



Advancing Competition in African Alcohol Markets

Lessons from FTI Consulting's experience in assessing the Heineken/Distell transaction across multiple African jurisdictions

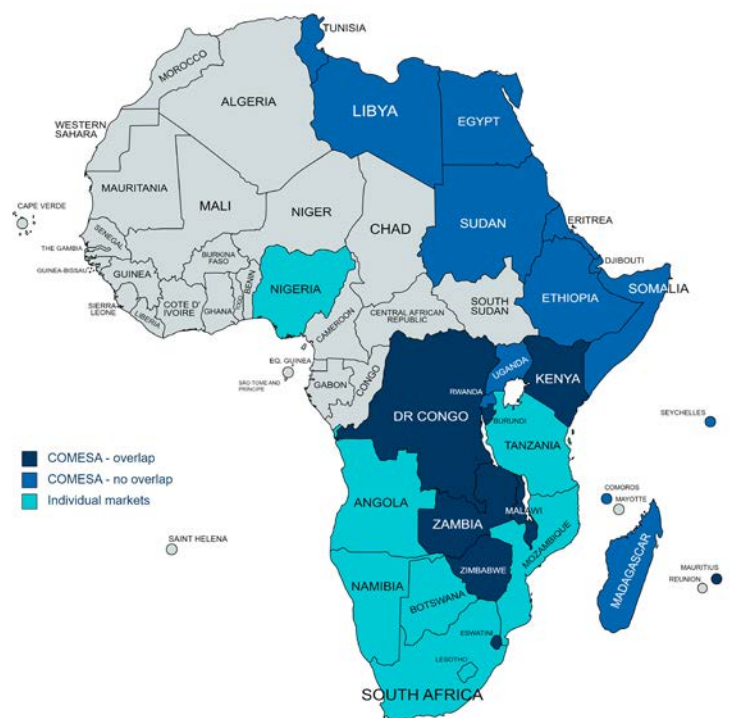
1. What Did the Merger Entail?

This article discusses various aspects of the large merger between Heineken and Distell that was notified in several African jurisdictions. The Heineken Group ("Heineken") acquired a controlling interest in Namibia Breweries Limited and in the flavoured alcoholic beverage ("FAB"), wine and select spirits operations of Distell Group Holdings Limited ("Distell").¹ The transaction was filed and approved in South Africa, Namibia and several markets across Africa.

FTI Consulting² was instructed by ENSAfrica, on behalf of Distell, to act as the economic experts and to assist in providing economic analyses throughout the merger assessment process. This article details the competition economics assessments conducted, the procedural aspects of filing in multiple jurisdictions, the ultimate outcomes and some key lessons arising from the process.

2. How Were the Relevant Competition Markets Defined?

As expert economists, a central question that FTI Consulting needed to answer in this merger assessment was what the relevant markets were. Since the merging parties generally participated in different markets, the main consideration was whether there were any overlaps between the product categories and, if so,



what the combined size was in such markets. The only significant overlap was in the cider category. Heineken owns Strongbow, which has a small market share in the South African market despite being the largest cider brand in the world. The Distell cider brands, Savanna and Hunter's, are also players in this space.

Case precedent typically defines product markets according to alcoholic beverage categories: wine, spirits, beer and FABs. Internationally, competition authorities have concluded that beer and FABs are in different product markets.^{3,4} In *SAB/Diageo* (2019),⁵ for instance, the South African Competition Commission (“Commission”) defined a market for the production and supply of clear beer products and a market for the production and supply of FABs, including ciders and flavoured beers. This delineation was in line with previous decisions by the Competition Tribunal (“Tribunal”).^{6,7} In *SAB/Diageo*, both the Commission and the Tribunal concluded that FABs should not be segmented further by type. For the geographic market, case precedent indicated a national market for each country.

To define the relevant product markets in this merger, FTI Consulting considered data on prices (e.g. trends and price ladders), closeness of competition, consumer behaviour (e.g. consumers’ willingness to substitute one product for another), the production process (e.g. ingredients and equipment required) and product characteristics (such as taste profiles). Data from surveys asking regular drinkers of different brands of beer and FABs which other drinks they consume showed that regular Savanna, Hunter’s and Strongbow drinkers do not just switch between these three ciders. Rather, the data showed that they consume a range of FABs and ready-to-drink beverages, including those from competitors SAB (i.e. AB InBev), Halewood and Diageo. This did not support a separate market for cider.

