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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/11/LV/10

**Decision¹ of the Twenty Eighth Committee Responsible for Initial
Determination Regarding the Distribution Agreement entered into
between Parmalat SA (Pty) Limited and its Distributors**

**ECONOMIC SECTOR: PRODUCTION AND DISTRIBUTION OF MILK AND DAIRY
PRODUCTS**

23rd 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 8th August 2016 the COMESA Competition Commission (hereinafter referred to as the "Commission") instituted investigations under Article 22 of the COMESA Competition Regulations (hereinafter referred to as the "Regulations") and duly served Parmalat SA (Pty) (hereinafter referred to as "Parmalat") with a Notice of Investigation. The objective of the investigation was to determine whether the Agreements entered into between Parmalat and its distributors infringe Article 16 of 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.

Parmalat

4. Parmalat is one of the largest producers of dairy products in Africa. Parmalat's popular products in Africa include their Flagship EverFresh UHT Milk brand, Bonnita Long Life Milk, Bonnita Maas, PureJoy 100% Fruit Juices, Steri Stumpie flavoured milk, Parmalat yoghurts, Parmalat Milk Pods (long life milk) and an extensive range of everyday and specialty cheeses.

The Agreement

5. Parmalat has appointed exclusive distributors for the sale of Parmalat's products in designated Member States namely; Malawi, Swaziland, Zambia and Zimbabwe.

Competition Analysis

6. The CID defined the relevant market as production and distribution of dairy products and fruit beverages in the Common Market.
7. The CID observed that the relevant markets are contestable and that while the Agreements between Parmalat and its distributors 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

8. 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.
9. 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.
10. This decision is adopted in accordance with Article 22 of the Regulations.

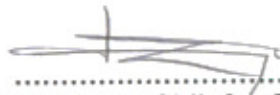
Dated this 23rd day of November, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Chilufya Sampa (Member)