

CASE FILE NO.: CCC/ACBP/4/1/2021

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

ECONOMIC SECTOR: Alcoholic Beverages

21 September 2025



Reference: CASE NO. CCC/ACBP/4/1/2021

Parties: COMESA Competition Commission Secretariat (the Commission)
DIAGEO PLC (Diageo)

In the matter: Investigation into alleged anti-competitive business practices by Diageo PLC (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;

Cognisant 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;

Recognising 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 21 June 2021, the COMESA Competition Commission Secretariat (the "**Commission**") commenced an investigation against Diageo 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 through a Notice of Investigation.



2. The Commission's Notice of Investigation concerned Diageo'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 Diageo's production and distribution agreements (the "**Agreements**"):
 - a. Minimum Resale Price Maintenance;
 - b. Single Branding Restrictions; and
 - c. Territorial Restrictions.
3. The Commission thus issued its Statement of Concerns ("**SOC**") on 7 September 2023 and invited Diageo 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 set in accordance with Rule 79 of the Rules. Specifically, the Commission recommended that Diageo be fined **USD300,000** for each of the restrictions contained in their Agreements which would amount to a total of **USD900,000**.
4. Diageo requested an extension to the applicable timeline to provide its responses to the SOC on 22 January 2024. The extension was granted by the Commission and Diageo submitted its response to the SOC on 22 January 2024.
5. The above notwithstanding, Diageo 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 Diageo had breached Article 16(1) of the Regulations. On the other hand, Diageo's position was that the Commission did not establish a case against it 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, the Commission and Diageo negotiated a commitment agreement with was presented to the Committee Responsible for Initial Determinations ("**CID**") for consideration on 21 September 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.

Diageo

8. Diageo is a global alcoholic beverage brand owner and manufacturer with approximately 200 brands sold in 180 countries. In Africa, Diageo manufactures locally, producing local brands with locally sourced materials. Diageo submitted that it has operations in the following COMESA Member States; Eswatini, Ethiopia, Kenya, Mauritius, Rwanda, Seychelles, Uganda, Zambia and Zimbabwe.

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 Diageo and third parties (distributors and producers);
 - b. Agreements implemented within the Common Market;
 - c. Agreements have the object or effect to prevent, restrict or distort competition within the Common Market;
 - d. 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. The Agreements in Seychelles and Uganda have restrictive clauses whose implementation amounts to fixing the price of the products in the Common Market. Such restrictions reduce the freedom of distributors to determine their own prices thus undermining intra-brand competition.
- b. Single Branding**
16. Uganda distributors are restricted from dealing in competing products which harms inter-brand competition. The harm to competition was exacerbated by the dominant position of Diageo in the market.



c. Territorial Restrictions

17. The Agreements in Uganda had clauses which restrict the distributors from operating outside their allocated territories, and in some instances implied a restriction to passive sales leading to absolute territorial restrictions. Business arrangements which prohibit distributors from distributing outside their territories (whether defined as an entire Member State or a part of a Member State) hinder actual trade across physical borders and are offensive to the regional integration imperative agenda. Restrictions on active sales may be permissible if implemented by non-dominant firms. Conversely, if restrictions on active sales are implemented by dominant firms such conduct may be a violation of the Regulations subject to the existence of certain market conditions. However, restrictions on passive sales are a very serious offense which would always be considered a breach of the Regulations because they are an affront to the overriding Treaty objective of the single market integration.
18. Territorial restrictions were also observed in the Agreements in Eswatini, Seychelles and Zambia. The companies are restricted from exporting or selling to customers whom they believe would re-sell the products for export. Such clauses limit the possibility of trade among Member States and should be severed from the Agreements.

Proposed Commitments

19. The CID noted that on a non-admission of liability basis, Diageo proposed the following undertakings to address the concerns raised by the Commission:
- a) 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) Training of its staff and management to ensure they fully understand the provisions of the amended Agreements and its distribution management system;
 - c) Submitting periodic compliance reports to the Commission; and
 - d) Paying a settlement amount of **USD300,000** for each of the Commission's concerns (i.e., territorial restrictions and minimum resale price maintenance), and **USD150,000** for the alleged single branding restrictions. The total settlement amount to be paid by Diageo being **USD750,000**.
20. 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.

