MERGER DECISION NO 23 OF 2022

DECISION ON THE PROPOSED ACQUISITION OF A FURTHER INTEREST IN NAMIBIA BREWERIES LIMITED AND THE IN-SCOPE ASSETS OF DISTELL GROUP HOLDINGS LIMITED BY HEINEKEN B.V THROUGH SUNSIDE ACQUISITIONS LIMITED ("NEWCO")

Introduction of the Merging Parties

i. Pursuant to Section 53(4)(a)(ii) of the Competition Act 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("The Authority") in respect of the proposed acquisition by Heineken B.V.("Heineken") through Sunside Acquisitions Limited ("Newco") of -

   a) a further interest in Namibia Breweries Limited ("NBL"), and the combination of Heineken's current South African business, Heineken South Africa (RF) (Pty) Ltd ["Heineken SA"]; and

   b) the flavoured alcoholic beverages ("FABs"), wine and spirits businesses (In-Scope-Assets) of Distell Group Holdings Limited ("Distell"), excluding certain Distell Scotch Whiskey and South African spirit businesses (Out-Scope-Assets).

ii. The transaction was notified to the Authority on 8th March 2022, and the merger assessment was completed on 1st August 2022.

iii. The Acquiring Enterprise, Newco, is a company duly incorporated in terms of the Laws of the Republic of South Africa. It does not control any entity in Botswana. Newco is a special purpose vehicle controlled by Heineken. Heineken is a wholly owned subsidiary of Heineken N.V., a Dutch multinational brewing company headquartered in Amsterdam, the Netherlands. Heineken is active in the production, marketing and distribution of beer and other beverage products through its subsidiaries and associated companies. Heineken has a range of 170 beer brands and more than 300 products around the world, including both global and regional brands. Heineken offers its products under international and local brand names including, *inter alia*, Heineken, Amstel, Anchor, Biere Larue, Bintang, Birra Moretti, Cruzcampo, Desperados, Dos Equis, Foster's, Newcastle Brown Ale, Ochota, Primus, Sagres, Sol, Star, Strongbow, Tecate, Tiger and Zywiec.

iv. Heineken is active in Botswana through a wholly-owned local subsidiary Heineken Botswana Proprietary Limited ("Heineken Botswana"), which was established in

Botswana in 2019. Heineken does not have local manufacturing facilities in Botswana, and all Heineken beverages are imported into Botswana from South Africa through Heineken's South African-based subsidiary, Heineken South Africa Export Company ("HSAEC"), and distributed through a local appointed distributor. Heineken currently supplies international beer brands such as Heineken, Amstel and Amstel Life, as well as a Flavoured Alcohol Beverage ("FABs") brand, Strongbow. These brands are distributed through an appointed distributor SMC Brands Botswana ("SMC Brands").

Target Entities

NBL Investment Holdings Proprietary Limited ("NIH")

v. NIH, is a company incorporated in accordance with the Laws of Namibia. NIH is controlled by Ohlthaver & Listed Beverage Company (Pty) Ltd ("O&L") and Heineken. NIH is a holding company which controls Namibia Breweries Ltd ("NBL"), a company incorporated under the Laws of Namibia and listed on the Namibian Stock Exchange. NBL owns and operates a brewery in Windhoek, Namibia, together with an extensive distribution network that covers the whole of Namibia and some of other Southern African Development Community member states. NBL produces a range of beers in Namibia including, amongst others, Windhoek, Tafel Larger and Tafel Light.

vi. NBL's product list also includes non-alcoholic beverages such as mineral water (Aqua Splash) and mixers (McKane). NBL, produces a range of beers in Namibia including, amongst others, Windhoek, Tafel Larger and Tafel Light. NBL does not have any local production facilities, and no local office in Botswana. Since 2019, NBL's products have been imported into Botswana from South Africa by Heineken through a pre-existing arrangement with HSAEC and distributed through SMC Brands.

Distell Group Holdings Limited ("Distell")

vii. Distell, is a company incorporated in accordance with the Laws of the Republic of South Africa. Distell's majority shareholder is Remgro Limited (South African registered company). In Botswana, Distell controls Distell Botswana Proprietary Limited ("Distell Botswana"). Distell manufactures, markets and distributes wines, spirits and FABs brands. Distell operates distribution depots in South Africa and Namibia, with further depots in Botswana, Lesotho and Eswatini. Distell does not have any local manufacturing facilities in Botswana and it supplies its products into Botswana from South Africa and distributes them through an appointed local distributor, CA Sales and Distribution (Pty) Ltd ["CA Sales"].

viii. Distell Botswana, manages its business operations in Botswana such as wholesale pricing, rebates and promotions, while CA Sales and Distribution (Pty) Ltd ["CA Sales"] provides warehousing, distribution and logistics services for Distell. Distell currently supplies a range of spirits (JC Le Roux Sparkling Wine and Amarula Cream Liquour, respectively.), and FABs (Savana Dry, Hunter's dry).

Relevant Markets

ix. The description of the activities of the Parties to the transaction, reveal that there are two (2) product overlaps that emerges from the activities of the Merging Parties, being:

a) *The market for the supply of clear beer in Botswana; and*

b) *The market for the supply of FABs (including ciders and flavoured beers) in Botswana.*

x. It is worth noting that the clear beer overlap that exists between Heineken and NBL received less attention due to the existing structural and control relationship between the two. Thus, the overlap is not expected to bring a significant change in the market structure post-merger. On the other hand, the FABs overlap between Heineken and Distell was the main focus of the assessment of the transaction at hand. Distell is the largest supplier of FABs in Botswana. Therefore, Heineken will be acquiring a dominant market share currently held by Distell pre-merger.

xi. In recognition and acknowledgement of the acquisition of dominance in this transaction, Heineken has committed to an upfront remedy, involving the disposal of its Strongbow brand in South Africa, Lesotho, Eswatini, Namibia and Botswana. This remedy presents an attempt by the Merging Parties to effectively eliminate the established horizontal overlap and postulated market share accretion between the Merging Parties in the supply of FABs.

xii. The divestiture of Strongbow involves the sale by Heineken Brouwerijen B.V. of the rights (which include a perpetual royalty-free exclusive license) to manufacture, sell and distribute the Strongbow brand in South Africa, Namibia, Eswatini, Lesotho, and Botswana.

