

FILED / PRODUIT

Date: September 27, 2010

CT- 2010-009

Chantal Fortin for / pour
REGISTRAR / REGISTRARE

OTTAWA, ONT.

2

PUBLIC VERSION

CT-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by The Coca-Cola Company of the North American carbonated soft drink business of Coca-Cola Enterprises Inc.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

– and –

THE COCA-COLA COMPANY

Respondent

CONSENT AGREEMENT IN RELATION TO THE ACQUISITION BY THE COCA-COLA COMPANY OF THE NORTH AMERICAN BUSINESS OF COCA-COLA ENTERPRISES INC.

PUBLIC VERSION

WHEREAS The Coca-Cola Company (“**TCCC**”) and Coca-Cola Enterprises Inc. (“**CCE**”) entered into a Business Separation and Merger Agreement dated February 25, 2010 pursuant to which TCCC is to acquire the North American carbonated soft drink business of CCE;

AND WHEREAS CCE will separate its business of marketing, producing and distributing non-alcoholic beverages outside of the United States, Canada, the British Virgin Islands, the United States Virgin Islands and the Cayman Islands and transfer those businesses to International CCE Inc. (“**New CCE**”);

AND WHEREAS the existing shareholders of CCE, other than TCCC or any of its subsidiaries, will receive 1.000 share of New CCE common stock and cash consideration of \$10.00 in exchange for each share of common stock of CCE and TCCC will become the owner of all of the shares of CCE common stock and CCE will merge into and continue as a wholly-owned subsidiary of TCCC (the “**Transaction**”);

AND WHEREAS the Commissioner of Competition (the “**Commissioner**”) has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of carbonated soft drinks in Canada;

AND WHEREAS the Commissioner has concluded that the implementation of this Consent Agreement (the “**Agreement**”) is necessary and sufficient to ensure that any substantial lessening and/or prevention of competition would not result from the Transaction;

AND WHEREAS the Respondent does not admit but will not for the purposes of the enforcement of any provision of this Agreement, or in any subsequent proceeding, including in any proceedings under section 106 of the *Competition Act* (the “**Act**”), in relation to this Agreement contest: (i) that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of carbonated soft drinks in Canada; and (ii) that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition would not result from the Transaction;

AND WHEREAS in this Agreement to address the Commissioner’s concerns, the Respondent has agreed to certain restrictions on the use of CDMI Commercially Sensitive Information;

AND WHEREAS TCCC attorns to the jurisdiction of the Competition Tribunal (the “**Tribunal**”) and the courts for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement;

AND WHEREAS the Commissioner and TCCC agree to the immediate registration of this Agreement with the Tribunal;

NOW THEREFORE TCCC and the Commissioner agree as follows:

I. DEFINITIONS

[1] For the purposes of this Agreement, unless something in the subject matter or context is inconsistent therewith, the following terms have the following meanings:

PUBLIC VERSION

- (a) “**Act**” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (b) “**Additional Firewalled TCCC Personnel**” means those employees that are identified and approved pursuant to subparagraph [8](b) of this Agreement;
- (c) “**affiliate**” means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (d) “**Agreement**” means this Consent Agreement entered into between the Commissioner and the Respondent pursuant to section 105 of the Act, including the appendices hereto;
- (e) “**Bottler**” means an entity licensed by a Concentrate Company to produce, distribute, market, price, and sell carbonated soft drink products under the brands of that Concentrate Company;
- (f) “**Bottler Functions**” means the following activities, and no others, of a Bottler, which are typical of a Bottler that no Concentrate Company owns or has a controlling interest in: (1) purchasing concentrate from one or more Concentrate Companies for use in the production of carbonated soft drinks, (2) producing carbonated soft drinks, (3) marketing, advertising, promoting, distributing, pricing, and selling carbonated soft drinks, (4) implementing the marketing, advertising, and promotional programs of the Concentrate Company, (5) determining and coordinating the amount or timing of funding of retail-related promotions of carbonated soft drinks for that retailer’s operations for the brands of carbonated soft drink products of more than one Concentrate Company, and (6) formulating and engaging in marketing, advertising, or promotional activities for the brands of carbonated soft drink products of more than one Concentrate Company within the Territory; provided, however, that no Concentrate-Related Functions are included in Bottler Functions. For greater certainty, for purposes of this Agreement, Bottler Functions include those of TCCC as a Bottler;
- (g) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (h) “**CCE**” means Coca-Cola Enterprises Inc., a company with its principal place of business in Atlanta, Georgia, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by CCE, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. For greater certainty, CCE includes Coca-Cola Bottling Company, a company with its principal place of business in Toronto, Ontario, but does not include New CCE;

