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south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM243Mar15

In the matter between:

Coca-Cola Beverages Africa Limited Primary Acquiring Firm

and

Various Coca-Cola and Related Bottling Operations Primary Target Firm

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Panel	: Norman Manoim (Presiding Member) : Yasmin Carrim (Tribunal Member) : Imraan Valodia (Tribunal Member)
Heard on	: 9 May 2016
Order Issued on	: 10 May 2016
Reasons Issued on	: 25 July 2016

Reasons for Decision

Conditional Approval

[1] On 10 May 2016, the Competition Tribunal ("Tribunal") conditionally approved the merger between Coca-Cola Beverages Africa Limited ("CCBA") and various Coca-Cola and related bottling operations ("Target Firms").

[2] The reasons for approving the proposed transaction follow.

[3] The transaction is divided into two separate components; the Bottling Transaction and the Branding Transaction. For ease of reference each of these will be dealt with separately.

[4] This case was set-down to be heard over the period 9 to 27 May 2016. For reasons which we will discuss in detail below all outstanding issues were settled which obviated the need for a prolonged hearing.

Background

[5] On 19 March 2015, the merging parties filed a large merger transaction with the Competition Commission ("Commission"). During its investigation the Commission engaged with relevant stakeholders, including the Minister, and interested third parties. The Commission engaged with the Ministry of Economic Development and the Economic Development Department regarding a range of public interest and competition concerns, relating to employment, localization of the supply-chain, empowerment and access for smaller suppliers to fridge space in the retail units that utilize fridge facilities of the merging parties. In order to address the abovementioned concerns, the Commission and the merging parties had agreed on a set of remedies excluding the condition in relation to refrigeration and coolers.

[6] On 17 December 2015, the Commission filed its recommendation with us, approving the merger subject to this set of conditions.

[7] In order to understand the prolonged process that followed as well as the parties involved we provide a brief background to the merger proceedings which ensued.

[8] Following the Commission's filing, we extended an invitation to all interested parties to attend the first pre-hearing held on 19 January 2016. The following parties indicated their intention to intervene in the merger proceedings: The Minister of Economic Development ("The Minister"), The Food and Allied Workers Union ("FAWU"), The National Union of Food Beverage Wine Spirits and Allied Workers ("NUFBWSAW"), Softbev Proprietary Limited ("SoftBev") and the Golekane group which is a consolidation of former and current ABI Owner Drivers ("Owner Drivers").[1]

[9] As a matter of process, we drew a distinction between parties who had a right to participate afforded to them by the Competition Act ("the Act"), namely the Unions and

[1] Two other parties in attendance at this pre-hearing, Boxmore Packaging and Nampak Limited, resolved their issues with the merging parties who had undertaken to include refinements to the drafting of the supply chain condition to better encompass plastic closures and aluminium cans and ends.

the Minister, and parties who were required to lodge formal applications to be allowed to participate namely SoftBev and the Owner Drivers. All the parties, except the Unions, at this stage in the process were tasked with providing a Statement of Interest and Issues[2]. The Unions after indicating that they were of the view that their issues could be ventilated to the merging parties and resolved through a series of negotiations were tasked with reporting back on whether such negotiations were successful. However, in order to mitigate the potential for unsuccessful negotiations, provision was made for the Unions similarly to submit a Statement of Interest and Issues on 31 March 2016.

[10] The final outcome of this interlocutory process resulted in the following prior to the commencement of the hearing.

[11] Softbev withdrew their application to intervene citing that it did not wish to incur further costs in pursuing the intervention.

[12] With respect to the Minister's intervention application, the Tribunal ruled that the Minister's scope of intervention would be limited to the following:

(i) the retrenchment of employees;[3]

(ii) refrigerator and cooler capacity in retailers' stores;

(iii) the possible reduction of the size of the R150 million HDSA/SMME training and support fund;

(iv) the manner in which the R500 million fund is to be directed; and

(v) the restraint on TCCC from bottling beer and alcoholic ready to drink beverages[4];

(vi) The Minister also raised concerns on the continued procurement of apple juice concentrate which was addressed in the initial Appletiser condition. With respect to his scope of intervention in relation to Appletiser, the Tribunal directed that the Minister was to provide evidence to support his proposed amendment to clause 4 of the Initial Conditions. In addition, the Minister was also directed to provide legal submissions to support drafting changes he had proposed in the Statement of Interest and Issues.[5]

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[2] In particular, parties were required to elucidate in their Statement of Interest and Issues on the reasons for their intervention, the scope of the issues on which they wished to intervene, provide potential theories of harm and finally propose remedies should they oppose the merger or alternatively wish to alter the Initial Conditions proposed by the Commission.

[3] Although the Minister was afforded an opportunity to intervene in this respect the Unions, FAWU and NUFBWSAW, led the negotiations. The conditions negotiated were then incorporated as conditions to the merger and addressed the relevant employment concerns.

[4] This issue was not addressed in the Commission's conditions.

[5] Tribunal Directive dated 29 February 2016.

[13] With respect to the Owner Drivers, after failing to meet our initial direction with respect to the content of their Statement of Interest and Issues, they failed to meet the timetable for our second direction in which they were required to clearly articulate the merger specificity of their issues as well as the remedies sought. They subsequently had their condonation application dismissed on 18 March 2016 for, amongst other reasons, failing to establish a likelihood of success.

[14] FAWU, while initially reaching consensus together with NUFBWSAW and the merging parties on conditions which would settle their disputes, retracted their agreement and put forward their intention to participate.[6]

[15] On the basis of the above, a timetable for the further conduct of proceedings incorporated only the Unions and the Minister into proceedings and allowed them to intervene on issues within their ambit.

Negotiations between the Merging parties, the Minister and the Unions

[16] In the week prior to the commencement of the first date of hearing the Minister and the merging parties negotiated an agreement which settled all outstanding issues in dispute between the merging parties and the Minister. Similarly, FAWU and the merging parties reached an agreement in respect of their disputes, which was also incorporated into the conditions and this settlement offer was extended to NUFBWSAW, which subsequently accepted.

[17] During the pre-hearing held on 6 May 2016 the aforementioned was communicated to us and we afforded the Commission an opportunity to determine whether the newly proposed conditions addressed their concerns or whether they intended to pursue a prolonged hearing. Discussions between all the parties successfully reached a consensus and no outstanding issues remained by the first day of hearing. Specifically the Commission after having considered the conditions, raised no dispute and concluded that the newly proposed conditions satisfied their concerns.

