



COMESA Competition Commission
Kang'ombe House
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesa.int



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/01/02/2022

**Decision¹ of the Eighty-Fourth (84th) Committee Responsible
for Initial Determinations Regarding the Proposed Merger
involving Coca-Cola Sabco (East Africa) Limited and Castel
Malawi Limited**

ECONOMIC SECTOR: Non-alcoholic beverages

Two handwritten signatures in black ink. The first signature on the left is a cursive, circular scribble. The second signature in the middle is a large, stylized letter 'M' with a vertical line extending downwards from its right side.

9 July 2022

A handwritten signature in black ink, consisting of a cursive, looped scribble.

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 14th March 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Coca-Cola Sabco (East Africa) Limited ("**CCSEA**") as the acquiring undertaking and Castel Malawi Limited ("**Castel Malawi**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the "**Regulations**").
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the 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.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.



The Parties

CCSEA (the acquiring undertaking)

4. CCSEA is a private company incorporated in accordance with the laws of Dubai. It is a wholly owned subsidiary of Coca-Cola Beverages Africa Proprietary Limited ("**CCBA**"), a private company incorporated in accordance with the laws of South Africa.
5. The majority shareholder in CCBA is The Coca-Cola Company TCCC, a public company listed on the New York Stock Exchange and incorporated in accordance with the laws of Delaware, the United States of America ("**USA**").
6. TCCC, CCBA, CCSEA and its controlled subsidiaries are collectively referred to as the "Acquiring Group".
7. TCCC is a brand owner and supplier of concentrates for non-alcoholic beverages, which it sells to TCCC's authorised bottling and canning companies. Throughout the world, TCCC owns the trademark and other related intellectual property rights for the Coca-Cola brand and in over four hundred other non-alcoholic beverage brands.
8. CCBA and its subsidiaries are bottlers authorised by TCCC to produce, distribute and sell TCCC branded non-alcoholic beverages to wholesalers and retailers who in turn sell to consumers.
9. TCCC branded beverages are sold throughout the world, including in COMESA Member States.
10. In the TCCC distribution system, TCCC, the brand owner, works together with its appointed bottlers to further its commercial and competitive objectives. The system is described below.
 - i) Through its indirectly wholly owned subsidiaries, TCCC manufactures and sells concentrates and beverage bases for bottled and canned beverages to authorised independent bottling operations ("**Coca-Cola Bottlers**"). The Coca-Cola Bottlers in turn prepare finished beverage products in authorised containers bearing TCCC trademarks, which products are then sold and distributed to wholesalers and retailers, who ultimately sell to consumers.
 - ii) The deployment, under TCCC's direction, of an authorised bottling network to efficiently produce, market, distribute, and sell TCCC-owned brands is commonly referred to as the "**TCCC System**".
 - iii) The relationship between TCCC and the Coca-Cola Bottlers world-wide is based on TCCC's requirement that a standard term agreement (referred



to as a Standard International Bottler's Agreement ("SIBA")) is entered into under which the Coca-Cola Bottlers are authorised to produce, sell, and distribute finished TCCC branded beverages.

- iv) The Coca-Cola Bottlers' operations are "set up" to service and promote TCCC branded products and they operate under key contractual obligations in this regard.

[REDACTED]

- v) Coca-Cola Bottlers are required to produce, sell, and distribute TCCC products in accordance with these strategies. The Coca-Cola Bottlers provide valuable input into local market conditions and bear the responsibility for the practical implementation of the TCCC plan for a given region or country, including ensuring sufficient production and distribution of finished products to meet demand and devising and implementing sales initiatives.
- vi) TCCC retains the ultimate right to make decisions and/or advise on all of the important elements of the business model, including marketing the brands that will be offered in a particular region or country. These activities are used to maintain the relationship between TCCC and its authorised bottlers to ensure that the TCCC brands are protected and promoted, and that the TCCC System is maintained in line with the expectations of consumers.
- vii) TCCC System is primarily designed to encourage each Coca-Cola Bottler to, *inter alia*, invest the necessary capital, distribution infrastructure and management talent in order to create, develop, stimulate, and fully satisfy demand for beverages identified by TCCC brands/trademarks within its territory. Information available to the Commission reveal that the activities of the Coca-Cola Bottlers and TCCC do not overlap in any competitive sense and they are not in a horizontal relationship.