PUBLIC VERSION

- (i) “**CDMI**” means Canada Dry Mott’s Inc., a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 30 Eglinton Avenue, Mississauga, Ontario L5R 3E7, a subsidiary of Dr Pepper Snapple Group, Inc., and its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (j) “**CDMI Beverages**” means the carbonated soft drink products that will be sold by TCCC in Canada under the License Transaction and all package sizes and flavours sold under this License Transaction; CDMI Beverages also includes any new sizes and flavours introduced by CDMI and carried by TCCC in the Territory;
- (k) “**CDMI Bottler Functions**” means Bottler Functions related to CDMI Beverages;
- (l) “**CDMI Commercially Sensitive Information**” means all information provided, disclosed, or otherwise made available by CDMI to TCCC relating to CDMI Beverages that is not in the public domain, including but not limited to information related to the research, development, production, marketing, advertising, promotion, pricing, distribution, sales, or after-sales support of CDMI Beverages; CDMI Commercially Sensitive Information includes: (1) CDMI Information Relating To Concentrate Functions and (2) CDMI Information Relating To Bottler Functions;
- (m) “**CDMI Concentrate-Related Functions**” means Concentrate-Related Functions related to CDMI Beverages;
- (n) “**CDMI Information Relating To Bottler Functions**” means CDMI Commercially Sensitive Information relating to CDMI Bottler Functions; CDMI Information Relating To Bottler Functions includes no more than the type of information that CDMI provided to its Bottlers in the Territory prior to the Transaction; provided, however, that CDMI Information Relating To Bottler Functions may not necessarily include all such information;
- (o) “**CDMI Information Relating To Concentrate Functions**” means CDMI Commercially Sensitive Information relating to CDMI Concentrate-Related Functions;
- (p) “**CDMI Information Relating To Independent CDMI Promotions**” means CDMI Commercially Sensitive Information relating to planned Promotional Activities for CDMI Beverages that are separate from and independent of planned Promotional Activities for TCCC Beverages;

PUBLIC VERSION

- (q) “**CDMI National Accounts**” means those retailers that sell CDMI Beverages in the Territory (or those retailers that do not sell CDMI Beverages in the Territory but that CDMI is calling on to persuade them to sell CDMI Beverages in the Territory) to which CDMI makes account calls in support of the CDMI Beverages sold by or on behalf of TCCC in the Territory;
- (r) “**Closing Date**” means the date upon which the Transaction is completed;
- (s) “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (t) “**Concentrate Company**” means a company that formulates concentrate for the production of carbonated soft drink products and other beverages and sells the concentrate to Bottlers. For greater certainty, for purposes of this Agreement, TCCC and CDMI are Concentrate Companies;
- (u) “**Concentrate-Related Functions**” means the activities of a Concentrate Company that are typical of a Concentrate Company operating separately from and independently of any Bottler in which it may have an interest, including: (1) setting the price of the concentrate sold by the Concentrate Company and selling that concentrate, (2) making decisions with respect to formulating and introducing new brands and flavours to offer to Bottlers, (3) making decisions with respect to introducing new flavours and package sizes of existing brands, (4) formulating and designing marketing and advertising programs of the Concentrate Company, and (5) determining whether, to what extent, and when the Concentrate Company will fund Promotional Activities. For greater certainty, for purposes of this Agreement, Concentrate-Related Functions include those of TCCC;
- (v) “**Confidential Information**” means competitively sensitive or proprietary information not independently known to a person from sources other than the entity to which the information pertains or to a person who is under confidentiality obligations to such first mentioned person, including, without limiting the generality of the foregoing, manufacturing, operations and financial information, operating costs and revenues, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets;
- (w) “**Legal or Regulatory Functions**” means activities necessary to comply with financial or other regulatory requirements, obtain or provide legal advice, or otherwise comply with applicable laws and regulations, including this Agreement;
- (x) “**License Transaction**” means the agreement between TCCC and CDMI, containing a license to produce, distribute, market, price, and sell CDMI Beverages in Canada, in the form attached at Confidential Appendix “A”. Such agreement shall constitute a Remedial Agreement;
- (y) “**Monitor**” means the person appointed by the Commissioner pursuant to Part IV of this Agreement;

