleged anti-competitive business practices by Castel Group (the matter).

The Committee Responsible for Initial Determinations:

Desirability of the overriding objective of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**Treaty**"), namely the strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Cognizant of Article 55 of the Treaty;

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 3 thereof;

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

Recalling the overriding need to establish a Common Market;

Recognizing that anti-competitive conduct 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 conduct in one Member State may adversely affect competition in another Member State;

Determines as follows:

## **A. Introduction and Background information**

1. On 16 June 2021, the COMESA Competition Commission Secretariat (the "**Commission**") commenced an investigation against Castel on its own motion pursuant to Article 22 of the COMESA Competition Regulations (the "**Regulations**") for a possible violation of Article 16(1) of the Regulations.
2. The Commission's investigation concerned Castel's alleged practice of market allocation which had been enforced through its distribution agreements with third party distributors. In particular, the Commission's investigation identified the following concerns in respect of Castel's production and distribution agreements (the "**Agreements**"):



- a. Minimum Resale Price Maintenance;
  - b. Single Branding Restrictions; and
  - c. Absolute Territorial Restrictions.
3. The Commission thus issued its Statement of Concerns (“**SOC**”) on 7 September 2023 and invited Castel to respond to the SOC by 5 October 2023. The SOC outlined the investigation findings and proposed to impose the following remedial measures:
  - a. Prohibit the Agreements as incompatible with Article 16 of the Regulations. However, where it is possible to sever the anti-competitive clauses without affecting the performance of the entire Agreements, only such offending clauses should be expunged; and
  - b. Impose a fine in accordance with Rule 79 of the Rules. Specifically, the Commission recommended that Castel be fined **USD300,000** for each of the restrictions contained in their Agreements which would amount to a total of **USD900,000**.
4. Castel requested for an extension to the applicable timeline to provide its responses to the SOC by 22 January 2024. The extension was granted by the Commission and Castel submitted its response to the SOC on 22 January 2024.
5. The above notwithstanding, Castel engaged the Commission in commitment negotiations in line with Section 13 of the Commission’s Guidelines on Settlement and Commitment Procedures with a view of achieving an expedited and amicable resolution of the investigation on a **no admission of liability basis**. The Commission was of the considered position that Castel had breached Article 16(1) of the Regulations. On the other hand, Castel’s position was that the Commission did not establish a case against it to warrant a finding that it had breached Article 16(1) of the Regulations.
6. In view of this and in the interest of expedient resolution to the matter amicably without resorting to a lengthy litigation process, and the need to expediently remedy the competition concerns, the Commission and Castel negotiated a commitment agreement which was presented to the Committee Responsible for Initial Determinations (“**CID**”) for consideration on 5 December 2025.

## **B. The Parties**

### **The Commission**

7. The Commission is a regional body established under Article 6 of the Regulations whose core mandate is to enforce the provisions of the Regulations with regard to trade between Member States and promote competition within the Common Market. The Commission is responsible for the enforcement of the Regulations. The purpose



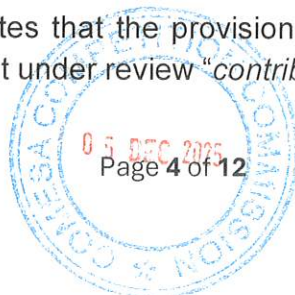
of the Regulations is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and to protect consumers against offensive conduct by market actors.

### **Castel**

8. Castel is an international beverage company with significant presence in the Common Market in wine, beer and soft drinks production and supply. Castel submitted that its subsidiaries are active in the production and marketing of beer and other alcoholic and non-alcoholic products. Within the Common Market, it has operations in the following countries; Democratic Republic of Congo (“DRC”), Ethiopia, Madagascar, Malawi and Tunisia. Castel subsidiaries in these five countries own factories and warehouses in which the products are manufactured and stored. The products are generally marketed through independent distributors/wholesalers which purchase the products from the Castel subsidiaries and resell them to retailers.