11. According to publicly available information the Acquiring Group has operations in all the COMESA Member States.



Castel Malawi (the target undertaking)

12. Castel Malawi is a private company incorporated in accordance with the laws of Malawi. It is a subsidiary of B.I.H. Brasseries Internationales Holdings ("B.I.H."). B.I.H. is a company incorporated in accordance with the laws of Gibraltar. It is ultimately controlled by Investment Beverage Business Fund which is a Fund listed on the Singapore Stock Exchange Mainboard, having its principal business address at One Raffles Quay, No. 35-01 North Tower, Singapore, 048523.
13. The parties submitted that the Target Business is the "soft drinks" business of Castel Malawi operating as an authorised bottler of TCCC in Malawi. The parties have further submitted that the Target Business is part of the TCCC system and is a bottler and distributor of TCCC branded Non-Alcoholic Ready to Drink (NARTD) products in the Malawian territory.

Jurisdiction of the Commission

14. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of the concerned parties' decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
 - b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*
15. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.



Details of the Merger

16. The notified transaction involves the acquisition of sole control by CCSEA (a special purpose vehicle established for the purposes of the notified transaction notified), through CCBA over the "soft drinks" business of Castel Malawi operating as an authorised bottler of TCCC in Malawi (the Target Business).
17. The parties have submitted that as a result of the notified transaction, CCBA (through CCSEA) will acquire brands for the following NARTD products comprising the Target Business:
 - i) All TCCC NARTD products including but not limited to the following brands: Coca-Cola, Sprite, Fanta, Stoney Sparletta, Schweppes, Powerade, Bonaqua, Play and Monster, Appletiser, Minute Maid, and Fuze Tea; and
 - ii) The Castel Malawi Sobo range, which includes the Sobo carbonated soft-drinks range, as well as cordial, and its Quench Water brand.

Competitive Assessment

Relevant Product Market

18. CCBA operates Coca-Cola bottling operations throughout Africa. In respect of the Common Market, it has plants in Comoros, eSwatini, Ethiopia, Kenya, Uganda, and Zambia and is authorised by TCCC to bottle and distribute in these countries. CCBA prepares, bottles, distributes and sells TCCC-branded NARTD beverages throughout the above-mentioned territories. More specifically, CCBA bottles and distributes, *inter alia*, the following TCCC-branded NARTD products: Coca-Cola, Sprite, Fanta, Stoney, Sparletta, Schweppes, Powerade, Bonaqua, Play and Monster, Appletiser, Minute Maid, and Fuze Tea. [REDACTED]
[REDACTED]
19. The Target Business is part of TCCC system and produces, bottles, and distributes TCCC products in accordance with the terms of the SIBA. In addition to TCCC products, the Target Business also produces and supplies Castel Malawi Sobo brand range, which includes the Sobo carbonated soft-drinks range, as well as cordial, and its Quench bottled water brand.
20. The CID noted that both CCBA and the Target business are engaged in the supply of ready to drink non-alcoholic products, which include TCCC branded non-alcoholic ready to drink products. The CID further noted that the [REDACTED]
[REDACTED]



21. According to market data, the CID observed that the carbonated NARTD products sold on the market in Malawi include the following:

- i) TCCC branded products, namely Coca-Cola, Fanta, Sprite;
- ii) Sobo branded products;
- iii) TCCC branded products from Mozambique, South Africa, Tanzania, United Kingdom and South Africa namely: Coca-Cola, Fanta, Sprite, Stoney, Coca – Cola cherry, Twist and Sparletta;
- iv) Pepsi Cola products by authorised bottlers from Zimbabwe and South Africa, namely Pepsi Cola, Mirinda, Mountain Dew;
- v) local carbonated NARTD products, namely: Thumbs Up supplied by Rab Processors Ltd; Coolfizz supplied by Coolfizz (Malawi), Rocky supplied by Mellet Enterprise; Sippy supplied by KGN; Waka Waka supplied by Mother's Food Ltd;
- vi) Popz branded products from South Africa;
- vii) Coo-ee branded products from South Africa;
- viii) Bashew's branded products from South Africa; and
- ix) McKane branded products from Namibia.