PUBLIC VERSION

- (z) “**National Accounts Sales Team**” means the TCCC Bottling Operations Personnel who (1) call on CDMI National Accounts and (2) determine and formulate the level and timing of Promotional Activities in support of TCCC Beverages sold by TCCC in the Territory that do not include CDMI Beverages;
- (aa) “**New CCE**” means New CCE as defined in the recitals, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (bb) “**person**” means any individual, partnership, limited partnership, firm, corporation, association, trust, unincorporated organization or other entity, whether acting alone or in concert with another person;
- (cc) “**Promotional Activities**” means price and non-price promotions, in-store displays, and newspaper inserts;
- (dd) “**Remedial Agreement**” means any agreement between the Respondent and CDMI that has been approved by the Commissioner and that is specifically referenced in this Agreement as constituting a Remedial Agreement;
- (ee) “**TCCC**” or “**Respondent**” means The Coca-Cola Company, a company with its principal place of business in Atlanta, Georgia, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; after the Transaction, TCCC includes the North American carbonated soft drink business of CCE acquired in the Transaction;
- (ff) “**TCCC Beverages**” means TCCC brands of carbonated soft drink products and all package sizes and flavours thereof; TCCC Beverages shall not include CDMI Beverages;
- (gg) “**TCCC Bottling Operations Personnel**” means persons, functions, or positions of or within TCCC that satisfy all of the criteria described in Part III of this Agreement; “TCCC Bottling Operations Personnel” as of the date of this Agreement shall include, but not be limited to, the names, functions, or positions described in Appendix “B” to this Agreement (the “**List**”) and all people who report (directly or indirectly) to such names, functions, or positions; the List shall indicate those who have access under paragraphs [4] and [5]; all changes to the TCCC Bottling Operations Personnel shall be in accordance with the procedure described in Part III of this Agreement;
- (hh) “**Territory**” means Canada or any part thereof;
- (ii) “**Transaction**” means the Transaction as defined in the recitals; and

- (jj) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), as amended.

All other terms defined in this Agreement have the meanings established elsewhere in this Agreement.

II. APPLICATION

[2] The provisions of this Agreement shall apply to:

- (a) the Respondent, and the Respondent shall cause each of its affiliates to carry out their respective obligations under this Agreement;
- (b) each officer, director, employee, agent or other person acting for or on behalf of the Respondent with respect to any of the matters referred to in this Agreement;
- (c) all other persons acting in concert or participating with one or more of those listed in (a) or (b) above, with respect to the matters referred to in this Agreement, who shall have received actual notice of this Agreement;
- (d) the Commissioner; and
- (e) the Monitor.

III. USE OF CDMI COMMERCIALY SENSITIVE INFORMATION BY TCCC

[3] TCCC shall not use CDMI Information Relating To Concentrate Functions for any purpose except as expressly provided in this Agreement.

[4] TCCC shall use CDMI Information Relating To Bottler Functions only under the following conditions:

- (a) the CDMI Information Relating To Bottler Functions is provided, disclosed, or otherwise made available only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;
- (b) the CDMI Information Relating To Bottler Functions is used only in connection with CDMI Bottler Functions, or solely for the purpose of Legal or Regulatory Functions;
- (c) the CDMI Information Relating To Bottler Functions is used only in or in relation to the Territory;
- (d) the CDMI Information Relating To Bottler Functions is not used in connection with Concentrate-Related Functions in any way, such prohibition to include but not be limited to using the information even if the CDMI Information Relating To Bottler Functions is not itself revealed;

