

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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Date: October 1, 2018
CT-2018-011

Andrée Bernier for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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Reply to the Attention of
Direct Line Casey Halladay
416.865.7052
Email Address casey.halladay@mcmillan.ca
Our File No. 258102
Date October 1, 2018

VIA E-MAIL

Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4

Attention: Rachel Boyer, Executive Director & Registrar

Dear Ms. Boyer:

RE: Application for Rescission of Registered Consent Agreement, CT-2010-009, *The Commissioner of Competition v. The Coca-Cola Company*

On behalf of The Coca-Cola Company (“TCCC”), and pursuant to sections 2(1) and 81(1) of the *Competition Tribunal Rules*¹ and past practice² before the Competition Tribunal (“Tribunal”), please accept this letter as an application made pursuant to section 106(1)(b) of the *Competition Act*³ for the rescission of the Consent Agreement between TCCC and the Commissioner of Competition (“Commissioner”) that was registered with the Tribunal on September 27, 2010 (the “CA”).

This application is being brought on consent of the parties to the CA. Mr. Steve Sansom, counsel to the Commissioner, is copied on and has participated in the drafting of this letter. A copy of the Commissioner’s consent to this application is attached at Appendix I of this letter.

TCCC and the Commissioner agreed to enter into the CA in connection with TCCC’s 2010 acquisition of Coca-Cola Enterprises, Inc. (“CCE”), including CCE’s Canadian bottling operations (now known as Coca-Cola Refreshments Canada Company (“CCRC”). The Commissioner reviewed that 2010 transaction under Part IX of the *Act*. Due to CCRC’s bottling

¹ SOR/2008-141.

² See, e.g., CT-2018-002, BCE Inc. and Xplornet Communications Inc. (variation of CT-2017-007); CT-2018-009, Volkswagen Group Canada Inc. and Audi Canada Inc. (variation of CT-2016-017); CT-2017-014, Bank of Montreal (variation of CT-1995-002 and CT-2013-003).

³ *Competition Act*, R.S.C. 1985, c. C-34, as amended, section 106(1)(b) (hereinafter, the “Act”).

activities for rival beverage brands, and the potential for TCCC to access competitively-sensitive data relating to those rival brands through its ownership of CCRC, the parties agreed to enter into the CA, which imposed a firewall remedy governing TCCC's access to and use of competitively-sensitive information held by CCRC.

Over the last two years, TCCC has been engaged in a lengthy process by which it has been divesting its North American bottling operations. In October 2017, TCCC substantially completed this process in the United States with the sale of its final three bottlers.⁴ In Canada, this process was carried out through the sale of CCRC to a partnership led by Mr. Larry Tanenbaum (and his business, The Kilmer Group) and Mr. Junior Bridgeman (and his business, Heartland Coca-Cola Bottling Company, which operates as a bottler of Coca-Cola beverages in Kansas, Missouri and Southern Illinois).⁵ That transaction closed on September 28, 2018.

CCRC is now owned and operated by an independent third party (*i.e.*, the Kilmer-Heartland partnership). Prior to the closing of the CCRC transaction, TCCC voluntarily opted to have any former CCRC personnel joining TCCC before the closing date each sign a Non-Disclosure Agreement ("NDA") modeled after the NDA used under the CA. While an affiliate of TCCC, Business Services North America, LLC ("BSNA"), provides marketing and related support services to certain Coca-Cola bottlers, numerous structural safeguards have been implemented to prevent TCCC accessing (via BSNA) any competitively-sensitive information held by the Coca-Cola bottlers to whom BSNA provides its services. TCCC has detailed these extensive safeguards to the Commissioner, in connection with the Commissioner's provision of consent to this application.

The basis for the CA — and indeed, its original *raison d'être* — no longer exists. TCCC therefore respectfully requests that the Tribunal issue an order granting the parties' application under section 106(1)(b) of the *Act* and rescinding Registered Consent Agreement CT-2010-009, registered with the Tribunal on September 27, 2010. A draft form of order is attached for your consideration at Appendix II of this letter.

We would be pleased to provide any further information that the Tribunal may require in considering this application.

