

General Notice No. 1414 of 2013

COMMISSION/DS/0008



Mr. Rodney Rama – Commissioner
 Mr. Ravi Sagar – (Acting Chairman) – Chairperson

Decision of the Commissioners of the Competition Commission

On 30th April 2013 the Commission held a hearing where the Commission considered the following:

Fact of the Case

On 18th May 2012, the Executive Director of the Competition Commission (the "CCM") initiated an investigation under Section 51 of the Competition Act 2001 (the "CA") into the conduct of certain activities of the respondents, Pepsico Beverages Limited and Quality Beverages Limited ("Quality Beverages Limited") (collectively referred to as "Quality Beverages Limited") in relation to the sale of certain products.

The investigation was initiated following concerns expressed by the CCM in the latter part of 2011 that the respondents were engaged in anti-competitive practices. The respondents were alleged to have entered into an agreement with certain retailers to stock the drinks produced or distributed by their particular company. The respondents were alleged to have also entered into an agreement with certain retailers to stock any other competitor product in the market for any other retailer. The respondents were also alleged to have entered into an agreement with certain retailers to stock any other competitor product in the market for any other retailer.

30th April 2013

CCM/DS/0008

The Executive Director issued a statement of reasons on 13th December 2012 stating that the preliminary concerns that the Executive Director had in relation to the respondents' conduct were substantiated. In light of the information gathered, the Executive Director initiated an investigation into the respondents' conduct. The respondents were given an opportunity to be heard and to present their views.

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Decision of the Commissioners of the Competition Commission

CCM/DS/0008 - Investigation into the supply of coolers to retailers by Phoenix Beverages Limited and Quality Beverages Limited

Commissioners present:

Mr. Rajiv Servansingh – (Acting Chairperson) - Chairperson

Mr. Rodney Rama – Commissioner

Mr. Reshad Sadool – Commissioner

Mrs. Selvam Poonoosamy- Commissioner

On 30th April 2013, the Commission held a meeting wherein the Commissioners took cognizance of the following:

Facts of the Case

On 18th May 2012, the Executive Director of the Competition Commission (the 'CCM') started an investigation under Section 51 of the Competition Act 2007 (the 'Act'), into the supply of coolers to retail shops by Phoenix Beverages Limited and Quality Beverages Limited (this 'Investigation'), referred to as INV019.

This investigation was initiated following observations by the CCM, to the effect that when either Phoenix Beverages Limited ('PBL') or Quality Beverages Limited ('QBL') grants a cooler to a retailer to stock the drinks produced or distributed by that particular company, the retailer does not stock any other competitor products in the cooler. An enquiry under Rule 5 of the Competition Commission Rules of Procedure 2009 preceded this Investigation.

The Executive Director issued a Statement of Issues on 10th December 2012 to both PBL and QBL setting out the preliminary concerns that the Executive Director has in relation to the Investigation and in which in light of the information gathered, the Executive Director expressed the views that:

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- both PBL and QBL are in a monopoly situation as defined under Section 46 (1) (b) of the Act in the market for the provision of carbonated soft drinks and still water in Mauritius for immediate consumption, supplied chilled by retail outlets of sizes 20m2 or less;
- PBL is in a monopoly situation as defined under Section 46 (1) (a) of the Act in the market for the provision of beer in Mauritius for immediate consumption, supplied chilled by retail outlets of sizes 20m2 or less;
- In providing coolers to retailers on an exclusionary policy, PBL might be abusing its monopoly position in the market for both the provision of carbonated soft drinks and still water in Mauritius for immediate consumption, supplied chilled by retail outlets of sizes 20m2 or less and in the market for the provision of beer in Mauritius for immediate consumption, supplied chilled by retail outlets of sizes 20m2 or less in that this conduct might lead to the potential foreclosure of those competitor companies which for reasons related to costs or space constraints are unable to provide coolers to retailers.

The Executive Director invited comments from both PBL and QBL on the Statement of Issues. Together with its comments and without admission of any liability or accepting any views expressed in the Statement of Issues, PBL provided undertakings under Section 63 of the Act and Rule 28 of the Competition Commission Rules of Procedure 2009 on 18th March 2013 to the CCM.