PUBLIC VERSION

- (e) all CDMI documents and copies of documents reflecting or containing CDMI Information Relating To Bottler Functions (whether in the form provided by CDMI or in a form created by TCCC) are maintained as confidential until the earlier of five (5) years from the date that such documents are received by TCCC, or when CDMI Information Relating To Bottler Functions becomes public through no act of TCCC; and
 - (f) CDMI Information Relating To Independent CDMI Promotions shall not be provided to the National Accounts Sales Team any time prior to the disclosure of such information to any Bottler other than TCCC.
- [5] TCCC Bottling Operations Personnel shall include only those persons, functions, or positions that:
- (a) are responsible for Bottler Functions or Legal or Regulatory Functions only; provided, however, that persons, functions, or positions included within “TCCC Bottling Operations Personnel” because they are responsible for Legal or Regulatory Functions shall have access to and use of such CDMI Commercially Sensitive Information, but only to the extent such information is necessary to perform such Legal or Regulatory Functions;
 - (b) are not responsible for Concentrate-Related Functions, and if any such person, function, or position reports (directly or indirectly) to a person responsible for Concentrate-Related Functions, that person, function, or position shall not disclose, provide, or otherwise make available CDMI Commercially Sensitive Information to the person responsible (directly or indirectly) for Concentrate-Related Functions; and
 - (c) do not receive bonuses or other tangible benefits related to the marginal sale of TCCC Beverages as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of CDMI Beverages.
- [6] Each person specifically identified at Appendix “B” must submit to the Commissioner an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Agreement, will comply with its terms, and will take all reasonable steps to ensure that employees that report to him or her will comply with its terms. Such materials shall be submitted:
- (a) for each person specifically identified in Appendix “B”, no later than twenty (20) days after the Closing Date; and
 - (b) for each person who replaces any of those specifically identified in Appendix “B” or who are given any subset of the responsibilities of those people specifically identified in Appendix “B”, no later than ten (10) days after assuming those responsibilities.

PUBLIC VERSION

- [7] TCCC shall change the TCCC Bottling Operations Personnel only pursuant to the following procedures:
- (a) replacing or adding individuals who report (directly or indirectly) to the people, functions, or positions specifically identified in Appendix “B” shall be in accordance with the usual and customary business practices of TCCC;
 - (b) replacing any of the people specifically identified in Appendix “B” or reorganizing functions or positions specifically identified in Appendix “B”, which for greater certainty shall not include the addition of new functions that are not specifically identified in Appendix “B” (but may include the splitting or amalgamation of positions that are specifically identified in Appendix “B”), shall be in accordance with the usual and customary business practices of TCCC and shall require the provision of written notice to the Monitor; and
 - (c) adding new functions or positions that are not specifically identified in Appendix “B” shall require prior notification to the Monitor and the Commissioner in accordance with the following:
 - (i) if the Commissioner does not object in writing to the change within ten (10) days of receiving the notification, TCCC shall be permitted to make the change; and
 - (ii) if the Commissioner, in her sole discretion, objects in writing to the change within ten (10) days of receiving the notification, TCCC shall not be permitted to make the change.
- [8] TCCC shall disclose CDMI Commercially Sensitive Information to Additional Firewalled TCCC Personnel only under the following conditions:
- (a) such Additional Firewalled TCCC Personnel:
 - (i) are employees or agents of TCCC; and
 - (ii) are approved by CDMI, receive only the limited information approved by CDMI, for the time period approved by CDMI, all according to the procedure described in subparagraph [8](b) of this Agreement; and
 - (b) TCCC shall comply with the following procedure in connection with Additional Firewalled TCCC Personnel:
 - (i) TCCC shall submit the name, position, and function of any proposed Additional Firewalled TCCC Personnel to CDMI, the Monitor, and the Commissioner, together with a statement of the reasons for the need to include such person, the specific CDMI Information Relating To Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared;

PUBLIC VERSION

- (ii) TCCC shall notify the Monitor and the Commissioner, within twenty (20) days of providing the notification in subparagraph [8](b)(i), of CDMI's objection to, approval of, or failure to respond to the notification provided under subparagraph [8](b)(i);
- (iii) where: (1) CDMI does not object in writing to the proposed Additional Firewalled TCCC Personnel set out in the notification under subparagraph [8](b)(i) or CDMI fails to respond in writing to the notification under subparagraph [8](b)(i) within twenty (20) days of receiving such notification, and (2) the Commissioner does not object in writing to the proposed Additional Firewalled TCCC Personnel within ten (10) days of receiving the notification under subparagraph [8](b)(ii), the person(s) set out in the notification shall be an Additional Firewalled TCCC Personnel;
- (iv) if the Commissioner, in her sole discretion, does object in writing within ten (10) days of receiving the notification under subparagraph [8](b)(ii), then the person shall not become an Additional Firewalled TCCC Personnel; and
- (v) TCCC must obtain from each Additional Firewalled TCCC Personnel an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Agreement and will comply with its terms.