[18] For the sake of posterity, we will briefly discuss the concerns raised by the Commission and the various interveners prior to the hearing and we will also briefly

[6] Please note that prior to FAWU withdrawing its agreement, The Congress of South African Trade Unions ('COSATU") during the pre-hearing of 18 March 2016 also indicated that it intended to intervene. This application was dismissed as COSATU did not have the right to intervene in terms of section 13(A)(2) of the Competition Act and failed to successfully argue condonation of the late filing of its Statement of Interest and Issues.

discuss the conditions. No evidence was ventilated before us as to whether the harm alleged had been established nor if it had, whether the conditions proposed successfully mitigate them. Our approval of this merger, subject to conditions, remains on the basis that a settlement was reached between the merging parties, Unions, Minister, and the Commission which settled the concerns raised by them. Where parties settle disputes over conditions in this manner we generally adopt a deferential approach to reviewing them, unless facially the conditions appear to be disproportionate to the harms they are alleged to redress, inappropriate or irrational.

Parties to transaction

The "Bottling Transaction"

Primary acquiring firm

[19] The primary acquiring firm CCBA, which at the date of filing of the Commission's recommendation was yet to be formed, is intended to be a newly formed company and a subsidiary of SABMiller Plc ("SABMiller"). CCBA will comprise of the following shareholders post-transaction: SABMiller which will hold 57% and exercise control over CCBA, Gutsche Family Investments Proprietary Limited ("GFI")[7] which will hold 31.7% and The Coca-Cola Company ("TCCC") which will hold the remaining shareholding of 11.3%.

[20] TCCC is a public company incorporated in accordance with the laws of the United States of America. TCCC is listed on the New York Stock Exchange and is not controlled by any single firm or shareholder. TCCC owns the trademarks and other intellectual property rights of various non-alcoholic beverages ("NAB's") including Coca-Cola, Coke Zero and Sprite.

[21] Pre-merger, TCCC has five authorized bottlers in South Africa. These are Amalgamated Beverage Industries ("ABI") owned by the South African Breweries Proprietary Limited ("SAB"), Coca-Cola Sabco Proprietary Limited ("SABCO"), Coca-Cola Shanduka Beverages South Africa Proprietary Limited ("CCSB"), Coca-Cola Canners of Southern Africa Proprietary Limited ("Canners") and Peninsula Beverage Company Proprietary Limited ("PenBev").[8]

[7] GFI, a family trust is the majority shareholder of the Coca-Cola bottler, Sabco.
[8] PenBev elected not to be part of the proposed transaction and will continue to operate as an independent bottler in the Western Cape and Northern Cape Provinces.

[22] SABMiller is a public company which has a primary listing on the London Stock Exchange and a secondary listing on the Johannesburg Securities Exchange. It is not controlled by any firm or group of firms. SABMiller is a multinational brewing and beverage company which is engaged in the manufacture, distribution and sale of various types of alcoholic and non-alcoholic beverages. In South Africa, SABMiller operates through its subsidiary SAB. As mentioned above, the SAB business relevant to the proposed transaction is ABI.

Primary target firms

[23] The primary target firms are Coca-Cola Sabco Proprietary Limited ("Sabco"), Coca-Cola Fortune Proprietary Limited ("CCF"), Coca-Cola Shanduka Beverages South Africa Proprietary Limited ("CCSB"), Waveside Proprietary Limited ("Waveside") and Coca-Cola Canners of Southern Africa Proprietary Limited ("Canners").

[24] Sabco is an investment holding company which is operational throughout South Africa through CCF. Sabco is controlled by GFI and TCCC. CCF is authorized by TCCC to bottle and distribute TCCC related or branded products in defined geographic areas within South Africa. CCF has six bottling plants in Bloemfontein, Port Elizabeth, Port Shepstone, Polokwane and Nelspruit as well as seventeen sales depots.

[25] CCSB, Canners and Valpré is ultimately controlled by TCCC. CCSB has a manufacturing and distribution centre in Nigel, a warehouse in Witbank and four sales centres in Steelpoort, Groblersdal, Standerton and Ermelo. Canners is responsible for the production of certain TCCC products for a number of mostly canned beverage types and it is not involved in any distribution functions. Its bottling operations are based in Wadeville and Epping. Valpré, which is TCCC's authorized plant, produces and packages Valpré still and sparkling water.

[26] PenBev opted to remain outside of this transaction and will continue to be an authorized bottler in the Western Cape.

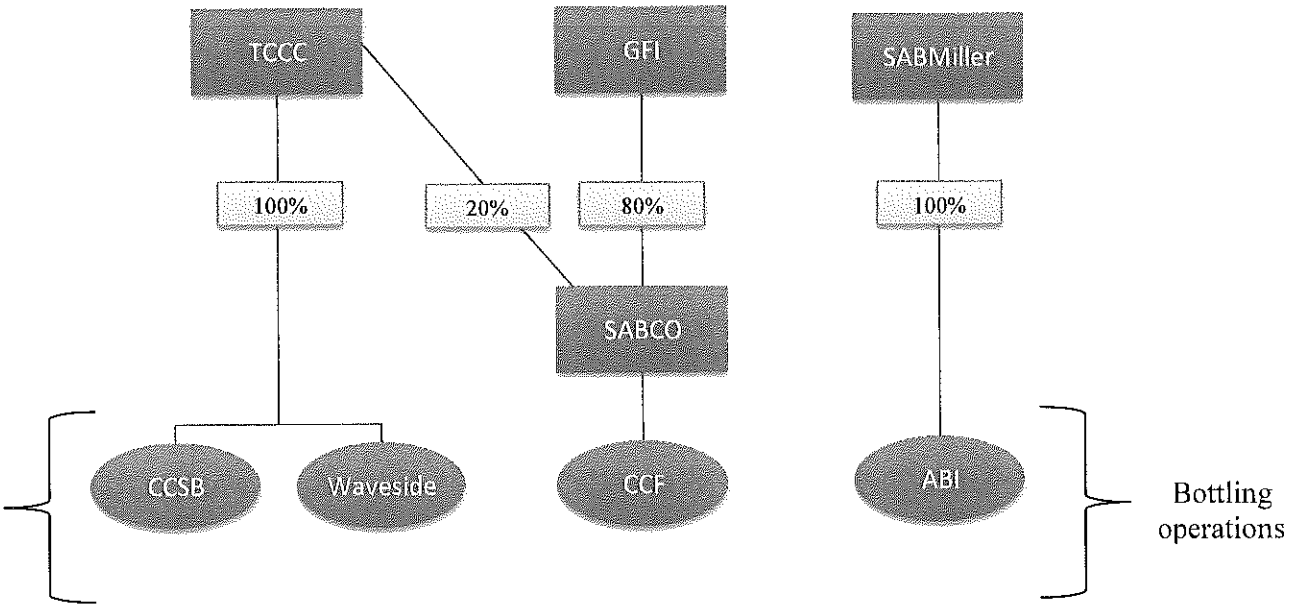
Proposed transaction and rationale

[27] TCCC believes that the bottling transaction, which creates one bottling entity, would increase access to investment resources and generate benefits that can be reinvested in various initiatives. TCCC is also of the view that the combination of various bottlers

into one entity would result in an enhanced ability to distribute its products more effectively.