Upon receipt of the undertakings, the Executive Director issued a Press Communique together with a Media Release on 11th March 2013 setting out the main provisions of the undertakings provided by PBL and inviting comments from any party which might be affected by the undertakings proposed.

The Executive Director gratefully received comments from Stag Beverages Ltd, Food Canners Ltd and Compagnie Industrielle de Pailles Ltée.

After considering all the comments received from the above-named enterprises, the Executive Director of the CCM produced a Report on the undertakings dated 20th March 2013 entitled

“Investigation into the supply of coolers to retailers by Phoenix Beverages Limited and Quality Beverages Limited”.

Conclusion of Report of Investigation

In the Report, the Executive Director concluded that:

- a) The main undertakings offered by PBL in both markets relate to the provision of 20% of the capacity of a rent free cooler which PBL provides to retailers so that the latter may store in it any products of their choosing. The Executive Director is of the view that 20% of shelf space represents a fair amount of cooler space which will be given to competitors' products and during the five years during which the undertakings will remain in force, it can reasonably be expected that the undertakings will allow retailers to propose to end consumers, competitor carbonated soft drink, still water and beer products, chilled thereby fostering a level playing field for the other competitors of PBL.
- b) The granting of the 20% of cooler space is however conditional upon certain exceptions.
- c) The first exception is that the undertakings will not be applicable to a competitor product having a market share of 30% or equal to that of PBL's related product market share. PBL has undertaken to appoint an independent market research expert to determine the market share of that competitor product.
- d) On this point, the Executive Director is of the view that if a competitor product has a market share of 30% or equal to that of a PBL related product, then such product would already have enough leverage on the market to constitute a competitive constraint on the products which PBL stores in its coolers. The manufacturer of those products may find it easier to negotiate floor space with a retailer on par with PBL as opposed to a smaller competitor manufacturer of carbonated soft drink where the retailer might not be willing to stock those products chilled if the retailers do not have a cooler given by those smaller competitors. Furthermore, the Executive Director believes that the appointment of an independent market research expert would indeed give a fair assessment of

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- whether a competitor product has 30% so that it may be excluded from the purview of the undertakings.
- e) A second exception is that competitor products of newly launched PBL branded carbonated soft drink products and beer products will not be stored in the cooler for a period of 2 years.
 - f) The Executive Director believes that it is reasonable for the particular product to enjoy this protection for the specified period of time, as all new products usually need to be promoted and advertised so as to gain market share. Thus on undertakings lasting five years, a span of two years might be sufficient for a competitor to gain market share thereby causing minimal prejudice to competitor products.
 - g) The undertakings will also not apply if, for the purposes of this provision (of 20% shelf space in the cooler), a cooler which is not on view, namely, for example, one which is in the back room or associated home of a customer annexed to a Tabagie, but is used for keeping stocks of products to be sold in the Tabagie. Such a cooler shall be considered as constituting an existing installed chilled beverage capacity in the Tabagie.
 - h) The Executive Director assessed this condition and appreciated the fact that many shops or tabagies do indeed have a backroom cooler which is used to store products to be sold in the shop or tabagie and, as a consequence, many shops may be excluded from the purview of the undertakings. The rationale behind this proviso seems to be that if a backroom cooler is present, the retailer will already have a means to store competitor carbonated soft drinks, still water and beer products which can be supplied to customers should they wish to buy same chilled. Therefore, if the retailers are able to offer competitors' products chilled by keeping products in a backroom cooler, the need for 20% space in a PBL cooler is nullified.
 - i) In relation to the undertakings offered by Phoenix Beverages Ltd for the market for the provision of beer in Mauritius for immediate consumption, supplied chilled by retail outlets of sizes 20m² or less, the undertakings will not apply to "any off Licence Tabagie, if in the vicinity of 200m (two hundred metres) of the said off Licence Tabagie, there is another retail outlet having a cooler sponsored by a competitor selling beer, or having a

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private cooler belonging to the retailer which is not a back room cooler”, the 200 metres representing a walking/driving distance between retail outlets. The rationale behind the non-application of the criterion is if the customer is prepared to walk for some metres around or drive to a maximum of 200 metres in search of the competing chilled beer, then it could be assumed that the competitive product is readily available, thus nullifying the reason and need for the provision of space in PBL’s cooler to competitor’s products.