[9] TCCC shall develop and implement procedures with respect to CDMI Commercially Sensitive Information, with the advice, assistance, and approval of the Monitor, to comply with the requirements of this Agreement:

- (a) such procedures shall ensure, without limitation, that CDMI Commercially Sensitive Information is:
 - (i) disclosed only if it is CDMI Information Relating To Bottler Functions;
 - (ii) disclosed only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;
 - (iii) used solely for CDMI Bottler Functions, or Legal or Regulatory Functions in or relating to the Territory; and not for Concentrate-Related Functions; and
 - (iv) maintained confidentially; and
- (b) such procedures shall include, without limitation:
 - (i) monitoring compliance;
 - (ii) enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;

- (iii) distributing information regarding the procedures annually to all employees of TCCC associated with TCCC's carbonated soft drink products; and
- (iv) requiring that the TCCC Bottling Operations Personnel and the Additional Firewalled TCCC Personnel comply with the requirements of this Agreement.

IV. MONITOR

- [10] At any time after the registration of this Agreement with the Tribunal, the Commissioner may appoint a Monitor to ensure that TCCC complies with all obligations and performs all responsibilities required by this Agreement.
- [11] The Commissioner, in her sole discretion, shall select the Monitor.
- [12] Not later than ten (10) days after the appointment of the Monitor, TCCC shall execute an agreement that, subject to the prior approval of the Commissioner, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor TCCC's compliance with the requirements of this Agreement.
- [13] If a Monitor is appointed by the Commissioner, TCCC shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
- (a) the Monitor shall have the power and authority to monitor TCCC's compliance with the requirements of this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Agreement and in consultation with the Commissioner. In carrying out its functions, the Monitor is authorized to, among other things, provide specific information to the Commissioner as to whether:
 - (i) CDMI Commercially Sensitive Information provided to TCCC is CDMI Information Relating To Bottler Functions;
 - (ii) CDMI Information Relating To Bottler Functions is conveyed only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel; and
 - (iii) CDMI Information Relating To Bottler Functions that is conveyed to the TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel is used solely for the purpose of carrying out CDMI Bottler Functions or Legal or Regulatory Functions;
 - (b) the Monitor shall act in a fiduciary capacity for the benefit of the Commissioner;

PUBLIC VERSION

- (c) the Monitor shall serve until five (5) years after the License Transaction takes effect; provided, however, that the Commissioner, in her sole discretion, may extend or modify this period as may be necessary or appropriate to accomplish the purpose of this Agreement;
- (d) the Monitor shall have, subject to a legally recognized privilege, full and complete access to TCCC's personnel, books, records, documents and facilities, or to any other information relevant to the performance of his responsibilities as Monitor, including Confidential Information, as the Monitor may request from the Respondent. The Respondent shall cooperate with any request of the Monitor. The Respondent shall not interfere with or impede the Monitor's compliance with this Agreement or the Monitor's ability to oversee the performance of this Agreement;
- (e) the Monitor shall serve without bond or security, at the expense of TCCC, on such reasonable and customary terms as are agreed to prior to the approval of the Commissioner. If the Monitor and the Respondent fail to agree on terms within ten (10) days from the date of the Monitor's appointment, the Commissioner shall establish the terms of the Monitor's service. The Monitor shall have the authority to engage, at the cost and expense of TCCC, such consultants, accountants, legal counsel, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities under this Agreement;
- (f) the Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of his duties under this Agreement. This includes all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not such claim results in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence or bad faith by the Monitor;
- (g) TCCC shall report to the Monitor in accordance with the requirements of this Agreement. For greater certainty, TCCC shall provide the Monitor with, amongst other things, all source materials, working papers, and all other information used by TCCC to respond to each audit conducted to confirm that TCCC has protected CDMI Commercially Sensitive Information in accordance with the License Transaction and this Agreement, and each other report relating to TCCC's efforts to protect CDMI Commercially Sensitive Information in accordance with the License Transaction and this Agreement;
- (h) in addition to information received pursuant to subparagraph [13](g), the Monitor may undertake independent audits to confirm that TCCC has protected CDMI Commercially Sensitive Information and otherwise complied with this Agreement;

