THE PROPOSED ACQUISITION OF A CONTROLLING STAKE IN ALMASI BEVERAGES LIMITED BY COCA-COLA SABCO (EAST AFRICA) LIMITED

1. The Competition Authority of Kenya has approved the acquisition of a controlling stake in Almasi Beverages Limited by Coca-Cola Sabco (East Africa) Limited, subject to several conditions.
2. Coca-Cola Sabco (East Africa) Limited (CCSEA), the acquiring undertaking is a wholly owned subsidiary of Coca-Cola Beverages Africa Proprietary Limited (CCBA), a private company established in South Africa.
3. CCSEA is an investment holding company which holds shares in various bottling companies (Nairobi Bottlers Limited, Crown Beverages Limited and Equator Bottlers Limited). The company is in the preparation, packaging, distribution and sale of a range of non-alcoholic ready-to-drink beverages.
4. Almasi Beverages Limited (Almasi), the target undertaking, is a subsidiary of Centum Investments Company PLC (Centum), an investment company which is listed on the Nairobi Securities Exchange.
5. Almasi has three subsidiaries in Kenya namely; Almasi Bottlers (Mt. Kenya Bottlers), Kisii Bottlers and Rift Valley Bottlers.
6. The subsidiaries prepare, package, distribute and sell Coca-Cola branded non-alcoholic ready-to-drink drink beverages.
7. The proposed transaction involves acquisition of 53.95% of the issued share capital of Almasi from Centum by CCSEA. The transaction therefore qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No.12 of 2010.
8. The parties' combined and relevant turnover for the preceding year was **over Sh1 billion.** The transaction therefore met the threshold for full merger analysis as provided in the **Merger Threshold Guidelines**.
9. As indicated above, the acquirer and the target are involved in the production and distribution of branded non-alcoholic ready-to-drink beverages that are brands of The Coca-Cola Company.

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10. For purposes of analysing the proposed transaction, the Authority determined the relevant product market to be the market for production and distribution of non-alcoholic ready-to-rink Coca-Cola products.

11. CCBA allocates individual bottlers the territorial markets within which to supply their products. However, the bottlers compete among themselves in the allocated territories with the aim of maximizing their revenues.

12. For the purpose of analyzing the proposed transaction, the Authority determined that the relevant geographical market is national.

13. Non-alcoholic ready-to-drink Coca-Cola products largely consist of glass and plastic bottled sodas, juices fruit flavored water. Coca Cola bottlers do not compete among themselves in terms of production units, but compete against entities manufacturing substitutable products.

14. The non-alcoholic ready-to-drink market is made up of carbonated soft drinks, carbonated still energy and sports drinks, carbonated and still fruit juice, flavored milk, iced teas, iced coffee and still bottled water, among others.

15. The Coca-Cola Company competes globally and locally with several players. In Kenya, the main players in this sector and their market shares are: Coca-Cola (70%); Kevian Kenya (4.76%); Excel Chemicals (2.29%); Del Monte (1.42%); Highlands (1.59%); Suntory (0.48%); and Others, including imported brands, (19.46%).

16. Post-merger, this market structure and concentration is unlikely to change since the merging entities both bottle products for The Coca-Cola Company and intend to continue with this line of business for the foreseeable future.

17. Further downstream, the subsidiaries of the merging parties enter into supply agreements with distributors who channel the Coca-Cola products to retailers in specified locations for sale to consumers.

18. However, these retailers lease cooling refrigerators from the bottler and are further required to stock Coca-Cola branded products in these equipment.

19. The parties indicated that post-merger, The Coca-Cola Company and its bottlers will maintain the existing operational model where each bottler and distributors is allocated a region to operate from.

20. Given that the transaction constitutes a vertical merger, with The Coca-Cola Company holding supplying key inputs to the downstream market players for value addition and subsequent

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distribution, the Authority assessed the potential of this arrangement leading to foreclosure relating to inputs and customers.

21. This concern on the transaction impact on competition is heightened by the fact that, post-merger, Coastal Bottlers Limited will exist as the only independent bottler.