- j) It is submitted that the rationale for including the distance of 200 metres from an off-licence is that customers demanding chilled beer are normally those who require an almost immediate consumption of the product, where the immediate consumption should not be taken to be on the spot consumption. There are legal restrictions prescribed by the Public Health (prohibition on Advertisement, Sponsorship and Restriction on Sale and Consumption in Public Places, of Alcoholic Drinks Regulation 2008) as to the places where an alcoholic drink, including beer, can be consumed. Therefore, when considering purchases from off licence retail outlets, this is possible if the customer intends to consume the chilled beer in a private area found in the vicinity of that particular retail outlet.

Recommendations of the Executive Director

The Executive Director’s recommendations to the Commissioners are as follows:

With due regard given to the comments provided by Food Canners Ltd and Stag Beverages Ltd and Compagnie Industrielle de Pailles Ltée, the undertakings offered by Phoenix Beverages Ltd satisfactorily address the likely competition concerns outlined in the Statement of Issues for this Investigation, in a reasonable and timely manner.

Therefore, the Executive Director recommends that the Commissioners accept the undertakings.

Decision

Having taken cognizance of:

- i) the undertakings offered by Phoenix Beverages Ltd;

- ii) the comments received by the Executive Director in response to a Press Communique together with a Media Release issued on 11th March 2013 setting out the main provisions of the undertakings provided by Phoenix Beverages Ltd and inviting the comments of any party which might be affected by the undertakings proposed and the Executive Director's assessment of the comments received;
- iii) the recommendations of the Executive Director of the CCM in his Report dated 20th March 2013 and;
- iv) the fact that the Commission is empowered by Section 63(3) of the Act to determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition.

We, the Commissioners state as follows:

- 1) That we are satisfied with the recommendations of the Executive Director of the CCM;
- 2) That we believe that the undertakings would indeed satisfactorily address the concerns the Commission has about any prevention, restriction, distortion or substantial lessening of competition;
- 3) The Commission shall keep under review the compliance with this direction and the performance of the undertakings given by Phoenix Beverages Ltd and will report to PBL on any non-compliance noted by the Commission;
- 4) That, notwithstanding the undertakings offered by Phoenix Beverages Ltd over the duration of five (5) years from the date on which Phoenix Beverages Ltd is notified of the final decision of the Competition Commission or final determination of any Court to which any appeal is made by any third party, Phoenix Beverages Ltd has a continuing obligation to comply with the Competition Act 2007.

We hereby accept the following undertakings as per the hereunder named Annexes:

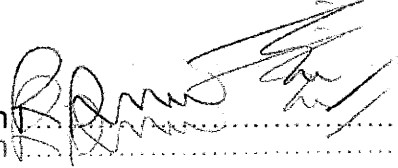
Annex 1: Undertaking – Beer Coolers (dated 18th March 2013)


Annex 2: Undertaking for CSD and Water (dated 18th March 2013)

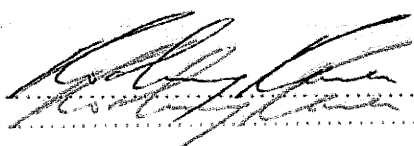
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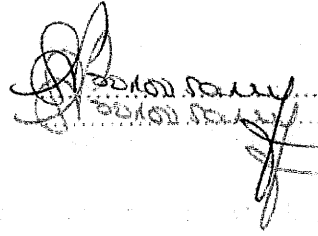
Pursuant to section 63(5) of the Competition Act, the above acceptance of the undertakings given by Phoenix Beverages Ltd shall have the effect of a direction in similar manner as under section 60 of the Competition Act 2007.

