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MEDIA RELEASE

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THE EXECUTIVE DIRECTOR RECOMMENDS FINANCIAL PENALTIES OF RS. 27 MILLION ON PHOENIX BEVERAGES LIMITED AND STAG BEVERAGES LIMITED

In her Final Report of investigation submitted as per section 51(2) of the Competition Act 2007 (the 'Act') to the Chairperson of the Competition Commission (CCM), the Executive Director of the CCM (the Executive Director) **recommends the imposition of financial penalties for an amount of Rs. 20, 299, 355 on Phoenix Beverages Limited and Rs. 6, 575, 377 on Stag Beverages Limited respectively.** In addition to the financial penalties, the Executive Director has recommended several measures to address the competition concerns that the investigation has revealed.

These recommendations follow the investigation launched by the Executive Director in which she found that, Phoenix Beverages Ltd on the one hand and Stag Beverages Ltd/Castel Group on the other hand were party to the collusive agreement in breach of section 41 of the Act. The Executive Director however finds that the agreement was more likely to be negligent rather than intentional in nature.

The investigation was started in March 2014 when the Executive Director had reasonable grounds to believe that Phoenix Beverages Ltd and the Castel Group/Stag Beverages Ltd may jointly have agreed to exit the Madagascar and Mauritius markets of beer respectively. The Executive Director's concern was that such an agreement, may amount to the allocation of the Mauritian beer market to Phoenix Beverages Ltd only and the restriction of supply of beer in Mauritius by the closure of Stag Beverages Ltd (and thus, its exit from the Mauritian beer market), in breach of section 41 of the Act.

Phoenix Beverages Ltd took advantage of the CCM's Leniency Programme provided for under CCM3 Guidelines on Collusive Agreements whereby enterprises may obtain lenient treatment in exchange of information on cartel activity in which they are involved. As part of its leniency application, Phoenix Beverages Ltd submitted information to the CCM which led the Executive Director to conclude that

there was indeed a collusive agreement between Phoenix Beverages Ltd and Stag Beverages Ltd in breach of section 41 of the Act.

Both Phoenix Beverages Ltd and Stag Beverages Ltd have indicated their intention to comply with the financial and non-financial directions as recommended in the report of investigation, albeit that the parties have not admitted liability, both Phoenix Beverages Ltd and Stag Beverages Ltd have also waived their rights to a hearing before the Commissioners.

It is now incumbent on the Commissioners to give the final directions, after taking cognizance of the recommendations of the Final Report of the Executive Director.

Mrs. Kiran Meetarbhan, Executive Director of the CCM said:

“Many jurisdictions have developed programs that offer leniency because of the many benefits that flow from having them. In line with international best practices, the CCM has not lagged behind in developing a leniency program that has been reinforced so as to grant full amnesty to the first reporting firm in addition to offering judicial security to informants.

This investigation triggered our first leniency application since the CCM’s inception. This is also the first cartel investigation which I have launched in my capacity as Executive Director for which I have recommended financial penalties in addition to other measures to address competition concerns.

I wish to commend the main parties’ approach in this investigation which has revealed a true spirit of co-operation. Leniency programs create powerful incentives to enterprises to race to self-report at an early stage. Evidence can thus be obtained more quickly, and at a lower direct cost, compared to other methods of investigation, leading to prompt and efficient resolution of cases. This case provides a perfect example of the manner in which a leniency application coupled with the active cooperation of the main parties have led to the successful completion of the investigation within a remarkable three months’ timeline.

The fines recommended on Phoenix Beverages Ltd takes into account its leniency application, absent which, the fines would have been higher. Phoenix Beverages Ltd took advantage of the amnesty provisions, which lapsed on 24th May 2014. We cannot stress enough the importance of the leniency programme with regards to collusive agreements.

Several factors help to free an economy from the malicious effects of a collusive agreement including a strong political support towards fighting cartels and a resilient commitment to equip the competition agency with the appropriate legislative framework and adequate financial resources. The Government

has signified its intention to further empower the Competition Commission in order to better fight cartels. This was announced by the Prime Minister in his address to the Nation this year."

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.

Leniency Programme

The CCM has had a leniency programme since its inception in 2009. Under the leniency programme, members of a cartel may come forward to the Commission and admit their cartel involvement and provide the Commission with information on the cartel, in return for lenient treatment from the Commission. Enterprises which apply for leniency may therefore receive total immunity from financial penalties or leniency of up to 100% of financial penalties. For more information on the leniency programme, please consult the CCM3 Guidelines on Collusive Agreements.

http://www.ccm.mu/English/Documents/Legislations/CCM3-Guidelines-Collusive_Agreements_May2012.pdf

Further information:

For further information see the CCM's website at www.ccm.mu, and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Competition Commission Rules of Procedure', 'CCM 3 - Collusive agreements' and 'CCM 6 - Remedies and Penalties', all available on the web site.