

## MEMORANDUM

To Authority Consumer and Markets (ACM)

From InBev Nederland N.V. (AB InBev)

Date 30 September 2020

Subject **ACM Consultation Guidelines for Sustainability Agreements**

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### 1. AB INBEV'S APPROACH TO SUSTAINABILITY

- 1.1 AB InBev welcomes the initiative of the ACM to give clear guidance to companies on their potential collaborations in the field of sustainability through its Guidelines for Sustainability Agreements.
- 1.2 Sustainability has been an important driver to AB InBev for many years, and we engage actively in pursuing the United Nations Sustainable Development Goals (**SDG**). Specifically, we divide our initiatives into Smart Agriculture, Water Stewardship, Circular Packaging, Climate Action and Smart Drinking. More information on our initiatives and how they link to the UN SDG is available here: <https://www.ab-inbev.com/sustainability/2025-sustainability-goals.html>.
- 1.3 Many of our sustainability initiatives are driven by us acting unilaterally – in part because this can be very effective given our large scale, but also in part as this is legally more straightforward. That said, we are fully aware of the importance of collaboration to maximise the sustainability impact, and also collaborated in supply chain initiatives (for example, the Smart Barley program for farmers) and participate in multi-sectoral initiatives (such as for water stewardship).
- 1.4 Some areas where AB InBev in the Netherlands has considered – but not always followed through – on greater pro-sustainability collaborations include the following:
- (a) AB InBev has entered into a Plastic Pact with other Dutch companies, including brewers, to reduce the levels of plastic in our packaging; however an arrangement with further reaching benefits would be achievable through closer monitoring and stricter targets if confirmed by a clearer antitrust greenlight;
  - (b) Potential logistics collaborations, or data sharing, with other beverage or FMCG companies to reduce the overall kilometers travelled by logistics companies. However, this can lead to complex antitrust concerns;
  - (c) Pursuing returnable bottles more strongly in the market through industry cooperation; the Dutch government has targeted that at least 90% of the market should be returnable bottle, but bottles can be a relevant competitive parameter which limits appetite for companies to pursue this further, in light of the perceived antitrust risk of cooperation.

### 2. ELEMENTS OF THE DRAFT GUIDELINES WE SUPPORT

- 2.1 We understand that in cases where agreements do restrict competition, they will be permitted by the ACM if certain conditions are fulfilled. One such condition is that the benefits of the collaboration must outweigh the disadvantages. The benefits could include lower carbon emissions; the disadvantages could include a price rise for users. A new feature in these draft Guidelines is the way in which these

benefits are weighed against the disadvantages, prioritizing a more holistic view of the impact on consumers in some circumstances stretching to society as a whole - rather than the more conventional focus on the direct consumer's willingness to pay for sustainability gains. AB InBev sees how this new view may result in new and more efficient and effective opportunities for companies in the Netherlands to achieve sustainability and climate targets.

- 2.2 AB InBev furthermore encourages the proposed approach of the ACM to not immediately impose fines if the Guidelines have been followed as closely as possible, but those agreements ultimately turn out not to be in line with competition law. AB InBev welcomes the proposal that in such cases ACM would first consult with the parties involved.

### **3. POINTS OF CONCERN IN THE DRAFT GUIDELINES**

- 3.1 Although AB InBev is aligned with the draft Guidelines to a large extent, AB InBev wishes to submit suggestions to the ACM for the finalisation of the Guidelines.

- 3.2 Firstly, AB InBev would like to point out that in the draft Guidelines the ACM makes a distinction between environmental-damage agreements and other sustainability agreements. Environmental-damage agreements are agreements that aim to improve production processes that cause harm to humans, the environment, and nature. As an example the ACM mentions agreements aimed at reducing emissions of pollutants, and at preventing the use of pollutive raw materials in products. For such agreements, the ACM proposes taking into account the potential benefits for all society and not just the direct consumers affected.

- 3.3 With regard to other sustainability agreements the ACM follows the traditional principle that users must be fully compensated by the benefits of the sustainability agreements for the harm that they suffer caused by a restriction of competition.

- 3.4 Given the importance of all of the UN SDG, and the proposed application of the guidelines to all of the SDG, it is unclear to AB InBev why the distinction between environmental-damage agreements and other sustainability agreements is made. This is especially the case since agreements may contain overlapping characteristics of both environmental-damage agreements and sustainability agreements. For example, labour rights are closely linked to preventing damage to humans, and animal welfare measures to protecting from damage to nature.

- 3.5 Secondly, despite the Guidelines being quite comprehensive, a number of concepts touched upon remain relatively vague and unclear. To remove some of this vagueness AB InBev suggests that the ACM introduces safe harbours for certain types of agreements, perhaps based on market share thresholds, to boost companies' confidence in the legality of such collaborations.

### **4. LIMITED GEOGRAPHIC SCOPE**

- 4.1 AB InBev notes that the draft Guidelines are (necessarily) particularly focused on the Netherlands, whereas many sustainability initiatives are international. AB InBev is aware that the ACM's jurisdiction is limited by the Dutch borders, but would encourage the ACM to keep in close contact with foreign competition authorities to have cross-border alignment in order for competing companies to achieve sustainability goals through international collaboration.

### **5. CONCLUSION**

- 5.1 Overall, AB InBev very much welcomes and supports the draft guidelines published by the ACM, and commend your leadership on this topic in the competition community.

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