



COMPETITION AUTHORITY OF KENYA'S DETERMINATIONS PASSED ON 29TH AUGUST, 2017 BASED ON THE COMPETITION ACT.

A. DECISIONS ON EXEMPTION

East African Tea Trade Association (EATTA) Exemption Request

The Authority has rejected an application for exemption by the **East African Tea Trade Association (EATTA) to set brokerage commission and warehouse prices**. EATTA, which operates the weekly Mombasa Tea Auction, had sought to be exempted from the provisions of section 21 and 22 of the Competition Act No. 12 of 2010 (the Act) on some of its activities for an indefinite period.

The rejection was premised on the following:

- i. The setting of broker fees and commissions under the auspices of the EATTA was a hardcore contravention under Section 22 (1) (b) of the Act as it is a form of price fixing;
- ii. The setting of brokerage fees was beneficial to the brokers with no express benefits to consumers and tea producers;
- iii. The Kenyan brokerage fees were higher compared to those in Sri Lanka and India and have remained unchanged for a long period of time;
- iv. Warehousing is an important element in the tea value chain and that fixing of warehouse fees would undermine innovation and improvement of value proposition to customers given that warehousemen will be assured of the minimum fees set by EATTA. This the Authority concluded that it will encourage inefficiencies in warehousing thus impacting on the trade negatively; and
- v. The justification provided by EATTA for the exemption did not meet the threshold set under section 26(3) of the Act where the benefit to the public would outweigh the lessening of competition.

However, the Authority allowed, for a period of three (3) years), the trading to be permitted amongst membership; specialization of brokers to offer tea for sale and produce Auction Catalogues and; EATTA to oversee the determination of penalties.

In arriving at the decision, the Authority took consideration that granting of exemption for an indefinite period is not in tandem with international best practice as situations relied upon to grant the exemption might change substantially over time. The exemption period of three (3)

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years was thus considered sufficient to enable the Authority re-evaluate application in light of market dynamics.

B. DECISIONS ON MERGERS AND ACQUISITIONS

1. Acquisition of Coca Cola Beverages Africa Proprietary Ltd by Coca Cola Company.

The Authority has approved the implementation of the merger between Coca Cola Beverages Africa Proprietary Limited (CCBA) and The Coca Cola Company (TCCC) **on condition** that the merged entity abides by the following conditions;

- i. Continued production of Keringet brand for at least three (3) years after the completion of the then transaction;
- ii. Retention of employees at the Molo Plant for a period of at least two (2) years after the completion of the transaction;
- iii. Retention of employees in the administrative divisions in its Nairobi Beverages Limited and Crown Beverages limited companies
- iv. TCCC to continue honouring the existing third party distribution contracts with regard to the Keringet brand; and
- v. The merged entity shall provide detailed annual reports on the post-merger effects on employment and future plans on employment for the next five (5) years;
- vi. Retention of employees of Equator bottlers and submit a compliance report to the Authority annually for two (2) years post transaction.

These were the same conditions that were set to the parties in the acquisition of of Keringet brand by TCC on 7th May 2015 and acquisition of Equator Bottlers by CCBA on 31st May 2017.

2. Acquisition of Associated Vehicle Assemblers Limited by Simba Corporation Limited

The Authority has **approved with conditions** the proposed acquisition of Associated Vehicle Assemblers Limited by Simba Corporation Limited. The transaction which will see the Simba Corporation limited acquire control of Associated Vehicle Assemblers Limited was approved on condition that the merged entity:

- A. Shall keep the plant open to existing third party brands and any other competing brand that may wish to use the AVA plant for assembly, for as long as there exists excess capacity at the plant; and

- B. Honours all existing assembly contracts with third party brand assemblers at the AVA plant.

Simba Corporation Limited (Simba), the acquiring undertaking, is engaged in automotive and generator distribution, real estate and hospitality while the target, Associated Vehicle Assemblers Limited (AVA) is involved in the assembly of commercial motor vehicles including trucks, buses and pickups.

The conditional approval was informed by the fact that the transaction would likely raise competition concerns in market for the assembly of commercial motor vehicles, specifically on how third party brands will be treated, or allowed to utilize the AVA plant. Based on this, the Authority cushioned the third party brands and any other competing brand from being locked out of the plant as long as capacity exists in the plant.

3. Acquisition of Air Connection Limited by Panalpina Airflo Limited, Panalpina Airflo B.V. And Panalpina Kenya Limited

The Authority has **approved with condition** the proposed acquisition of the freight forwarding business of Air Connection Limited by Panalpina Airflo Limited, Panalpina Airflo B.V. and Panalpina Kenya Limited. While approving the merger, the Authority ordered the acquirers to retain at least 95% of the employees of Connection Limited for at least one (1) year after the date of completion of this transaction.

The entities are involved in freight forwarding and logistics services of perishable and non-perishable goods.

In its analysis, the Authority's assessment indicated that the transaction was unlikely to lessen or prevent competition in the said market, but will likely lead to redundancies, thus the conditional approval.

4. Acquisition of Trillvane Limited by Kuehne + Nagel Limited

The Authority has **approved with conditions** the proposed acquisition of Trillvane Limited by Kuehne + Nagel Limited. Kuehne is involved in sea freight services, airfreight services, overland services (road and rail logistics) and contract logistics (warehousing, storage and distribution) while Trillvane Limited is involved in freight forwarding and logistics specifically, transportation of cut flowers and fresh produce.

In its assessment, the Authority concluded that the transaction is unlikely to lessen or prevent competition in the markets for air freight services.

However, the Authority noted that the transaction was likely to raise public interest concerns, thus in its approval imposed a condition that, the acquirer (Kuehne) shall retain employees of the Trillvane Limited for at least one (1) year after the date of completion of the transaction.

Other Mergers that were approved

The Authority also **unconditionally approved** other mergers that are not likely to lessen or prevent competition and raise any negative public interest issues. They include:

- i. **Acquisition of Nairobi Java House Ltd by Star Foods Holding Limited**
- ii. **Acquisition of Savannah Cement Limited by Mr. Benson Sande Ndeta**
- iii. **Acquisition of Alldean Networks Limited, Simbanet Com Limited And Wananchi Telecom Limited by Synergy Communications**

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