PUBLIC VERSION

- (i) the Monitor shall evaluate all reports submitted to the Monitor by TCCC. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commissioner concerning the performance by TCCC of its obligations under this Agreement;
- (j) TCCC may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to the Commissioner;
- (k) the Monitor shall execute a confidentiality agreement in a form determined by the Commissioner, pursuant to which the Monitor will undertake to the Respondent not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person, except as permitted by such confidentiality agreement or by this Agreement;
- (l) in the event the Commissioner determines that the Monitor has ceased to act or failed to act diligently, the Commissioner may appoint a substitute Monitor in the same manner as provided in this Part IV; and
- (m) all information obtained by the Monitor pursuant to this Agreement that is communicated to the Commissioner shall be afforded, by the Commissioner, all of the protections available under section 29 of the Act, the *Access to Information Act*, and the policies of the Commissioner in respect of the treatment of confidential information.

V. FUTURE ACQUISITIONS

[14] For the term of this Agreement, if TCCC intends to merge with a Bottler that is licensed to distribute TCCC Beverages anywhere in Canada and is also licensed to distribute CDMI Beverages anywhere in Canada ("To-Be-Acquired Bottler"), TCCC may use CDMI Commercially Sensitive Information relating to the specific brand or brands in the geographic areas covered by the To-Be-Acquired Bottler's license for the CDMI Beverages, after TCCC's acquisition of the To-Be-Acquired Bottler, as long as TCCC complies with the obligations of paragraphs [3], [4], [5], and [6] of this Agreement, and satisfies the following additional conditions:

- (a) TCCC shall comply with the obligations of this Agreement with respect to that CDMI Commercially Sensitive Information; and
- (b) for acquisitions of To-Be-Acquired Bottlers that are subject to Part IX of the Act, TCCC shall also comply with the notification and waiting obligations of the Act and the *Notifiable Transaction Regulations*.

- [15] Unless otherwise agreed in writing by the Commissioner, for any merger with a To-Be-Acquired Bottler that is not subject to Part IX of the Act (“**proposed merger**”), TCCC shall supply notice of the proposed merger to the Commissioner at least thirty (30) days before completing the proposed merger, and such notification shall include the information described in section 16 of the *Notifiable Transaction Regulations*.

VI. COMPLIANCE

- [16] Within five (5) Business Days of the Closing Date, the Respondent shall submit to the Commissioner a verified written report that certifies the date on which the Transaction was completed.

- [17] Within thirty (30) days of the Closing Date, TCCC shall submit to the Commissioner an affidavit that describes in reasonable detail the manner and form in which it intends to comply, is complying, and has complied with this Agreement. In that affidavit, TCCC shall provide:

- (a) among other information that may be required, a list of all Bottlers that engage in any Bottler Function for TCCC Beverages in or into the Territory at the time of submission of the list that also engage in any Bottler Functions for CDMI Beverages; and for each such Bottler, TCCC shall list:
 - (i) each brand of TCCC Beverages that such Bottler is licensed to distribute, together with a description of the geographic areas in which each brand is licensed to be distributed; and
 - (ii) each brand of CDMI Beverages that such Bottler is distributing anywhere in each geographic area described in subparagraph [16](a)(i) to the extent that TCCC has this information; and
- (b) a copy of its report concerning compliance with this Agreement to the Monitor.

- [18] One (1) year after the Closing Date, annually for the next nineteen (19) years on the anniversary of that date, and at other times as the Commissioner, in her sole discretion, may require:

- (a) TCCC shall file a verified written report with the Commissioner setting forth in detail the manner and form in which it has complied, and is complying, with this Agreement; and
- (b) TCCC shall also include in each of its annual reports:
 - (i) any changes to the list of Bottlers of TCCC Beverages submitted under subparagraph [16](a) of this Agreement, including any deletions, additions, or other changes; and

PUBLIC VERSION

- (ii) for all To-Be-Acquired Bottlers acquired by TCCC during the previous year, a description of the geographic areas in which the To-Be-Acquired Bottler is licensed to produce, distribute, market, price, or sell each CDMI Beverage.