Ultimately, separate national markets were defined for beer, FABs, wine and spirits. This market definition was accepted by the competition authorities in South Africa⁸ and in other jurisdictions relevant to this merger. For example, the Committee Responsible for Initial Determinations (“CID”) in the Common Market for Eastern and Southern Africa (“COMESA”) defined the relevant markets as clear beer (including premium and ultra-premium beer), cider, wine, spirits and carbonated soft drinks.⁹

3. Overlaps and the Divestiture Remedy

With this market definition in mind and the distinct (and largely complementary) product portfolios of the two parties, only a minor overlap existed between Distell’s Savanna and Hunter’s brands and Heineken’s Strongbow brand. The parties ultimately decided to eliminate the overlap by divesting Strongbow in certain regions. The divestiture was intended to proactively eliminate any possible competition concerns arising from the transaction.

The structural condition ultimately imposed in South Africa, Namibia, Botswana and certain other markets involved Heineken selling its Strongbow brand as a perpetual, exclusive, royalty-free licence to an independent licensee to produce, market, distribute and sell Strongbow in those jurisdictions.¹⁰



4. Filing in Multiple Jurisdictions

Although the competition authorities in each country applied their own approaches to assessing the merger, a common feature was that they were proactive and keen to engage in order to fully understand the details of the transaction and its likely effects on local firms and consumers.

In addition to potential overlaps and market shares, certain other aspects were investigated in all jurisdictions. These included barriers to entry, cooler space, the effect on third-party distributors of Heineken and Distell's products, incentives and rebates offered to customers, potential tying and bundling of products post-merger, promotional spend, and whether there was any local production, and if so, where the production facilities sourced inputs such as glass bottles. In some cases, local production and ownership also warranted further inquiry.

There were extensive interactions with various competition authorities, including the Namibian Competition Commission ("NaCC"). In addition to written requests for information and data, the NaCC convened a stakeholder conference in June 2022 where relevant parties were invited to make oral or written submissions before or at the conference.¹¹ FTI Consulting's Competition Expert, Professor Nicola Theron, acting as Distell's economic expert, accompanied the merging parties' delegation to Windhoek to assist in responding to stakeholders' questions and concerns. Online and in-person meetings between competition authorities and the merging parties' legal and economic advisors also took place in Botswana, Zimbabwe, Tanzania and Malawi (part of COMESA), along with extensive written correspondence in all the jurisdictions.

A notable development was the recurring intervention by AB InBev in all jurisdictions. AB InBev is predominantly a beer producer throughout Africa, with a large market share in most of the relevant countries.

To accommodate all third-party concerns, the competition authorities tested the concerns of AB InBev and others with the merging parties. This added to the rigour of the process, ensuring thorough assessments of the merger. This level of engagement by competition authorities bodes well for the development of competition enforcement throughout Africa, where many authorities are still maturing.

5. What Was the Outcome of the Merger?

The result of these analyses, reports, and online and in-person interactions with the authorities was that the transaction was approved in all jurisdictions, conditional on the Strongbow divestiture in certain countries as well as public interest commitments. Examples of such approvals and conditions include the following:

- In **Botswana**, the Competition & Consumer Authority found that despite there being no substantive competition concerns, the proposed transaction *could* give rise to public interest concerns related to distributors. The transaction was approved in August 2022 with the condition that the parties identify a suitable citizen-owned company within 24 months and set up a distribution development programme to absorb the local company into the merged entity's supply chain in Botswana.¹²
- In **Namibia**, the NaCC approved the transaction in September 2022, subject to conditions that address potential concerns related to, *inter alia*, employment, barriers to entry, market share accretion in the FABs market, sourcing of key inputs outside Namibia and the participation of small businesses in the relevant markets. Some of the conditions are aimed at advancing the public interest. For example, the NaCC set the condition that up to 50,000 hectolitres



