

From the Presidency of the Competition Authority,

**COMPETITION AUTHORITY DECISION**

**File No** : 2019-3-051 (Investigation)  
**Decision No** : 21-41/610-297  
**Date of Decision** : 02.09.2021

**A. BOARD MEMBERS IN ATTENDANCE**

**Chairman** : Birol KÜLE  
**Members** : Arslan NARİN (Deputy Chairman), Şükran KODALAK  
Ahmet ALGAN, Cengiz ÇOLAK

**B. RAPPORTEURS** : Nimet ALACAPINAR, Ömer Volkan YAZAR, Ebrar KOCAMAN,  
Osman Can AYDOĞDU, Nur ÖZKAN, Fatma ABAZ, Derya ERMİŞ

**C. APPLICANT** : - Coca Cola Satış ve Dağıtım A.Ş.  
Esenkent Mah. Deniz Feneri Sok. No:4  
Ümraniye/İstanbul

**D. COMPLAINANT:** - Requested confidentiality.

- (1) **E. SUBJECT OF THE FILE:** Assessment of the commitments offered by Coca Cola Satış ve Dağıtım A.Ş. on 02.09.2021 within the framework of the investigation conducted on the aforementioned undertaking with the Competition Board decision dated 02.04.2020 and numbered 20-18/244-M.
- (2) **F. PHASES OF THE FILE:** In accordance with the Competition Board (Board) decision dated 02.04.2020 and numbered 20-18/244-M, an investigation was launched in order to determine whether Coca Cola Satış ve Dağıtım A.Ş. (CCSD) violated Articles 4 and 6 of the Act no 4054 on the Protection of Competition (Act no 4054) by preventing the sales of competing products at the final outlets, using various practices. The Investigation Report dated 02.04.2021 and numbered 2019-3-051/SR was notified to CCSD on 15.04.2021. With a correspondence that was entered into the Competition Authority records on 14.06.2021, with the number 18600, CCSD submitted its second written plea and requested to present a commitments package in order to eliminate the competitive concerns listed in the Investigation Report. In response to the aforementioned request, the Information Note dated 16.06.2021 and numbered 2019-3-51/BN-05, prepared by the Investigation Committee, was discussed at the Board meeting of 17.06.2021 and the decision no 21-31/413-M was taken, stating that the commitment negotiations with CCSD should be initiated and the opinions of third parties on the commitments should be collected. Commitment negotiations were held between the Investigation Committee and CCSD on 24.06.2021, at the Authority's sites.
- (3) On 30.06.2021, CCSD submitted a commitments letter, with the number 19097. Following the negotiations between the Investigation Committee and CCSD, this letter was further improved and resubmitted by CCSD, and was received into the Authority records on 02.07.2021, with the number 19205 (First Commitments Letter).
- (4) A summarized version of the First Commitments Letter purged of business secrets was forwarded to third parties with the official letters dated 05.07.2021, numbered 28208 and dated 07.07.2021, numbered 28438, asking their opinions on whether the commitments offered were sufficient to eliminate competition problems, and on their applicability, efficiency

and duration. In addition, online meetings were held with some third parties who were asked to submit their opinions on the commitments in writing to the Authority for entry into the records.

- (5) In response to the opinions of the third parties collected, an online meeting was held with CCSD on 03.08.2021, informing CCSD on the opinions of the other stakeholders in the sector. As a result of the discussions held, CCSD revised and resubmitted the commitments package, which was received into the Authority records on 02.09.2021, with the number 20793. The Information Note dated 02.09.2021 and numbered 2019-3- 051/BN-07 on the revised commitments was discussed and a decision was taken.
- (6) **G. RAPPORTEUR OPINION:** The Information Note states that the commitments package submitted by CCSD is sufficient to eliminate the competition problems identified during the investigation phase, therefore the investigation process should be terminated by making the commitments package binding under Article 43.3 of the Act no 4054, as well as Article 14(1) of the Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position.

## **H. EXAMINATION AND ASSESSMENT**

### **H.1.Competition Problems Listed in the Investigation Report**

- (7) The Investigation Report makes the following observations: CCSD holds dominant position in the markets for “*carbonated drinks*,” “*cola drinks*,” and “*flavored carbonated drinks*,” and it abused its dominant position through a discount system and cooler policies that worked to obstruct the operations of its rivals in the market for carbonated drinks. CCSD’s non-carbonated product exclusivity benefits from block exemption with the Board Decision dated 16.10.2008 and numbered 08-58/930-376 should be revoked; however, for non-carbonated beverages, those non-compete obligations in the agreements signed with on-premise consumption outlets which received exclusive sales rights as a result of public and private tenders that were open to bidding by all undertakings under transparent and objective terms should be exempt from the revocation for a period of no more than two years. The cooler rule that was introduced with the Board decision dated 10.09.2007 and numbered 07-70/864-327 stating that “*20% of the coolers must be open for the use of competing undertakings*” should be revised as “*40% of the coolers must be open for the use of competing undertakings*”. Sales agreements and loan agreements for cooler use signed by CCSD and/or its dealers with outlets should be also be revised in line with the regulations introduced in the decision within four months following the notification of the reasoned final decision to their side, and CCSD must certify before the Authority that the relevant amendments have been made.

### **H.2.The First Commitment Text Submitted**

- (8) The first commitment text submitted by CCSD is included below:
1. The use of agreements with a “*General*” scope, arranged to cover the whole product portfolio will be terminated and separate agreements based on duration and quantity will be drawn for “*Carbonated Products*” and “*Non-carbonated Products*”, ensuring the independent fulfillment of agreement terms for carbonated and non-carbonated products, including quantity calculations and transitivity. In addition, agreements covering “*Non-carbonated Products*” will ensure that quantity guarantees for non-carbonated beverages maintained separately (under the categories of water and mineral water, juice and ice tea, energy drinks, sports drinks), taking into account substitution opportunities. The exception to this practice will be for modern channel customers where there are no competitive concerns, who will be able to sign their own

agreement formats in accordance with their specific demands so that these demands can be fulfilled.