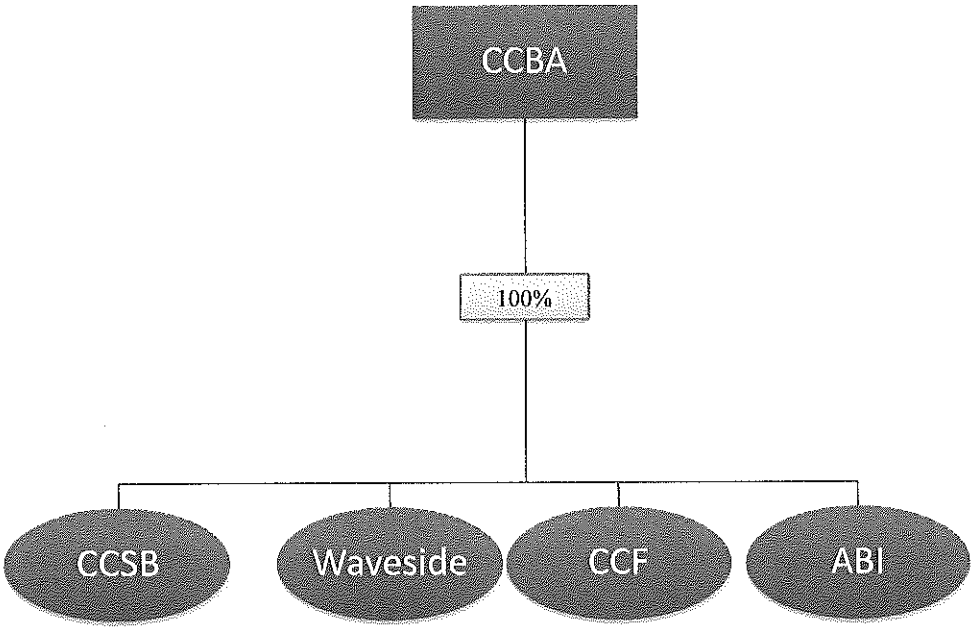
[28] The bottling transaction essentially involves a consolidation of the bottling operations owned by TCCC, SABMiller and GFI into one entity to be known as CCBA. Figure 1 illustrates the pre-merger ownership structure.

Figure 1: The pre-merger ownership structure of the bottling transaction



[29] Post-merger the bottling operations will be consolidated into one entity, CCBA, in which TCCC, SABMiller and GFI will hold 11.3%, 57% and 31.7% respectively.

Figure 2: The post-merger control structure of the bottling transaction



Impact on competition

[30] The Commission found a vertical relationship between TCCC and the bottlers given that the bottlers manufacture and bottle TCCC products, which are then distributed to wholesalers and retailers.[9]

[31] More specifically, TCCC's route to market comprises two distinct activities: brand ownership and bottling. Brand ownership involves the creation and support of brands, the supply of beverage concentrate and consumer marketing. The brand owner would then authorize local bottlers to prepare, package, distribute and sell the beverages. The manufacturing process of NAB's therefore begins with TCCC supplying concentrate and beverage bases to its five authorized bottlers in South Africa which comprise ABI, CCF, CCSB, Canners and PenBev. The bottlers combine the concentrate with various inputs such as sugar which it then packages into authorized PET bottles, returnable glass bottles and cans[10]. After packaging is complete the NAB's are distributed throughout the country.

[9] Apart from SABMiller's current interest in the Appletiser brands no other bottler is involved in bottling for any third parties. This was confirmed by third party competitors such as PepsiCo who the Commission contacted during their investigation.

[10] PET bottles are produced by blowing pre-forms into bottles in dedicated packaging lines and are sourced from companies such as Mpact (Pty) Ltd and Boxmore. Returnable glass bottles and cans are also obtained from third party suppliers such as Nampak Limited.

[32] The merging parties submit that each of the bottlers is subject to a Standard International Bottlers Agreement ("SIBA") ("bottler agreements") which authorizes the bottler to prepare, package, sell and distribute TCCC products and limits the sales process thereafter. Furthermore, the agreements also limits the bottlers ability to trade in or with customers in a particular territory as well as set a price which is higher than that set by TCCC.

[33] The bottling plants intended to be acquired currently exclusively bottle Coca-Cola related products in specified territories pursuant to their bottler's agreements.

[34] The merging parties were therefore of the view that the proposed transaction would have a neutral effect on competition as the relevant bottling operations already form part of the TCCC system.

[35] The Commission concurred with this finding and was of the view that the manner in which the bottling operations will operate will not change following the Proposed Transaction as the status quo will be maintained, i.e. TCCC through its bottler agreements would still be able to 'control' production and distribution.

The "Branding Transaction"

Primary acquiring firm

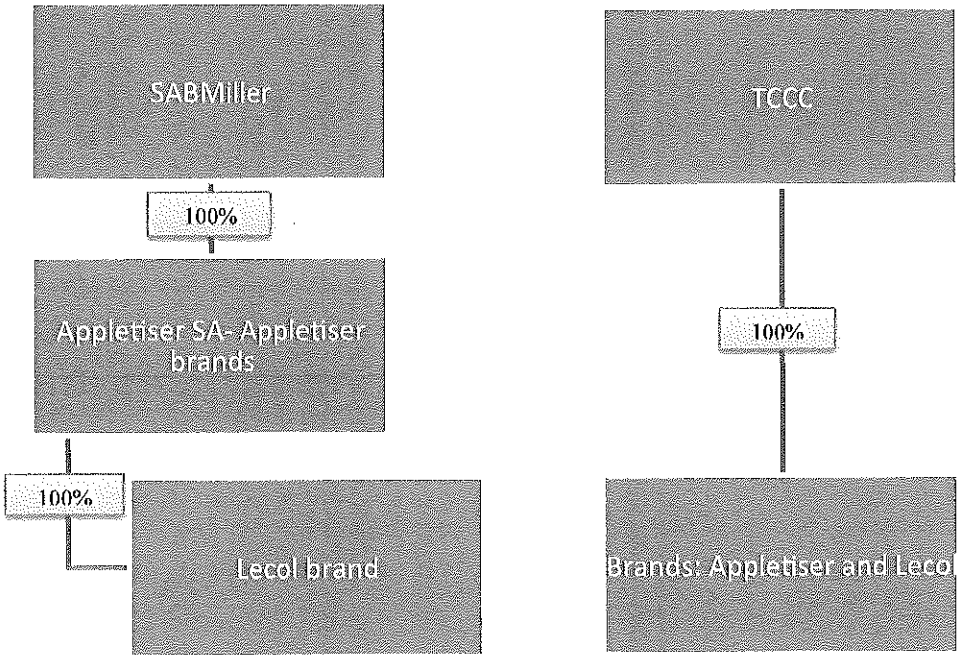
[36] The primary acquiring firm is TCCC or one of its subsidiaries.

