EABL, Diageo Transaction Holds Steady as CAK Imposes New Remedies

Client briefing | Antitrust & Merger Control
Kenya | CAK Imposes New Remedies
31 August 2026

A recent transaction has reportedly raised significant concerns at the Competition Authority of Kenya (CAK). Diageo plc sold its 65% controlling shareholding in East African Breweries plc (EABL) to Asahi Group Holdings, Ltd. (Asahi). The CAK reportedly proposed remedies which have raised questions about the scope of the Authority's powers. They have also raised questions about the types of conditions the CAK may impose in merger control review.

The proposed transaction was announced in December 2025. It concerns the acquisition of 65% in EABL by Asahi from Diageo for a consideration of approximately USD 2.3 billion. For Asahi, a major Japanese beverage group, the transaction is a significant strategic step to into the East African market.
However, the proposed transaction has hit another regulatory obstacle in Kenya. The CAK has reportedly informed the National Assembly's Finance and National Planning Committee that clearance of the proposed transaction would be subject to two significant conditions.

First, EABL would be required to set aside money in a dedicated reserve fund before closing. The fund would be equivalent to approximately 4% of the transaction value, amounting to approximately USD 115 million. According to the CAK, the reserve would be ring-fenced to address potential third-party claims, disputes, liabilities and regulatory matters involving EABL that may arise after completion of the proposed transaction. The CAK initially wanted a reserve equivalent to approximately 10% of the transaction value, before reducing it to approximately 4%.

Second, EABL would reportedly be required to allocate at least 20% of the refrigeration space supplied to retail outlets to products that EABL or Asahi does not brand. The measure appears designed to ensure that competing manufacturers retain access to retail refrigeration infrastructure. More broadly, it appears to prevent the transaction from further restricting competitors' access to retail outlets.

The nature of these remedies is highly unusual. Requiring EABL to set up a compulsory reserve to cover third-party claims and liabilities goes beyond the more conventional structural and behavioral remedies typically associated with merger control. The CAK has the power to approve a merger subject to conditions. However, the proposed reserve raises a separate question. It asks whether securing potential liabilities arising from pre-existing disputes falls within the proper scope and purpose of a merger remedy.
Diageo and Asahi have reportedly firmlyopposed the proposed conditions. Diageo has stated that there is “no basis whatsoever” for the proposed conditions. It also said the concerns identified are unrelated to the proposed transaction and that imposing them would be unlawful. Diageo and Asahi have continued to discuss the matter with the CAK.

The CAK's approach appears to have been influenced, at least in part, by several ongoing disputes involving EABL and third parties. These include the dispute with Bia Tosha Distributors. Bio Tosha sought to block the proposed transaction until its dispute with EABL was resolved. JILK Construction Company Limited and other petitioners also brought a separate application. They sought to block the proposed transaction until a dispute relating to the construction of EABL's Kisumu brewery was also resolved. Additionally, a minority shareholder subsequently obtained conservatory orders. The orders temporarily prevented steps towards completion of the proposed transaction.

Key takeaways

Nevertheless, while the remedies appear unusual, this does not necessarily mean that they lack a legal or economic rationale. Competition authorities may conduct extensive assessments of parties entering their markets. They may also assess the potential effects of a transaction on market structure and competition. In this context, outstanding or potential legal claims and liabilities could materially affect the market after the transaction closes. The CAK may therefore consider that exceptional circumstances justify the imposition of non-traditional remedies.

The case nevertheless illustrates the increasingly complex regulatory environment facing parties undertaking cross-border M&A in the region. Businesses looking to enter the Kenyan market should expect heightened scrutiny under the applicable merger control framework. They should also be prepared for the possibility that competition authorities may seek remedies beyond traditional structural or behavioural commitments. The EABL/Diageo transaction may therefore serve as a key example of how merger control remedies are evolving in Kenya.

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