MEDIA RELEASE

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Investigation Ref: INV027

COMMISSIONERS ENDORSE THE RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR AND DIRECT PHOENIX BEVERAGES LTD AND STAG BEVERAGES LTD TO PAY FINANCIAL PENALTIES OF MUR 27 MILLION FOR COLLUSIVE BEHAVIOUR.

The Commissioners of the Competition Commission (CCM) have today issued their decision in the investigation into a potential collusive agreement that may exist between Phoenix Beverages Ltd and Stag Beverages Ltd. The final report of investigation was submitted by the Executive Director to the Commissioners in June 2014 as per section 51 of the Competition Act 2007 (the Act). In her Final Report the Executive Director recommended to the Commission the imposition of financial penalties on both Phoenix Beverages Ltd and Stag Beverages Ltd in addition to the imposition of directions.

On the 22 August 2014, the quorum of three Commissioners, as is required under section 16 (3) of the Act, fully endorsed the recommendations of the Executive Director and decided that there has been an agreement between Phoenix Beverages Ltd and the Stag Beverages Ltd with the object and/or effect of sharing the beer market in Mauritius and restricting the supply of beer in the beer market of Mauritius, in breach of the provisions of section 41 of the Act.

The Commissioners further decided to accept the undertakings offered by Phoenix Beverages Ltd, which will take the form of a direction of the Commission and comprise of the following main elements:

1. Phoenix Beverages Ltd will seek the clearance of the CCM prior to any increase in prices when such increase is not attributable to costs for a period of 4 years.

2. Phoenix Beverages Ltd will not stop the commercial distribution of any brands of its beer for a period of 2 years without the authorization of the CCM.
3. Phoenix Beverages Ltd will provide certain resellers with space in its coolers for a period of 2 years.

The Commission has also declared the provision of the agreement in so far as it makes a condition to the agreement the exit of Stag Beverages Ltd from the beer market of Mauritius and the dismantling of the plant of Stag Beverages Ltd from Mauritius, prohibited and void.

The Commission has moreover imposed additional directions to limit communications between Stag Beverages Ltd and Phoenix Beverages Ltd.

Given that the breach is of a serious nature and that the agreement may have already caused significant harm to competition the Commission further decided to:

1. Impose a financial penalty on Phoenix Beverages Ltd for breach of the provisions of section 41 of the Act, net of leniency, of MUR 20, 299, 355, subject to Phoenix Beverages Ltd’s continued co-operation with the CCM and compliance with the Undertakings.

2. Impose a financial penalty on Stag Beverages Ltd for breach of the provisions of section 41 of the Act, of MUR 6, 575, 377.

3. Order that the respective financial penalties be paid within 25 working days of this Decision.

Now that the Commissioners have decided on the matter the parties will have to pay the financial penalties and abide by the directions. It must be noted that Phoenix Beverages Ltd has taken advantage of the leniency programme offered by the CCM and benefitted from significant reductions in fines.

The Executive Director of the CCM said:

“I welcome this decision of the Commissioners to endorse the recommendations I had made in this case. This is the first cartel investigation in which a financial penalty has been imposed. It is worth noting that the financial penalties is a reduced amount, because one of the party took the benefit of the provisions regarding leniency.

This case shall also act as precedence in terms of the application of leniency to give the necessary reassurance which lawyers and the business community so far have been seeking from CCM in terms of its applicability and certainty.”
Leniency is internationally recognised as the best means of cartel detection and prosecution. It works in favour of both the enterprises concerned and the Competition Agency as the former receives either a total immunity from fine or a reduced fine, whilst the Competition Agency is able to conduct its cartel investigation in a shorter span of time without incurring heavy costs.

This case will also send the right signal to any enterprise in Mauritius, that the Competition Commission fully intends to use the full force of the law, with due respect to the rights of parties, in terms of natural justice and fairness.

We also hope that by imposing several directions on the parties, the damage on competition in the beer market in Mauritius through the exit of Stag Beverages Limited will to a large extent be curtailed.”

A copy of the decision of the Commissioners will be available on our website and will be gazetted in the Government Gazette.

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on November 25th 2009, and is enforced by the CCM. Sub-parts I of Part III of the Competition Act 2007, cover restrictive business practices described under ‘Collusive agreements’.

Collusive Agreements:

Sections 41 to 43 of the Act prohibit agreements between enterprises, which are considered collusive, unless excluded under the Act. An “agreement” may be in any form, whether or not legally enforceable and includes an oral agreement, a decision by an association of enterprises and any concerted practice. A Concerted practice means “a practice involving contacts or communications between competitors falling short of an actual agreement but which nonetheless restricts competition between them.”

An agreement is considered collusive under the Competition Act 2007, if it exists between enterprises that supply or acquire goods and services of the same description; prevents, restricts or distorts competition and the object and effect of which is, in any way, to:

- Fix the selling or purchase price of goods and services;
- Share markets or sources of supply of the goods and services;
- Restrict the supply or acquisition of the goods or services
The CCM takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects. Consequently, if the CCM finds evidence of collusive agreements, it will normally expect that such behaviour will have adverse effects on consumers or the economy as a whole and may impose appropriate directions, including financial penalties, to remedy the situation.

Further information: