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Common Market for Eastern and Southern Africa

CCC/MER/07/26/2019

Decision[1] of the Sixty-Second (62nd) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of 53.95% of the Share Capital of Almasi Beverages Limited (the Target) by the Coca-Cola Company (the Acquirer)

ECONOMIC SECTOR: Alcoholic and Non-Alcoholic Beverages

25th September 2019

[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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 17th July 2019, the COMESA Competition Commission hereinafter referred to as (the "Commission") received a notification for approval of a merger involving The Coca-Cola Company (hereinafter referred to as "**TCCC**") and Almasi Beverages Limited (hereinafter referred to as "**Almasi**").

2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (hereinafter referred to as the "**Regulations**"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether 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.

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. Further, the transaction satisfied the merger notification thresholds provided for under Rule 4 of the Rules of Determination of the Merger Notification Thresholds and Method of Calculation. 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 (the "Acquiring Undertaking")

4. It was submitted that TCCC is a brand owner and supplier of concentrates for non-alcoholic beverages, which it sells to bottling companies. In the Common Market, TCCC derives revenue from the following Member States: Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Uganda, Zambia, and Zimbabwe. TCCC also indirectly controls Coca-Cola Beverages Africa Proprietary Limited ("**CCBA**"), a private company incorporated in accordance with the laws of South Africa. CCBA holds certain TCCC authorised bottlers in Africa.

Almasi (the "Target Undertaking")

5. It was submitted that Almasi is an authorized Coca-Cola Bottler. Almasi is the controlling shareholder (holding a 99.99% stake) in each of Almasi Bottlers Limited, Kisii Bottlers Limited, and Rift Valley Bottlers Limited (together the "Almasi Subsidiaries"). Almasi conducts its principal activities through the Almasi Subsidiaries in Kenya only.

Nature of the Transaction

6. The parties have submitted that the transaction being notified involved the acquisition of a controlling shareholding in Almasi by TCCC, through its affiliate Coca-Cola Sabco (East Africa) Limited ("**CCSEA**").

Competition Analysis

7. The CID defined the relevant markets as follows:

a) in the upstream: the continental (i.e. Africa) production of beverage bases and concentrates for non-alcoholic beverages;

b) in the downstream: the production and distribution of carbonated and non-carbonated non-alcoholic beverages in Kenya delineated as follows:

(i) Production and distribution of carbonated non-alcoholic beverages;

(ii) Production and distribution of non-carbonated non-alcoholic beverages;

(iii) Production and distribution of carbonated bottled water; and

(iv) Production and distribution of non-carbonated bottled water.

8. The CID observed that the merger was unlikely to raise horizontal competition concerns in the relevant markets. However, the assessment revealed that the merger was likely to raise vertical competition concerns i.e. foreclosure concerns in the downstream markets for bottling of Non-Alcoholic Ready to Drink Beverages. The assessment further revealed that the merger was likely to raise public interest concerns with regard to loss of jobs post-merger.

Determination

9. In order to address the identified concerns, the parties submitted the following undertakings:

(a) CCBA will continue to operate the current bottling plants of the Merged Entity in Nyeri, Edoret, Nairobi, Molo and Kisumu for at least three (3) years after completion of the Proposed Transaction.

(b) The Merged Entity shall reserve the lower deck or not less than twenty per cent (20%) of the total storage space of the coolers lent to SMEs for products of competitors except the brands of the Coca-Cola Company's three (3) largest global non-alcoholic, ready-to-drink beverages (NARTDs) competitors. For these purposes, and for the sake of clarity, this condition shall be interpreted in the following manner:

I. SME shall be construed as those outlets of the Merged Entity that (i) purchase 10 cases or less on a weekly basis, and (ii) only have a CCBA cooler in the outlet (i.e. where there is no dealer owned cooler or competitor owned cooler in the outlet);

ii. the products of competitors, which may be put in the reserved portion of the coolers shall be limited to NARTDs shall be construed as: carbonated soft drinks, carbonated and still energy and sports drinks, carbonated and still fruit juice, flavoured milk, iced teas, iced coffee and carbonated and still bottled water;

iii. competitors shall mean those with two point five percent (2.5%) or lower market share in the NARTD market in Kenya. Market shares shall be calculated annually with reference to data collected by a reputable firm as agreed between the Competition Authority of Kenya (CAK) and CCBA; and

iv. the SMEs to which this condition applies shall be free to provide access to the reserved portion of a cooler to competitor products, at the SME's sole discretion. As part of this commitment, CCBA shall not induce the SMEs to refuse access to space in the coolers to which this condition applies.

(c) That for a three (3) year period following completion of the Proposed Transaction, the Merged Entity shall retain one thousand seven hundred and thirty nine (1,739) employees out of the total 1,730 permanent employees. This condition excludes any exits by permanent employees as a result of the following:

i. voluntary separation arrangements;

ii. voluntary early retirement packages;

iii. unreasonable refusals to be redeployed;

iv. resignation or retirements in the normal course; and

v. necessary steps taken by CCBA dictated as a result of the operating environment which is materially adversely impacted by an economic downturn, regulatory changes, or municipal infrastructure supply difficulties, which are all beyond CCBA's control.

(d) The bottler agreement dated 1 September 2012 (as amended) entered into with Coastal Bottlers Limited will be honoured in accordance with its terms.

(e) CCBA shall within nine (9) months following completion of the Proposed Transaction amend the agreements between the Merged Entity and its distributors to distribute other NARTDs, to the extent (if at all) the agreement provide otherwise.

(f) CCBA shall within nine (9) months following completion of the Proposed Transaction amend the agreements between the Merged Entity and its distribution to remove all clauses which stipulate the prices and profit margins for the sale of its

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products, to the extent (if at all) the agreements contain such clauses; provided that, the Merged Entity shall retain the ability to set maximum recommended resale prices for its distributors.

10. The CID considered and approved the above undertakings as adequate to address the identified concerns. The CID therefore approved the transaction on condition that the parties comply with these undertakings. Failure to comply with these undertakings shall render the transaction null and void and the Commission shall invoke the relevant provisions of the Regulations to address any such violation.

11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 25th day of September, 2019

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Commissioner Patrick Okilangole (Chairperson)

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Commissioner Brian M. Lingela

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Commissioner Thembelihle P. Dube

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