

General Notice No. 1320 of 2014

COMMISSION/DS/0012



Decision of the Commissioners of the Competition Commission

**Supply of Coolers to Retailers by Phoenix
Beverages Ltd and Quality Beverages Ltd**

Decision

**23rd April 2014
CCM/DS/0012**

Decision of the Commissioners of the Competition Commission

COMMISSION/DS/0012 - Investigation into the Supply of Coolers to Retailers by Phoenix Beverages Limited and Quality Beverages Limited

Commissioners present:

Mr. Ariranga G. Pillay	-	<i>Chairman</i>
Mr. R. T. Servansingh	-	<i>Vice Chairman</i>
Mr. J. R. Rodney Rama	-	<i>Commissioner</i>
Mr. M. Reshad Sadool	-	<i>Commissioner</i>
Mrs. J. P. S. Poonoosamy	-	<i>Commissioner</i>

Pursuant to the Report submitted by the Executive Director of the Competition Commission (the '*Executive Director*'), under Section 51 of the Competition Act 2007 (the '*Act*'), upon completion of an investigation into an alleged abuse of a monopoly situation in the 'Supply of Coolers to Retailers by Phoenix Beverages Ltd and Quality Beverages Ltd,' the Commissioners state the following -

1. Background

- 1.1. This Decision is addressed to Quality Beverages Limited ('QBL') and relates to an alleged abuse of a monopoly situation in respect of the supply of coolers to retailers by Phoenix Beverages Limited ('PBL') and QBL in Mauritius. The Decision follows the Executive Director's investigation launched on 18th May 2012, initiated following observations by the Executive Director, to the effect that when either PBL or QBL would grant a cooler to a retailer to stock goods produced or distributed by the respective enterprises, the retailer would not stock products supplied by any other enterprise in the cooler.
- 1.2. Following the launch of the Investigation, the Executive Director produced a Statement of Issues Report to both QBL and PBL (the main parties) on 10th December 2012 which contained the concerns of the Executive Director with regard to the Investigation. QBL and PBL both responded to the Executive Director's invitation to comment the Statement of Issues Report. In its response, QBL questioned the preliminary view that it was in a monopoly situation and denied that it was involved in the alleged restrictive business practice.
- 1.3. In addition to comments, PBL provided Undertakings to the Commission under Section 63 of the Act and Rule 28 of the Rules of Procedure on 18th March 2013. A report of Undertakings was thereafter submitted to the Commissioners by the Executive Director on 20th March 2013, following which the Undertakings provided by PBL were deemed to address satisfactorily the competition concerns raised by

COMMISSION/DS/0012

the conduct of PBL in the Statement of Issues Report and thereby accepted by the Commission, and published in the form of a Commission Decision, in pursuance of Section 63(4) of the Act dated 30th April 2013¹. Acceptance of the undertakings offered by PBL thereby ended the investigation into the latter's alleged conduct.

- 1.4. QBL remained under investigation to assess whether its conduct constituted any breach of the Act. Information gathering from the Statement of Issues stage to the Provisional Findings stage focused on determining whether QBL was abusing its monopoly situation, if any, by providing coolers to retailers on exclusionary terms, for the stocking of carbonated soft drinks and still water in Mauritius for immediate consumption supplied chilled by retail outlets of sizes of 20 square meters or less, thus, preventing, restricting or distorting competition in the relevant markets concerned, in breach of Section 46(2)(a) of the Act.
- 1.5. Information was gathered from QBL, the main party to the investigation, as well as from auxiliary parties, following which, the Executive Director issued her Provisional Findings Report to QBL on 24th January 2014 under Rule 14 of the Rules of Procedure setting out the Provisional Findings of the investigation. Therein, the Executive Director invited the views of QBL on the Provisional Findings contained in the Report.
- 1.6. QBL submitted its comments on the Provisional Findings Report on 14th February 2014, essentially disputing the preliminary finding of the Executive Director that QBL was in a monopoly situation but otherwise welcoming the other preliminary findings and recommendation of the Executive Director.
- 1.7. Having regard to the submissions from QBL detailing the reasons for which the Executive Director should make her provisional findings become final, the Executive Director took the final view that QBL had not been abusing its monopoly situation in the relevant market and submitted her final Report of Investigation together with her recommendation to the Commission on 14th March 2014.
- 1.8. The Executive Director made the following findings in her Report:
 - 1.8.1. A review of the monopoly situation of QBL did not show that the enterprise enjoyed such a position of dominance in the market, as defined in Section 46 (3)(a) of the Act, as to make it possible for QBL to adjust prices or output, without effective constraint from the other main player in the market.
 - 1.8.2. Although there is an exclusionary clause in the contract between QBL and retailers, there is no evidence to suggest the clause has had the object or effect of preventing, restricting or distorting competition in the defined market, in breach of Section 46 (2)(a) of the Act.

¹ Decision of the Commissioners of the Competition Commission, 'Investigation into the supply of coolers to retailers by Phoenix Beverages Limited and Quality Beverages Limited' (CCM/DS/0008, 30 April 2013)

- 1.9. The Executive Director concluded her Report, stating that, in the absence of the establishment of any breach of the Act, as far as the conduct of QBL was concerned, there was no need for any remedial action to be recommended.