Primary target firm

[37] The primary target firms are SABMiller's Appletiser and Lecol brands. The Lecol brand is owned by Appletiser SA but the manufacturing is outsourced to Afoodable Proprietary Limited and the distribution to RTT Logistics. In South Africa, Appletiser brands are manufactured by Appletiser SA and distributed through the TCCC system.

[38] Appletiser SA is a beverage company involved in the manufacturing and marketing of non-alcoholic beverages made from concentrated apple, pear, grape or blended juice concentrate. Lecol is a lemon juice substitute made from 100% lemon juice and predominantly used in the preparation of food or as a condiment.

Figure 3: The pre and post- merger ownership structure



Proposed transaction and rationale

[39] The proposed transaction involves the transfer of SABMiller's Appletiser and Lecol brands to TCCC or one of its subsidiaries. Following the transaction TCCC will own these brands.

[40] The merging parties noted that the proposed transaction did not constitute a merger, as it did not result in any change in control and would, if it did constitute a merger fall within the thresholds of a small merger. They submit that the proposed branding transaction is in line with TCCC's business model of owning brands and authorizing bottlers to manufacture and distribute product.

Impact on competition

[41] With respect to the proposed branding transaction, the Commission established that a horizontal overlap existed between TCCC and SABMiller in relation to the Appletiser and Lecol brands, in that both TCCC and SABMiller manufacture and sell NABs. In particular, TCCC manufactures and supplies a number of NABs which includes

carbonated soft drinks ("CSD"), fruit juices and water under a number of well-known brands.

[42] Similarly, SABMiller manufactures, distributes and sells various types of beverages, including sparkling (carbonated) fruit juice (Appletiser) and lemon juice under the Lecol brand.

[43] The Commission's analysis revealed that from a supply-side perspective, there was very little substitution between fruit juices and other NABs like CSDs offered by SABMiller and TCCC. However, from a demand-side perspective, the Commission found that customers generally switched between the different sub-segments of the broader fruit juice market. The Commission also noted that the sparkling (carbonated) fruit juices such as Appletiser served a different need (weekend, occasion or celebration) than other fruit juices or even soft drinks.

[44] The Commission found that the proposed transaction will not materially change the competitive dynamics of the market and will only result in the transfer of the brand from SABMiller to TCCC. The Appletiser brand will face the same competition post-merger as it did pre-merger and the merged entity will continue to lead the market for sparkling (carbonated fruit juices). Based on the above, the Commission concluded that the proposed branding transaction was unlikely to substantially prevent or lessen competition in any relevant market.

[45] The Commission also considered the effect of the transaction on various parties within the value chain such as customers and suppliers of input products used in the manufacture of the NAB's. For the sake of brevity, as none of these concerns were raised and no evidence ventilated before us this will not be traversed in further detail.

Public interest

Concerns raised by the EDD

[46] During the Commission's investigation, the merging parties engaged with the Minister, who had as mentioned above, raised a number of public interest and competition concerns. The Commission's Initial Conditions incorporated the following remedies which would address the concerns raised:

- *Relocation of the head office*- Coca-Cola Beverages Africa Proprietary Limited ("CCBSA") would be located, managed and directed from SA as well as remain a tax resident of SA. This condition was required in order to avoid a

negative impact on the non-alcoholic beverage ("NAB") market in SA which would impact on employment and localisation.

- *Production of Appletiser-* The merging parties undertook to acquire a minimum of 80% of local input in order to address the Commission and the Minister's concerns that fruit juice concentrate, which is currently sourced in SA, would not be sourced elsewhere post-merger.
- *Broad-based black economic empowerment-* the merging parties undertook to commit to implementing a BEE transaction which would increase the BEE ownership by 9 to 20% by 2020. Additionally 20% of Appletiser SA would be sold to a qualifying black company who would be entitled to block a special resolution as if it held 25% plus 1.
- *SMME's-* To address the public interest concerns with respect to small business, the following conditions were stipulated:
    i. Subject to certain conditions, from the date of approval to the end of 2020, CCBA would invest not less that R500 million in the development of the downstream distribution and retail aspects of the South Africa business of CCBSA
    ii. To ensure that small retail outlets that are supplied with fridges by Cola-Cola do not exclusively sell Coca-Cola products and instead be free to sell competing products, the Commission incorporated a condition requiring Coca-Cola to allow small and medium sized retailers to stock 20% of competing products in Coca-Cola refrigerators. This was to mitigate the Commission and the Minister's concern that competitor's lack of access to refrigeration may significantly hamper their ability to compete. The Commission noted that similar commitments had been agreed to by TCCC in other countries in relation to exclusionary conduct investigations. It should be noted that while the merging parties were largely in agreement with the proposed conditions, it was not in agreement with this condition and sought to challenge the imposition of it thereof.
    iii. The merging parties would provide suitable business training to an additional 25 000 black retailers between Approval date to 2020.
    iv. CCBSA would create a fund of R150 million in support and training of historically disadvantaged developing farmers and/or small suppliers of inputs for Appletiser and Coca-Cola products. The administration and management of the fund would vest in CCBSA.

- *Owner Drivers* In relation to concerns of the unfavourable management of the owner driver scheme and the unfair information gap between the parties, the merging parties agreed to provide independent counselling to an employee when an employee elects to be an owner-driver, in order for the employee to fully understand the move from an employment relationship to a contractual relationship. The condition also required training be provided to employees who change to an owner-driver scheme to enable them to manage their businesses and understand the inherent risks.
- *Supply Chain*- The merging parties would undertake to procure all tin cans, glass and PET bottles, packaging, crates and sugar (sugar includes procurement from Swaziland) from local suppliers. Where a direct supplier is an SMME the merging parties undertook to procure from these or alternate local SMME's for a period of 5 years.
- *Employment* - the merging parties undertook not to retrench any bargaining unit employees and will limit non bargaining unit employee retrenchments to 250 employees.

[47] However, as became apparent during the proceedings, the Minister challenged the Initial Conditions and required the redrafting thereof. As mentioned above all these remaining disputes were settled in negotiations prior to the first day of hearing and so no evidence was led in this regard.