E. Confirmation of the Commitment Agreement by the CID

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

Dated this 21st day of September 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 Diageo Plc for alleged violations of Article 16 of the Regulations.

Case file: Case CCC/ ACBP/4/1/2021, Diageo Plc

In accordance with Section 13(1) of the COMESA Competition Commission Guidelines on Settlement and Commitment Procedures of 2022 (the "Guidelines"), Diageo Plc ("Diageo") offers the following voluntary commitments (the "Commitments").

Consistent with Section 13(2) of the Guidelines, these commitments are given on the understanding that the Commission will confirm that there are no grounds for further action and will close the proceedings opened on 21 June 2021 under Case No. CCC/ACBP/4/1/2021.

These Commitments are intended to fully address the Commission's competition concerns, in particular by seeking to ensure that no restrictions amounting to absolute territorial allocation, single branding and resale price maintenance are included or enforced in the Distribution Agreements as well as the Production and Distribution Agreements entered into by Diageo with distributors and producers respectively.

INTERPRETATION

1. The following terms shall have the meaning assigned to them hereunder:
 - a. "CID" means the Committee Responsible for Initial Determinations established pursuant to Article 13 of the Regulations;
 - b. "Commission" means the COMESA Competition Commission established pursuant to 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 pursuant to Article 1 of the COMESA Treaty;
 - e. "Day" means calendar days;
 - f. "Diageo" means Diageo Plc and its connected undertakings and subsidiaries;
 - g. "Distribution Agreement" means an agreement between Diageo and an



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authorised distributor in a Member State, where the two parties enter into a commercial relationship which aims at the supply by one of the ranges of its products;

- h. **"Effective Date"** means the date upon which Diageo receives formal notification of a Commitment Decision by which the CID makes the Commitments binding on Diageo;
- i. **"Investigation"** means the Commission's investigation initiated against Diageo under Case No. CCC/ACBP/4/1/2021;
- j. **"Production and Distribution Agreement"** means an agreement between Diageo (Brands owner) and a producer which grants the producer the rights to manufacture, distribute, sell and market the products on the terms determined by the Brand owner.
- k. **"Regulations"** means the COMESA Competition Regulations;
- l. **"Relevant Member States"** includes Eswatini, Seychelles, Uganda and Zambia;
- m. **"Statement of Concerns"** means the Commission's statement of concern dated 7 September 2023 in respect of the Investigation.

BACKGROUND

- 2. On 21 June 2021, the Commission commenced an Investigation against Diageo for an alleged 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 Diageo's Distribution and/or Production and Distribution Agreements in the Relevant Member States:
 - i. Restrictions on distributors amounting to minimum resale price maintenance;
 - ii. Restrictions on distributors amounting to single branding; and
 - iii. Restrictions on distributors amounting to territorial restrictions.
- 3. The Commission's Investigation into the aforementioned practices asserted that such practices 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") outlining its findings and proposed remedies in relation to the Relevant Member States and invited



Diageo to provide a response by 5 October 2023.

4. On 22 January 2024, Diageo responded to the SOC where it rebutted the Commission's allegations. After various correspondence with Diageo, in May 2025, the Commission and Diageo engaged in commitment negotiations aimed at addressing the Commission's concerns. Diageo further committed to pay a settlement amount to the Commission, on a non-admission of liability basis, in full and final settlement of the investigation and proceedings under the Commission's Case No. CCC/ACBP/4/1/2021.

