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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/RFA/06/11/2016**

**Decision<sup>1</sup> of the Fifty-Fourth (54<sup>th</sup>) Committee Responsible for  
Initial Determination in the Application for Authorisation of the  
Agreements of Unilever Market Development (Pty) Limited and  
Distributors in the Common Market**

**ECONOMIC SECTOR: Distribution of FMCGs**

**10<sup>th</sup> February, 2019**

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<sup>1</sup> 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## **Information and Relevant Background**

1. On 13<sup>th</sup> October 2017, the COMESA Competition Commission (hereinafter referred to as the “Commission”) received an application for authorisation of the distribution agreements concluded between Unilever Market Development (Pty) Limited (“UMD”) and third party distributors in the Common Market.
2. The agreements were notified with the Commission under Article 20 of the COMESA Competition Regulations, 2004 (hereinafter referred to as the “Regulations”). The Commission’s concern was to determine whether or not the agreements may affect trade between Member States and have as their object or effect the prevention, restriction, or distortion of competition within the Common Market.
3. The Committee Responsible for Initial Determination (hereinafter referred to as “the CID”) established that the agreements had a regional dimension and were likely to affect trade between Member States. Notably, the CID observed that the agreements covered the distribution and sale of fast moving consumer products directly to purchasers in the Common Market. The CID thus concluded that the agreements satisfied the regional dimension requirement under the Regulations.

## **The Parties**

### **UMD**

4. UMD is a subsidiary company of the Unilever Group. The Unilever Group has a dual-listed structure comprising Unilever N.V. (“Unilever NV”) and Unilever Plc (“Unilever PLC”) as twin parent companies. The two entities exist as separate companies but operate as a single economic unit. The Unilever Group is a worldwide supplier of fast-moving consumer goods and has primary share listings on Euronext Amsterdam (through Unilever NV) and the London Stock Exchange (through Unilever PLC).
5. The Unilever Group conducts its business within some Member States through UMD, a South African incorporated subsidiary. UMD enters into and concludes Sale and Distribution Agreements with third parties to market, distribute and sell its products in the Democratic Republic of Congo (“DRC”), Madagascar, and Mauritius.

## **The Agreements**

6. In terms of the agreements, UMD has appointed third party distributors the right to distribute the products in the above-mentioned Member States. The agreements relating to the DRC contain price monitoring clauses in terms of which the prices of Unilever products in the market could be monitored by UMD.

## **Competition Analysis**

7. The CID considered that the relevant markets are the national markets for the distribution of:
  - a) Personal Care products;
  - b) Home Care products;
  - c) Food Products; and

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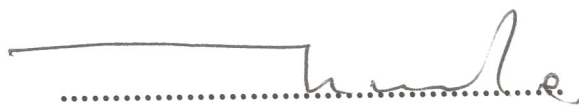
d) Beverages

8. The CID observed that Unilever has numerous leading brands in some product groups, where brand loyalty is significant. However, the CID also observed that there is healthy import competition and that barriers to entry in distribution are not prohibitive.
9. As regards the price monitoring clauses, the CID considered UMD's submission that retail pricing is determined by the distributors in their sole discretion, further that Unilever has a vested interest in the development of the brand in the markets and will monitor market developments including retail price levels. However, the CID observed that such price monitoring mechanisms would soften competition in the relevant market by acting as a signal to the prices set by competitors.


**Determination**

10. The CID determined that the price monitoring clause is potentially incompatible with the Regulations and is likely to have anti-competitive effects in the market. Consequently, the CID determined that the clause must be severed from the agreements relating to the DRC.
11. To address the CID's concerns, Unilever undertook to sever the price monitoring clause from the agreements. The CID accepted Unilever's undertaking and therefore authorised the agreements.
12. This decision was adopted in accordance with Article 20 of the Regulations.

**Dated this 10<sup>th</sup> day of February, 2019**

  
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**Commissioner Patrick Okilangole**  
**(Chairperson)**

  
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**Commissioner Brian M. Lingela**  
**(Member)**

  
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**Commissioner Thembelihle P. Dube Nee Dlamini**  
**(Member)**