Dated this 30th April 2013
Dated this 30th April 2013

Mr. Rajendra T. Servansingh  Date 03/05/2013
Mr. Rajendra T. Servansingh
(Acting Chairman)
(Acting Chairman)

Mr. Reshad Sadool  Date 30/04/2013
Mr. Reshad Sadool
(Commissioner)
(Commissioner)

Mr. Rodney J. R. Rama  Date 30/04/2013
Mr. Rodney J. R. Rama
(Commissioner)
(Commissioner)

Mrs. J. P. Selvam Poonoosamy  Date April 30 2013
Mrs. J. P. Selvam Poonoosamy
(Commissioner)
(Commissioner)

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Annex I

PHOENIX BEVERAGES LTD

UNDERTAKING – BEER COOLERS

RESTRICTED CIRCULATION CLAIMED -18th March 2013.

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Annex I

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Undertaking in relation to Beer Coolers

This undertaking is given under section 63 of the Competition Act 2007 and Rule 28 of the Competition Commission Rule of Procedure.

A. Definitions:

In this Undertaking, the following terms will have the meanings indicated below:

- 1.1 **Beer Coolers** means installed equipment, other than vending machines and fountain equipment, used for chilling Beer.
- 1.2 **CCM** means the Competition Commission of Mauritius
- 1.3 **Beer** means an alcoholic drink as defined by the Excise Act.
- 1.4 **ED** means the Executive Director of the Competition Commission of Mauritius
- 1.5 **Effective Date** means the date on which PBL is notified of the final decision of the Competition Commission or final determination of any Court to which any appeal is made by any third party.
- 1.6 **Existing Agreement** means any agreement, whether oral or written, entered into on or before the Effective Date by PBL in relation to Tabagies.
- 1.7 **Full Implementation Date** means six months after the Effective Date.
- 1.8 **Off Licence** means a Tabagie which has been issued with an Off Licence permit to sell alcoholic drinks subject to the conditions of the issuing authority and any other relevant authority in Mauritius;
- 1.9 **On Licence** means a Tabagie which has been issued with an On licence permit (or an On Licence together with an Off Licence permit) to sell alcoholic drinks subject to the conditions of the issuing authority and any other relevant authority in Mauritius.
- 1.10 **PBL** means Phoenix Beverages Ltd, a corporation incorporated in Mauritius, with its registered office at Round About, Pont Fer, Phoenix and all of its Subsidiaries.
- 1.11 **PBL-Branded** means any Beer brands marketed under trademarks owned by or licensed or commercialised by PBL.
- 1.12 **New Agreement** means any agreement, whether oral or written, entered into after the Effective Date by PBL with Tabagie(s).

1.13 **Tabagie Channel** means Channel of sales consisting of Tabagies.

1.14 **Subsidiaries** mean an entity in which PBL, directly or indirectly, holds an interest exceeding 50% and which is involved in the distribution or sale of Beer in Mauritius.

1.15 **Tabagie(s)** mean(s) a retail outlet known as 'tabagie' or 'boutique du coin' of outlet floor area of 20 square metres or less.

B. MEASURES PROPOSED AS UNDERTAKING:

2.0 PBL hereby gives the following undertaking concerning their commercial practices relating to the placement of Beer Coolers in the Tabagie Channel. This undertaking is designed to provide clear, objective and administrable rules governing the said commercial practices of PBL.

3.0 This Undertaking is made without prejudice to PBL's position should any other party decide to open proceedings or commence any legal action against PBL.

H.1 Substantive provisions:

4.0 PBL undertakes to apply the following measures.

The commitments in this section are applicable to all commercial arrangements on placement of Beer Coolers relating to On Licence and Off Licence Tabagies (as defined above) which PBL sells PBL-Branded Beers in Mauritius.=

5.0 BEVERAGE COOLER PLACEMENT

5.1 The commitments in this section will be applicable to commercial arrangements concerning the installation and use of Beer Coolers in Tabagies (as defined above).

5.2 Beer Coolers

5.2.1 PBL policies for the placement of Beer Coolers will be based on the following principles:

5.2.1.1 **Rent-Free Placement.** Where PBL provides a Beer Cooler on a rent-free basis, a customer may be required to stock that Beer Cooler

only with Beer distributed by PBL placing the equipment, provided the customer has other installed chilled beverage capacity in the outlet. Where a Beer Cooler is provided on a rent-free basis by PBL and the customer does not have other installed chilled beverage capacity in the outlet, the customer will be free to use 20% of that Beer Cooler's capacity for any products of its choosing. For the purposes of this provision, a cooler which is not on view, namely, for example, one which is in the back room or associated home of a customer annexed to a Tabagie (collectively 'back room cooler') but used for keeping stocks of products to be sold in the Tabagie shall be considered as constituting of an existing installed chilled beverage capacity in the Tabagie.