22. Therefore, it is conceivable that the CCBA may decide to foreclose Coastal Bottlers Limited's customer access by deciding to commence supplying product in territories that are presently assigned to the bottler.

23. It is also conceivable that The Coca-Cola Company may enforce input foreclosure by giving its merged bottlers preferential treatment, over Coastal Bottlers Limited, when procuring concentrates. Such an eventuality would increase Coastal Bottlers Limited's cost of production and its products, making them less attractive to consumers.

24. Although the proposed transaction is unlikely to negatively affect bottling, The Coca-Cola Company will now gain direct control of the bottling process as well as the retail level through dictating how coolers are issued through their bottlers.

25. Additionally, both the CCBA and Almasi bottlers presently require retailers to ensure that their coolers are always fully stocked with The Coca-Cola Company's products. This is enforced through cooler lending contracts.

26. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. The public interest concerns considerations include;

    i. extent to which a proposed merger would impact employment opportunities;
    ii. impact on competitiveness of small and medium enterprises (SMEs);
    iii. impact on particular industries/sectors; and
    iv. impact on the ability of national industries to compete in international markets.

27. The parties indicated that the target has been undergoing rationalization which may lead to redundancies. Completion of this exercise, according to the acquirer, is necessary in order to eradicate duplicated functions, particularly in the middle and senior management levels.

28. The parties have committed that the exercise, which they anticipate to happen in 2020, will impact a maximum of 21 employees of the merged entity. This is equivalent to 0.061% of the merged entities' combined workforce of 3,394. Further the parties have indicated that they intend to continue operating and investing in the bottling plants in the foreseeable future.

29. The Authority also assessed the impact of the proposed transaction on the ability of SME's to gain access and compete in the non-alcoholic ready-to-drink market.

30. The merging parties submitted that approximately 69% of its retailers, whom have been issued

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with Coca-Cola branded coolers, are SMEs. SMEs in the context of this transaction are firms which purchase a maximum of **ten** cases of product per week and have **one** Coca-Cola-issued cooler in their premises. These business are constrained for space and have limited financial power to acquire coolers from The Coca-Cola Company's competitors.

31. To address this concern, the Authority is of the view that the lower shelf/deck, or not less than twenty (20) percent of the total storage space, of the coolers leased to SMEs by the merged party's bottlers be reserved for competitor brands, with the exception of The Coca-Cola Company's three (3) largest global non-alcoholic ready-to-drink competitors.

32. Further, a distributor's assessment of what constitutes a fully-stocked cooler should exclude the lower shelf. Additionally, the SMEs shall provide access to the reserved portion of the cooler to competitor brands at their discretion.

33. The Authority is of the view that these interventions will allow new players to gain access to the local non-alcoholic ready-to-drink sector market, exerting positive competitive pressure on the incumbents.

34. From the foregoing, the Authority approved the acquisition of a controlling stake in Almasi Beverages Limited by Coca-Cola Sabco (East Africa) Limited, subject to the following conditions:

    i. CCBA will continue to operate the current bottling plants of the Merged Entity in Nyeri, Eldoret, Nairobi, Molo and Kisumu for at least three (3) years after completion of the proposed transaction;

    ii. The merged entity shall reserve the lower deck, or not less than 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 competitors;

    iii. The merged entity shall for a three (3) year period following completion of the proposed transaction retain 1,749) employees of the total 1,760 permanent employees. This condition supersedes any previous employment conditions imposed on the merging parties as a result of any prior merger decisions issued by the Authority;

    iv. The merged entity shall honour the existing agreement with Coastal Bottlers Limited;

    v. CCBA shall within nine (9) months of completion of the transaction amend the agreements between the merged entity and its distributors to permit such distributors to distribute other non-alcoholic ready-to-drink, if the agreements

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dictate otherwise.; and

vi. CCBA shall within nine (9) months of completion of the transaction amend the agreements between the Merged Entity and its distributors to remove all clauses which stipulate the prices and profit margins for the sale of its products, to the extent (if at all) the agreements contain such clauses. However, the merged entity should retain the ability to set maximum recommended resale prices for its distributors.

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