2. In promotions aimed at the outlets, the small number of promotion mechanics (carbonated and non-carbonated) which include cross product categories and are planned as quantity discounts in the form of product surplus will be completely eliminated. The aforementioned promotions involving quantity discounts for outlets in the form of surplus will be limited to the carbonated/non-carbonated, non-carbonated/non-carbonated and sports drinks/sports drinks mechanics. Additionally, for promotions offered under "*Carbonated Products*," quantity discounts in the form of product surplus will only be provided to be used in cola drinks, separate from other carbonated drink categories.
3. For non-carbonated products, the practice of signing exclusive agreements will be terminated. However, undertakings that have more than 50% market share that corresponding to two times or more of that of CCSD's according to Nielsen's market share data based on sales values will be exempt from this rule. Similar to carbonated drinks, a two-year exclusivity may be applied to non-carbonated drinks in tender purchases.
4. For quantity-based agreements, in case the duration of the agreement signed is more than two years, the outlet will have the right to terminate the agreement without the application of penalty clauses by returning the investment made in accordance with the procedure of per diem deduction. For duration-based agreements, the term of the agreement will be limited to two years. At the same time, in order to ensure competition, an exemption is envisaged for those agreement terms demanded by national on-premise consumption consumers that would exceed the aforementioned two-year duration, provided these customers make a written declaration that is open to their competitors stating their intention to sign agreements in accordance with their own duration requirements. On the other hand, with relation to the exemption for consumers whose demand exceeds two years, CCSD commits to sign the relevant agreements for a period of two years with an option to extend them for one year on the written agreement of the parties, which cannot exceed a total of five years in any case. Thus, the customer will be able to opt out at the end of the two years, as well as at the end of each year of extension.
5. The cooler access rule covering those outlets below 100 m<sup>2</sup> in the traditional channel which do not have available a self-owned cooler or a competitor's non-alcoholic commercial beverage cooler directly accessible by the consumer and those outlets in the on-premise consumption channel will be increased from 20% to 25%. In addition, charcuterie (with the exception of concept coolers devoted to beverages), milk and ayran coolers will not be counted as another cooler accessible by the consumer.
6. The phrase "by purchasing regularly and continuously" in the agreements related to noncarbonated products will be kept only for those agreements which include cash investments due to its importance for the method for recognizing the investment as an expense under the condition of "acquiring and sustaining current income" in the Income Tax Law, and it will be eliminated from those agreements with no cash investments. However, an amendment to those agreements with cash investments will exempt any failure to comply with the phrase "by purchasing regularly and continuously" that would otherwise be against the agreement from the application of penalty clauses.
7. Informative labels will be placed on the coolers concerning the cooler access rule in order to raise awareness in the consumers. In addition, information notes will be submitted to the outlets in order to inform them on the conditions included in the

relevant commitment text. The consumer information and outlet information notes to be prepared will be certified before the Authority.

- (9) In addition, it is clarified that the harmonization process has been started as of 07.06.2021, and it is guaranteed that the Commitment 2 will be fulfilled by 01.09.2021, and Commitments 5 and 7 will be fulfilled by 01.10.2021.

### **H.3.Opinions of the Sector Stakeholders**

- (10) The letter sent by (.....) ((.....)) and entered into the Authority records on 16.07.2021 with the number 19672 states that the commitments presented were commercially reasonable and could eliminate the competitive concerns in the relevant markets where CCSD is dominant, and therefore could be assessed in a positive light.

- (11) The letter sent by (.....) ((.....)) and entered into the Authority records on 13.07.2021 with the number 19576 states the following, in summary:

- With relation to the first Article of the commitments,

- (.....)'s current sales organization structure is different depending on the channel and the product group, which means the agreements signed with its customers are drawn to be separate and include different business conditions in terms of business units, channels and product groups;
- CCSD's commitment to use category-based agreements (carbonated/non-carbonated separation, further categorizing non-carbonated products into water and mineral water, juice and ice tea, energy drinks and sports drinks) instead of general ones would lead to pro-competitive applications;
- However, CCSD did not clarify whether the conditions in the agreement could be fulfilled independently, whether quantity commitments for non-carbonated drinks would be separate, and how the relevant organization would be shaped when implementing the commitments;
- The modern channel, by nature, does not work exclusively, so the modern channel should be excluded from the framework of the commitments;

- With relation to the second Article of the commitments,

- CCSD's commitment to provide of quantity discounts in the form of product surplus for cola drinks so that they can only be used for cola drinks and not for other carbonated products is not a practice that would affect CCSD's market position, but the commitment would still serve to reinforce the competitive environment to be established;

- With relation to the third Article of the commitments,

- It would be better to address the exceptional circumstance in the commitment separately for each category and downstream market since the regulation in the commitment may be suitable for those channels where the market share can be measured under objective criteria, but it is not clear how the assessments and calculations would be made in case of a channel than cannot be measured (eg. HoReCa), and thus an opinion on the relevant commitment cannot be provided;

- With relation to the fourth Article of the commitments,

- A reduction in the penalty clauses included in the agreements, agreement durations, and the number of conditions which make terminating a contract harder would be to the benefit of all other actors in the market;

- Even though national on-premise consumption customers tended to present in their operations a single front with the same products/menus at each outlet, there may be exceptions to this, as an example of which (.....) currently can see demand from these outlets that work with a single brand and multiple brands/company products can be offered at the same outlet;
- Preparing agreements with a two-year period that can be extended for one year on the written consensus of the parties up to a maximum of five years would strengthen competition;

Articles five, six and seven of the commitments would be beneficial in supporting the competitive environment.

(12) The letter sent by (.....) ((.....)) and entered into the Authority records on 06.08.2021 with the number 20092 states the following in summary:

- With relation to the first Article of the commitments,

- Using separate agreements for carbonated-non-carbonated products instead of general ones would not sufficiently eliminate competitive concerns, since it is hard for an undertaking operating in a single category to compete with portfolios;
- Higher quotas/discounts/investments can be implemented depending on whether the outlet purchases CCSD's whole non-carbonated product category with the penalty clauses set accordingly, and therefore these outlets would not choose to work with the competitors;
- The agreements must be drawn in consideration of the sub-categories; for instance, in non-carbonated drinks, quantities/quotas/prices should be set on a product-basis in the three main categories consisting of "*packaged water*," "*juice-mineral water-lemonade-ice tea*," and "*energy drinks-sports drinks*;"

- With relation to the second Article of the commitments,

- Instead of cross-promotion practices, each category should receive its own, and specific discounts and cross-promotion practices involving sub-categories would affect the purchase decisions of the outlets by creating the perception that the outlet could receive discounts or promotions;

- With relation to the third Article of the commitments,

- For non-carbonated drinks, the text does not include clear definition of the phrase "tender," which makes it difficult to understand the condition concerning the tender procedure and the condition allowing the conclusion of two-year exclusive; the commitment could eliminate competitive concerns if the tender definition is kept restricted to hotel and military installation tenders that utilize centralized purchases;

- With relation to the fourth Article of the commitments,

- For agreements that are essentially drawn for a two-year period and can be extended for a period of one year up to a maximum of five years by consensus; the quantities, pricing, investment and penalty clause amounts must be determined on the basis of these periods and their application must allow renegotiation with the outlets concerning the business terms when extending the agreements;

- With relation to the fifth Article of the commitments,

- It would be appropriate to increase the cooler access rule to 25%, however maintaining this usage ratio would be quite difficult in practice; on the other hand,

the consumers tend to prefer those brands with coolers and therefore restrictions should be placed on the coolers placed by CCSD inside and outside of outlets smaller than 100 m<sup>2</sup>;

- With relation to the sixth Article of the commitments,

- Preparing quota- or duration-based agreements would be a more competitive approach, and if the outlet is granted the right to exit the agreement, they can have the opportunity to work with other companies more competitively without being subject to a constant obligation to purchase;

- With relation to the last Article of the commitments,

- The information labels on the coolers should be placed so that they are visible, readable and understandable for both the outlet and the consumers.

(13) The letter sent by (.....) ((.....)) and entered into the Authority records on 30.07.2021 with the number 19929 states the following, in summary:

- With relation to the first Article of the commitments,

- Unbundling agreements into those for carbonated and non-carbonated products would not be sufficient to eliminate competitive concerns;
- CCSD should make agreements with outlets under six different categories consisting of *i*) cola, orange and orange-flavored soft-drinks, *ii*) unflavored soft drinks and other carbonated drinks, *iii*) natural spring water, *iv*) natural mineral water, flavored and fruity mineral water, *v*) lemonades and juices, *vi*) ice tea and other non-carbonated drinks,
- One copy of the agreements signed with CCSD should be left for the outlet, and the agreement should not include any provisions preventing the sharing of competition provisions with other rivals;
- The commitment text is only binding for new agreements and competition will continue to be restricted in the market as long as those older agreements with unknown durations stay in the market; therefore, CCSD should renew the existing agreements in the market within the framework of the relevant commitments;

- With relation to the second Article of the commitments,

- An examination of CCSD's agreements show that a large number of different concessions may be given, including turnover premiums, free products, volume discounts, rebates and cash paybacks, and these concessions may be implemented together under the same agreement;
- Since CCSD's concessions system is very complicated, it is very hard for an outlet to understand the concessions system;
- The commitment text only provides a solution for the quantity discounts in the form of product surplus; however, in light of the fact that competition in the market as a whole is restricted by the model's inclusion of multiple concessions for the same product, offering commitments for a just one of these concession would have a limited effect;
- As a result, discounts must be provided within each product category comprising the subject matter of six separate agreements<sup>1</sup>;

---

<sup>1</sup> For instance, all discounts and concessions for natural mineral water (including free products) should be in the

- In order to ensure that the outlet clearly understands the total discounts/concessions provided, the agreements must clearly state the total amount of concessions granted to the outlet;
- With relation to the third Article of the commitments,
- Abandoning exclusivity for non-carbonated products without revising the first two articles of the commitments would be insufficient to establish competition in the market since CCSD's market power stems from the fact that it utilizes its concessions system as a whole to obstruct the competitors' operations, in addition to the exclusivity of its agreements for non-carbonated drinks;
  - In that framework, as suggested above, exclusivity practices on the basis of six separate agreements should be abandoned and exclusivity exceptions should not be included in the agreements;
  - The commitment concerning tender purchases should be limited to "*tenders by organizations that are subject to special legislations*," the agreement should only be exclusive if an institution/organization wishes to sign an exclusive agreement based on the power granted by its special legislation, and otherwise exclusivity via tenders should not be allowed;
  - Agreements should not include a discount system in the form of target discounts that would lead to de facto exclusivity;
- With relation to the fourth Article of the commitments,
- The duration of the contracts signed by CCSD should not exceed a period of two years under any circumstances, even if specifically requested by the customer, the agreements should be renewed every two years and quantity-based agreements should be abandoned in favor of duration-based ones, which should be limited to a maximum of two years;
- With relation to the fifth Article of the commitments,
- Increasing the cooler rule from 20% to 25% is insufficient;
  - The requirement that no other cooler should be present at the outlet including concept coolers for beverages, which is required for the application of the cooler rule, should be abandoned;
  - If the gross volume of the coolers owned by CCSD and assigned for the use of the outlet under an agreement or whose ownership is transferred to the outlet by CCSD itself or by another undertaking on the direction of the CCSD is more than twice the cooler volume of the rivals at the same outlet, 50% of CCSD's cooler should be open to competitors' use, and if this ratio does not exceed 50% then 30% of CCSD's coolers should be open to the use of competitors;
  - The application of the article should be limited to those outlets whose "*net closed area is below 100 square meters*;"
- With relation to the sixth Article of the commitments,
- This would have a positive yet limited effect on the competition in the market in comparison to the other commitments;

---

category for natural mineral water and/or flavored or fruity natural mineral water, and there should be no cross-concessions from the other 5 categories provided for natural mineral water.

- With relation to the seventh Article of the commitments,
    - The relevant commitment would have a transitory and minimal effect on competition.
- (14) (.....) also noted that CCSD signed a central agreement with franchisers in the on-premise consumption channel to tie all current/potential franchisees to itself in a single step, as a result of which not only those in the franchise system or those who later become a franchisee do not have the right to choose which brand of beverages to sell, they are also unable to work with a competing beverage company; that the commitments provided by CCSD did not eliminate the competitive concerns in the franchising side; that since allowing the franchisees to sell different brands of beverages would not harm the unity of the franchise system, this point should also be included in the commitments submitted by CCSD.
- (15) The letter sent by (.....) ((.....)) and entered into the Authority records on 26.07.2021 with the number 19751 states the following, in summary:
- With relation to the first Article of the commitments,
    - In the discount markets channel, CCSD can sometimes use the market power of its carbonated drinks to have their Cappy brand juices listed, and it would be beneficial to set up a commitment to prevent this would be beneficial;
    - The modern channel should be excluded from the scope of the exceptions;
  - With relation to the second Article of the commitments,
    - A discount policy specific to the channel or region should be determined for the carbonated drinks in the CCSD portfolio, and the same policy should be used for all customers without discrimination<sup>2</sup>,
  - With relation to the third Article of the commitments,
    - CCSD's competitors in the product categories it operates in should be clearly identified and the sales of competitors other than those listed should not be prevented;
    - The exclusivity agreement should be limited solely to the relevant product category;
  - With relation to the fifth Article of the commitments,
    - Currently CCSD only allows the use of the 20% under the cooler rule for non-drink categories such as sausage, cheese, etc., preventing competition in the drink category in many outlets by only letting these types of products in their coolers;
    - Since there is a large number of brands and categories in the beverages group, the cooler rule must be increased to 35% at a minimum;
  - With relation to the seventh Article of the commitments,
    - The information note should be attached to the cooler or should be kept at the outlet in a sheet protector so that it can be seen by everyone without annoying the consumer;
    - Additionally, CCSD uses various artificial intelligence applications to take the coolers' photos and determine whether there are competing products in them, refuses to take orders from those outlets who do not match with the planogram, and

---

<sup>2</sup> For instance, in order to force outlets to purchase Cappy juices, those outlets who purchase Cappy juices may receive 2 free packs for each 10 packs from the carbonated drinks category, while those who do not only receive 1 pack for each 10. Thus, there should be a set standard period for carbonated drink activities or campaigns aimed at a channel or a region.



these practices should be terminated since they have a restrictive effect on competition

(16) The letter sent by (.....) ((.....)) and entered into the Authority records on 15.07.2021 with the number 19709 states the following, in summary:

- With relation to the first Article of the commitments,

- Separating the general agreements used by CCSD into the categories of “*Carbonated Products*” and “*Non-carbonated Products*” could have positive effects on competition, but would not be sufficient to solve the competitive problems on its own; for instance, due to CCSD’s practices of making investments in the outlets over water and energy drinks categories which involve counting water product purchases under the quotas of other products, (.....) is unable to reach the number of outlets it deserves in accordance with its market share in channels such as chain restaurants; therefore the agreement definition of “*Non-carbonated Products*” should be unbundled into the “*Non-carbonated Products Except Water and Energy Drinks*,” “*Water*” and “*Energy Drinks*”.
- In that framework, quantity agreements should not include water and energy drinks under the quotas for carbonated or non-carbonated beverages and the purchase of the former should not count towards the quotas of the latter;
- The lack of a regulation on the purchase quotas CCSD can impose on the outlet in quantity agreements and the resulting situation where the outlet exclusively sells CCSD’s cola/carbonated drinks portfolio in a de facto fashion constitute a competitive problem; CCSD defines high quotas to outlets in quantity agreements and makes significant investments in the outlets in return for these high quotas, which creates de facto exclusivity at the outlet, since it is trying to fulfill the quota for the whole duration of the agreement;
- In order to prevent the aforementioned problems, the quota and investment ratios specified in the agreements CCSD makes under the “*Carbonated Products*” and “*Non-carbonated Products*” categories should be in correlation with the sales performance of the outlets in the last three years and CCSD should be prevented from investing in or imposing a quota on an outlet that is much beyond the sales performance of that specific outlet;
- The aforementioned concerns are not just limited to the traditional channel and the on-premise consumption channel but also includes the modern channel, since the players in that channel are also incentivized with similar investment and quota practices to allocate a larger shelf ratio and display area to CCSD, and thus the exception introduced for the modern channel reduced the sufficiency of the commitments,
- The relevant commitment does not seem to be implementable until 01.10.2021,

- With relation to the second Article of the commitments,

- The existence of transitivity between different types of quotas defined under the separate agreement groups of non-carbonated, carbonated and water products harms competition due to the fact that these quotas are set at a high level, and therefore market competition would benefit from the prevention of cross promotions between the carbonated/non-carbonated/water categories;
- Besides the usual cash and non-cash incentives including concessions, free products and discounts, CCSD provides various incentives to outlets under different

names such as marketing and promotion support which are often not included in the agreements signed with the outlets or are provided through different CCSD affiliates, making them difficult to monitor and harder for competitors to submit competitive complaints about. The commitments by CCSD does not include the incentives given to the outlets through CCSD's affiliates in the same economic entity under the title of marketing, promotion, etc., rendering them insufficient for solving the competition problems in the market;

- The relevant commitment could become permanent;

- With relation to the third Article of the commitments,

- CCSD abandoning exclusive contracts is an important development with regard to the competition problems in the market, however the phrase in the commitment text *"undertakings that have more than 50% market share, corresponding to two times or more of that of CCSD according to Nielsen's market share data based on sales values"* harms the efficiency of the commitment to a large extent, since CCSD would be able to prevent another supplier from selling out of the same outlet if they achieved exclusivity there for any products due to their strong portfolio effect, wide product range and the fact that outlets usually wish to work with one provider or a small number of them;

- The relevant commitment is implementable and could become permanent;

- With relation to the fourth Article of the commitments,

- Quantity agreements involve no regulations on the size of the quota; in fact, in its agreements, CCSD defines sales quotas for outlets that are impossible to fulfill within the duration of the contract and much higher than the sales performance of the outlet. If these large quotas were not fulfilled, the outlets would not prefer to repay the investment, even if the repayment amount was calculated by the procedure of per diem deduction, due to the large and unreasonable size of the aforementioned quotas. Thus, the calculation generally results in an amount that the outlet is unable to pay due to cash flow reasons;
- In addition, the implementation of the procedure of per diem deduction in the field would be a significant concern. There are recent examples where CCSD asked the outlet to repay not only the investment amount provided under the agreement who wished to terminate their quantity agreements whose quotas were unfulfilled, but it also aggregated the discounts applied to all CCSD products sold to the outlet as well as the marketing and media incentives given, and applied an interest over this amount, similar to a penalty clause or a cancellation penalty;
- As a result, the commitment should state which investments could be demanded back from the outlet in a clear way that is easily understandable by the outlet on an item-by-item basis, and other than those specified, CCSD should be unable to ask any fees, costs or other payments back;
- As an alternative solution, when investing under the agreement, instead of paying the total amount of the investment at the start of the agreement, CCSD could choose to provide the investment to the outlet based on the quota fulfilled in quota agreements, and on the period completed in duration agreements; this would eliminate the need to return the investment and prevent its loyalty-increasing effect on outlets which damage the competition in the market by making it harder for outlets to switch suppliers;

- CCSD must define reasonable and rational quotas, and transferring quotas between agreements must be prevented to ensure that CCSD cannot foreclose the outlets in practice;
- CCSD being able to sign agreements of more than two years with national on-premise consumption customers would mean that these players corresponding to 31% of the on-premise consumption channel would be foreclosed to (.....) for at least five years. Thus, longer than two-year contracts should not be allowed, and if they are, the definition of national on-premise consumption consumer should be clarified based on objective and unchanging criteria;

- With relation to the fifth Article of the commitments,

- The 25% rule mentioned in the commitment text is not sufficient to resolve the competition problems in the market;
- The space open to competitors must be more than the total market share of CCSD in the carbonated drinks market, otherwise, even if the outlet wanted to, the other players cannot be represented within the cooler at a level corresponding to their market shares at a minimum;
- A large portion of the coolers consisting of at least 40% must be open to competing undertakings. Opening two out of the five shelves in the coolers concerned to competition would allow undertakings to extend their market share and would be implementable by the traditional channel sellers, since a smaller proportion would be impractical in the field;
- CCSD influences the outlets concerning which products to put in the 20% area in their coolers. For instance, it ensures that products such as juice and mineral water are placed on CCSD coolers instead of (.....) products.

- With relation to the sixth Article of the commitments,

- The relevant commitment is seen as a positive but insufficient development for the market, however the investments made under the agreements must be kept at a reasonable level in sight of the sales and sales potential of the outlets in the last three years. Also, it should be ensured that the cash and non-cash incentives provided to the outlet are not repayable, i.e. there are no penalty clauses imposed;

- With relation to the seventh Article of the commitments,

- The relevant commitment is seen as a positive development for the market, however it is not sufficient to make sure that situations such as CCSD employees violating the cooler access rule or CCSD using incentives and concessions to remove (.....) coolers from the outlet are notified and solutions for them can be created in the field;
- A comprehensive supervision and monitoring program should be set up to ensure compliance with the cooler access rule and to prevent CCSD's rivals from being removed from the outlets. In that framework, a separate contact line should be established for use by CCSD's rivals and outlets, thus creating an authority where (.....) and other undertakings operating in the sector can reach to submit their objections concerning the problems in the field, for example, in case of a violation of the cooler access rule or removal of a cooler.