5.2.1.2 PBL shall:

5.2.1.2.1 include in its written agreement for the placement of PBL Coolers relevant to this undertaking, a warning to the retailer to consider acting within the laws of Mauritius in its discretion to use the 20% capacity mentioned in paragraph 5.2.1.1 above,

5.2.1.2.2 positively impress on Tabagies not to stock any out of date or expired products within the said discretionary use capacity area

but this without PBL accepting any responsibility or liability or policing the said warning notice.

5.2.1.3 PBL shall include in its written agreement for the placement of PBL Coolers relevant to this undertaking, a clause for any Tabagie to confirm of the existence of a back room cooler available at the Tabagie outlet location, and advise of any change in status of the said back room cooler so as to ensure that the back room cooler is being used for keeping products in the Tabagie.

5.2.2 The Obligations under paragraph 5.2.1.1 does not apply to:

5.2.2.1 Beer products of competitors with a Beer flavour segment share of more than or equal to 30% or where this share is higher than that of the relevant equivalent PBL Branded Beer; or

5.2.2.2 Competitors of newly launched PBL Branded Beer products for a period for a period of 2 years from the launch of the said PBL Branded Product.

5.2.2.3 Any Off Licence Tabagie, if in the vicinity of 200m (two hundred metres) of the said Off Licence Tabagie, there is another retail outlet having a cooler sponsored by a competitor selling beer, or having a

private cooler belonging to the retailer which is not a back room cooler.

- 5.2.3 An independent market research expert shall be appointed to determine the market share of a competitor product under paragraph paragraphs 5.22. et seq. as required.

6.0 IMPLEMENTATION

6.1 ENTIRE AGREEMENT

- 6.1.1 This Undertaking comprises the entire extent of PBL commitments to or agreements or understandings with CCM.

6.2 SCOPE OF APPLICATION

- 6.2.1 PBL will be bound by this Undertaking for the territory of Mauritius.

- 6.2.2 PBL will be responsible for ensuring its compliance with the Undertaking.

6.2.3 New Agreements

- 6.2.3.1 All New Agreements will comply with this Undertaking.

6.2.4 Existing Agreements

- 6.2.4.1 All Existing Agreements will be brought into compliance with this Undertaking by the Full Implementation Date.

6.3 CHANGES IN APPLICABILITY

- 6.3.1 PBL shall be at liberty to approach the CCM at any time during the undertaking period to request the CCM to reconsider this undertaking. PBL shall appoint an independent market research team to compile the beer market share information necessary to determine whether this undertaking shall continue to be applicable to Tabagies. PBL shall, for such purpose, provide the CCM with a report describing the process undertaken by PBL to identify the currently available share data for purposes of determining the applicability of the undertaking to the Tabagies Channel and providing the required beer share information.

- 6.3.2 The Tabagie Channel ceases to be subject to this Undertaking because the applicable thresholds are no longer met, namely

- 6.3.2.1 Competitor products having more or equal to 30% of the Beer flavour segment share; or

- 6.3.2.2 Competitor products having a higher share than the equivalent PBL Branded Beer Flavour.

6.4 REPORTING

6.4.1 Compliance Certification

6.4.1.1 PBL will provide annually a written report describing steps taken by PBL to comply with this Undertaking. Such statements shall confirm that PBL has implemented a compliance program according to which it has made the Undertaking known to all of its management and commercial employees and that all such employees are familiar with the terms of this Undertaking. Such reports will be delivered to the CCM on or before March 31 of each year.

6.5 PUBLICITY

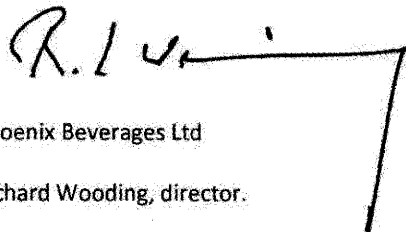
6.5.1 Scope of Application

PBL will use its best efforts to ensure that this Undertaking is made known to and is understood by its customers and other industry participants.