Competitive Analysis and Public Interest

xiii. In the assessment of Substantial Lessening of Competition (SLC), the Authority assessment unraveled that there would be a slight change in the FABs market post-merger, as a result of the acquiring enterprise market share which is highly insignificant. It suffices to say that though the market for the supply of FABs in Botswana is highly concentrated in one player being the target. The high market concentration that appears is a function of the pre-merger market structure and not on account of the implementation of this transaction. Therefore, there will be no substantial lessening of competition post-merger.

xiv. Additionally, without this merger, the Authority considers that Heineken would continue to operate independently in the future should the proposed acquisition not proceed. Moreover, there exists countervailing power in the market under consideration. This is so because, downstream players have the liberty to negotiate product prices (including FABs) from the distributors of the Merging Parties. The Authority is therefore of the view that there is sufficient countervailing power which will make SLC unlikely.

xv. Furthermore, the assessment reveals that the largest and third players in the FABs market are joining forces, in the relevant market. However, there exists a second large player in AB InBev with global player status which has the ability and capacity to come up with means to exert a competitive constraint that will remain in the relevant market to ensure that rivalry continues to discipline the commercial behaviour of the Merged Entity post-merger.

xvi. In light of the above, and subsequent to the characteristics of the market under consideration, the implementation of the proposed merger is not expected to result in the Acquiring Entity increasing or enhancing its dominant position.

xvii. In terms of Public Interest Considerations, the findings of the assessment revealed that the proposed transaction **may** give rise to public interest concerns under section 52(2)(f) of the Competition Act of 2018, given that the Merging parties' local distributors, CA Sales and SMC Brands are both foreign owned and in fact owned by the same company being CA Holdings (domiciled in South Africa).

The Determination

xviii. The analysis of the facts of the case in this report have shown that there are no substantive competition concerns that will arise in both the markets for the supply *of clear beer and FABs in Botswana*, given the fact that:

a) The proposed transaction will slightly alter the structure of the markets under consideration;

b) The merger would result in the Merged Entity attaining a dominant position in the FABs market, however the dominance does not arise as a result of the merger, but rather a pre-existing position held by the target; and

c) The merger would not enhance the Merged Entity's ability to abuse its inherited dominant position. This is because historically, the Authority has never encountered any negative conduct as far as the target which holds a 70% pre-merger share of the local FAB's market.

xix. Nonetheless, it is noted that the proposed transaction **may** give rise to public interest concerns under section 52(2)(f) of the Competition Act of 2018, given that the Merging parties local distributors, CA Sales and SMC Brands are both foreign owned and in fact owned by the same company being CA Holdings (domiciled in South Africa).

xx. Furthermore, the Merging Parties have committed to the divestment of the Heineken' Strongbow brand to effectively eliminate the horizontal overlap in one of the relevant markets (the FABs market). The divestiture of the Strongbow brand involves the Sale by Heineken of the rights to manufacture, sell and distribute the Strongbow brand in the countries indicated above. It is worth noting that there are no employees dedicated to the distribution of the Strongbow brand in Botswana, and as such, the divesture is not expected to have any bearing on employment in Botswana post-implementation.

xxi. Pursuant to the provision of Section 53 of the Act, and based on the public interest concerns raised in respect of the distribution of the Merging Parties products in Botswana, the Authority has decided to approve the proposed acquisition of a further interest in Namibia Breweries Limited and the In-Scope Assets of Distell Group Holdings Limited by Heineken B.V through Sunside Acquisitions Limited ("Newco") with the following conditions, aimed at empowering a citizen owned distribution company:

A. The Merging Parties must within a period of 24 months from the decision date, identify a suitable citizen owned company in the distributorship business:

a) During this time, the Parties are to develop a robust supplier (distributor) development programme in order to capacitate a local citizen owned distribution company with the aim to absorb it within the Merging Parties supply chain; and

b) The Merging Parties are required to submit an update on the progress of part (a) of the condition above, at least 6 months before the expiry of the 24 months' period stated in condition (A) above.

B. The Authority is cognisant of the Merging Parties 'commitment to divest Heineken's Strongbow brand. In light of this, the Merged Entity shall:

a) Once the license becomes effective, not either as a principal, agent, partner, representative, shareholder, beneficiary, consultant, advisor, financier, or in other like or similar capacity, directly or indirectly be associated with the marketing, distribution and selling of Strongbow brand in Botswana;

b) Furnish the Authority with the signed License Agreement between Heineken South Africa and the appointed licensee (the new Strongbow brand owner), where applicable, with the associated Transitional

Service Agreement, within 10 days of the conclusion of such agreement(s); and

c) The aforementioned condition will allow the Authority to consider the License and Transitional Agreements to the extent that they relate to the Botswana market and whether they may amount to a merger/acquisition within the contemplation and thresholds of Botswana's Competition Law. Ultimately, the CCA will be in a position to advise the parties on its position regarding the 'new' transaction i.e. whether or not it should be notified or not.

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

Dated at Gaborone on this 4th day of August 2022.

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