22. The CID noted that the Target Business bottles TCCC branded products and Sobo branded products in 300 ml returnable glass bottles ("RGB") and 330 ml PET bottles. The CID observed that the sale of the RGB is more predominant in Malawi. The CID noted that other TCCC products available on the Malawi market include 300 ml can, 500 ml can and PET bottles in 750 ml, 1litre, 1.5 litres and 2 litres which are imported into Malawi from authorised bottlers of TCCC products in the region, namely Mozambique, South Africa, Tanzania and Zambia. The CID further noted that these imports are not done by the parties, but by third party importers.

23. The CID observed that the main distribution channels through which carbonated NARTD products are sold in Malawi are large retailers which own supermarkets, superettes, convenience stores, fast food stores, hotel and restaurants.

24. Beverages can be categorised into two groups namely: alcoholic and non-alcoholic beverages. This is consistent with the decision of the CID in the **SABMiller/Sabco** merger. The CID considered the market for non-alcoholic beverages as distinct from the market for alcoholic beverages on the premise that the utility derived from consuming a non-alcoholic beverage is different from that derived from consuming an alcoholic beverage. The CID also pondered on the high unlikelihood or improbability of consumers switching to consuming an alcoholic beverage on account of a 5 – 10% increase in the price of a non-alcoholic beverage. The CID's



identification of the relevant product market in this transaction took a similar approach and limited the assessment to non-alcoholic beverages' market as a unique and distinct market from the alcoholic beverages. Given that the parties supply non-alcoholic drinks, the CID's focus on the product market was on the non-alcoholic drink segment.

25. The CID was further convinced that from a pricing perspective, if the price of non-alcoholic beverages increased by 5 – 10%, it is unlikely that a reasonable number of consumers would switch to consuming alcoholic beverages in a manner that a general market of beverages is construed. This finding is supported by the 'intended use' element of categorising the relevant product market. It is unequivocal that consumers consume alcohol to derive the same satisfaction as they would from consuming non-alcoholic beverages. According to scholars and other observers, people consume alcohol for several reasons and among those identified are to enhance sociability, to increase perceived individual power, to escape problems, to get drunk and for enjoyment and pleasure. A number of these factors are not the compelling reasons for consuming non-alcoholic beverages. Therefore, in this case, a separate non-alcoholic beverages market is established without prejudice to the CID's definition and construction of the relevant product in future cases.

Non-alcoholic beverages


26. The non-alcoholic beverages segment comprises of all the ready to drink products with no alcoholic content. The products are further divided into two categories namely, carbonated and non-carbonated drinks which may be considered as distinct markets as discussed below.

Carbonated NARTD

27. Carbonated non-alcoholic ready to drink products (or carbonated soft-drinks) are fizzy drinks which are rich in sugar or have a sugary taste and are pressurised with gas, largely carbon-dioxide. Carbonated soft-drinks are often consumed with fast foods and occasionally, for instance, when a customer is taking a meal in a restaurant. In terms of their characteristics, carbonated non-alcoholic beverages bubbles and fizzes with carbon-dioxide and are made through a process called carbonation i.e., pumping carbon dioxide into the drink at high pressure then sealing the container. Alternatively, they are made through natural carbonation as is the case with mineral water which absorbs carbon dioxide from the ground.

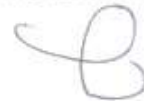
Non-Carbonated NARTD

28. Non-carbonated non-alcoholic ready to drink products are non-fizzy or still beverages which comprise of a wide range of products, namely non-carbonated soft drinks, fruit juice, non-carbonated energy drinks, water, cold dairy products,



iced tea, iced coffee and hot beverages such as tea and coffee. Each of the drinks within the non-carbonated ready to drink product has its own characteristics, price and intended use.

