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Competition Commission

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Common Market for Eastern and Southern Africa

Staff Paper No. 2018/12/RR/08

Decision[1] of the Forty-Ninth (49th) Committee Responsible for Initial Determination in the Investigation into the Distribution Agreements between Coca-Cola Beverages Africa and Distributors in the Common Market

ECONOMIC SECTOR: Non-Alcoholic Beverages

6th December 2018

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[1] In the published version of this decision, some information may have 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 15th January 2018, the COMESA Competition Commission (the "Commission") served Coca-Cola Beverages Africa "(CCBA") with a notice of investigation pursuant to Article 22 of the COMESA Competition Regulations (the "Regulations").

2. The purpose of the investigation was to determine the effects of the resale price maintenance clauses identified in the distribution agreements concluded between them and independent distributors in the Common Market.

3. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") observed that the agreements are concerned with the distribution and sale of non-alcoholic beverages under the trademarks belonging to The Coca-Cola Company "(TCCC") in various Member States. The CID established that the agreements have a regional dimension and are likely to affect trade between Member States.

The Parties

CCBA

4. CCBA was created in 2015, following the consolidation of various authorised independent bottlers of TCCC products into one single entity. TCCC is a brand owner and supplier of concentrates for non-alcoholic beverages to bottling companies globally.

The Agreements

5. The CID observed that CCBA had concluded several agreements with independent distributors for the distribution of various TCCC products in different pack sizes. The agreements cover defined territories in Comoros, Ethiopia and Uganda. The TCCC products include the core brands i.e. Coca-Cola, Sprite, Fanta, as well as the different variations of these core brands, and some local brands.

Competition Analysis

6. The CID considered that the relevant markets were for the distribution of non-alcoholic carbonated beverages. The CID observed that the TCCC brands are dominant in the relevant markets. It was noted that although barriers to entry in the relevant markets are not prohibitive, the TCCC brands have continued to command a majority share of the relevant markets notwithstanding the entry of new products over time.

Determination

7. The CID noted that the parties are in a vertical relationship with their distributors. It was noted that the agreements contain clauses which stipulate the profit margins to be enjoyed by the distributors, as well as the commission at different levels of the market. The CID also observed that the agreements contain vertical restraints which constrain the distributors' conduct in the relevant markets.

8. The CID registered its concern that the stipulation of prices may have anti-competitive effects in the market. To address the CID's concerns, CCBA has undertaken to amend its agreements in the market by removing the clauses which stipulate the prices and profit margins. CCBA has also undertaken to implement a compliance program

designed to ensure that its employees, management and directors do not engage in conduct that contravenes Part III of the Regulations.

9. This decision is adopted in accordance with Article 22 of the Regulations.

Dated this 6th of December, 2018

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Commissioner Patrick Okilangole (Chairperson)

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Commissioner Brian Lingela
(Member)

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Commissioner Thembelihle Dube
(Member)