



1ST NALSAR CCI ANTITRUST MOOT COURT COMPETITION 2022

in association with



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REVISED MOOT PROPOSITION (After Clarifications)

1. The Republic of Volta (“**Volta**”) is a developing, mixed economy with an increasing emphasis on gradual state deregulation, to increase the competitiveness of its internal markets. To effectuate this policy, the Liberal Volta Party (“**LVP**”) in the year 2002 was able to pass the Competition Act, 2002 (“**Competition Act**”). The principal regulatory body entrusted with maintaining fair competition in the Voltan internal markets is the Competition Commission of Volta (“**CCV**”). The Voltan Appeals Tribunal (“**VAT**”) handles all appellate matters arising from the CCV, and the Supreme Court of Volta is the final court of appeal.¹
2. The Voltan society has historically been conservative, and until the year 2000, sin goods such as alcohol and tobacco were completely prohibited across the country. Due to extensive illegal influx of alcohol and tobacco products from border states, as well as an internal movement to gradually liberalise the Voltan society (and thereby transition towards regulation of sin goods), the Liberal Volta Party progressively legalized the consumption of alcohol and tobacco products for adults². This also provided the government much needed additional revenue streams since sin goods are currently taxed at a whopping 35% as per the Voltan Tax Code, 1961.³
3. The legalization of sin goods such as alcohol and tobacco ushered in several private players who competed *inter se*. However, the private players quickly realized that operating in these markets was an extremely difficult affair since the government not only imposed very high taxes on such products, but also extensively regulated the production, distribution, and sale of sin goods. Therefore, over the years, few private players who had either benefitted from a first-mover advantage or through subsequent consolidation with other players in the market, have only been able to survive and compete in the market.

¹ The Regional Higher Courts in Volta separately exercise their respective writ jurisdiction to entertain limited matters pertaining to the Competition Act, 2002.

² Individuals above the age of 21 are considered adults in the Republic of Volta.

³ The rate of taxation levied on sin goods has progressively increased since the year 2000, from 7.5% (in 2000) to 35% (in 2020). Due to a lot of opposition from the tobacco industry, the government has not increased the rate of taxation in the FY 2020-2021, and it continues to remain at 35%, subject to further revision (if any) on 31 March 2022. Further, taxation on sin goods is in the Union List as per the Constitution of the Republic of Volta.

4. The extensive state regulation as well as high incidence of taxation has led to little innovation (and therefore low product differentiation) in the tobacco goods market which includes products such as factory manufactured cigarettes, cigars, roll-your-own/make-your-own tobacco, pipe tobacco and snus. The market constitutes of significant domestic players such as Stella Tobacco Limited (“**Stella**”),⁴ Arboris Tobacco Products Limited (“**Arboris**”),⁵ Venus Cigars Limited (“**Venus**”),⁶ as well as Voltan subsidiaries of international tobacco companies such as Blue Andean Tobacco Volta Limited (“**BAT**”),⁷ Pollock & Morset International Volta Limited (“**PMI**”)⁸ and Voltan Imperial Limited (“**Imperial**”)⁹. Some of the smaller, regional players that also compete in the market include Supersniffs Private Limited (“**Supersniffs**”),¹⁰ Tigris Industries Limited (“**Tigris**”)¹¹ and Klaus Tobacco Limited (“**Klaus**”)¹².
5. Stella, Arboris, Venus, BAT, PMI and Imperial manufacture and sell a complete range of tobacco products, whereas Supersniffs, Tigris, and Klaus were primarily operational in the market for pipe tobacco and snus. The market shares of the players have fluctuated over the course of the last 11 years (2010-2020) and some players have also exited the market.¹³ The market shares of the players between 2010-2020 is provided at **Appendix 1**.

⁴ Stella was the first tobacco products manufacturer to have been offered a license by the Federal Trade Authority of Volta (“**FTA**”), in September 2000. It manufactures and sells a complete range of tobacco products.

⁵ Arboris was the second tobacco products manufacturer to have secured a license from the FTA in October 2000. It manufactures and sells a complete range of tobacco products.

⁶ Venus was the third tobacco products manufacturer to have received a license from the FTA in July 2001.

⁷ BAT is the Voltan subsidiary of the global tobacco company Blue Andean Tobacco A.G., which is based out of Argentina. It was the first international player to have secured a license from the Federal Investment Promotion Board (“**FIPB**”) as well as the FTA to manufacture and sell tobacco products in Volta, in January 2003.