29. On the demand-side, customers demand each of the product depending on their personal taste and preference. A customer wishing to quench his/her thirst on a hot summer day may choose water to do so while another customer may be indifferent among all the non-carbonated non-alcoholic ready to drink products. Similarly, a distinction can be drawn on the manner in which the beverage is served/consumed. For instance, a distinction can be made between hot beverages and other beverages that are not taken hot. It does appear that the most common beverage in the segment for breakfast will be hot beverages such as tea or coffee as opposed to other non-carbonated soft drinks. Thus, the pattern of consumption of the product may differentiate hot beverages from the other drinks in the same category. Fruit juices, water and dairy products are consumed because they are perceived by the customer to be healthy and nourishing which can aid a healthy lifestyle. Within each category, there can be several sub-categorisations. For instance, juice can be freshly pressed juice, juice in tetra packs, made from natural fruits or fruit concentrates.
30. Similarly, within the carbonated NARTD category, there are many products and brands that *prima facie* may compete with each other. The CID noted that in Malawi, the recent past has seen entry of several companies producing carbonated NARTD. Among these include; TCCC products, products produced by Pepsi, and the Sobo branded fizzy drinks produced by Castel. All these may reasonably be categorised in the same market with varying degrees of substitution among them. From the intended use perspective, it may appear that all these fizzy drinks may offer similar satisfaction to a consumer in terms of quenching the first and providing that characteristic fizzy taste that cannot be satisfied by non-carbonated NARTD or even alcoholic beverages. The CID, therefore, identified distinct markets for carbonated NARTDs and non-carbonated NARTDs in view of their intended use and characteristics. The above notwithstanding, the CID noted that the target does not supply non-carbonated NARTDs and hence, this was not considered as a relevant market for the purposes of the competition assessment of this notified transaction.
31. With regard to carbonated NARTDs, the CID noted that there are a number of these products on the market such that in an event of a SSNIP, a number of customers are likely to substitute among these products especially those in the low-end income category to whom changes in price may have significant effect on their real income and are in the majority. This *ergo* leads to the conclusion that there is a general and broader market for carbonated NARTD with a possibility of further delimitation especially in the case of infra-marginal customers who have an



acquired characteristic taste that the SSNIP may not trigger their switch to alternative specific products within the broad carbonated NARTD.

32. The CID observed that the target is already part of the TCCC system via the Standard International Bottling Agreement. It was noted that under the aforementioned agreement, the target is already bottling TCCC products in Malawi in addition to the Sobo brand. The CID reached the view that the transaction was therefore not likely to change the market structure, *a fortiori* the relevant product market may be left open as any narrower definition will not alter the outcome of the assessment. The CID noted that such an approach is permissible in merger assessments by a number of competition authorities. The CID's decisional practice has also favoured this approach in cases which are unlikely to raise any competition concerns. Such an approach balances the need to properly analyse the transaction with the need to save competition authorities' precious resources in cases that are not riddled with competition concerns.

Non-alcoholic Not ready to Drink products

33. The Target business also supplies cordials under the brand of Sobo Squash which is a sweet non-alcoholic fruit flavoured concentrate and form part of the broad non-alcoholic not ready to drink products. On the demand side, non-alcoholic not ready to drink products are likely to have a significant number of overlapping customers. However, the information obtained from the market was inconclusive to determine a separate market from a demand point of view. From a supply point of view, it was conclusive that non-alcoholic NRTD products form a distinct relevant product market. The production of non-alcoholic NRTD products may require different ingredients, processes, machinery, skills and expertise. It is unlikely, for example, that companies producing non-alcoholic NRTD products would immediately change their processes and alter their machines to produce non-carbonated NARTDs in response to a small but significant non-transitory increase in price.

Bottled water

34. Bottled water can be defined as water that is sealed in food grade bottles which is intended for human consumption². The bottled water market can comprise of a number of different types of still and sparkling water, such as mineral water and spring water. Spring water may be labelled as mineral water where it fulfils the requirements regarding its composition and quality. Sparkling water is carbonated water which has a fizz from the added carbon dioxide gas while still water has no carbon dioxide added to it. Both carbonated and non-carbonated water may fall under the category of carbonated and non-carbonated NARTDs. However, the distinguishing factor may be that carbonated and non-carbonated water may not be in the NARTD classification. NARTD are beverages with a characteristic taste

² http://lancaster.unl.edu/enviro/water/ww10_04.shtml accessed on 12 May 2022

and are consumed not only to quench thirst but provide additional satisfaction. Water on the other hand is mainly consumed to quench thirst. There may be an insignificant number of consumers who may substitute water with traditional NARTDs but they may not be significant enough to construe a broader NARTDs market to include water. The CID noted that the target business is not active in the production and supply of carbonated water in Malawi and therefore limited its focus on the manufacture and supply of non-carbonated water.

