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**Common Market for Eastern  
and Southern Africa**

**Staff Paper No. 2016/11/LV/04**

**Decision<sup>1</sup> of the Twenty Seventh Committee Responsible for Initial  
Determination Regarding the Application for Authorisation of the Supply  
Agreement between Eveready East Africa Limited and Sayyed Engineers  
Limited**

**ECONOMIC SECTOR: WRITING INSTRUMENTS AND DISTRIBUTION**

**22<sup>nd</sup> November 2016 – Livingstone, Zambia**

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<sup>1</sup> 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 14<sup>th</sup> September 2016, Eveready East Africa Limited (hereinafter referred to as "Eveready") and Sayyed Engineers Limited (hereinafter referred to as "Sayyed") completed the notification process for authorisation of a Supply Agreement (hereinafter referred to as the "Agreement") as provided under Article 20 of the COMESA Competition Regulations (hereinafter referred to as the "Regulations"). On the basis of this formal application for authorisation, the COMESA Competition Commission (hereinafter referred to as "the Commission") has assessed the Agreement to determine whether it is compatible with the Regulations.
2. Pursuant to Article 16 of the Regulations, the Commission is required to assess 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 30<sup>th</sup> September 2004 and converted to a public company with limited liability on 30<sup>th</sup> 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.

#### **Sayyed**

6. Sayyed is a public limited liability company incorporated in Pakistan. Sayyed produces a variety of writing instruments under the brands 'Piano' and 'Tempo', including Ballpoint Pens, Fine Liners, Soft Ink Pens, Fountain Pens, and Lead Pencils. The company also produces Wood Pencils, Erasers, Sharpeners and other Stationery Products.

### **The Agreement**

7. The seemingly offending provisions contained in clause 2 of the Agreement provides that Eveready will:
- (a) Act as the selling Agent for the supplier's products within the East African Markets.
  - (b) Not offer for sales Products manufactured by any company other than the Supplier during the term of this Agreement and any extensions thereof unless mutually agreed by both parties.
  - (c) Make its best efforts to promote Supplier's product to Customers within the East African Market. In the event Purchaser fails to place an order with the Supplier, within 2 months from the date of this Agreement of minimum 150,000US\$ (referred to herein as the "Introductory Period"), this Agreement may be terminated by either Party.
8. The products covered by the Agreement include Piano branded ballpoint pens, pencils, rubbers and markers. The duration of the Agreement is for an initial term of 2 years, after the expiration of the introduction period.

#### **Competition Analysis**

9. The CID defined the relevant market as the market for - :
- Global manufacture of ordinary pens and pencils;
  - Global manufacture of rubbers;
  - Global manufacture of markers; and
  - distribution of writing instruments in the Common Market.
10. The CID observed that the relevant markets are competitive in spite of Clause 2(b) of the Agreement between Eveready and Sayyed. The offending provisions under the said Agreement are not likely to have an appreciable effect on competition. 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**

11. The CID determined that the 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 authorised the Agreement.

12. This decision is adopted in accordance with Article 20 of the Regulations.

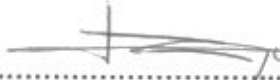
Dated this 22<sup>nd</sup> day of November, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Chilufya Sampa (Member)