### **C. Jurisdiction**

9. Article 3(2) of the Regulations prescribes that the Regulations apply to conduct covered by Parts 3, 4 and 5 which have an appreciable effect on trade between Member States and which restricts competition in the Common Market.
10. According to Article 16(1) of the Regulations, certain conduct is prohibited as incompatible with the Common Market. Specifically, Article 16(1) states that: “[T]he following shall be prohibited as incompatible with the Common Market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which:
  - a. may affect trade between Member States; and
  - b. have as their object or effect the prevention, restriction or distortion of competition within the Common Market.”
11. Article 16(2) provides that Article 16(1) applies “...only if the agreement, decision or concerted practice is, or is intended to be, implemented within the Common Market.” Article 16(3) provides that any agreement or decision which is prohibited by Article 16(1) is void. It is noted that in line with established case law, this nullity only applies to clauses in an agreement which are caught by the prohibition. It is only the offending clauses which would be required to be amended or expunged, and not the agreement as a whole, to the extent that this does not affect the performance of the agreement. The agreement as a whole will only be void where those clauses are not severable from the remaining terms of the agreement.
12. Lastly, Article 16(4), stipulates that the provisions of Article 16(1) may be declared inapplicable if the agreement under review “contributes to improving the production or



*distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*

- a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b. afford such undertakings the possibility of eliminating competition in respect of a substantial market for the goods or services in question.

13. Accordingly, the Commission assessed and established the following cumulative elements in line with Article 16 (1) of the Regulations:

- a. Existence of agreements between Castel and its distributors (distribution agreements);
- b. Existence of agreements between Castel and third parties (production and distribution agreements);
- c. Agreements implemented within the Common Market;
- d. Agreements have the object or effect to prevent, restrict or distort competition within the Common Market; and
- e. Agreements have an effect on trade between Member States.

#### **D. Competition Concerns**

14. The CID observed that the Commission's investigation identified the following competition concerns;

##### **a. Resale Price Maintenance**

15. In DRC and Malawi, the Castel distribution agreements have restrictions which amount to fixed prices in the Common Market. Such restrictions reduce the freedom of distributors to determine their own prices, potentially restrict trade between Member States and result in adverse effects on competition and should be removed from the agreements.

16. Given Castel's dominant position in the identified markets, the Commission was of the considered view that Castel has a special responsibility not to impair genuine competition in the market.

##### **b. Single Branding**

17. The distribution agreements in DRC and Ethiopia, restrict distributors from dealing with competing brands. Such restrictions limit the possibility of trade between Member States. While there are benefits arising from single branding clauses, the anti-competitive effects are likely to outweigh such benefits if single branding is committed by a dominant firm. Therefore, the Commission concluded that such single branding



clauses should be struck out and in cases where the manufacturer made significant investments in the distribution level, the single branding obligations should only be long enough to allow the manufacturer to recoup their investments. Such agreements containing single branding clauses would have been notified to the Commission to assess the period within which such investments may be recouped and consequently sever such clauses from the agreements.

### **c. Absolute Territorial Restrictions**

18. The distribution agreements in DRC, Ethiopia and Madagascar restrict distributors from responding to passive sales, and from selling outside their allocated territories which limit the possibility of trade between Member States.
19. However, the Commission observed that Castel distributors submitted that the road network in Kinshasa is not well developed and that relay warehouses are set up to service those areas which are not accessible by road. The distributors also submitted that they are allowed to sell to customers who approach them, whether or not they are located in their respective territories.
20. The Commission also noted the absence of a sales control system implemented by Castel to monitor the sale of products within the designated territories for the respective distributors. This suggests that absent the visits by the sales representatives, Castel does not have a monitoring system to ensure that distributors maintain their sales within the designated territories and further refuse sales from customers outside their designated areas, or so-called passive sales. However, the agreements submitted by Castel indicated that each distributor is confined to a limited territory.
21. Specifically, the Commission observed that their distribution agreements stipulate that they shall refrain from selling the products purchased outside the perimeters of the catchment area described above.

### **Proposed Commitments**

22. The CID noted that on a non-admission of liability basis, the parties agreed to the following undertakings to address the concerns raised by the Commission:
  - a) To amend the clauses in the Agreements with which the Commission took issue, and which could be interpreted as containing absolute territorial restrictions, single branding or resale price maintenance;
  - b) To train its staff and management to ensure they fully understand the provisions of the amended distribution agreements;
  - c) To submit periodic compliance reports to the Commission; and