35. The CID considered the characteristics that distinguishes still and carbonated water in order to draw a conclusion that still water comprises a separate market. The CID observed that the main use for still water is to quench thirst. To the contrary, carbonated water may in addition to quenching thirst provide a fizzy characteristic taste that brings a sense of satisfaction to some consumers. The CID observed that still water is more prominent on the market in the Malawi as opposed to carbonated water which suggests that most people in Malawi consume still water. Carbonated water appears to be a preserve for a select affluent category of consumers who have acquired a characteristic taste for carbonated water. In an event of a SSNIP, it is unlikely that customers in Malawi would switch to purchasing carbonated water leading to the conclusion, *in concreto*, that still water is in a distinct market. Further, the CID noted limited presence of the locally produced carbonated bottled water in the Malawi which may also point to the fact that most consumers are accustomed to the taste of still water as opposed to carbonated water.
36. The CID therefore concluded that demand side substitutability between non-carbonated water and carbonated water was limited. In terms of supply-side substitutability, the CID observed that different production lines may be required by the suppliers in terms of adding a carbonating system to the production line.³ Further, given the popularity of still water on the Malawi market, an entrant in the carbonated bottled water market that wishes to capture customers in the still bottled water market may require to put more investment in the marketing and different packaging of carbonated bottled water. Such changes in the production line, investment and marketing requirements are not likely to occur in a timely manner to allow effective substitution. The CID therefore opined that non-carbonated water can be distinguished from carbonated bottled water.

Coca-Cola Concentrates

37. The Coca-Cola concentrates are flavouring ingredients or sweeteners which are used to prepare syrups or finished, beverages and includes powders for purified

³ Anticipated acquisition by Danone S.A. of Harrogate Water Brands – Decision of the Competition & Markets Authority on relevant merger situation and substantial lessening of competition https://assets.publishing.service.gov.uk/media/5efca9e63a6f4023d242ed72/Danone_Harrogate_-_Final_Decision.pdf accessed 17th June 2022



water products. The concentrates supplied by TCCC are generally used as a raw material into the production of the various products that are bottled by the authorised Coca-Cola Bottlers. TCCC concentrates carry intellectual property rights which make them unique and non-replicable and therefore belonging to a distinct product market.

38. From the foregoing discussion of the activities of the parties in the Common Market, the relevant product markets include the broad market for manufacture and supply of non-alcoholic beverages which can further be segmented into the following specific markets:
- a) manufacturing and supply of carbonated NARTD beverages;
 - b) manufacturing and supply of non-alcoholic not ready to drink beverages;
 - c) manufacturing and supply of non-carbonated bottled water; and
 - d) manufacturing and supply of Coca-Cola concentrates.

Relevant Geographic Market

Manufacturing and Supply of Coca-Cola Concentrates.

39. [REDACTED]

Therefore, the relevant geographic market in this case is at least the Common Market.

Manufacturing and Supply of Carbonated Non-Alcoholic Beverages

40. CCBA operates Coca-Cola bottling operations throughout Africa and is based in Gqeberha, South Africa. In respect of the Common Market, it has bottling plants in Comoros, eSwatini, Ethiopia, Kenya, Uganda, and Zambia and is authorised by TCCC to bottle and distribute in these countries. The Target business is part of the TCCC system and is a bottler and distributor of TCCC branded NARTD products

in Malawi in addition to distributing its carbonated NARTD products under the Sobo brand. The CID noted that there were other competing carbonated NARTD on the Malawian market. These included beverages produced by authorised bottlers of Pepsi-Cola Ltd, Chill Beverages International, Coo-ee Mineral Water Company and Beverage Manufacturers & Distributors, whose respective brands are Pepsi, Bashew, Coo-ee, and Pops, which brands are mostly supplied from South Africa.

41. The CID further noted that the main retailers in Malawi stock both locally produced and imported brands. The CID observed that the Commission gathered price data and conducted customer surveys from retailers to determine whether imported and locally produced carbonated non-alcoholic beverages belong in the same geographic market.
42. The CID noted the price variation between the carbonated non-alcoholic beverages produced and/or supplied in Malawi by the target, locally produced competing carbonated non-alcoholic beverages and imported carbonated non-alcoholic beverages as presented in Tables 1 to 3 below.