[48] However, in order to provide some insight into the extent to which the Initial Conditions materially changed, we attach the agreed Final Conditions as Annexure A. We note that the main differences between the Initial Conditions and the Final Conditions relates to the issue of coolers and employment, with the merging parties having made concessions on both fronts. We briefly set out some of the key differences below:

- *SMMEs*- The merging parties undertook to invest R400 million into SMME's.
- *Coolers and Refrigeration:* With respect to cooler and refrigeration space, the merging parties shall ensure that in Micro Outlets where there is no dealer-owned product-visible cooler or competitor product-visible cooler that such outlets shall at all times be free to provide 10% of the visible space in their coolers and refrigerators supplied or funded by CCBSA to local small competitors' products. In addition, such products, will be solely at the retailer's discretion. A similar condition was drafted in terms of Small Outlets.

- *Historically disadvantaged farmers*: the merging parties undertook to increase their investment in the establishment of a Fund for enterprise development in the agriculture value chain to R400 million

[49] We again note our approach to the settlement of issues that we set out earlier and it is not necessary therefore for us to make any findings in this regard.

Concerns raised by the Unions

[50] As mentioned above, the Unions had indicated at the first pre-hearing that most of their issues in relation to employment could be settled with the merging parties in private negotiations. However, despite several negotiation sessions held between the merging parties and FAWU no resolution had been achieved by the agreed date of 31 March 2016. As a result, in line with the Tribunal's direction dated 29 February 2016, FAWU submitted its Statement of Interest and Issues on 31 March 2016, in which it highlighted issues remaining in dispute.

[51] In particular, these issues related to:

- The strengthening of the condition recommended by the Commission regarding retrenchments at the merged entity;
- Post-merger harmonization of pay and benefits at the merged entity; and
- The exclusion of employees from the BBBEE scheme forming part of the merger (the SAB Zenzele employment trust share scheme)

[52] During an interlocutory hearing on 13 April 2016, FAWU sought to make an appeal to the Tribunal for discovery of certain documents in relation to retrenchments, harmonization and the SAB Zenzele employment trust share scheme, which they submitted were crucial to their bargaining power.

[53] In particular, FAWU submitted that it had become apparent that a number of retrenchments that were to take place, as a result of integrating four workforces into one, would be of individuals who were not highly skilled, easily employed, and readily mobile and were individuals who would most likely find it difficult to find secure employment post-merger. Furthermore while FAWU had received high level integration, harmonization plans, they had not received responsive discovery. Finally, FAWU also spoke to the issue of the SAB Zenzele employment trust share scheme, a share scheme which only ABI workers are entitled to participate in, and which almost three-quarters of the merged workforce would be excluded from. While the merging

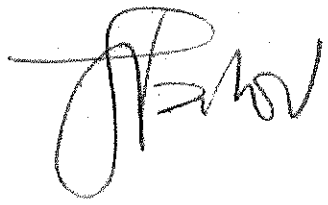
parties had indicated that a lock-in period would apply till 2020 preventing other workers from joining the scheme, FAWU requested access to the documents of such lock-in period in order to interrogate whether there were any mechanisms available to expand the scheme to include the entire workforce.

[54] Following some of their discovery requests being granted, FAWU continued to engage with the merging parties in private settlement negotiations. As noted above, these negotiations were successful with same being extended to NUFBWSAW.

[55] In terms of the changes to the conditions, FAWU successfully negotiated a strengthening of the employment condition, with the merging parties committing to amongst other things, to ensure that for a period of at least three years CCBA would maintain at least the number of Employees as are employed in the aggregate by the merging parties as at the Approval Date. Furthermore, where the merging parties seek to retrench employees, appropriate measures to more sufficiently mitigate the consequences were put in place.

Conclusion

[56] In light of the above, we therefore approve the proposed transaction, subject to a set of conditions as agreed upon by the parties during private settlement negotiations. For the sake of convenience we attach the final set of conditions as "Annexure A".



Prof Imraan Valodia

25 July 2016
DATE

Mr Norman Manoim and Ms Yasmin Carrim concurring

Tribunal Researcher: Aneesa Ravat and Karissa Moothoo Padayachie

For the merging parties: Mike van der Nest S.C. assisted by Mark Wesley and Benny Makola instructed by Bowman Gilfillan, Cliffe Dekker Hofmeyr and Webber Wentzel.

For the Commission: Maya Swart, Hariprasad Govinda and Ruan Mare

Trade Unions: Nqobile Tshabangu for NUFBWSAW. Michelle Le Roux with Nyoko Muvangua instructed by Cheadle Thompson & Haysom Inc for FAWU.

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Commission Case No: 2015Mar0130
Tribunal Case No: LM243Mar15

In the large merger between:

Coca-Cola Beverages Africa Limited	**Primary Acquiring firm**
and	
Various Coca-Cola Bottling and Related Operations	**Primary Target firm**

Non- confidential Conditions

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1 DEFINITIONS

In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

1.1 "**Act**" means the Competition Act, No. 89 of 1998 (as amended);

1.2 "**Advisory Board**" means that advisory board to the Fund contemplated in terms of paragraph 6.5 below and comprised of 2 representatives chosen by CCBSA, and 1 representative chosen by the Minister of Economic Development;

1.3 "**Appletiser**" means finished products bearing the Appletiser and related brands;

1.4 "**Approval Date**" means the date on which the Merger is approved by the Competition Tribunal;

1.5 "**Appletiser SA**" means Appletiser South Africa Proprietary Limited, a private company registered and incorporated in accordance with the company laws of

the Republic of South Africa (or it successor-in-title or assign after implementation of the Merger);

1.6 "**B-BBEE**" means broad-based black economic empowerment as defined in the B-BBEE Act;

1.7 "**B-BBEE Act**" means the Broad-Based Economic Empowerment Act, No. 53 of 2003 (as amended);

1.8 "**B-BBEE Codes**" mean the Codes of Good Practice on Broad-Based Economic Empowerment, 2013, published pursuant to the B-BBEE Act;

1.9 "**Bargaining Unit Employees**" means those employees of the Merging Parties falling within the respective bargaining units as defined in the various recognition agreements of the Merging Parties in terms of the Labour Relations Act;

1.10 "**CCBA**" or the "**merged firm**" means Coca-Cola Beverages Africa Proprietary Limited, a private company registered and incorporated in accordance with the company laws of the Republic of South Africa;

1.11 "**CCBSA**" means Coca-Cola Beverages South Africa Proprietary Limited, a subsidiary of CCBA and a private company to be incorporated in accordance with the company laws of the Republic of South Africa, including its subsidiaries;

1.12 "**Commercially Reasonable and Practical Terms**" means terms that provide for the application of appropriate quality standards (based on the CCBA Group's usual and standard business practices in South Africa over time), reasonable availability of goods, and reasonably competitive commercial terms. Such terms shall not be regarded as commercially unreasonable or impractical if the merged entity has, before calling off further negotiations with an affected supplier, given that supplier written notice as to the reasons why its terms of supply were considered not to provide for appropriate quality standards, reasonable availability, and reasonably competitive commercial terms;

1.13 **"Competition Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;

1.14 **"Competition Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;

