



Hellenic Competition Commission

Athens, January 7th 2020

PRESS RELEASE

The HCC has accepted the commitments proposed by "DIAGEO HELLAS SA" ("DIAGEO") so as to address competition concerns, raised on the basis of the ex-officio investigation of the Directorate-General for Competition, with regard to various commercial practices of the company in several alcoholic beverages markets in the on premise channel.

By means of its unanimous decision **no. 698/2019**, and pursuant to article 25 par. 6 of the L. 3959/2011 ("Greek Competition Act"), the Hellenic Competition Commission ("HCC"), sitting in plenary session, has accepted and made binding the commitments proposed by DIAGEO to address the preliminary competition concerns (Articles 1 and 2 L. 3959/2011, Articles 1 and 2 L. 703/1977 and Articles 101/102 TFEU) raised regarding certain types of DIAGEO's practices in the markets of gin, Scotch whisky and Ready To Drink/Premix alcoholic beverages (RTD's/Premix) in the on premise channel in Greece, where DIAGEO has been assessed, in the HCC's preliminary view, as holding a dominant position.

In the HCC's preliminary assessment, the practices under scrutiny, which are based on explicit and/or implicit agreements between DIAGEO and on premise outlets, consist in the provision to DIAGEO by on premise outlets of de jure and/or de facto exclusivity with regard to pouring services¹ and various types of marketing and visibility services². Such services are complementary in nature in that, in most cases, they are used in combination with each other so as to cover both branded and unbranded demand, and, as implemented in Greece, they are capable, in the HCC's preliminary view, of foreclosing potential or existing competitors from access to a significant part of the relevant markets, due to the fact that DIAGEO incentivizes exclusivity:

- a) through pouring agreements, with regard to non branded demand, i.e. an important sales driver and the most dynamic part of demand, where brand equity is not a pre-requisite, in the strategically most significant outlets, which constitute, in terms of both quality and sales volumes, the sales channels, which are most essential to reaching end consumers, and
- b) through marketing and visibility services, with regard to key spots, in terms of promotional value, in on premise outlets, including the strategically most significant outlets.

In the HCC's preliminary assessment, financial incentives, such as lump sums and/or rebates paid by DIAGEO to on premise outlets in exchange for pouring and marketing and visibility services are in fact used as a means to secure exclusivity in the meaning explained above.

In view of the aforementioned, DIAGEO proposed a set of commitments to address the HCC's concerns, despite the fact that it did not admit to infringing competition law provisions. The main

¹ Pouring services are defined as services consisting in the offer by on premise outlets of the product(s) which is/are agreed between the latter and DIAGEO in the event that the customer orders a product of the category, without specifying the brand, or orders a cocktail or mixed drink that includes a product of the category or the outlet offers for free (free drinks) a product of the category (ie. shots etc), and, therefore, the said services concern **unbranded demand**.

² Marketing and visibility services mean all marketing and visibility services provided by on premise outlets to DIAGEO, which include, for example, the following services: (i) bottle displays; (ii) table set services; (iii) sous plat; (iv) table brochures; (v) staff uniforms; (vi) menus; (vii) price lists; or (viii) other promotional materials and, therefore, they concern **branded demand**.

goal of the commitments consists in lifting exclusivity with regard to pouring and marketing and visibility services, so that every strategically important outlet, with regard to pouring services, and every on premise outlet, with regard to marketing and visibility services, shall be able to offer such services **in parallel**, i.e. both to DIAGEO and to competing suppliers, by type of services, by product category (WHISKY, GIN, RTD's/PREMIX), brand (e.g. Johnnie Walker, Gordon's, Gordon's Space) or/and brand variant (e.g. Johnnie Walker Red Label, Gordon's London Dry Gin etc).

In particular, on the basis of the commitments proposed by DIAGEO, the latter shall not enter into pouring agreements with, existing or new, strategically important on premise outlets, as such are defined in the commitments, with regard to a large portion of unbranded demand covering generic cocktails, neat drinks and free drinks nor shall it provide special incentives to on premise outlets to pour DIAGEO Scotch whisky and gin brands and/or brand variants with regard to the above types of beverages. Strategically important on premise outlets shall be free to enter into pouring agreements with third party suppliers and they shall have sole discretion at all times to choose which gin or Scotch whisky brand to pour with regard to the above types of beverages, and, therefore, they may at their sole discretion, without prejudice to the aforementioned restriction as to DIAGEO brands, serve the gin and/or Scotch whisky brands of multiple suppliers either at the same time or consecutively.

Moreover, with regard to marketing and visibility services, DIAGEO shall provide fees in relation to a particular brand for a maximum number of three (3) marketing and visibility services. On premise outlets shall remain free at all times to provide any and all marketing and visibility services in parallel to any and all other competing brands. Especially, with regard to certain types of marketing and visibility services (menu maker, cocktail menu status and table setting services), the DIAGEO brands and/or cocktails (as applicable) included in the outlet's menu as well as the number of tables, on which a bottle of Diageo's Scotch whisky or gin brands is to be displayed, should account for no more than 50% of all brands and/or cocktails listed in each gin, Scotch whisky and RTDs/Premix (where applicable) category and of all tables designated for the service of drinks in the on premise outlets respectively.

Both with regard to pouring services and marketing and visibility services, commercial agreements between DIAGEO and on premise outlets shall have a duration of no more than twelve (12) consecutive months, and they shall be terminable by on premise outlets for any and no reason with a prior written notice of three (3) months. Additionally, any fees paid for pouring and/or marketing and visibility services shall be provided on an itemized basis against a particular brand and/or brand variant and a particular service and they will be determined on the basis of objective criteria. Furthermore, payment thereof shall only be conditional upon provision of the agreed service(s) per brand and/ or brand variant and per type of service, they shall not be linked to purchasing specific quantities or reaching volume or other targets on the part of the on premise outlets and they shall only be withheld if the agreed service(s) per brand and/ or brand variant is/are not provided or if otherwise permitted under Greek law.

DIAGEO has committed to adopting the above principles for a period of five (5) years as from 31-01-2020. The HCC has made the above commitments binding on DIAGEO without concluding whether or not there has been or still is an infringement. Non compliance with the commitments may lead to the imposition of a fine, in accordance to the Greek Competition Act.