Table 1 – Average prices of the Target’s main products

	Lilongwe	Blantyre	Mzuzu
TCCC branded carbonated products			
300 ml RGB	USD 0.34 (MWK 349)	USD 0.39 (MWK 400)	USD 0.36 (MWK 368)
300 ml PET	USD 0.40 (MWK 402)	USD 0.57 (MWK 573.99)	USD 0.40 (MWK 401)
Sobo branded carbonated products			
300 ml RGB	USD 0.25 (MWK 258)	USD 0.33 (MWK 336)	USD 0.37 (MWK 374.5)
300 ml PET	USD 0.38 (MWK 384)	USD 0.38 (MWK 383)	USD 0.38 (MWK 386)

43. Table 2 below provides the average prices of locally produced carbonated non-alcoholic beverages which are sold in Malawi in 350ml PET bottles.

Table 2 – Average prices of the locally produced competing carbonated non-alcoholic beverages

	Lilongwe	Blantyre	Mzuzu
--	----------	----------	-------

Thumbs Up ⁴	USD 0.23 (MWK 288)	USD 0.30 (MWK 304)	USD 0.36 (MWK 367)
Cool Fizz ⁵	USD 0.25 (MWK 250)	USD 0.24 (MWK 246)	USD 0.25 (MWK 253)
Rocky ⁶	USD 0.23 (MWK 233)	USD 0.25 (MWK 250)	Not available in Mzuzu
Sippy ⁷	USD 0.29 (MWK 299)	USD 0.29 (MWK 299)	Not available in Mzuzu
X-tra ⁸	Not available in Lilongwe	Not available in Blantyre	USD 0.29 (MWK 298)
Waka Waka ⁹	Not available in Lilongwe	USD 0.34 (MWK 350)	Not available in Mzuzu

44. Table 3 below provides the average prices of imported TCCC products and imported carbonated non-alcoholic beverages.

Table 3 – Average prices of the imported TCCC products and competing carbonated non-alcoholic beverages

	500ml	Can	2 litres
TCCC products	USD 0.80 (MWK 817)	USD 2 (MWK 2067)¹⁰	USD 2.8 (MWK 2822)
Pepsi Cola	USD (MWK 703)	USD 0.72 (MWK 728)	USD 2.15 (MWK 2182)
Coo-ee ¹¹	Not available in Malawi	Not available in Malawi	USD 1.97 (MWK 2000)
Refresh ¹²	Not available in Malawi	Not available in Malawi	USD 1.5 (MWK 1545)
Pops ¹³	USD 0.29 (MWK 299)	Not available in Malawi	USD 1.97 (MWK 2000)

⁴ Manufactured and supplied by Rab Processers Ltd

⁵ Manufactured and supplied by Coolfizz (Malawi)

⁶ Manufactured and supplied by Mellet Enterprises

⁷ Manufactured and supplied by KGN Distributors

⁸ Manufactured and supplied by Thirsty Juice Company

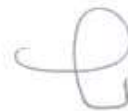
⁹ Manufactured and supplied by Mother's Food Ltd

¹⁰ The Commission found TCCC Cola Cola can in two retail outlets only which were imported from UK and South Africa.

¹¹ Imported from South Africa

¹² Imported from South Africa

¹³ Imported from South Africa



Sips ¹⁴	Not available in Malawi	Not available in Malawi	USD 1.25 (MWK 1265)
Bashew ¹⁵	Not available in Malawi	USD 0.72 (MWK 732)	Not available in Malawi

45. The CID considered that intended use and the SSNIP may determine substitution between locally produced carbonated non-alcoholic beverages and imported ones. The CID noted that there are marginal differences between the price of imported TCCC products and those of competing suppliers.
46. From a demand point of view, the market can be defined as national. This is because it is unlikely that if the products supplied on the local market were to increase by 5% to 10% consumers in Malawi would switch to obtaining these products from abroad. From a supply point of view, the market may be broader than national. The presence of imported competing products *a fortiori* indicates that products are supplied from outside Malawi that in an event of anti-competitive conduct by the merging parties that would result in them earning supra-normal profits, importation of more competing products may be triggered to bring the market back to equilibrium. The market is therefore likely to be broader than national and may at least be the Southern African Region.
47. From the relevant product markets identified above, the CID noted that the TCCC carbonated NARTD non-alcoholic, non-TCCC non-alcoholic carbonated and non-carbonated NARTD products bottled and supplied by the target may be in competition with other products found in the same category but which are not TCCC products. The foregoing notwithstanding, the CID is of the considered view that it is unlikely that there will be a change in the market dynamics as the products were produced and supplied by the same entity controlled by the Acquiring Group before the transaction. The only risk that may manifest is when the Acquiring Group elects to get rid of the non-TCCC non-alcoholic carbonated and non-carbonated products produced by the target. The foregoing notwithstanding, the CID is of the considered view that the market may be left open as any alternative market definition would not affect the disposition of the merger.

