CAK DECISION ON THE PROPOSED ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL OF KENYA BOTTLING COMPANY LIMITED BY CROWN BEVERAGES MAURITIUS LIMITED

1. The Competition Authority of Kenya has approved the proposed acquisition of the entire issued share capital of Kenya Bottling Company Limited by Crown Beverages Mauritius Limited unconditionally.
2. This approval has been granted based on the finding that the transaction is unlikely to negatively impact competition in the market for **non-alcoholic ready-to-drink (NARTD) beverages**, nor elicit negative public interest concerns, the two key considerations during merger analysis.
3. Crown Beverages Mauritius Limited (Crown Beverages), is an undertaking incorporated and registered in Mauritius. Crown Beverages does not have subsidiaries nor market presence in Kenya. However, it is affiliated with PepsiCo, a Ugandan entity involved in the bottling of carbonated drinks.
4. SBC Kenya Ltd (SBC Kenya), which is fully owned by the target Kenya Bottling Company Limited, is an undertaking incorporated in Kenya. It operates a bottling plant in Nairobi as an independent bottler for PepsiCo products within Kenya.
5. The proposed transaction, involves the acquisition of the entire issued share capital of Kenya Bottling by Crown Beverages.
6. The transaction therefore, qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No. 12 of 2010. The Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, vertical integration.
7. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority prior to implementing the proposed transaction. The transaction between Crown Beverages and SBC Kenya met this threshold for mandatory notification and full analysis as provided in the Competition (General) Rules, 2019.

8. During merger analysis, and in order to determine the impact that a transaction will have on competition, the Authority identifies the **relevant product market** as well as the **relevant geographic market.**

9. The **relevant product market** comprises products/services that are interchangeable or substitutable by the consumer due to their characteristics, prices and/or intended use. Based on this criteria, the relevant product market for the proposed transaction is the **market** for **non-alcoholic ready-to-drink (NARTD) beverages.**

10. Determination of the **relevant geographic market** involves interrogating the area in which merging parties undertake the business and in which competition conditions are sufficiently similar. With regard to the proposed transaction, Crown Beverages operates outside Kenya while SBC Kenya provides the NARTD beverage, PepsiCo throughout the country. Therefore, the relevant geographic market is **national.**

11. The non-alcoholic beverages market in Kenya is characterized by a mix of multinational corporations and local companies and is diverse, with various products catering to different consumer preferences.

12. Coca-Cola is the leading player dealing with carbonated drinks with a 93.9% market share, followed by Highlands (3.6%) and then Pepsi (1.5%).

13. One criteria of assessing a merger's impact on competition is the post-merger market share of the undertakings involved in the transaction. With regard to the proposed merger, the post-merger market share in the market for non-alcoholic ready-to-drink (NARTD) beverages will not change since the acquirer has no market presence in Kenya. Therefore, the structure and concentration of the market for NARTD beverages will not change in Kenya, as a result of the proposed transaction **is unlikely to lead to a substantial lessening of competition in the market non-alcoholic ready-to-drink (NARTD) beverages.**

14. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. Public interest in this case refers to various economically-inclined concepts that, when considered, protect the welfare of the Public. In the Competition Act, some of the public interest considerations are;

    a) extent to which a proposed merger would impact employment opportunities;
    b) impact on competitiveness of SMEs;
    c) impact on particular industries/sectors; and
    d) impact on the ability of national industries to compete in international markets.

15. As per the parties' submissions, this transaction will not elicit negative public interest concerns. Specifically, there will be no employment loss and all the current 27 employees of the target will be retained.

16. Premised on the above, the Authority approved the proposed acquisition of the entire issued share capital of Kenya Bottling Company Ltd by Crown Beverages Mauritius Limited unconditionally.