- d) To pay a settlement amount of **USD300,000** for each of the Commission's concerns (i.e., minimum resale price maintenance and single branding) and drop the settlement amount of **USD300,000** on absolute territorial restriction. The total settlement amount to be paid by Castel being **USD600,000**.
23. The CID noted that the settlement amount for absolute territorial restrictions was not justified because the evidence gathered during the investigation indicated that most of the distributors were able to sell to all customers who approached them both from within and without their allocated territories. The CID also noted that the lack of an effective monitoring mechanism to police and sanction distributors who contravened the clause on absolute territorial restriction justified non imposition of penalty.
24. The CID considered the Commitment Agreement and satisfied itself that the proposed Commitments were sufficient to address the identified competition concerns. The CID also considered that settlement of the matter would avoid the lengthy investigation and adjudication process while addressing the Commission's competition concerns, consistent with considerations of the judicial economy of the process.
25. The CID considered Castel's request for deferment of the Effective Date for the implementation of the Commitment Agreement, based on the practical difficulties of complying with implementing the Commitment Agreement during the period when the company will close for the festive season. Consequently, the CID determined the Effective Date of the Commitment Agreement to be 5 January 2026.

#### **E. Confirmation of the Commitment Agreement by the CID**

26. **NOW THEREFORE**, the CID hereby confirms the Commitment Agreement between Castel and the Commission. The Commitment Agreement is attached to this Decision.

Dated this 5<sup>th</sup> day of December 2025

**Commissioner Mahmoud Momtaz (Chairperson)**

**Commissioner Lloyds Vincent Nkhoma**

**Commissioner Vipin Naugah**



## COMMITMENTS

### In the matter involving the investigation by the COMESA Competition Commission against Castel Group for alleged violations of Article 16 of the Regulations.

Case file: Case CCC/ACBP/5/3/2021, Castel Group.

In accordance with Section 13(1) of the COMESA Competition Commission Guidelines on Settlement and Commitment Procedures of 2022 (the "**Guidelines**"), Castel Group ("**Castel**") offers the following voluntary commitments (the "**Commitments**"), on a non-admission of liability basis.

Consistent with Section 13(2) of the Guidelines, these Commitments are given in full and final settlement of the proceedings and on the understanding that the COMESA Competition Commission (the "**Commission**") will confirm that there are no grounds for further action and will close the proceedings opened on 16 June 2021 under Case No. CCC/ACBP/5/3/2021.

These Commitments are intended to fully address the Commission's competition concerns, in particular by seeking to ensure that no restrictions on distributors as set out below are included or enforced in Castel's Distribution Agreements.

### INTERPRETATION

1. The following terms shall have the meaning assigned to them hereunder:
  - a. "**CID**" means the Committee Responsible for Initial Determination established in terms of Article 13 of the COMESA Competition Regulations;
  - b. "**Commission**" means the COMESA Competition Commission established in terms of Article 6 of the Regulations;
  - c. "**Commitment Proceeding**" means a proceeding in which the Commission adopts a binding decision requiring that an infringement or a potential infringement be brought to an end on the basis of the commitments offered by the undertakings concerned to meet the concerns identified by the Commission in its preliminary assessment;
  - d. "**Common Market**" means the Common Market for Eastern and Southern Africa established in terms of Article 1 of the COMESA Treaty;
  - e. "**Day**" means calendar days;
  - f. "**Distribution Agreement**" means an agreement between Castel and an independent distributor or independent wholesaler in a COMESA Member State, which purchases the products from the Castel subsidiaries and resells them to retailers;
  - g. "**Effective Date**" means the 5<sup>th</sup> of January 2026.
  - h. "**Castel**" means the Castel Group and its connected undertakings, subsidiaries;
  - i. "**Investigation**" means the Commission's investigation initiated against Castel under case number Case No. CCC/ACBP/5/3/2021;



- j. "**Minimum Resale Price Maintenance**" means the alleged fixing of minimum prices at which distributors should sell Castel's products;
- k. "**Regulations**" means the COMESA Competition Regulations;
- l. "**Single Branding Restrictions**" means the alleged restriction on Castel's distributors' ability to deal in competing products;
- m. "**Territorial Restrictions**" means the alleged restriction on distributors from responding to passive sales requests from customers located outside the distributors' allocated territories;
- n. "**Statement of Concerns**" means the Commission's statement of concerns dated 7 September 2023 in respect of the Investigation;