2. Findings of the Commission

Relevant Market Definition

- 2.1. The Executive Director supported the identification of the relevant market or markets within which QBL operates in accordance with the *CCM Guidelines CCM 2 - Market Definition and Calculation of Market Shares*.
- 2.2. Following these guidelines, the relevant market is defined along two dimensions, as a set of products which could compete with other products and a defined geographical area within which competition occurs.
- 2.3. The Commission has reviewed the arguments and evidence put forward by the Executive Director in defining the relevant product, functional and geographical dimensions of the candidate market and is of the opinion that the Executive Director has correctly identified the relevant market as follows:

- 2.3.1. The supply of coolers to traditional retail outlets of sizes less than 20 square meters in the markets for carbonated soft drinks supplied chilled for immediate consumption, and for still water supplied chilled for immediate consumption, in Mauritius.

Assessment of Monopoly Situation

- 2.3.2. An assessment of facts pertaining to the alleged abuse by QBL of its monopoly situation has been conducted by the Executive Director with respect to the relevant market identified.
- 2.3.3. Information gathered during the investigation revealed that, for the year 2012 and based on turnover figures, PBL's market share in the market for the provision of carbonated soft drinks in Mauritius, in the traditional retail sector was of around 75.6% and that of QBL of around 21.7%. The smallest player on the market was Stag Beverages Ltd with a market share of around 2.8%.
- 2.3.4. Neither PBL nor QBL or Stag Beverages Ltd supplied their carbonated soft drinks or still water chilled in retail outlets. Instead, to allow retailers to sell their respective products chilled, each enterprise provides coolers free of charge to retailers. According to the Executive Director, limited floor space area of retail outlets, of 20m², could prove to be a constraint and be the subject of potential harm based on the alleged conduct of the main party to this investigation. The Executive Director therefore defined the supply of coolers to traditional retail outlets of

sizes less than 20m² in the markets for carbonated soft drinks supplied chilled for immediate consumption and for still water supplied chilled for immediate consumption, in Mauritius as the relevant market.

2.3.5. The Executive Director took the view on the evidence that PBL and QBL together had more than 70% market share in the supply of coolers to traditional retail outlets of sizes less than 20m² in the markets for carbonated soft drinks supplied chilled for immediate consumption, and for still water supplied chilled for immediate consumption, in Mauritius. Given that Section 46 (2) of the Act confers a duty on the Commission to review the exclusionary conduct of any one of the three or fewer enterprises supplying 70% of goods or services in a given market, QBL in our instance, an assessment of the extent of dominance enjoyed by QBL was consequently carried out by the Executive Director.

2.3.6. A phone survey was conducted and a list of retailers who hold coolers from PBL, QBL or Stag Beverages Ltd was drawn up to this end. In total, 81% of the 1080 retailers concerned were interviewed and it was found that only 30 retailers hold coolers exclusively from QBL compared to over 100 retailers which hold coolers from PBL.

2.3.7. The Executive Director took the view that the extent to which QBL can foreclose its competitors depends on the extent to which it requires compliance with the exclusionary clause in the contract that it has with retailers upon the provision of a cooler but it was submitted by QBL that even if retailers do not generally comply with the clause, the enterprise had never taken back the possession of a cooler so far.

2.3.8. Based on the assessment of facts gathered during the investigation, the Executive Director concluded that the conduct of QBL as reviewed during this investigation was not likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or is likely to be detrimental to the interests of consumers.

3. Conclusion

Having taken cognizance of the Executive Director's findings in the Report of Investigation and based on our own assessment of the said findings,

We, the Commissioners, decide that:

- a. In spite of its being in a monopoly situation in the markets for the provision of carbonated soft drink in Mauritius supplied chilled by retail outlets in the traditional retail sector and the market for the provision of still water in Mauritius supplied chilled by retail outlets in the traditional retail sector under Section 46 (1)(b) of the Act, QBL, on its own, does not hold a position of dominance in the relevant markets identified owing to the presence of another significant

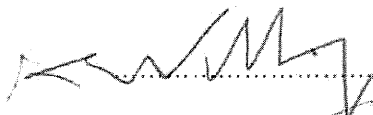
COMMISSION/DS/A/012

competitor which provides effective competitive constraints in the relevant markets identified.

- b. The presence of an exclusionary clause in the contract between QBL and retailers is not supported by evidence to suggest the clause has had the object or effect of preventing, restricting or distorting competition in the defined market under Section 46 (2)(a) of the Act.
- c. Since no breach of the Act has been established on the part of Quality Beverages Ltd, there is no need for any remedial action.

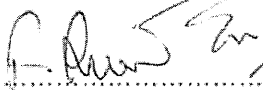
Dated this 23rd April 2014

Mr. Ariranga G. Pillay
(Chairman)



Date 23. 4. 14

Mr. Rajendra. T. Servansingh
(Vice Chairman)



Date 23/04/2014

Mr. J. R. Rodney Rama
(Commissioner)



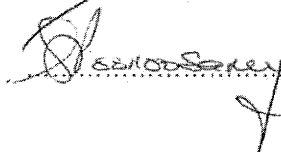
Date 23rd APRIL 2014

Mr. M. R. Sadool
(Commissioner)



Date 23. 04. 2014

Mrs. J. P. Selvon Poonoosamy
(Commissioner)



Date Ap 23 - 2014