1.15 **"Conditions"** mean, collectively, the conditions referred to in this document;

1.16 **"Employee"** means any permanent employee (as contemplated under South African labour law) of CCBSA as at the Approval Date, and excludes (i) employees of labour brokers who provide services to CCBSA in South Africa; (ii) independent contractors and their employees; and (iii) short-term, fixed-term contractors;

1.17 **"FAWU"** means the Food and Allied Workers Union, a registered trade union with members employed by the Merging Parties or their subsidiaries;

1.18 **"Fund"** means the fund referred to in paragraph 6.5 below;

1.19 "**GFI**" means Gutsche Family Investments Proprietary Limited, a private company registered and incorporated in accordance with the company laws of the Republic of South Africa;

1.20 **"Hay Grade 12"** means grade 12 in terms of the grading system utilised and developed by the Hay Group, a job evaluation consultancy firm. The Hay Grade 12 includes the following: specialised, skilled, technical specialist and senior supervisory. The range of salaries for employees in Hay Grade 12 in 2016 is from **[CONFIDENTIAL]**;

1.21 **"Historically Disadvantaged"** means historically disadvantaged persons within the meaning of the Act;

1.22 **"Juice Concentrate"** means apple and other fruit juice concentrate generally used in the manufacture of Appletiser;

1.23 **"Labour Relations Act"** means the Labour Relations Act, No. 66 of 1995 (as amended);

1.24 "**Merger**" means (i) the acquisition by CCBA of the various Coca – Cola bottling and related operations; and (ii) the transfer of SABMiller's Appletiser brands and its Lecol brand to TCCC, as notified under case number 2015Mar0130;

1.25 "**Merging Parties**" mean, collectively, CCBA, SABMiller, TCCC, GFI and Sabco;

1.26 "**Micro Outlets**" means retail outlets supplied by CCBA in South Africa from time to time of which the retail area is 15 square meters or smaller in inside floor size;

1.27 "**NARTD beverages**" means 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;

1.28 "**NUFBWSAW**" means the National Union of Food, Beverage, Spirits, Wine and Allied Workers, a registered trade union with members employed by the Merging Parties or their subsidiaries;

1.29 "**PET bottles**" means polyethylene terephthalate pre-forms or plastic bottles;

1.30 "**SABMiller**" means SABMiller plc, a public limited company with a primary listing on the London Stock Exchange and a secondary listing on the Johannesburg Stock Exchange;

1.31 "**Sabco**" means Coca-Cola Sabco Proprietary Limited, a private company registered and incorporated in accordance with the company laws of the Republic of South Africa;

1.32 "**Small Outlet**" means retail outlets supplied by CCBA in South Africa from time to time of which the retail area is more than 15 and up to 20 square meters in inside floor size;

1.33 "**Smaller Competitor**" means a producer of NARTD beverages in South Africa with 5% or lower national market share in the NARTD beverage market; for the avoidance of doubt, the sales by such producer of the brands of TCCC's three largest global NARTD beverage competitors shall not be taken into account in calculating the relevant national market share of such producer but shall be

taken into account in calculating the size of the entire national market. The reference point shall be calculated annually with reference to data collected by AC Nielsen (or such replacement agency as may be agreed between the Competition Commission and CCBSA) at the end of each preceding calendar year, measured by volume;

1.34 **"SMME"** means a small, very small, medium or micro enterprise as contemplated in the National Small Enterprise Act, No 102 of 1996;

1.35 **"TCCC"** means The Coca-Cola Company, a United States publically registered company listed on the New York Stock Exchange.

2 RECORDAL

2.1 On 19 March 2015, the Merging Parties filed a large merger transaction with the Competition Commission. The Competition Commission's investigation of the proposed Merger found the following competition and public interest concerns arising from the Merger:

2.1.1 The consolidation of the independent Coca-Cola bottlers in South Africa would result in the merged entity having increased bargaining power. As such, the proposed Merger may have a negative effect on the current local producers of PET bottles, tin cans, glass, packaging, sugar and crates in South Africa;

2.1.2 The proposed Merger is likely to have a negative impact on employment since it will result in job losses of 250 employees of the Merging Parties in South Africa;

2.1.3 Any relocation of the merged entity head office post-Merger is likely to have a negative impact on the non-alcoholic beverages market in South Africa, employment and localisation;

2.1.4 The proposed Merger may result in the fruit Juice Concentrate of the Appletiser brand currently sourced from South African producers being sourced by TCCC from suppliers outside of South Africa. Should the merged entity discontinue the sourcing of the fruit juice concentrate, this would

have a negative impact on the growth of the local producers. This may also result in local producers shutting down and/or reduce their current workforce;

2.1.5 The proposed Merger in its original form is likely to have a negative impact on B-BBEE. This is based on the merging parties' views on their relative shareholding post-merger;

2.1.6 The Competition Commission is concerned about the owner driver scheme (which largely comprises ex-employees of TCCC) and how it is currently being operated by TCCC. When recruited to join the owner-driver scheme, the owner-drivers have no real control over the operation and finances of their businesses. They also have limited understanding of how the contracts work and the risks involved which could potentially result in their contracts being terminated for no reason whatsoever. In the Competition Commission's view it is TCCC's responsibility to ensure that these drivers are fully aware of the risks when entering into this scheme and are supported when their participation in this scheme ends; and

2.1.7 Further, the Competition Commission is concerned that the lack of access to refrigeration and coolers in retail stores where there is only one fridge or cooler may prevent smaller rivals from competing effectively with the merged entity.

2.2 The parties have also engaged with the Minister of Economic Development and the Economic Development Department regarding a range of public interest and competition concerns that the Minister of Economic Development has highlighted, relating to employment, localisation of the supply-chain, empowerment and access to smaller suppliers to fridge space in the retail units that utilise fridge facilities of the merged parties.

2.3 In order to address the Competition Commission and Minister of Economic Development's concerns, the Merging Parties have agreed on a set of remedies as set out below.

3 LOCATION OF HEAD OFFICE

3.1 Consistent with CCBA's long term commitment to invest in the South African economy, CCBA shall remain incorporated in South Africa and its head office will be located in, and its operations will be managed and directed from, South Africa. Each of CCBA and CCBSA will remain a tax resident in South Africa.

4 PRODUCTION OF APPLETISER

4.1 The Merging Parties commit and undertake that Appletiser SA and the current operations and facilities in South Africa for the production of Appletiser will be maintained and kept in place in line with the Merging Parties' commitment and intention to use and grow the operations to supply South Africa and as a base from which to export Appletiser to the countries in Africa, and where commercially reasonable and practical, elsewhere in the world, where CCBA will operate in terms of the TCCC system.