## BACKGROUND

2. On 16 June 2021, the Commission commenced an investigation against Castel *inter alios* for a possible violation of Article 16(1) of the Regulations. The Commission issued a Notice of Investigation of even date. In particular, the Commission's Investigation identified the following concerns in respect of Castel's distribution system:
  - i. Restrictions on distributors amounting to Minimum Resale Price Maintenance in the Democratic Republic of Congo and Malawi;
  - ii. Restrictions on distributors amounting to Single Branding Restrictions in the Democratic Republic of Congo and Ethiopia; and
  - iii. Restrictions on distributors amounting to Territorial Restrictions in the Democratic Republic of Congo, Ethiopia, Madagascar for Distributors Agreements and in the Democratic Republic of Congo and Tunisia for license agreements.
3. The Commission's investigation into the practices established that such practices may restrict competition in the Common Market and are in violation of Article 16(1) of the Regulations. On 7 September 2023, the Commission issued its Statement of Concerns ("**SOC**") in the investigation and invited Castel to respond to the SOC by 5 October 2023. Castel duly responded to the SOC and placed its findings at issue.
4. On 22 January 2024, Castel responded to the SOC and contested the Commission's arguments on the competition concerns. However, Castel also informed the Commission of its willingness, in the interests of arriving at an amicable and expedited resolution of the matter, to take certain corrective measures and agree to the payment of a settlement amount, on a non-admission of liability basis, in full and final settlement of the Investigations and proceedings under the Commission's Case No. CCC/ACBP/5/3/2021.

## OFFERED COMMITMENTS

5. On a non-admission of liability basis, Castel agrees to sign the present Commitment Agreement (the duration of which shall be five (5) years from the Effective Date) to address the concerns raised by the Commission.
6. As of the Effective Date and subject to the below, Castel shall put in place corrective measures to



ensure that its Distribution Agreements, in the COMESA Member States where it has subsidiaries at the Effective Date (the Democratic Republic of Congo, Ethiopia, Madagascar, Malawi and Tunisia), do not contain any provisions which could be considered to amount to Territorial Restrictions, Single Branding Restrictions or Minimum Resale Price Maintenance.

In particular, Castel shall amend or remove the provisions (including any other provisions having direct or indirect relation with the offending provisions) in its Distribution Agreements which amount to the above-mentioned restrictions.

The amended provisions shall appear on the contracts as follows:

#### **Resale Price Maintenance**

Castel shall incorporate the following provision in its Distribution Agreements in force, within a maximum of one hundred fifty (150) Days from the Effective Date, and in future Distribution Agreements:

*"The Distributor is free to determine its own pricing strategy for resale prices.*

*In parallel, from time to time, the Supplier may communicate to the Distributor maximum resale prices which are mandatory and that the Distributor must comply with, without prejudice for the Distributor to fix lower resale prices."*

#### **Absolute Territorial Restrictions**

##### **Distribution Agreements**

Castel shall incorporate the following provisions in its Distribution Agreements in force, within a maximum of one hundred fifty (150) Days from the Effective Date, and in future Distribution Agreements:

*"The Distributor undertakes to distribute the Products in the Territories allocated to it on an exclusive basis in Appendix [•] of the Agreement. The Distributor undertakes to not actively market the Products outside the Territories defined in Appendix [•] of the Agreement which means that it must not sell the Products following active targeting of clients established outside the Territories, in particular by means of direct communication or targeted advertising and promotion. The Distributor remains free to market the Products passively outside the Territories defined in Appendix [•] of the Agreement, which means that it may respond to unsolicited requests from clients established outside the Territories."*

##### **Licensing Agreements**

Castel shall propose, within a maximum of thirty (30) Days from the Effective Date, to incorporate the following provision in the Beck licensing agreement in force in Tunisia:

*"Licensee shall refrain and shall procure that its Affiliates and Sales Intermediaries refrain from actively selling, seeking customers, establishing any branch and from maintaining any distribution depot or any other outlet or point of sale for the Products outside the Territory as defined in Article 1.45 of the Agreement. The LICENSEE, its Affiliates and Sales Intermediaries remain free from passively selling the Products outside the Territory as defined in Article 1.45 of the Agreement, which means that they may respond to unsolicited*



*requests from clients established outside this Territory.”*

Castel shall propose to include in future license agreements a provision stating that the licensee remains free to conduct passive sales outside the exclusive territory as defined in the licensing agreement.

### **Single Branding**

Castel undertakes not to use single branding provisions in Distribution Agreements in COMESA Member States (i) where it holds a dominant position on the national market for the production and distribution of beer (ii) in case such dominant position is held during two (2) consecutive years.