(17) The letter sent by (.....) ((.....)) and entered into the Authority records on 04.08.2021 with the number 20018 states the following, in summary:

- With relation to the first Article of the commitments,

- Agreements with a general scope seems more advantageous, unbundling them would lead to technical and operational difficulties;
- With relation to the third Article of the commitments,
- Terminating the use of exclusive agreements for non-carbonated products or limiting exclusivity to two years for larger operations could reduce the level of investment and financial resources accessible by (.....),
  - The relevant Article should exempt customers who have more than a specific number of outlets, such as (.....);
- With relation to the fourth Article of the commitments,
- Concerning the duration of the agreements CCDS signs with customers, providing the right to exit the agreement every 2 + 1 years was not advantageous for (.....). Even if such a regulation is to be made, customers with more than a specific number of outlets should be allowed to do business through longer term contracts of up to a maximum of five years, on the request of the customer;
  - In light of the pandemic the restrictions should not be made mandatory, and the current agreement should still be valid if the parties both wish to keep it, depending on the consent and approval of the customer, in particular;
  - For companies with post-mix operations, the effort and time required to switch the equipment would not be worth it for a period of 2 years, which would increase the likelihood of them continuing to work with the current firm.
- (18) The letter sent by (.....) ((.....)) and entered into the Authority records on 04.08.2021 with the number 20016 states the following in summary:
- With relation to the first Article of the commitments,
- Terminating the use of general agreements covering the whole product portfolio and the creation of two separate types of agreements for carbonated and non-carbonated drinks would not make a difference in practice, especially in light of the logistical and operations restrictions concerned; creating an additional third category for water could be beneficial;
- With relation to the fifth Article of the commitments,
- Since (.....) provides on-premise repair and maintenance services, this article has no physical application for the undertaking;
- With relation to the seventh Article of the commitments,
- An information note that would not disturb the customers could be placed on the coolers;
- Second, third, fourth and sixth Articles of the commitments are feasible under the current business conditions.
- (19) The letter sent by (.....) ((.....)) and entered into the Authority records on 06.08.2021 with the number 20088 states the following, in summary:
- With relation to the first Article of the commitments,
- Signing separate products for carbonated and non-carbonated drinks with the firms would give the customers the chance to procure a product group they do not prefer from a different firm. On the other hand, in case of quota-based agreement, this would make it unlikely for the customer to receive an advantageous quota

agreement;

- With relation to the second Article of the commitments,
  - The relevant issue should be assessed in line with what is more advantageous for the customer. They can be offered discounts or turnover premiums, or they can receive it in the form of a promotion;
- With relation to the fourth Article of the commitments,
  - The agreements could last a minimum of one and a maximum of four years, depending on the offer most advantageous for the customer. Longer term agreements must absolutely utilize the procedure of per diem deduction.
- With relation to the sixth Article of the commitments,
  - The penalty clause must take into account the infrastructure work that must be undertaken for manufacturing the relevant product. If the production is made for a specific customer and if there are machinery/equipment costs involved with that production, the producer should be able to impose penalty clauses for the duration, while if the production can be done on existing machinery/equipment, then there should be penalty clauses.

#### **H.4.Revised Commitment Text**

- (20) After receiving information on the opinions of third parties and on the rapporteur/Authority opinions, CCSD revised the commitment text and resubmitted it to the Authority. The revised commitments are as follows:

*In order to eliminate the potential competitive concerns expressed in the Investigation Report with regard to the Turkish market, CCSD submits the following commitments for your consideration:*

1. *The use of agreements with a “General” scope, arranged to cover the whole product portfolio in the traditional and on-premise consumption channel will be terminated. In that framework,*
  - *Separate duration- and quantity-based agreements will be prepared for “Cola Drinks,” “Other Carbonated Products,” and “Non-carbonated Products”.*
  - *In agreements for “Cola drinks,” product quantity as well as discounts and investments under the agreement will be set out separately from other agreements.*
  - *In agreements for “Other Carbonated Products,” the quantity of the carbonated drink as well as discounts and investments under the agreement will be set out under the sub-categories of “flavored soft drinks” and “unflavored soft drinks”.*
  - *In agreements for “Non-carbonated Products,” quantity of the noncarbonated drink as well as discounts and investments under the agreement will be set out under the sub-categories of “water and mineral water,” “juice and ice tea,” “energy drinks,” and “sports drinks”.*
  - *Product switching between contracts and sub-categories in quantity calculations will not be allowed.*
  - *A copy of the agreements signed between the parties will be left at the outlet.*
  - *CCSD will also obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*

- *Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates, and agreements signed in the modern channel where no competitive concerns were identified under the file will be exempt from the application of this article of the commitment.*
2. *Discounts and investments consisting of cash payments, total invoice discounts, turnover premiums, 100% discounted products, and quantity discounts in the form of product surplus to be provided through the agreement to the outlets in the traditional and on-premise consumption channel to facilitate their marketing operations, as well as promotions of total invoice discounts, quantity discounts in the form of product surplus and 100% discounted products which are applied outside the scope of the agreement will be determined*
- *Separately from other agreements for “Cola drinks;”*
  - *According to the sub-categories of “flavored soft drinks” and “non-flavored soft drinks” for “Other Carbonated Products;”*
  - *According to the sub-categories of “water and mineral water,” “juice and ice tea,” “energy drinks,” and “sports drinks” for “Non-carbonated Products”.*
  - *CCSD will also obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*
  - *Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates, and agreements signed in the modern channel where no competitive concerns were identified under the file will be exempt from the application of this article of the commitment.*
3. *For non-carbonated products, the practice of signing exclusive agreements will be terminated.*
- *Based on the Nielsen sales data of the previous year, the existence of another undertaking in the relevant market(s) with a market share above 50% and at least twice that of CCDS’s will render the relevant undertaking exempt from the application of this commitment article.*
  - *In case there exists an undertaking as mentioned in the first Article, the relevant undertaking and the relevant market this undertaking operates in will be clearly specified in the agreements concerned, and non-carbonated product exclusivity may not be imposed for other undertakings and other markets.*
  - *CCSD will obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*
  - *Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates may include two-year exclusivity for carbonated and non-carbonated drinks.*

4. *The periods and methods to be applied for quantity- and duration-based agreements will be regulated as follows.*

- For quantity-based agreements, if the duration of the agreement signed is more than two years, the outlet will have the right to terminate the agreement without the application of penalty clauses by returning the investment made in accordance with the procedure of per diem deduction.*
- For duration-based agreements, the term of the agreement will be limited to two years.*
- However, agreements which are demanded by customers in the on-premise consumption channel with 200 (two hundred) or more branches and/or with pre-mix/post-mix equipment investment requirements, and which may exceed the aforementioned two-year period limitation as demanded will be exempt from the two-year limitation, however they will be set up to allow extension of the agreement for a period of one year on the written consensus of the parties (for a maximum of three years).*
- In quantity agreements, the calculation method for determining the quantity and the total discounts and investments that shall be applied for the outlets will be established in a way that would not lead to de facto exclusivity.*
- The investment items that will be subject to repayment under the procedure of per diem deduction in case the outlets choose to exercise their right to exit the agreement shall be clearly identified.*

5. *For those outlets below 100 m<sup>2</sup> in the traditional channel and those in the on-premise consumption channel, 25% of the coolers owned by CCSD will be open for utilization by competing products.*