4.2 In order to give effect to this undertaking and subject thereto that such supply arrangements are on Commercially Reasonable and Practical Terms, the Merging Parties undertake:

4.2.1 to maintain and grow the South African production of Appletiser in order to meet the demand for those products –

4.2.1.1 in South Africa from time to time; and

4.2.1.2 countries in Africa where CCBA will operate in terms of the TCCC system and, where reasonably possible, elsewhere in the world; and

4.2.2 without derogating from the provisions of paragraph 8 below but subject to paragraph 4.2.3 below, that the current percentage of local inputs procured by Appletiser SA in the South African production of Appletiser, measured in quantities procured during Appletiser SA's most recent financial year ended prior to the Approval Date ("the base year") will be maintained, in each subsequent financial year, at a percentage level no lower than the percentage prevailing in the base year; and

4.2.3 that at least 80% of the apples, pears, grapes and similar fruit inputs used for all Juice Concentrate used in producing Appletiser will be procured from fruit grown in South Africa, it being understood that the merging parties will take all practical steps to increase within the next 5 years of the Approval Date to the extent possible its procurement of grapes used for Juice Concentrate used in producing Grapetiser, from grapes grown in South Africa.

5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT

5.1 The Merging Parties commit to a follow-on broad-based empowerment transaction, to be implemented within 5 years of the Approval Date, that the current B-BBEE ownership percentage of CCBSA of 11% under the B-BBEE Codes be increased by a further 9 percentage points to 20%.

5.2 Further, the Merging Parties shall **[CONFIDENTIAL]** of the Approval Date ensure that at least 20% of the equity in Appletiser SA be sold to a qualifying black company or consortium (**"black shareholder"**) with the intention that such company or consortium shall be developed into and/or operate as an active industrial partner in the Appletiser SA business, on reasonable commercial terms to be agreed with the black shareholder, who shall be entitled to the rights to block a special resolution of Appletiser SA on the same basis that a shareholder holding 25% plus 1 vote would ordinarily enjoy. In addition, the black shareholder shall be entitled to appoint not less than one non-executive director to the board of directors of Appletiser SA and shall further be entitled to nominate appropriately qualified candidates for all executive positions. The appointment of any such executives shall be the decision of the Chief Executive of Appletiser SA who shall give due and proper consideration to the abovementioned nominees of the black shareholder.

6 SMMEs

6.1 The Merging Parties undertake, in the five year period from the Approval Date, that CCBA will invest not less than R400 million in:

6.1.1 developing the downstream distribution and retail aspects of the South African NARTD business of CCBSA, on the basis that -

6.1.1.1 the invested amount should not be redirected from other expenditure for retailers which would ordinarily have been incurred but must be in addition to existing baseline investment expenditure absent the Merger;

6.1.1.2 any new retail outlets established pursuant to this investment will not be required to operate on an exclusive basis for any one or more companies in the CCBA group and shall be free to sell products competing with those of the CCBA group;

6.1.2 providing suitable business skills training to an additional 25 000 black retailers of CCBSA's products from the Approval Date until end 2020.

6.2 The Merging Parties shall ensure that in Micro Outlets where there is no dealer-owned product-visible cooler or competitor product-visible cooler at the Micro Outlet, such outlets are at all times free to provide 10% of the visible space in their coolers and refrigerators supplied or funded by CCBSA to local Smaller Competitors' products competing with CCBSA products, which products and situation may be chosen by the retailer entirely in their own discretion. As part of this commitment, CCBSA shall not induce the retailers to refuse access to space in the coolers and refrigerators directly or indirectly provided or funded in whole or in part by CCBSA.

6.3 The Merging Parties shall ensure that in Small Outlets where there is no dealer-owned cooler or competitor product-visible cooler at the Small Outlet, such outlets are at all times free to provide 10% of the visible space in their coolers and refrigerators supplied or funded by CCBSA to local Smaller Competitors' products competing with CCBSA products, which products and situation may be chosen by the retailer entirely in their own discretion. As part of this commitment, CCBSA shall not induce the retailers to refuse access to space in the coolers and refrigerators directly or indirectly provided or funded in whole or in part by CCBSA.

6.4 The conditions in paragraphs 6.2 and 6.3 do not apply to and exclude the brands of TCCC's three largest global NARTD beverage competitors.

6.5 The Merging Parties shall, through CCBSA establish a Fund for enterprise development in the agriculture value chain, particularly for the support and training of Historically Disadvantaged developing farmers and Historically Disadvantaged or small suppliers of inputs for Appletiser SA and CCBSA products with a view to make and/or keep them competitive and sustainable and to contribute an amount of R400 million to the Fund. The monies in the Fund shall be disbursed in equal annual portions over a 5 year period from the Approval Date, i.e. no less than R80 million per successive 12 month period.

6.6 The Fund will provide training and the disbursement of grants as contemplated by the B-BBEE Codes on Supplier Development and Enterprise Development.

6.7 The administration and management of the Fund shall vest in CCBSA, which shall appoint the necessary administrators thereof. Notwithstanding, CCBSA shall consult with the Advisory Board as regards the activities and expenditure of the Fund.

6.8 The representatives on the Advisory Board shall be appointed on the basis of their expertise relating to the objective of the Fund.

6.9 The Advisory Board, which shall meet as and when it so determines, shall:

6.9.1 consult with CCBSA to determine the details of each beneficiary as envisaged in paragraphs 6.5 and 6.6;

6.9.2 advise CCBSA as to the means and mechanisms to fulfil the objects of the Fund;

6.9.3 be entitled from time to time to call for and receive reports from CCBSA and CCBA regarding the implementation of the Fund and CCBSA and CCBA shall be obliged to provide such reports with all such detail as may be reasonably required by the Advisory Board; and

6.9.4 produce an annual report on the activities of the Fund and its assessment thereof which shall be submitted to the Competition Commission and the Economic Development Department, together with a set of annual financial

statements for the Fund compiled and audited by a firm of external auditors (which are not the external auditors of CCBSA).

6.10 CCBSA shall design and propose projects to the Advisory Board for its advice and recommendation.

7 OWNER DRIVERS

7.1 To the extent that the Merging Parties may be entitled to transfer current employees with their consent to owner-driver contracts (the legality of which the Competition Commission takes no view on) they shall nevertheless provide independent counselling to employees through the Commission for Conciliation Mediation and Arbitration (CCMA) prior to a decision by any individual worker to move to the owner-driver or similar scheme, to enable them to understand the risks inherent in moving from an employment relationship to a contracting relationship.

7.2 Further, the Merging Parties shall provide training to the employees that opt to join the owner-driver scheme or similar scheme to be able to manage their businesses and understand the risk inherent.