OFFERED COMMITMENTS

5. Diageo shall put in place corrective measures, as provided herein, to ensure that its Distribution Agreements and Production and Distribution Agreements do not contain any provisions which could amount to absolute territorial restrictions, single branding restrictions, or minimum resale price maintenance. Diageo shall within one hundred and eighty (180) days of the Effective Date amend and/or remove the provisions in its Distribution Agreements and Production and Distribution Agreements (including any other provisions having direct or indirect relation with the offending provisions) in Eswatini, Uganda and Zambia identified by the Commission as potentially restricting passive sales within the Common Market or indirectly imposing minimum resale price maintenance.
6. Without prejudice to the generality of the preceding commitment, Diageo undertakes to amend the provisions (clauses) relating to passive sales, in its Distribution Agreements and Production and Distribution Agreements (including Standard Terms and Conditions) identified by the Commission as potentially restricting passive sales in the territories of Eswatini, Uganda and Zambia to expressly permit passive sales within the COMESA region by incorporating the following text in its Distribution Agreements and Production and Distribution Agreements where appropriate: *"For the avoidance of doubt, passive sales are permitted in the COMESA region"*.
7. Further, with regard to the alleged practice of enforcing minimum resale price maintenance in Uganda, Diageo undertakes to remove any reference to



margins in its future price lists sent to its distributors.

8. At the latest within thirty (30) days after the Effective Date, Diageo shall notify each of its distributors operating in the Relevant Member States that it does not impose restrictions on passive sales, require single branding or impose minimum resale price maintenance in its distribution agreements or through its distribution management system.
9. As of the Effective Date, Diageo shall not include in any new Distribution Agreements or Production and Distribution Agreements (including in its Standard Terms and Conditions), provisions restricting passive sales, requiring single branding or imposing minimum resale price maintenance.
10. Diageo, within thirty (30) days after the Effective Date, undertakes to pay a settlement amount of USD 300,000 for each of the Commission's alleged restrictions (i.e., territorial restrictions and minimum resale price maintenance), and USD 150,000 for the alleged single branding restrictions. For the avoidance of doubt, Diageo shall pay a total settlement amount of USD 750,000.
11. Diageo shall provide annual training to its staff and management on the amended Distribution Agreements and Production and Distribution Agreements and its distribution management system for a period of three (3) years from the Effective Date to ensure that they fully understand the provisions of those agreements.

SCOPE

12. These Commitments comprise the entire extent of Diageo commitments to the Commission with respect to Case CCC/ACBP/4/1/2021. These Commitments shall be binding upon the confirmation of the CID.

NON-CIRCUMVENTION

13. Diageo shall not circumvent or attempt to circumvent these Commitments either directly or indirectly by any act or omission.



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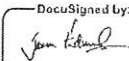
MONITORING AND COMPLIANCE WITH THIS AGREEMENT

14. Diageo shall, within thirty (30) days of the date specified in **paragraph 5**, submit to the Commission an affidavit confirming compliance with the undertakings provided in **paragraphs 5, 6 and 7** of these Commitments, accompanied by the amended distribution agreements and price lists.
15. Diageo shall, within sixty (60) days of the Effective Date, submit to the Commission an affidavit confirming compliance with the undertaking provided in **paragraph 8** of these Commitments, accompanied by the notification letters sent out to its distributors.
16. Diageo shall, within forty-five (45) days of the Effective Date, submit to the Commission a proof of payment of the settlement amount agreed with the Commission as provided in **paragraph 10** of the Commitments.
17. Diageo shall, within forty-five (45) days of each of the anniversary of the decision of the CID and for a period of three years, submit to the Commission an affidavit confirming compliance with the undertakings provided in **paragraph 11** of the Commitments.
18. After five (5) years, the monitoring will cease unless otherwise indicated by the Commission.

THUS DONE AND SIGNED AT London, England ON THIS 30th DAY OF
September 2025

NAME: James Edmunds TITLE: General Counsel Corporate & Deputy Company Secretary

(Authorised Signatory)

SIGNED: 
C4C6E1799EC948C



A handwritten signature in black ink, appearing to be 'J. Edmunds', with a flourish at the end.

ACCEPTED BY THE COMESA COMPETITION COMMISSION CID HELD ON 21
SEPTEMBER 2025

SIGNED ON THIS th30 DAY OF September 2025

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

SIGNED: :

For the COMESA Competition Commission