Manufacturing and Supply of Non-Carbonated Bottled Water

48. Based on the information gathered by the Commission, the CID noted that non-carbonated bottled water sold in Malawi is predominantly locally produced. The CID further noted that the Commission's research did not identify any imported still water selling on the Malawi market, suffice to mention that there are a number of local producers of bottled still water. Therefore, in an event for a 5 – 10 % increase

¹⁴ Imported from South Africa

¹⁵ Imported from South Africa

Three handwritten signatures or initials are present at the bottom of the page. The first is a large, stylized signature, the second is a smaller signature, and the third is a simple, circular mark.

in the price of the merged entities bottled water in Malawi, a consumer is likely to substitute with other brands of locally produced bottled water.

Manufacturing and Supply of Non-Alcoholic Not ready to Drink Beverages

49. In relation to the manufacturing and supply of non-alcoholic not ready to drink beverages, the CID considered that the market is broader than national and at least at continental level in view of the price difference with competing cordials sold in Malawi and imported from South Africa and are even priced cheaper than Sobo Squash cordials. The price of Sobo Squash is USD 2.3 (MWK 2345), the average price of competing locally produced cordial is USD 1.05 (MWK 1068) and cordial imported from South Africa is USD 0.76. Therefore, it is likely that in an event of a SSNIP or a shortage of Sobo Squash brand, a consumer is likely to switch to an imported cordial available on the Malawian market. The CID therefore concluded that the relevant geographic market under this product category is broader than national and may be at least continental.

Conclusion of Relevant Market Definition

50. For the purposes of assessing the proposed transaction only, and without prejudice to future cases, the CID has identified the relevant markets as follows:
- a. the market for the manufacturing and supply of carbonated non-alcoholic beverages is broader than national and may be at least the Southern African region;
 - b. the market for the manufacturing and supply of non-alcoholic not ready to drink beverages is broader than national and may be at least at continental level;
 - c. the market for the manufacturing and supply non-carbonated bottled water in Malawi; and
 - d. the market for manufacturing and supply of Coca-Cola concentrates in the Common Market.

Market Shares and Concentration

51. The parties have provided the following estimated market shares for the Target business in Malawi per Tables 4, 5 and 6 below:

Table 4 – Estimated Market Share for suppliers of non-carbonated non-alcoholic beverages in Malawi¹⁶

Supplier	Market Shares (%)
Universal Industries	●●
Castel Malawi	●●

¹⁶ Confidential information claimed by merging parties



Pro Brands	●
RAB Processor	●
Suncrest	●

Table 5 – Estimated Market Share for suppliers of carbonated soft drinks in Malawi¹⁷

Supplier	Market Shares (%)
Castel Malawi	●
Imports	●
RAB Processor	●
Zamm Investments (Cool Fizz)	●
Rim Industries (Kazuza)	●
Universal Industries	●

Table 6 – Estimated Market Share for suppliers of water in Malawi¹⁸

Supplier	Market Shares (%)
Universal Industries	●
Castel Malawi	●
Bowler Investment	●
RAB Processor	●
Zamm Investments (Cool Fizz)	●
Mellet Enterprise	●
Mkokomo	●

52. The CID observed from the above data that the target undertaking faces competition from a number of players operating on the Malawi market. With regards to carbonated soft drinks, the CID further observed that the products of the target compete with both locally produced and imported products. The CID noted that imports comprise a significant ● of the market for carbonated soft drinks in Malawi. The CID further observed that this position was confirmed by the Commission market research which revealed the presence of non-TCCC imported brands in Malawi. The confirmed imported carbonated soft drinks brands trading in Malawi included Pepsi Cola, Bashew, McKane, Popz and Co-ee which are imported from countries such as South Africa, Namibia, and Zimbabwe. This position supports the CID's conclusion that the relevant market is beyond national.