- The outlet will be able to use this space according to its own preference, to place non-alcoholic commercial drinks competing with the products in CCSD's portfolio.*
- At the same time, CCSD will not in any way influence which competing products may be placed in this 25% space. However, the goal of the cooler access rule is to allow those rivals that do not have a cooler at the outlet to use the space, and those rivals that do have coolers at the relevant outlet will not be placed in the section in CCSD's coolers allocated for competitors' use.*
- On the other hand, if the outlet does have a self-owned cooler specifically allocated for use by non-alcoholic commercial drinks that is directly accessible by the consumers, the cooler access rule will not be applied and the CCSD cooler will not be open to utilization by competing products.*
- Exemption rules introduced under the Competition Board decision dated 10.9.2007 and numbered 07-70/864-327 concerning which products may be placed in CCSD coolers will continue to apply.*
  - o In case one of CCSD's competitors has a market share of more than 50% in one of the relevant product markets under the category of commercial drinks according to home channel numbers and this market share exceeds twice that of CCSD's in the relevant product market, the products of this undertaking may be held exempt from the scope of the commitment article herein.*
  - o Competitors of CCSD's newly launched products in categories where CCSD did not previously have a product may be held exempt from the scope of the*

*commitment article herein for two years after the launch of the relevant product.*

- 6. The phrase “by purchasing regularly and continuously” in the agreements related to non-carbonated products will be kept only for those agreements which include cash investments due to its importance for the method for recognizing the investment as an expense under the condition of “acquiring and sustaining current income” in the Income Tax Law, and it will be eliminated from those agreements with no cash investments. However, an amendment to those agreements with cash investments will exempt any failure to comply with the phrase “by purchasing regularly and continuously” from the application of penalty clauses.*
- 7. In order to inform the consumers, the coolers subject to the cooler access rule will have labels explaining the rule in way that is visible and readable by the consumer and the outlet, and CCSD will endeavor to renew any damaged labels. In addition, periodically on a yearly basis, information notes will be notified to outlets explaining that the labels on the coolers should not be damaged. Moreover, the relevant information note shall clearly state that the outlets may consult the Consumer Contact Center at any time concerning the terms of sale and shall not suffer any forfeitures due to any such calls (with the exception of problems related to financial terms). Copies of the labels and information notes to be prepared shall be submitted to the Competition Authority.*
- 8. Outlets with currently ongoing agreements shall be informed concerning the termination of the exclusivity clause for noncarbonated product, possibility to sell other brands of noncarbonated products as it is in the carbonated product categories, elimination of any sanctions for such, and the completely independent handling of the purchase of carbonated and noncarbonated products as well as the discounts provided for product purchases.*
- 9. With relation to the implementation periods of the commitments,*
  - Compliance work that was initiated on June 7, 2021 will be completed until December 31, 2021, without waiting for a reasoned decision concerning all commitments with the exception of changing the current agreements.*
  - However, due to certain technical and operation requirements, the compliance process for the amendment of the current agreements will be complete within 1 (one) year following the notification of the reasoned decision.*
- 10. In case of any arrangements which are not covered by the commitments herein, the text of the reasoned decision for the Board Decision dated 10.09.2007 and numbered 07-70/864-327 will be taken as the basis.*
- 11. The commitments herein are presented with all rights reserved concerning the reassessment thereof in response to an application to be submitted to the Board in case of any changes in the market conditions.*

#### **H.5. Assessment of the Commitment Text under Article 43 of the Act no 4054 and the Communiqué no 2021/2**

(21) Article 43.3 of the Act no 4054 states:

*Relevant undertakings or associations of undertakings may offer commitments in order to eliminate the competition problems under Article 4 or 6 which may arise during an ongoing preliminary inquiry or investigation process. If the Board decides that the proposed commitments can resolve the competition problems, it may render these commitments binding for the relevant undertakings or associations of*



*undertakings, and decide not to initiate an investigation or to terminate an ongoing investigation. Commitments shall not be accepted for naked and hard-core infringements such as price fixing between competitors, region and customer allocation, or supply restriction. The rules and procedures concerning the application of this paragraph shall be established with a communiqué issued by the Board.”*

- (22) “The Communiqué no 2021/2 on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position” entered into force after its publication in the Official Gazette dated 16.03.2021 and numbered 31425. Article 4 of the Communiqué, titled “Definitions,” lists naked and hardcore infringements as follows:

*Agreements and concerted practices as well as decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services, made for the following purposes:*

*1) Price fixing, sharing customers, suppliers, territories or trade channels, restriction of supply or imposing quotas, bid rigging, sharing competitively sensitive information such as price, production or sales volumes planned for the future between competitors,*

*2) In the relationship between undertakings operating at different levels of the production or distribution chain, determining the fixed or minimum price for the buyer.*

- (23) Since the practices under the scope of the investigation conducted on CCSD did not constitute naked and hardcore infringements according to the relevant regulations, the party under investigation was allowed to offer commitments.
- (24) On the other hand, the Communiqué no 2021/2 limits the period in which commitment submission requests can be presented to the Authority to ensure that the commitments procedure remains operational. Article 5 of the Communiqué no 2021/2, titled “Commencing the Commitment Procedure” states:

*“(1) Parties who want to end an investigation conducted about them by means of a commitment may request to offer commitments during preliminary inquiry or investigation process. Requests to offer commitments during the investigation process shall be submitted to the Authority within three months after the notification of the investigation has been sent under the scope of paragraph two, article 43 of the Act. Requests to offer commitments submitted to the Authority after the said period has expired shall not be taken into account.*

*(2) The parties shall commence the commitment procedure by submitting their request to offer commitments to the Authority in written form*

- (25) Concerning ongoing examinations, Temporary Article 1.2 of the Communiqué no 2021/2 regulates<sup>3</sup>:

*Regarding investigations, for which the decision to initiate an investigation was taken more than three months before this Communiqué has entered into force, the requirement laid down in article 5, paragraph one that the request to offer*

---

<sup>3</sup> Competition Board’s Arslan Nakliyat Decision dated 28.07.2020 and numbered 20-36/485-212 also states that the investigation phase would be considered complete on the date when the third written pleas are entered into the Authority records and that parties can offer commitments until that date.

*commitments shall be submitted to the Authority within three months after the notification of investigation is sent shall not be observed.*

The Communiqué no 2021/2 entered into force on 16.03.2021 and the Board decision to launch an investigation on CCSD was taken on 02.04.2020. Thus, the regulation in Temporary Article 1 is applicable for the investigation concerned. In light of the fact that CCSD's request to submit commitments was received in the Authority records on 14.06.2021, during the second written plea stage, it has been found that the undertaking completed its request to submit commitments within due time, based on the aforementioned regulation.