[19] TCCC shall notify the Commissioner at least thirty (30) days prior to:

- (a) any proposed dissolution of TCCC;
- (b) any proposed acquisition, merger, or consolidation of TCCC; or
- (c) any other change in TCCC including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Agreement.

[20] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to TCCC's principal Canadian offices, registered office of its Canadian subsidiary, or headquarters address, TCCC shall, without restraint or interference, permit any duly authorized representative of the Commissioner:

- (a) access, during business office hours of TCCC and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of TCCC related to compliance with this Agreement, which copying services shall be provided by TCCC at the request of the authorized representative(s) of the Commissioner and at the expense of TCCC; and
- (b) the opportunity to interview officers, directors, or employees of TCCC, who may have counsel present, related to compliance with this Agreement,

it being understood that this paragraph [20] shall not be construed so as to derogate from any protections afforded by section 29 of the Act.

[21] This Agreement shall terminate twenty (20) years from the Closing Date.

VII. REMEDIAL AGREEMENTS

[22] Any Remedial Agreement shall be deemed incorporated into this Agreement.

[23] With the exception of the License Transaction, any failure by the Respondent to comply with any term of a Remedial Agreement shall constitute a failure to comply with this Agreement.

[24] Any failure by the Respondent to comply with any term of the License Transaction relating to the use of CDMI Commercially Sensitive Information shall constitute a failure to comply with this Agreement.

PUBLIC VERSION

- [25] The Respondent shall not modify or amend any term of a Remedial Agreement without the prior approval of the Commissioner, except with respect to the License Transaction.
- [26] The Respondent shall not modify or amend any term of the License Transaction relating to the use of CDMI Commercially Sensitive Information without the prior approval of the Commissioner.
- [27] Where the Commissioner approves amendments or modifications to any Remedial Agreement, such amended and modified Remedial Agreement shall become a Remedial Agreement and shall be deemed incorporated into this Agreement.
- [28] Except as expressly provided in paragraphs [25] and [26] of this Agreement, for a period of twenty (20) years from the Closing Date, the Respondent shall not, without the prior approval of the Commissioner, enter into any agreements that vary, amend, limit, contradict or impair the effectiveness of, or that may be construed to vary, amend, limit, contradict or impair the effectiveness of, the terms of this Agreement or any Remedial Agreement.

VIII. NOTIFICATION

- [29] The Respondent shall provide a copy of this Agreement to each of its own and its affiliates' officers, employees, or agents having managerial responsibility for any obligations under this Agreement, no later than ten (10) Business Days from the Closing Date.
- [30] Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement or in any proceedings arising herefrom before the Tribunal shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties as follows:

- (a) if to the Commissioner:

Competition Bureau
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013

With a copy to:

Competition Bureau Legal Services
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Executive Director and Senior General Counsel

Fax: (819) 953-5013

(b) if to the Respondent:

The Coca-Cola Company
One Coca-Cola Plaza
Atlanta, Georgia 30313
U.S.A.

Attention: Senior Vice President and General Counsel
Fax: (404) 598-5525

with a copy to:

Coca-Cola Ltd.
100 - 42 Overlea Boulevard
Toronto, Ontario
M4H 1B8

Attention: Senior Managing Counsel
Fax: (416) 467-2222

and a further copy to:

McMillan LLP
181 Bay Street, Suite 4400
Toronto, Ontario
M5J 2T3

Attention: Dr. A. Neil Campbell / Mark Opashinov
Fax: (416) 865-7048

or to such other street address, individual or electronic communication number or address as may be designated by notice given by any party to the other parties. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery and, if given by registered mail, on the fifth (5th) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