⁸ PMI is the Voltan subsidiary of the global tobacco company Pollock & Morset International, which is based out of the UK. It was the second international player to have secured a license from the FIPB and the FTA to manufacture and sell tobacco products in Volta, in January 2003.

⁹ Imperial is the Voltan subsidiary of the multinational tobacco company Imperial B.V., which is based out of Netherlands. It was the third international player to have secured a license from the FIPB and the FTA to manufacture and sell tobacco products in Volta, in November 2003.

¹⁰ Supersniffs received a license from the FTA in July 2007 to manufacture and sell tobacco products in Volta.

¹¹ Tigris received a license from the FTA in September 2010 to manufacture and sell tobacco products in Volta.

¹² Klaus received a license from the FTA in January 2011 to manufacture and sell tobacco products in Volta.

¹³ Supersniffs declared bankruptcy in 2019, whereas Tigris and Klaus declared bankruptcy in 2020.

6. In the budget for the financial year (“FY”) 2006-2007, the LVP increased the incidence of taxation on sin goods such as tobacco and tobacco products to 15%.¹⁴ This was followed by the Federal Trade Authority of Volta (“FTA”) announcing the ‘Tobacco Production, Distribution and Sales Regulation Policy 2006’ (“**Tobacco Policy**”), which further enhanced the regulatory scrutiny over the tobacco industry. A copy of the Tobacco Policy is provided at **Appendix 2**. This was in addition to the extant regulatory policy in the Republic of Volta pursuant to which the tobacco corporations could only increase the prices of their tobacco products after a price hike request made to the FTA was accepted. The only exception to this rule is a corresponding price hike caused by a hike in the excise duty levied on tobacco products.

7. In response to these developments and in the backdrop of mounting displeasure amongst the players in the tobacco industry, on 1 September 2006, the Voltan Tobacco Association (“**VTA**”) was established by Stella, Arboris, Venus and BAT to discuss issues that affected the tobacco industry as well as to present a united front to the government while negotiating on critical industry issues. The position of the President of the VTA is rotated amongst its members, and the CEO of Stella was chosen as the inaugural President of the VTA in 2006.

8. PMI became a member of the VTA in 2008 whereas Imperial joined the VTA in 2009. Supersniffs joined the VTA in 2011. Tigris and Klaus never joined the VTA and would often independently share their industry related grievances to the VTA through official channels of communication, which were always accepted by the VTA. Citing abuse of power by Stella within the larger VTA body, Imperial exited the VTA in September 2014, shortly followed by Supersniffs in December 2014. However, the circumstances behind Supersniff’s exit are unknown in the public domain.

9. In the budget for the FY 2010-2011, the LVP increased the incidence of taxation on tobacco products to 22%, which was met with outrage by the VTA. Despite several

¹⁴ This should not be confused with the current rate of taxation that is 35%, as stated in paragraph 2.

representations made to the government, the VTA was unsuccessful in reducing the incidence of taxation. This led to some consolidation in the tobacco industry with Imperial selling 40% of its stake to BAT in 2012, which was conditionally approved by the CCV. The CCV's official press release on the acquisition is provided at **Appendix 3**.

10. On 1 December 2019, the CCV's enforcement division received an official application for priority status for lesser penalty from BAT. A subsequent lesser penalty application was submitted by BAT on 11 December 2019 and relevant extracts of it are provided at **Appendix 4**. Following BAT's lesser penalty application, the CCV taking *suo motu* cognizance, through its order dated 4 February 2020 *prima facie* observed that several players within the cigarette industry were engaged in collusion in contravention of Section 3(3) read with Section 3(1) of the Competition Act, 2002 ("**Prima Facie Order**").¹⁵ It ordered the Office of the Director General ("**DG**") to undertake an investigation.
11. In furtherance of the CCV's Prima Facie Order, the DG's office conducted coordinated and simultaneous dawn raids at the official premises of Stella, Arboris, Venus, Imperial and the VTA on 3 April 2020. Pursuant to the dawn raid, Stella also submitted a lesser penalty application on 1 May 2020, after its application for priority status was granted the second position. Arboris followed suit and applied for a priority status on 19 June 2020. Venus was the last leniency applicant that submitted its application for priority status on 4 August 2020. The CCV accepted the lesser penalty applications of Stella, Arboris and Venus as well (in that order of priority). The DG submitted its investigation report ("**DG Report**")¹⁶ to the CCV on 22 March 2021, and the CCV forwarded the confidential version (*qua parties*) of the DG Report to BAT, Stella, Arboris, Venus, Imperial, and VTA on 1 April 2021.
12. In the DG Report, the DG made several observations in relation to the tobacco corporations including:

¹⁵ The original opposite parties identified by the CCV in its Prima Facie Order were Stella, Arboris, Venus and BAT.

