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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/11/LV/06

**Decision¹ of the Twenty Seventh Committee Responsible for Initial
Determination Regarding the Distribution Agreement entered into
between Eveready East Africa Limited and Clorox Sub Saharan Africa**

ECONOMIC SECTOR: MANUFACTURE AND DISTRIBUTION OF BLEACHING AGENTS

22nd November 2016 – Livingstone, Zambia

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 14th September 2016, the COMESA Competition Commission (hereinafter referred to as the "Commission") instituted an investigation into the Distribution Agreement (hereinafter referred to as the "Agreement") between Eveready East Africa Limited (hereinafter referred to as "Eveready") and Clorox Sub Saharan Africa (hereinafter referred to as "Clorox") pursuant to Article 20 of the COMESA Competition Regulations (hereinafter referred to as the "Regulations").
2. Pursuant to Article 16 of the Regulations, the Commission is required to investigate whether the Agreement between the parties would, or is likely to affect trade between Member States and has as its object or effect the restriction, prevention or distortion of competition in the Common Market.
3. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") established that the Agreement has a regional dimension and may likely affect trade between Member States. This therefore means that the Commission has jurisdiction to assess the Agreement.

The Parties

Eveready

4. Eveready was incorporated in Kenya as Union Carbide Kenya Limited in 1967. It changed its name to Eveready East Africa Limited on 30th September 2004 and converted to a public company with limited liability on 30th October 2006. Eveready has registered offices in Kenya and Uganda and also has operations in several other Member States through exports, namely Malawi, Rwanda and the DRC.
5. Eveready's main business activity is distribution of assorted products including batteries, pens, bleaching and lighting solutions in the Common Market.

Clorox

6. Clorox was established in Kenya in 2014 as a joint venture between US-based manufacturer, the Clorox Company and the Chandaria family. The Clorox Company is a multinational manufacturer and marketer of consumer and professional products.

The Agreement

7. The seemingly offending provisions contained in the Agreement provides for an exclusive dealing arrangement between the parties.

Competition Analysis

8. The CID defined the relevant market as the production and distribution of bleaching Agents in the Common Market.
9. The CID observed that the relevant markets are contestable and that while the Agreement between Eveready and Clorox may have as its effect the restriction of competition in the relevant markets, the extent of the restriction on competition is not likely to be appreciable. The CID further established that the Agreement has no effect of restricting trade between Member States and it would not be incompatible to the Treaty's objective of single market integration.

Determination

10. While the CID is generally concerned with the prevalence of anti-competitive agreements in the Common Market, however, from the prevailing evidence, the current Agreement is not likely to negatively affect trade between Member States and is compatible with the Treaty establishing the Common Market for Eastern and Southern Africa. The CID therefore resolved to close the investigation.
11. The CID further, resolved that should new information become available showing that the parties omitted or did not disclose other relevant information which could have assisted the Commission to determine whether Agreement was incompatible with the Regulations, the Commission reserves the right to reopen the investigation.
12. This decision is adopted in accordance with Article 22 of the Regulations.

Dated this 22nd day of November, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Chilufya Sampa (Member)