- of Distell's production and packaging of Savanna and Hunter's ciders as well as up to 200,000 hectolitres of Distell's packaging of selected wine brands be shifted from South Africa to Namibia,¹³ and that N\$25 million be made available over a five-year period to develop micro, small and medium enterprises in the manufacturing and beverage supply industry that are controlled by historically disadvantaged persons.¹⁴
- The **COMESA** CID approved the transaction in February 2023, subject to the parties' compliance with a number of undertakings.¹⁵ These relate to the divestiture of the Strongbow brand in Eswatini, Zambia and Zimbabwe; prohibiting sales of Distell's ciders conditional on the purchase of Heineken's beers in Eswatini, Zambia and Zimbabwe for five years; the management of Heineken's relationship with Afdis post-merger; compliance with existing distribution agreements in Zimbabwe; and reporting and monitoring of the parties' compliance with the undertakings.
 - Although the merger was first filed in **South Africa**, it was the last jurisdiction to approve it. This was largely due to the thorough investigation of the merger and various interventions by third parties, including AB InBev, the development of public interest conditions and the later Tribunal hearing following the need to accommodate participation by third parties, held in January 2023.
- Second, pursuant to the Competition Amendment Act, there is increased focus on public interest considerations in South Africa. Firms are viewed as having a responsibility to ensure that mergers are to the benefit of consumers. This is likely to be a key theme for the South African competition authorities going forward.
 - Third, it shows that merger proceedings for large mergers filed in many jurisdictions can be lengthy and expensive. In many cases, this is due to objections lodged by third parties and the rigorous assessments conducted by competition authorities, particularly in complex matters where merging parties are required to respond comprehensively to various information requests.
 - Finally, the competition authorities that assessed this merger are each making important strides in developing their jurisprudence. This progress bodes well for competition enforcement throughout the African continent and is an important consideration for firms that are expanding their footprint in the region.
- Nicola Theron, professor and competition expert in the Economic Consulting segment at FTI Consulting, acted as the economic expert for Distell and was assisted by Senior Directors Willem van Lill and Albertus van Niekerk, Director Elize Rich and Consultant Dr Roan Minnie.*

6. Important Lessons

This transaction provides several useful insights for practitioners and firms:

- First, it illustrates the importance of properly defining the relevant competition markets through rigorous testing, since this ultimately informs the identification of product overlaps and potential competition concerns. In this case, the analysis was simplified when the competition authorities concluded on the relevant markets that were defined.

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Endnotes

- 1 The combined company that was formed after the transaction is named Heineken Beverages.
- 2 This included responding to information requests from various competition authorities, data gathering, complex data analysis, assisting in writing expert economic reports and attending Competition Tribunal hearings. FTI Consulting also assisted in developing the final conditions that led to the conditional approval of the merger. Heineken was advised by RBB Economics and Webber Wentzel.
- 3 See, for example, Heineken/Bayerische Brau Holdings (2001) in the EU. Case No. COMP/M.2387.
- 4 For instance, in Asahi Group Holdings/Carlton & United Breweries (2020), the Australian Competition and Consumer Commission (ACCC) defined separate markets for beer and cider. See the ACCC's decision (18 May 2020) in [Asahi Group Holdings/Carlton & United Breweries](#).
- 5 Competition Tribunal. SAB/Diageo (2019). Case No. LM187OCT18.
- 6 Competition Tribunal. Diageo/Brandhouse Beverages (2015). Case No. LM090Aug15.
- 7 Competition Tribunal. AB InBev/SABMiller (2016). Case No. LM211Jan16.
- 8 The Commission decided to assess the merger in terms of both a market for the supply of FABs including cider and a market for the supply of ciders (Competition Commission South Africa. Large Merger Report. Case No. 2021Dec0005).
- 9 Decision of the Ninety-First (91st) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Heineken International B.V., Namibia Breweries Limited and Distell Group Holdings. Case File No. CCC/MER/4/27/2022, (para 43).
- 10 Competition Tribunal Media Release. [Heineken/Distell merger](#). 9 March 2023.
- 11 Namibian Competition Commission. [Invitation to Stakeholders Conference](#). 3 June 2022.
- 12 Competition & Consumer Authority. Merger Decision No 23 of 2022.
- 13 <https://marketing.hsf.com/219/29398/compose-email/africa-competition-law-update.asp#twentysix>
- 14 Government Gazette of the Republic of Namibia No. 7911, 27 September 2022, Notice no. 520.
- 15 <https://www.comesacompetition.org/wp-content/uploads/2023/02/Decision-Case-No-CCC-MER-4-27-2022-compressed.pdf> (para 90).