- (26) Article 11 of the Communiqué no 2021/2, titled "*Taking the views of third parties and assessment thereof*" is as follows:

*"(1) Should the Board decide that views of third parties be taken, it shall announce, within ten days following the Board decision, by sending or posting on the webpremise, the summary of the competition problems and the summary of the commitment text submitted by the parties, free from the trade secrets and confidential information, that the concerned can submit their views in written form within the period set by the Board.*

*(2) Third parties presenting their views about the commitment shall send their views, a version free of trade secrets and confidential information and confidentiality request, if any, to the Authority.*

*(3) The Board shall review its assessment about the elimination of competition problems by the commitment after taking the views of third parties. In case the Board finds the commitment appropriate, it shall render the commitment binding for the party concerned and decide not to initiate an investigation or discontinue the ongoing investigation. In case the Board does not find the commitment appropriate, it shall decide that parties can make amendments to the commitment at this stage and only for one time within the framework of its assessments and a certain time period it sets, or it shall decide to discontinue the commitment procedure."*

- (27) In response to the Information Note concerning the request to offer commitments, dated 16.06.2021 and numbered 2019-3-051/BN-05, the Board took the decision dated 17.06.2021 and numbered 21-31/413-M to initiate the commitment discussions and request the opinions of the third parties on the commitments offered. In that framework, the Investigation Committee communicated to the sector shareholders a copy of the commitments CCSD submitted to the Authority on 02.07.2021 after purging it from business secrets and confidential information, in order to ask the opinions of the third parties on the commitments. In the same period of time, the Investigation Committee held online meetings with (.....) on 06.07.2021, with (.....) on 09.07.2021, with (.....) and (.....) on 12.07.2021, with (.....) on 14.07.2021, with (.....) and (.....) on 28.07.2021, and with (.....) and (.....) on 29.07.2021, receiving the opinions of the third parties both verbally and via letters entered into the Authority records.

- (28) It is understood that Articles 1 and 2 of the commitments are offered to eliminate the competitive problems, noted in the Investigation Report, related to CCSD reinforcing its portfolio effect by allowing switching between products through the inclusion of carbonated and non-carbonated products into quantity calculations in the agreements signed between CCSD and the outlets. The commitments offer to conclude separate agreements for "*cola drinks*," "*other carbonated products*," and "*non-carbonated products*;" differentiating product quantities, discounts and investments according to categories, and preventing switching between sub-categories in quantity calculations, thereby allowing outlets and competitors to

compare competition parameters.

- (29) Article 3 of the commitments seems to target the competitive concerns created by the exclusivity in non-carbonated products, also included in the Investigation Report. The commitment offered in this context removes exclusivity in non-carbonated products with some exceptions, using a method similar to the one included in the Board decision dated 10.09.2007 and numbered 07-70/864-327 (2007 Decision), on the removal of exclusivity in non-carbonated products to terminate such exclusivity in non-carbonated products. In addition, the commitment offered clarifies “*tender definition*”.
- (30) An examination of Article 4 of the commitments shows that it aims to regulate the validity periods of CCSD’s quantity- and duration-based agreements in a way that would not cause de facto exclusivity. To that end, extending the right to exit the agreement granted to the outlets, clearly informing the outlets on the repayments they would have to make for the investments and discounts received according to the procedure of per diem deduction if they exercised their right to exit the agreement, limiting the duration-based agreements to two years with some exceptions, and granting outlets the right to terminate any agreements with a duration exceeding two years for quantity-based agreements are found to be sufficient to remove the competitive concerns.
- (31) Article 5 of the commitments is an update of the cooler access rule introduced by the Board’s 2007 Decision. In that context, CCSD undertook to increase the cooler access rule from 20% to 25% and not to influence outlets on which competing to place in the coolers as part of the 25% allocated space. Additionally, CCSD also undertook that, in case the outlet has a cooler owned by one of CCSD’s rivals<sup>4</sup>, competing undertakings’ products other than those of the undertaking in question would be placed in the 25% space allocated. At the same time, if the outlet has a cooler for self-owned non-alcoholic commercial drinks, then the 25% cooler access rule will not be applied. The relevant article of the commitments is found to eliminate the competitive concerns of the Investigation Report.
- (32) Article 6 of the commitments is intended to alleviate the Investigation Report’s concern that the phrase “*by purchasing regularly and continuously*” could have a decisive effect on the buying choices of the outlets. In that context, and in line with the opinions of the third parties collected, the commitment offered by CCSD is found to be sufficient.
- (33) Article 7 of the commitments includes the actions to be taken in order to inform the outlets and consumers on the cooler access rule mentioned in Article 5 of the commitments. The relevant article of the commitments is found to eliminate the competitive concerns listed in the Investigation Report.
- (34) Article 8 of the commitments includes the regulations to be implemented for ongoing agreements. In that context, CCSD undertakes to inform the outlets about the termination of the non-carbonated product exclusivity and the completely independent handling of the discounts granted in return for carbonated and non-carbonated product purchases. The relevant article of the commitments is found favorable and sufficient in terms of compliance with the commitments.
- (35) Article 9 of the commitments establishes the implementation periods for the commitments. It is noted that the relevant party started compliance work as of 07.06.2021 (around 2 months after the notification of the Investigation Report), that compliance would be ensured for the first seven articles by 31.12.2021, and compliance concerning the unbundling of ongoing agreements would be complete within one year following the notification of the reasoned decision. In that context, the periods specified in the relevant commitment articles are found

---

<sup>4</sup> Refers to the undertakings operating in the relevant product markets of the products in CCSD’s product portfolio.

to be reasonable in light of the facts that the commitments offered include a wide scope of changes, that there is a large number of ongoing agreements and outlets, and of the operational and technical difficulties that might arise regarding the implementation of the commitments (such as a failure to contact the outlets, closure of the outlet, etc.).

- (36) Article 10 of the commitments addresses the potential creation of a regulatory gap within the framework of the current commitments offered, and states that in such a case, the Board's 2007 Decision will be taken as the basis. As a result, it is assessed that this will ensure sustainability in the implementation of the commitments offered. The request in Article 11 of the commitments concerning the reservation of CCSD's right to make an application for the reassessment of the commitments in case of a change in the market conditions is found to be reasonable as well.
- (37) A general assessment of the commitment text and the articles of the commitment concluded that the commitments package offered would make competition parameters in the relevant markets comparable for rivals and outlets, that the new arrangement for the cooler access rule would increase rivals' opportunities to keep products at the outlets which would allow consumers to access a wider variety of products, that the information notes to be provided by CCSD would increase awareness of the commitments to be implemented, that the shortening of the agreement durations with some exceptions would render the market more competitive for CCSD and rivals, that the separation of carbonated and non-carbonated products into subcategories would eliminate competitive concerns stemming from product portfolio power, and that terminating non-carbonated product exclusivity with some exceptions would have positive effects on competition in the relevant markets with regard to the aforementioned product portfolio power. Therefore, it is assessed that the commitments package offered is proportionate to the competition problems, sufficient to eliminate these problems, implementable in a short period and efficiently applicable.