8 SUPPLY CHAIN

8.1 The merged entity (which shall include Appletiser SA) will use all reasonable endeavours to ensure that it maintains and, if possible, improves its level of local production and procurement of inputs made in South Africa. To this end, the merged entity shall purchase all tin and aluminium cans and ends, glass and PET bottles, PET closures, packaging, crates and sugar from local suppliers (in the case of sugar, local suppliers include procurement from Swaziland, to the same percentage of procurement that applied in the financial year immediately preceding the Approval Date), subject to supply on Commercially Reasonable and Practical Terms. Existing agreements with suppliers in force at the Approval Date shall be honoured in accordance with their terms.

8.2 Where SMMEs are direct suppliers to any of the Merging Parties, the Merging Parties agree that CCBSA will continue to procure from these or alternative local

SMMEs for a period of at least 5 years after Approval Date, subject to supply on Commercially Reasonable and Practical Terms.

8.3 The Merging Parties recognize the value of local procurement to the country and wish to be a partner in deepening such efforts. To this end, the merged entity undertakes to implement the commitments on local procurement contained in these Conditions and further undertakes to:

8.3.1 host an annual local procurement conference with suppliers to identify opportunities to maintain and grow local procurement;

8.3.2 produce and issue an annual report on local procurement, including new possibilities and efforts made to deepen localization; and

8.3.3 train managers in the merged entity on the value of local procurement to the country and the company.

9 EMPLOYMENT CONDITIONS

9.1 Notwithstanding any other provision in this paragraph 9, CCBA commits that, for a period of no less than three years from the Approval Date, it will maintain at least the number of Employees as are employed in the aggregate by the Merging Parties as at the Approval Date.

9.2 Without derogating from its commitment set out in paragraph 9.1, CCBA shall not retrench any Bargaining Unit Employees as a result of the Merger, and any retrenchments of employees outside of the bargaining units shall be limited to 250 employees within the category of Hay Grade 12 and above.

9.3 The Merging Parties commit to put in place suitable and appropriate measures to mitigate the consequences of the retrenchments by providing:

9.3.1 in each year during which a retrenchment contemplated in paragraph 9.2 or a separation contemplated in paragraph 9.4.1 takes place flowing from the Merger, employment in the CCBA group within South Africa to such number of permanent employees as are equal to the number of employees retrenched or separated, voluntarily or non-voluntarily (with the intention

that there shall be no net reduction in employment arising from the Merger for a period of no less than three years from the Approval Date);

9.3.2 funding to re-skill affected employees in an amount of R20 000 per retrenched employee up to a maximum of the fund value of R5 000 000;

9.3.3 counselling and guidance on applying for alternative employment;

9.3.4 within 3 years of Approval Date, redeployment of 20% (twenty percent) of affected employees, within the business of the merged firm;

9.3.5 in addition to the redeployment contemplated in paragraph 9.3.4, the Merging Parties shall procure that, for a period of 2 years of the Approval Date, the retrenched employees shall be offered the right to preferential re-employment, subject to final agreement on the actual terms and conditions of employment; and

9.3.6 approaching external stakeholders (such as suppliers, customer and business partners) with a view of them hiring affected employees.

9.4 In the interest of clarity, retrenchments in the context of this condition do not include:

9.4.1 voluntary separation arrangement (subject to paragraph 9.3.1);

9.4.2 voluntary early retirement packages;

9.4.3 unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act;

9.4.4 resignations or retirements in the normal course;

9.4.5 necessary steps taken by the Merging Parties in terms of section 189 of the Labour Relations Act should operational requirements in the ordinary course of business that are not merger specific necessitate that such steps be taken.

10 NO RESTRAINT

The parties shall not enter into any agreement in terms of which TCCC shall be prohibited from bottling, distributing or marketing beer and/or alcoholic ready to drink beverages in South Africa.

11 TRADE UNIONS

11.1 The Merging Parties have entered into agreements with FAWU and NUFBWSAW regarding certain concerns which FAWU and NUFBWSAW have raised in relation to the proposed Merger, which agreements are attached as Annexure "B" and Annexure "C" ("the Union Agreements"). The Merging Parties agree that the terms of clauses 3, 4 and 5 of each of the Union Agreements shall be conditions of the approval of the proposed Merger.

11.2 In the event of any conflict in interpretation between the terms of these conditions and the Union Agreements, the terms of the Union Agreements shall prevail.

12 MONITORING

12.1 In the event that the Competition Commission receives a complaint regarding non-compliance by the Merging Parties with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

12.2 CCBA will, within 30 days of each anniversary of the Approval Date up until the 6th anniversary, provide a suitable and appropriately detailed annual report to the expiry of 5 years following the Approval Date to the Competition Commission regarding its measures to comply with these Conditions, together with the report and audited accounts referred to in paragraph 6.9.4.

12.3 The report referred to in 12.2 shall be accompanied by an affidavit attested to by the chief executive officer of CCBA confirming accuracy of the annual report and full compliance of these Conditions in the year to which the report relates.

12.4 CCBA shall submit to the Competition Commission within 30 days of the Approval full details of its relevant procurement during its base year and employment at the Approval Date, as contemplated in paragraphs 4.2.2, 8.1 and 9.1.

12.5 The Competition Commission may request any additional information from CCBA which the Competition Commission from time to time deems necessary for the monitoring of compliance with these Conditions.

12.6 In order to enable the Minister of Economic Development to bring a complaint as contemplated in paragraph 12.1 and to enable him to play a meaningful role in the Advisory Board, a copy of the annual report referred to in paragraph 12.2 shall simultaneously be furnished to the Economic Development Department. Nothing in this paragraph 12.6 shall derogate from the monitoring and enforcement role of the Competition Commission in terms of the Act.

13 VARIATION

13.1 Should the Merging Parties wish to amend the conditions, CCBA shall be entitled, upon good cause, to make a proposal to the Competition Commission to consent to the waiver, relaxation, modification and/or substitution of one or more of the Conditions, which consent shall not be unreasonably withheld. "Good cause" shall have its normal meaning as interpreted under the Act and the common law, save that 'good cause' shall additionally mean that the circumstances giving rise to the Merging Parties' request in terms of this Condition 13.1 shall require that the circumstances that could not reasonably have been foreseen by the Merging Parties at the time of the Competition Tribunal's approval of the Merger and which cannot reasonably be mitigated or addressed in another manner. **[CONFIDENTIAL]**

13.2 In the event of the Competition Commission and CCBA agreeing upon the waiver, relaxation, modification or substitution of any aspect of the Conditions, the Competition Commission and CCBA shall make application to the Competition Tribunal for confirmation by it of such waiver, relaxation, modification or substitution of any one or more of the Conditions.

13.3 In the event of the Competition Commission withholding its consent to a waiver, relaxation, modification and/or substitution of any one or more of the Conditions, CCBA shall be entitled to apply to the Competition Tribunal for an order waiving, relaxing, modifying or substituting of any one or more of the conditions. The Competition Commission shall be entitled to oppose such application.