7. At the latest thirty (30) Days after the Effective Date, Castel shall notify its distributors affected by the Commitments in the COMESA Member States where it has subsidiaries at the Effective Date (the Democratic Republic of Congo, Ethiopia, Madagascar, Malawi and Tunisia) that it will no longer enforce the provisions which could be considered to amount to Territorial Restrictions, Single Branding Restrictions (save to the extent permitted by **paragraph 6**) or Minimum Resale Price Maintenance in the Distribution Agreements.
8. As from the Effective Date, Castel shall not include in any new Distribution Agreements, which are the subject of the offered Commitments, provisions relating to Territorial Restrictions, Single Branding Restrictions (save to the extent permitted by **paragraph 6**) and Minimum Resale Price Maintenance.
9. In case Castel starts operations further to the acquisition of an existing company or through greenfield investment (i) in the COMESA Member States where it has subsidiaries at the Effective Date (the Democratic Republic of Congo, Ethiopia, Madagascar, Malawi and Tunisia) or (ii) in a new COMESA Member State, it shall put in place the necessary corrective measures to ensure that the Distribution Agreements in force and the future Distribution Agreements of the said company do not contain any provisions which could be considered to amount to Territorial Restrictions, Single Branding Restrictions (save to the extent permitted by **paragraph 6**) or Minimum Resale Price Maintenance. The necessary corrective measures shall be implemented within a maximum of one hundred fifty (150) Days from the closing of the transaction.
10. Castel, within thirty (30) Days after the Effective Date, undertakes to pay the sum of USD 300,000 in full and final settlement of each of the following two Commission's competition concerns theories of harm, i.e., Single Branding Restrictions and Minimum Resale Price Maintenance. For the avoidance of doubt, Castel shall pay a total of USD 600,000.
11. Castel shall annually train its staff, management, and distributors on the COMESA Competition Regulations to ensure compliance. Castel shall provide all its employees with online whistleblowing platform to report any non-compliance with the COMESA Competition Regulations. Castel shall appoint a Compliance Officer in each subsidiary, who will be responsible notably for (i) monitoring that the employees have access to annual training on COMESA Competition Regulations, (ii) answering any questions they may have in this regard and (iii) collecting/reporting any issue they wish to raise regarding COMESA Competition Regulations compliance.

### **SCOPE**

12. These Commitments comprise the entire extent of Castel Commitments to the Commission with



respect to Case CCC/ACBP/5/3/2021. These Commitments shall be binding upon the confirmation of the CID.

**FINE IN CASE OF NON-IMPLEMENTATION OF THE COMMITMENTS**

- 13. A fine of up to ten percent (10%) of the annual turnover in the Common Market for the preceding financial year may be imposed in case Castel fails to comply with the Commitments, pursuant to Article 8(5) of the COMESA Competition Regulations.

**MONITORING AND COMPLIANCE WITH THIS AGREEMENT**

- 14. Castel shall, within one hundred fifty (150) Days of the confirmation of the CID (Effective Date), submit to the Commission an affidavit confirming compliance with the undertaking provided in **paragraph 6** of this Commitment, accompanied by the amended Distribution Agreements.
- 15. Castel shall, within forty-five (45) Days of the decision of the CID (Effective Date), submit to the Commission an affidavit confirming compliance with the undertaking provided in **paragraph 7** of this Commitment.
- 16. Castel shall, within forty-five (45) Days of the decision of the CID (Effective Date), submit to the Commission a proof of payment of the fine imposed by the Commission as provided in **paragraph 10** of the Commitment.
- 17. Castel shall, within forty-five (45) Days of each anniversary of the decision of the CID (Effective Date) and for a period of five (5) years, submit to the Commission an affidavit confirming compliance with **paragraphs 8, 9 and 11** of the Commitment.
- 18. After five (5) years, the Commission shall review and assess Castel's compliance with the above Commitments.

THUS DONE AND SIGNED AT Luxembourg ON THIS 11<sup>th</sup> DAY OF December 2025

NAME: Gregory Clerc TITLE: Laurence Dequatre  
Chief executive officer Chief financial officer  
(Authorised Signatory)

SIGNED:  

**ACCEPTED BY THE COMESA COMPETITION COMMISSION CID HELD ON 5 DECEMBER MONTH 2025**

SIGNED ON THIS 11<sup>th</sup> DAY OF December 2025

NAME: Dr Willard Mwemba TITLE: Director and Chief Executive Officer

SIGNED: 

**For the COMESA Competition Commission**