IX. GENERAL

- [31] The Commissioner and the Respondent agree to the immediate registration of this Agreement with the Tribunal.
- [32] The Commissioner agrees that Confidential Appendix “A” shall not form part of the public version of this Agreement and shall remain confidential at all times during and following the duration of this Agreement.
- [33] With the exception of the provisions of paragraph [21], the Commissioner may, in her sole discretion, extend any of the time periods contemplated by this Agreement. The Respondent and the Commissioner may mutually agree to amend this Agreement in any manner pursuant to subsection 106(1) of the Act.
- [34] Nothing in this Agreement (including the recitals hereto) precludes the Respondent from bringing an application under section 106 of the Act (or a successor or equivalent provision under the Act) to vary or rescind this Agreement. The Respondent agrees that it shall not, in any such application, contest the Commissioner’s present conclusion that: (i) the Transaction is likely to prevent or lessen competition substantially in the supply of carbonated soft drinks; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition would not result from the Transaction.
- [35] Computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall be deemed to include Saturday.
- [36] This Agreement constitutes the entire agreement between the Commissioner and the Respondent and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [37] In the event of a dispute regarding the interpretation, application or implementation of this Agreement, including any decision by the Commissioner pursuant to this Agreement or any breach of this Agreement by the Respondent, any of the Commissioner or the Respondent may apply to the Tribunal for directions or a further order.
- [38] This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English language and French language versions of this Agreement, the English language version shall prevail.

[The remainder of the page is intentionally left blank.]

PUBLIC VERSION

The undersigned hereby agree to the immediate registration of this Agreement.

DATED this 27th day of September, 2010.

[Original signed by “Melanie L. Aitken”]

Melanie L. Aitken
Commissioner of Competition

THE COCA-COLA COMPANY

By: [Original signed by “Geoffrey J. Kelly”]

Name: Geoffrey J. Kelly

Title: Senior Vice President and General Counsel

[Signature Page Public Version of Consent Agreement between the Commissioner of
Competition and The Coca-Cola Company]

**CONFIDENTIAL APPENDIX “A”
Master License Agreement**

[CONFIDENTIAL]

APPENDIX “B”

Coca-Cola Refreshments Canada (“CCRC”) Bottling Operations Personnel

President, Coca-Cola Refreshments Canada, who at the time of the closing of the Acquisition will be Kevin Warren:

- The President will be responsible for all bottler operations in Canada
- The President, all of his direct reports, and the entire organization below them, will be part of Coca-Cola Refreshments Canada; none will have Concentrate-Related Functions
- CCRC will be responsible for executing third-party brand distribution agreements in accordance with applicable information firewall requirements
- The President will report to the CEO of Coca-Cola Refreshments U.S.A. (“CCR”)

[Title], Field Sales, who at the time of the closing of the Acquisition will be Rob Gehring:

- This position will execute national, regional and local Foodservice and Retail customer plans across Canadian market.
- This position will develop and execute regional and local programs
- This position will create and implement strategic initiatives and objectives driving business metrics
- This position will report directly to the President, CCRC

[Title], Sales and Customer Marketing, who at the time of the closing of the Acquisition will be Scott Lindsay:

- This position will lead CCRC’s executive relationship with a portfolio of strategic national customers
- This position is responsible for portfolio optimization and franchise partner leadership
- This position will report directly to the President, CCRC

[Title], Supply Chain, who at the time of the closing of the Acquisition will be Alain Robichaud:

- This position will lead the operations for all brands and packages, across all routes to market, including manufacturing, procurement, transportation, warehouse and direct store delivery
- This position will lead efforts in areas such as quality, safety, environmental sustainability, and operational excellence
- This position will report to Supply Chain, CCR

[Title], Finance, who at the time of the closing of the Acquisition will be Ed Walker:

- This position will be accountable for overall financial stewardship, including centralized management and financial reporting, financial planning and forecasting, and report-to-record activities
- This position will lead real estate activities and CCR business planning
- This position will report directly to Finance, CCR

[Title], Human Resources, who at the time of the closing of the Acquisition will be Tova White:

- This position will develop and execute human resource strategies and will lead development and implementation for all human resource initiatives and processes
- This position will identify solutions for organizational capabilities, required competencies and skills, and future strategic objectives
- This position will report directly to HR, CCR

[Corporate Counsel] Legal, who at the time of the closing of the Acquisition will be Fabio Pozzobon:

- This position will provide legal support and oversight of legal services
- This position will report directly to Legal, CCR

[Title], Public Affairs and Communications, who at the time of the closing of the Acquisition will be Sandra Banks:

- This position will be responsible for the development and execution of stakeholder engagement, communication, media, and government relations strategies and campaigns
- This position will lead efforts in partnership with Marketing and business operations to support and enable growth while protecting and enhancing the reputation of TCCC and its brands
- This position will report directly to Public Affairs and Communications, CCR.