6.6 DURATION AND REVIEW

6.6.1 Duration

6.6.1.1 This Undertaking will remain in force for a period of five years following the Full Implementation Date.



Phoenix Beverages Ltd

Richard Wooding, director.

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Annex II

Phoenix Beverages Ltd

Undertaking for CSD and Water

Restricted Circulation claimed – 18th March 2013

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UNDERTAKING FOR CSD AND STILL WATER

This undertaking is given under section 63 of the Competition Act 2007 and Rule 28 of the Competition Commission Rule of Procedure.

A. Definitions:

In this Undertaking, the following terms will have the meanings indicated below:

- 1.1 **Beverage Coolers.** means installed coolers used for chilling packaged CSDs.
- 1.2 **CCM** means the Competition Commission of Mauritius
- 1.3 **CSDs.** means Sweetened, non-alcoholic drinks containing carbon dioxide. Excludes carbonated tea-based and coffee-based products (included in iced/rtd tea drinks and iced/rtd coffee drinks respectively) and carbonated sports drinks and energy drinks. Includes carbonated juice (eg Appletiser), carbonated nectars, regardless of juice content. Includes sweetened water-based carbonated flavoured drinks.
- 1.4 **ED** means the Executive Director of the Competition Commission of Mauritius
- 1.5 **Effective Date** means the date on which PBL is notified of the final decision of the Competition Commission or final determination of any Court to which any appeal is made by any third party.
- 1.6 **Existing Agreement** means any agreement, whether oral or written, entered into on or before the Effective Date by PBL in relation to Tabagies.
- 1.7 **Full Implementation Date** means six months after the Effective Date.
- 1.8 **PBL** means Phoenix Beverages Ltd, a corporation incorporated in Mauritius, with its registered office at Round About, Pont Fer, Phoenix and all of its Subsidiaries.
- 1.9 **PBL-Branded** means any CSD and Still water brands marketed under trademarks owned by or licensed or commercialised by PBL.
- 1.10 **New Agreement** means any agreement, whether oral or written, entered into after the Effective Date by PBL with Tabagie(s).

1.11 **Tabagie Channel** means Channel of sales consisting of Tabagies.

1.12 **Subsidiaries** mean an entity in which PBL, directly or indirectly, holds an interest exceeding 50% and which is involved in the distribution or sale of CSDs in Mauritius.

1.13 **Tabagie(s)** mean(s) a retail outlet known as 'tabagie' or 'boutique du coin' specifically of outlet floor area of 20 square metres or less.

B. MEASURES PROPOSED AS UNDERTAKING:

2.0 PBL hereby gives the following undertaking concerning their commercial practices in the placement of Beverage Coolers in the Tabagie Channel (as defined above). This undertaking is designed to provide clear, objective and administrable rules governing the said commercial practices of PBL.

3.0 This Undertaking is made without prejudice to PBL's position should any party decide to open proceedings or commence any legal action against PBL.

F.1 Substantive provisions:

4.0 PBL undertakes to apply the following measures.

The commitments in this section are applicable to all commercial arrangements on Beverage Coolers relating to Tabagies (as defined above) to which PBL sells PBL-Branded CSDs in Mauritius.

5.0 BEVERAGE COOLER PLACEMENT

5.1 The commitments in this section will be applicable to commercial arrangements concerning the installation and use of Beverage Coolers.

5.2 Beverage Coolers

5.2.1 PBL policies for the placement of Beverage Coolers will be based on the following principles:

5.2.1.1 **Rent-Free Placement.** Where PBL provides a Beverage Cooler on a rent-free basis, a customer may be required to stock that Beverage Cooler only with beverages distributed by PBL placing the equipment, provided the customer has other installed chilled beverage capacity in the outlet. Where a Beverage Cooler is provided on a rent-free basis and the customer does not have other installed chilled beverage capacity in the outlet, the customer will be free to use 20% of that Beverage Cooler's capacity for any products of its choosing. For the purposes of this provision, a cooler which is

not on view, namely, for example, one kept in the back room or associated home of a customer annexed to a Tabagie (collectively "back room cooler") but used for keeping products to be sold in a Tabagie shall be considered as constituting of an existing installed chilled beverage capacity in the outlet.