## **I. CONCLUSION**

- (38) It was decided, UNANIMOUSLY, that the following commitment text submitted by Coca Cola Satış ve Dağıtım A.Ş. on 02.09.2021 with the number 20793 within the framework of the investigation conducted in accordance with the Competition Board decision dated 02.04.2020 and numbered 20-18/244-M should be accepted and made binding for the relevant undertaking, since it could eliminate the relevant competition problems, and the investigation launched by the aforementioned Board decision should be concluded, with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision:

1. *The use of agreements with a "General" scope, arranged to cover the whole product portfolio in the traditional and on-premise consumption channel will be terminated. In that framework,*
  - *Separate duration- and quantity-based agreements will be prepared for "Cola Drinks," "Other Carbonated Products," and "Non-carbonated Products".*
  - *In agreements for "Cola drinks," product quantity as well as discounts and investments under the agreement will be set out separately from other agreements.*
  - *In agreements for "Other Carbonated Products," the quantity of the carbonated drink as well as discounts and investments under the agreement will be set out under the sub-categories of "flavored soft drinks" and "unflavored soft drinks".*
  - *In agreements for "Non-carbonated Products," quantity of the noncarbonated drink as well as discounts and investments under the agreement will be set out*

*under the sub-categories of “water and mineral water,” “juice and ice tea,” “energy drinks,” and “sports drinks”.*

- Product switching between contracts and sub-categories in quantity calculations will not be allowed.*
  - A copy of the agreements signed between the parties will be left at the outlet.*
  - CCSD will also obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*
  - Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates, and agreements signed in the modern channel where no competitive concerns were identified under the file will be exempt from the application of this article of the commitment.*
- 2. Discounts and investments consisting of cash payments, total invoice discounts, turnover premiums, 100% discounted products, and quantity discounts in the form of product surplus to be provided through the agreement to the outlets in the traditional and on-premise consumption channel to facilitate their marketing operations, as well as promotions of total invoice discounts, quantity discounts in the form of product surplus and 100% discounted products which are applied outside the scope of the agreement will be determined*
- Separately from other agreements for “Cola drinks;”*
  - According to the sub-categories of “flavored soft drinks” and “non-flavored soft drinks” for “Other Carbonated Products;”*
  - According to the sub-categories of “water and mineral water,” “juice and ice tea,” “energy drinks,” and “sports drinks” for “non-carbonated Products”.*
  - CCSD will also obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*
  - Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates, and agreements signed in the modern channel where no competitive concerns were identified under the file will be exempt from the application of this article of the commitment.*
- 3. For non-carbonated products, the practice of signing exclusive agreements will be terminated.*
- Based on the Nielsen sales data of the previous year, the existence of another undertaking in the relevant market(s) with a market share above 50% and at least twice that of CCDS’s will render the relevant undertaking exempt from the application of this commitment article.*
  - In case there exists an undertaking as mentioned in the first Article, the relevant undertaking and the relevant market this undertaking operates in will be clearly specified in the agreements concerned, and non-carbonated product exclusivity may not be imposed for other undertakings and other markets.*

- *CCSD will obey the principles listed under the commitment article herein for those outlets with whom there is no agreement signed.*
  - *Agreements signed with public institutions and organizations which purchase by tender or in accordance with the legislation they are subject to, public economic enterprises and organizations that provide services for public benefit (municipalities, military, hospitals, universities, police guesthouses, prisons, etc.) as well as their affiliates may include two-year exclusivity for carbonated and non-carbonated drinks.*
4. *The periods and methods to be applied for quantity- and duration-based agreements will be regulated as follows.*
- *For quantity-based agreements, if the duration of the agreement signed is more than two years, the outlet will have the right to terminate the agreement without the application of penalty clauses by returning the investment made in accordance with the procedure of per diem deduction.*
  - *For duration-based agreements, the term of the agreement will be limited to two years.*
  - *However, agreements which are demanded by customers in the on-premise consumption channel with 200 (two hundred) or more branches and/or with pre-mix/post-mix equipment investment requirements, and which may exceed the aforementioned two-year period limitation as demanded will be exempt from the two-year limitation, however they will be set up to allow extension of the agreement for a period of one year on the written consensus of the parties (for a maximum of three years).*
  - *In quantity agreements, the calculation method for determining the quantity and the total discounts and investments that shall be applied for the outlets will be established in a way that would not lead to de facto exclusivity.*
  - *The investment items that will be subject to repayment under the procedure of per diem deduction in case the outlets choose to exercise their right to exit the agreement shall be clearly identified.*
5. *For those outlets below 100 m<sup>2</sup> in the traditional channel and those in the on-premise consumption channel, 25% of the coolers owned by CCSD will be open for utilization by competing products.*
- *The outlet will be able to use this space according to its own preference, to place non-alcoholic commercial drinks competing with the products in CCSD's portfolio.*
  - *At the same time, CCSD will not in any way influence which competing products may be placed in this 25% space. However, the goal of the cooler access rule is to allow those rivals that do not have a cooler at the outlet to use the space, and those rivals that do have coolers at the relevant outlet will not be placed in the section in CCSD's coolers allocated for competitors' use.*
  - *On the other hand, if the outlet does have a self-owned cooler specifically allocated for use by non-alcoholic commercial drinks that is directly accessible by the consumers, the cooler access rule will not be applied and the CCSD cooler will not be open to utilization by competing products.*
  - *Exemption rules introduced under the Competition Board decision dated 10.9.2007 and numbered 07-70/864-327 concerning which products may be*

*placed in CCSD coolers will continue to apply.*

- o In case one of CCSD's competitors has a market share of more than 50% in one of the relevant product markets under the category of commercial drinks according to home channel numbers and this market share exceeds twice that of CCSD's in the relevant product market, the products of this undertaking may be held exempt from the scope of the commitment article herein.*
  - o Competitors of CCSD's newly launched products in categories where CCSD did not previously have a product may be held exempt from the scope of the commitment article herein for two years after the launch of the relevant product.*
- 6. The phrase "by purchasing regularly and continuously" in the agreements related to non-carbonated products will be kept only for those agreements which include cash investments due to its importance for the method for recognizing the investment as an expense under the condition of "acquiring and sustaining current income" in the Income Tax Law, and it will be eliminated from those agreements with no cash investments. However, an amendment to those agreements with cash investments will exempt any failure to comply with the phrase "by purchasing regularly and continuously" from the application of penalty clauses.*
  - 7. In order to inform the consumers, the coolers subject to the cooler access rule will have labels explaining the rule in way that is visible and readable by the consumer and the outlet, and CCSD will endeavor to renew any damaged labels. In addition, periodically on a yearly basis, information notes will be notified to outlets explaining that the labels on the coolers should not be damaged. Moreover, the relevant information note shall clearly state that the outlets may consult the Consumer Contact Center at any time concerning the terms of sale and shall not suffer any forfeitures due to any such calls (with the exception of problems related to financial terms). Copies of the labels and information notes to be prepared shall be submitted to the Competition Authority.*
  - 8. Outlets with currently ongoing agreements shall be informed concerning the termination of the exclusivity clause for non-carbonated product, possibility to sell other brands of non-carbonated products as it is in the carbonated product categories, elimination of any sanctions for such, and the completely independent handling of the purchase of carbonated and non-carbonated products as well as the discounts provided for product purchases.*
  - 9. With relation to the implementation periods of the commitments,*
    - Compliance work that was initiated on June 7, 2021 will be completed until December 31, 2021, without waiting for a reasoned decision concerning all commitments with the exception of changing the current agreements.*
    - However, due to certain technical and operation requirements, the compliance process for the amendment of the current agreements will be complete within 1 (one) year following the notification of the reasoned decision.*
  - 10. In case of any arrangements which are not covered by the commitments herein, the text of the reasoned decision for the Board Decision dated 10.09.2007 and numbered 07-70/864-327 will be taken as the basis.*
  - 11. The commitments herein are presented with all rights reserved concerning the reassessment thereof in response to an application to be submitted to the Board in case of any changes in the market conditions.*