Institute of Economic Affairs

Memorandum on Alcoholic Drinks & Control (Amendment) Bill, 2020

Introduction

The Alcoholic Drinks Amendment Bill (2020) was published in the Kenya Gazette Supplement No.183 on October 15, 2020. This bill contains three clauses with Section 1 stating the title. Sections 2 and 3 make material changes to the Alcoholic Drinks Control Act (ADCA) in the following ways.

Section 2 of the bill seeks to amend Section 31(1) of the ADCA by deleting the words "250 Millilitres" and substituting it with "750 millilitres". This is reference to the minimum packaging quantity of all alcoholic drinks regulated under the ADCA.

Section 3 of the bill seeks to amend Section 62 (b) (h) by inserting paragraph (h)(a), to prescribe the value of fees payable as deposit on the value of any form of alcoholic drink purchased in a glass container.

I. Comments on Section 2 of the Bill

The economics literature identifies five reasons that justify government regulation intended to alter an existing competitive equilibrium in a market. These five reasons for regulation to correct for market failure are: informational asymmetry, natural monopoly, externalities, public goods provision and for social policy to correct income inequality.

The ADCA Amendment Bill, 2020, is a private Members bill seeking to regulate negative externalities arising from excessive drinking by young consumers of alcohol. These youthful consumers in whose protection Section 2 is aimed, may be excessive consumers and represent the demand side while the producers are on the supply side of the market. The proposal to limit alcohol manufacturing, packaging and distribution to 750 ml will only **cause huge adjustment costs on the supply side and not the demand side** where the proposer asserts that problem of excessive drinking exists.

In the assessment of the Institute of Economic Affairs, this approach is a clear case of **Policy Mistargeting because the manufacturers and the packagers will have to pay for the costs of the changes in packaging quantities because of their new obligation as suppliers**. The net effect of this regulation on minimum quantity of bottles and packaging sizes will create distortions on the supply side and lead to shrinkage of the share of formal alcohol market. Early research conducted by the Institute of Economic Affairs (IEA-Kenya) showed that Kenya has a **two-sided supply for the alcoholic beverages market[1]. The implication is that when the alcohol traded in the formal market by registered firms is unaffordable or unavailable, then the informal market is a ready substitute that consumers with a lower income will have access to.** The shift or substitution effects from the formal side to informal side has two consequences: Government will be unable to regulate sale, manufacturing, distribution and standards on the one side and also forgo revenue on the other.

[1] Kemboi, Leo, Kwame Owino, and Emmanuel Wa-Kyendo. "The Unintended Effect of Kenya's Alcohol Regulation Policies." , March 29, 2019. https://www.ieakenya.or.ke/publications/research-papers/the-unintended-effect-of-kenyaa-s-alcohol-regulation-policies.

Notably, there is no evidence in the literature that confirms that packaging at the 750 ml limit for alcohol would deter youthful consumers from purchasing or consumption of alcohol. Given the costs that would be incurred in the adjustments at the firm level and replacement of equipment, this policy change would create market distortions without affecting the question of access for youthful drinkers of alcohol as intended.

The most sensible way to shift the demand curve to reduce negative effects of high consumption would be through the application of appropriate taxation policy on alcohol distributed in Kenya. As it is, the excise taxes applicable for production and consumption of alcohol remain among the highest for countries at Kenya's income level and within the East African Community (EAC). If it is the view of parliament that existing taxation policy does not meet its intended goals, then we support a review of the taxes and design of policy for alcohol in Kenya to meet the objectives that are stated and not merely as a channel for raising regulatory burdens.

The study cited above classified consumers of alcohol into three categories which include: moderate drinkers, binge drinkers and hard drinkers. Binge drinkers imbibe a lot of alcohol in one sitting while hard drinkers drink consistently a considerable large amounts of alcohol for a longer period of time. The consumers that should be of concern to society and government are the hard drinkers because their demand for alcohol is inelastic (they are not price sensitive), which means that raising cost of drinking through taxes or regulation will not change their alcohol intake by the desired amount. Hard drinkers will not be affected by the change in 750 ml packaging limit. Given that drinking is a social skill and government already collects excise taxes, there should be a more targeted reform program towards hard drinkers. The National Assembly should seek data on hard drinkers, by geographical location and what specific programs the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) is running to fight excessive drinking to determine if they are effective and are addressing the problem of excessive drinking.

Proposal on Section 2 of the Bill

We conclude that the section 2 is not consistent with the stated purpose of reducing consumption by the youth and would be a redundant policy measure with enormous costs to firms throughout the value chain. The Committee should expunge it from the bill.

II. Comments on Section 3 of the Bill

The purpose of amendment of section 3 of the bill is to establish a Deposit Refund mechanism to encourage recycling of glass bottles and reduce environment pollution. There's no contention that pollution is a negative externality with costs that need to be contained. However, there is a need to distinguish between alcohol manufacturing and glass recycling and the bill does not make that distinction. Glass manufacturing and recycling are two separate value chains that coexist with each other. Distinguishing the two would allow government to ask, what problem would the proposals in the bill be solving.

Regulating the glass bottles for alcohol manufacturing separately from all bottle production needs to be examined broadly because glass bottles are used in other sectors such as cosmetics, soft drinks, water bottling. Regulating use of glass bottles for alcohol manufacturers raises costs, creates inefficiencies and makes the sector lose competitiveness regionally. In the study by IEA-Kenya, we noted that alcohol manufacturers already have a return system for beer bottles along the supply chain and mechanisms for recycling. There are private sector players that work fulltime to collect and recycle bottles from wines and spirits.

Whereas the concern for the negative externalities caused by glass production and use in alcohol trade is understandable, the economics of recycling suggest that the recycling of glass is not always advisable because it leads to very high energy expenditure and is often inefficient. In addition, there are specific forms of usage of glass waste that do not require recycling and have been applied successfully in many countries without the obligation to use energy intensive methods of breaking down used glass. Already, concerns on waste management by persons and entities have been covered under National Sustainable Waste Management Policy 2019 and the Environmental Management and Co-Ordination (EPR) Regulations, 2020. There's no need to require Manufacturing entities in the alcohol manufacturing and consumers to bear separate regulatory obligations for disposal of waste glass.

Proposal on Section 3 of the Bill

We conclude that the policy measure is unnecessary because a robust trade in used glass exists in Kenya and also that the alcohol manufacturing firms have a recycling mechanism. In addition, the recycling of glass requires the use of high energy processes and is not a cost effective method for reducing glass waste. This section should be expunged.

Conclusion

The Alcoholic Drinks & Control (Amendment) Bill, 2020 would raise the costs on the supply side and could inevitably shrink the market share of formal alcohol and lead to unintended consequences. The amendments to section 2 and 3 should be deleted because they fail to respond to the stated purposes of the bill.

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Note: The Memo was sent to the Clerk of National Assembly on 28TH January 2021