⁴ See The Coca-Cola Company, News Release, "The Coca-Cola Company Completes Refranchising of Company-Owned Bottling Operations in the United States", October 30, 2017, available online at <<https://www.coca-colacompany.com/press-center/press-releases/tccc-completes-refranchising-of-company-owned-bottling-operations-in-us>>.

⁵ See Coca-Cola Canada, News Release, "120-year-old Coca-Cola Canada Bottling Operation Returns to Canadian Ownership", October 1, 2018, available online at <<https://www.coca-cola.ca/newsroom/press-releases/canada-bottling-operation-returns-to-canadian-ownership>>.

Yours truly,

A handwritten signature in black ink, appearing to read 'Casey Halladay', with a stylized, overlapping loop at the end.

Casey Halladay

Copy to: S. Sansom, Competition Bureau Legal Services
Attach.

Appendix I: Consent of the Commissioner of Competition

The Commissioner of Competition, the Applicant to the Consent Agreement registered in respect of matter CT-2010-009, through his counsel, consents to an order by the Competition Tribunal rescinding the Consent Agreement registered in respect of matter CT-2010-009.

DATED at Gatineau, Quebec this 1st day of October, 2018.



Steve Sansom
Senior Counsel
Competition Bureau - Legal Services
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Gatineau, Quebec, K1A 0C9
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**Counsel for the Commissioner of
Competition**

Appendix II: Draft Form of Order

Reference: *The Commissioner of Competition v The Coca-Cola Company*

File No: CT-2010-009

Registry Document No:

IN THE MATTER OF a consent agreement registered by the Competition Tribunal on September 27, 2010, in Tribunal File No CT-2010-009, with respect the acquisition by The Coca-Cola Company of the North American carbonated soft drink business of Coca-Cola Enterprises Inc.;

AND IN THE MATTER OF an application, on consent, pursuant to paragraph 106(1)(b) of the *Competition Act*, RSC 1985, c C-34 to rescind the Consent Agreement of September 27, 2010.

BETWEEN:

The Coca-Cola Company
(Applicant)

and

The Commissioner of Competition
(Respondent)

Decided on the basis of the written record

Members:

Date of Order: _____, 2018

Order signed by:

ORDER ALLOWING AN APPLICATION UNDER PARAGRAPH 106(1)(b) OF THE COMPETITION ACT TO RESCIND A CONSENT AGREEMENT

[1] **FURTHER** to the Consent Agreement filed on September 27, 2010 by the Commissioner of Competition ("Commissioner") in relation to the acquisition by The Coca-Cola Company ("TCCC") of the North American carbonated soft drink business of Coca-Cola Enterprises Inc. ("CCE"), including CCE's Canadian bottling operations (now known as Coca-Cola Refreshments Canada Company ("CCRC");

[2] **AND WHEREAS** on September 28, 2018, TCCC completed the sale of CCRC to a partnership led by Mr. Larry Tanenbaum (and his business, The Kilmer Group) and Mr. Junior Bridgeman (and his business, Heartland Coca-Cola Bottling Company);

[3] **AND WHEREAS** since September 28, 2018, TCCC no longer has any ownership of the CCRC business, which is operated by independent third-party owners, thereby eliminating the competitive concern that gave rise to the filing of the Consent Agreement of September 27, 2010;

[4] **AND FURTHER** to an application made pursuant to paragraph 106(1)(b) of the *Competition Act*, RSC 1985, c C-34, by TCCC, with the consent of the Commissioner, to rescind the Consent Agreement of September 27, 2010 (the "Application");

[5] **AND UPON** considering the Application, the information and the reasons set out therein for the rescission of the Consent Agreement of September 27, 2010;

[6] **AND UPON** being satisfied with the reasons and information provided;

[7] **AND UPON** noting that the rescission of the Consent Agreement of September 27, 2010 is on consent, but is nevertheless a discretionary matter for the Tribunal;

THE TRIBUNAL ORDERS THAT:

[8] The Consent Agreement of September 27, 2010, in Tribunal file CT-2010-009, is hereby rescinded.

[9] There shall be no costs on this Application.

DATED at Ottawa, this ____ day of _____ 2018.

SIGNED on behalf of the Tribunal by:

Counsel of record

For the applicant:

The Coca-Cola Company
Casey Halladay and Neil Campbell

For the respondent:

The Commissioner of Competition
Steve Sansom