¹⁷ Confidential information claimed by merging parties

¹⁸ Confidential information claimed by merging parties

53. With regards to bottled still water, the CID observes that the competitors of the target are local producers who supported the position that the market is national.
54. The market shares in the above tables notwithstanding, the transaction is unlikely to alter the market structure in any way as the acquiring group was already controlling the target before the merger through the SIBA. The transaction would therefore not lead to the accretion of market shares in any of the identified relevant markets.

Barriers to Entry/ Exit

55. The CID noted that there is a wide array of non-alcoholic beverages that meet consumers' demands and needs. Further, the range of beverages that compete to meet consumers' needs is expanding on an ongoing basis and the African non-alcoholic beverages market continues to grow. The CID observed that many smaller companies are able to gain traction through introducing new products coupled with the existing brands to meet consumer choice.
56. The CID further noted that the regulatory process of obtaining import licenses or permits in each Member State for the importation of the relevant products do not appear to be onerous to the extent of delaying entry into the relevant markets.
57. The CID noted that the merger will not affect the market structure, and therefore will not in itself contribute to heightening any potential barrier to entry in the relevant markets.

Consideration of Dominance/ Unilateral Effects

58. The CID noted that the relevant markets other than the market of the supply of TCCC concentrates is replete with a vast number of players. The CID concluded that the merged entity will still be constrained by the other players in these markets and this will thwart any attempt on its part to engage in unilateral conduct.

Consideration of Coordinated Effects

59. The CID noted that the transaction will not lead to any change in the market structure and dynamics, given that the transaction is not significantly reducing the number of competitors in the relevant markets. The state of competition pre- and post-merger is not expected to change which therefore overruled the possibility of coordinated effects in the relevant markets.

Consideration of Public Interests

60. The proposed transaction is likely to negatively affect public interest elements provided for under Article 26(4) of the Regulations. The CID has noted that the Target Business is active in the production of Sobo branded carbonated soft drinks, cordial sold as Sobo Squash and bottled water under the Quench brand. It



is noted that these products compete with similar TCCC brand products which the acquiring group manufactures and sells.

61. Having duly considered a number of factors, including, the importance of the products under consideration in maintaining competition on the Malawian Market and their sentimental value to Malawian consumers, the CID was concerned there is a risk that post-merger, the Sobo Squash brand and the carbonated soft drinks under the Sobo brands that the Target Business manufactures and supply may be discontinued by the Acquiring Group. Such a development may negatively affect the interest of consumers in regard to the variety of such products and is therefore likely to be contrary to public interest.

Consideration of Effect on Trade between Member States

62. Given that no change in the relevant market structure is expected from the transaction, the CID concluded that in view of the absence of heightened market concentration and foreclosure concerns, the transaction is not capable of resulting in an appreciable effect on trade between Member States

Consideration of Third-Party Views

63. Submissions were received from Egypt, Eswatini, Ethiopia, Madagascar, Malawi, Mauritius and Seychelles which raised no competition concerns given that the parties are not competitors pre-merger.

Determination

64. Based on the foregoing reasons, the CID determined that while the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, it is likely to be contrary to public interest.
65. The CID therefore approved this transaction on the basis of the following undertakings submitted by the parties:
 - a. CCSEA commits that the Sobo branded carbonated soft-drinks and cordials sold under the Sobo Squash brand should not be discontinued as a direct result of the merger and that the quality should remain the same or even be improved. This undertaking shall be effective for a period of five (5) years from the date of approval of the transaction by the Committee Responsible for Initial Determinations, unless (i) a significant deterioration in the market conditions occur or (ii) if the volume of, or demand for, a Sobo product or brand declines or remains unduly low such that it is unwarranted or reasonably unjustifiable to continue with this undertaking with respect to a particular Sobo product before the expiration of 5 years;
 - b. After 5 years, the Commission shall review the relevance of agreeing the continuation of the relevant brands and products in line with these



undertakings and CCSEA shall engage with the Commission in good faith in that regard; and

- c. CCSEA commits to submit, within thirty (30) days of each anniversary of the approval of the transaction, for the next five (5) years, a comprehensive report detailing compliance with the above undertaking. This undertaking does not however prevent the Commission from undertaking periodic reviews of the market to assess compliance.

Dated this 9th day of July 2022



Commissioner Mahmoud Momtaz (Chairperson)



Commissioner Vincent Nkhoma



Commissioner Islam Tagelsir Ahmed Alhasan