5.2.1.2 PBL shall:

5.2.1.2.1 include in its written agreement for the placement of PBL Coolers relevant to this undertaking, a warning to the retailer to consider acting within the laws of Mauritius in its discretion to use the 20% capacity mentioned in paragraph 5.2.1.1 above,

5.2.1.2.2 positively impress on Tabagies not to stock any out of date or expired products within the said discretionary use capacity area

but this without PBL accepting any responsibility or liability or policing the said warning notice.

5.2.1.3 PBL shall include in its written agreement for the placement of PBL Coolers relevant to this undertaking, a clause for any Tabagie to confirm the existence of a back room cooler available at the Tabagie outlet location, and advise of any change in status of the said back room cooler so as to ensure whether the back room cooler is being used for keeping products in the Tabagie.

5.2.2 The Obligations under paragraph 5.2.1.1 does not apply to:

5.2.2.1 CSD products of competitors with a CSD flavour segment share of more than or equal to 30% or where this share is higher than that of the relevant equivalent PBL Branded CSD flavour; or

5.2.2.2 Competitors of newly launched PBL Branded CSD products for a period for a period of 2 years from the launch of the said PBL Branded Product.

5.2.3 An independent market research expert shall be appointed to determine the market share of a competitor product under paragraph 5.2.2.1 and 5.2.2.2 as required.

6.0 IMPLEMENTATION

6.1 ENTIRE AGREEMENT

6.1.1 This Undertaking comprises the entire extent of PBL commitments to or agreements or understandings with CCM.

6.2 SCOPE OF APPLICATION

6.2.1 PBL will be bound by this Undertaking for the territory of Mauritius.

6.2.2 PBL will be responsible for ensuring its compliance with the Undertaking.

6.2.3 New Agreements

6.2.3.1 All New Agreements will comply with this Undertaking.

6.2.4 Existing Agreements

6.2.4.1 All Existing Agreements will be brought into compliance with this Undertaking by the Full Implementation Date.

6.3 CHANGES IN APPLICABILITY

6.3.1 PBL shall be at liberty to approach the CCM at any time during the undertaking period to request the CCM to reconsider this undertaking. PBL shall appoint an independent market research team to compile the CSD and/or water market share information necessary to determine whether this undertaking shall continue to be applicable to Tabagies. PBL shall, for such purpose, provide the CCM with a report describing the process undertaken by PBL to identify the currently available share data for purposes of determining the applicability of the undertaking to the Tabagies Channel and providing the required CSDs and/or water share information.

6.3.2 The Tabagie Channel ceases to be subject to this Undertaking because the applicable thresholds are no longer met, namely:

6.3.2.1 Competitor CSDs or water having more or equal to 30% of the CSD flavour segment share in the Tabagie Channel; or

6.3.2.2 Competitor CSDs or water having a higher share than the equivalent PBL Branded CSD Flavour;

6.4 REPORTING

6.4.1 Compliance Certification

6.4.1.1 PBL will provide annually a written report describing steps taken by PBL to comply with this Undertaking. Such statements shall confirm that PBL has implemented a compliance program according to which it has made the Undertaking known to all of its management and commercial employees and that all such employees are familiar with the terms of this Undertaking. Such reports will be delivered to the CCM on or before March 31 of each year.

6.5 PUBLICITY

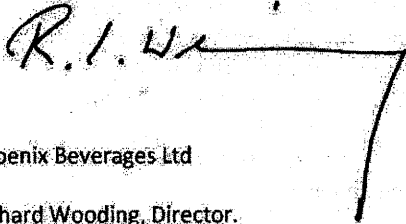
6.5.1 Scope of Application

6.5.2 PBL will use its best efforts to ensure that this Undertaking is made known to and is understood by its customers and other industry participants.

6.6 DURATION AND REVIEW

6.6.1 Duration

6.6.1.1 This Undertaking will remain in force for a period of five years following the Full Implementation Date.



Phoenix Beverages Ltd

Richard Wooding, Director.

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