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Common Market for Eastern
and Southern Africa

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Decision¹ of the Fiftieth (50th) Committee Responsible for Initial Determination Regarding the Proposed Merger between the Coca-Cola Company and Zambia Breweries Plc

ECONOMIC SECTOR: Alcoholic Beverages

7th December, 2018

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 21st June, 2018, the COMESA Competition Commission (the "Commission") received a notification for approval of a merger from The Coca-Cola Company ("TCCC") and Zambia Breweries Plc ("ZamBrew"). The proposed transaction entails the transfer of certain assets and liabilities of the TCCC branded non-alcoholic ready to drink bottling business of ZamBrew to TCCC's affiliate Strategic Alliance J.V.
2. The transaction has been notified with the Commission under Article 24(1) of the COMESA Competition Regulations (the "Regulations"). The Commission's concern is primarily whether or not the proposed transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition; or would be contrary to public interest in the Common Market as provided for under Article 26 of the Regulations
3. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operate in more than one COMESA Member State. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction

The Parties

TCCC

4. TCCC, a publicly-listed company incorporated under the laws of Delaware in the United States with its registered office in Atlanta, Georgia, is a brand owner and supplier of concentrates for non-alcoholic beverages to bottling companies. Globally, TCCC owns the trademarks and other related intellectual property rights in the brand for Coca-Cola and in over four hundred other non-alcoholic beverage brands.
5. TCCC supplies Coca-Cola concentrates and offers associated services to its authorised bottling and canning companies in the COMESA Member States. The Coca-Cola Bottlers in turn prepare finished beverage products in authorised containers bearing TCCC trademarks and the products are then sold and distributed to wholesalers and retailers who ultimately sell to consumers.

ZamBrew

6. ZamBrew is a brewing and beverage company listed on the Lusaka Stock Exchange. ZamBrew mainly manufactures clear beers and also operates a bottling business through which it produces, sells and distributes TCCC branded products. ZamBrew does not package, distribute and sell any other NARTD brands. ZamBrew has operations only in one COMESA Member State namely Zambia

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Nature of the Transaction

7. TCCC's affiliate, Strategic Alliance J.V., will acquire the TCC branded NARTD bottling business owned and operated by ZamBrew. To facilitate the transaction, ZamBrew will divide its business, such that the TCCC branded NARTD bottling business will be housed in a new company wholly owned by ZamBrew ("Zambian Softco") for the purposes of the proposed transaction. The proposed transaction therefore entails the transfer of certain assets and liabilities of the TCCC branded NARTD bottling business of ZamBrew to the newly incorporated Zambian Softco, after which, Strategic Alliance J.V. will acquire Zambian Softco. The proposed transaction will exclude ZamBrew's alcoholic ready to drink beverage business as such assets and liabilities will not be transferred by Zambian Softco, but will be retained by ZamBrew. As part of the proposed transaction, Zambian Softco will enter into a co-pack agreement with ZamBrew in terms of which ZamBrew will continue to provide packaging services to the NARTD business that will be acquired by Strategic Alliance J.V.

Competition Analysis

8. The CID defined the relevant market as the production and distribution of carbonated and non-carbonated non-alcoholic beverages in Zambia.
9. The CID observed that the transaction would lead to a change in the market structure due to the absence of horizontal overlaps in the activities of the parties. The CID concluded that the merger would not result in a substantial lessening or prevention of competition, however, the CID noted public interest concerns relating to employment, local production and local supply contracts.
10. To address the CID concerns, the parties have undertaken as follows:

Employment

- a. no process expected to result in forced job losses as a result of the transaction will be undertaken. In this regard, the following shall apply:
 - i. employees will be consulted on any process which will impact on their status in advance with sufficient detail of the anticipated process being provided to allow employees to protect their rights under these undertakings and Member State labour laws;
 - ii. in the event of any redeployment as a result of the transaction, employees will not be redeployed into positions which are materially less favourable in terms of remuneration or general working conditions; and without the necessary skills for those positions;



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- iii. where necessary, employees will receive reasonable assistance in order to acquire the skills required for any new positions;
- b. voluntary separation agreements, dismissals for disciplinary reasons, refusals to be redeployed and reductions due to attrition or retirement will not constitute retrenchments under this undertaking;

Suppliers

- c. if the separation of the target business of the disposing party requires the termination of supplier contracts for purposes of renegotiation thereof, TCCC will use its reasonable endeavours to ensure that such termination for renegotiation is notified to the Commission and CCPC;
- d. the existing supplier agreements that the target entity has entered into with local suppliers will continue to be honoured for the duration of these agreements in accordance with their terms, unless otherwise agreed between the relevant parties (*Zambian Supplier Undertaking*);
- e. the *Zambian Supplier Undertaking* will find application where the supply arrangement is subject to commercially reasonable and practical terms based on the TCCC system's usual and standard business practices in Zambia and where the supplier can ensure appropriate quality and availability of goods on competitive terms;

Preparation and packaging of TCCC products in Zambia

- f. TCCC undertakes that, subject to the ongoing commercial and operational viability thereof, it will endeavour that the manner of operation of the TCCC system in Zambia will not be altered such that the system ceases to, or materially diminishes the extent to which TCCC branded soft drinks products consumed in Zambia are prepared and packaged in Zambia.

Determination

11. The CID was satisfied that the undertakings were sufficient to address the public interest concerns arising from the merger.
12. The CID therefore approved the transaction subject to the parties' undertakings.
13. This decision is adopted in accordance with Article 26 of the Regulations.

Handwritten signature

T. R. D.


Dated this 7th 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)