¹⁶ As per the Competition Act, 2002 of the Republic of Volta, the Prosecutorial Wing of the Office of the DG is required to argue the DG Report as prepared by the Investigation Wing of the Office of the DG. Further, please note that the Office of the DG is separated from the Competition Commission of Volta.

- (i) Stella, Arboris, Venus, BAT, and Imperial (collectively “OPs”) were involved in a cartel to fix the prices of cigarettes manufactured in the Republic of Volta from 2015 until September 2020 and used the forum of the VTA to align on pricing;
- (ii) The OPs routinely exchanged emails and WhatsApp messages to discuss possible price hikes;
- (iii) The OPs coordinated with each other on proposing the same price revision requests to the FTA (and did not compete with each other by offering competitive pricing);
- (iv) All the price revisions of various products of the OPs between 2015 and September 2020 were either in complete tandem or extremely close to each other, thereby demonstrating price coordination;
- (v) The representatives of the OPs during oral depositions admitted to having met with each other to discuss prices in an attempt to standardize pricing “to collectively counter the long-term economic devastation caused by the excessive taxation which continues to threaten the survival of the tobacco industry”.
- (vi) There was a corresponding increase in the market shares of all the OPs between 2015-September 2020.
- (vii) During the period of operation of the cartel, at least three smaller tobacco companies went out of business and one tobacco company’s market share got drastically reduced.

13. In its confidential response to the DG’s Report, BAT accepted all the findings of the DG, barring one. The DG Report found BAT and Imperial to be a single economic entity pursuant to BAT’s acquisition of 40% shareholding in Imperial. Further, the presence of one common director (Mr. Alexander Ross (“**Mr. Ross**”)) in the boards of both BAT and Imperial, led the DG to note that “*the presence of a common director further deprived Imperial of operating independently of BAT as far as taking commercial decisions in relation to the manufacture, distribution and sale of cigarettes in the territory of the Republic of Volta is concerned*”. Furthermore, during the depositions of various representatives of the OPs at the DG’s office, a representative of Stella had also stated in their deposition that

“Imperial’s independent decision making may have been compromised pursuant to BAT’s acquisition.” Therefore, the DG Report found Imperial as also a member of the tobacco cartel which had indulged in price fixing, in violation of Section 3(3)(a) of the Competition Act.

14. BAT in its response to the DG’s Report submitted that notwithstanding its acquisition of a stake in Imperial, BAT and Imperial operated as independent economic units with *“no unity of economic interest”* and the presence of one common director in the respective boards of BAT and Imperial did not render them as a part of the same economic unit. BAT also argued that the evidence submitted by it to expose the cartel doesn’t indicate any participation from Imperial, which is why Imperial did not submit a leniency application. It further argued that a single, unverified deposition statement by a representative of a rival corporation could not be the basis of the DG’s conclusion, especially when neither BAT nor Imperial were given an opportunity to cross-examine the concerned individual. Therefore, the DG’s finding as to Imperial being complicit in the cartel in violation of Section 3(3)(a) of the Competition Act is incorrect in law.
15. Imperial in its response to the DG Report submitted that its representations to the FTA in relation to grievances as well as price hike requests were made independently, which were determined independently by its board of directors in consultation with senior company officials across different departments. It further argued that because BAT and Imperial are different economic entities, and only BAT was involved in the cartel, the calculation of turnover for the purposes of imposition of penalty on BAT cannot include the turnover of Imperial, since penalty can only be imposed on relevant turnover. In arguendo, it submitted that if BAT and Imperial were found to be part of the same economic unit, then Imperial should be afforded the same reduction in penalty that is eventually offered to BAT for filing its leniency application and assisting in the investigation.
16. Stella and Venus accepted all findings in the DG Report and prayed for lenient penalty imposition in light of having extended full cooperation to the DG and the CCV in the investigation. Arboris opposed the DG’s Report which had made several observations against Arboris, including:

- (i) Arboris was part of the tobacco cartel from 2015 until September 2020, whereby it colluded with Stella, Venus, BAT and Imperial in fixing the prices of packaged cigarettes manufactured during the period of the cartel by using the platform of VTA;
- (ii) The sales and marketing head of Arboris, Ms. Sanya Das, exchanged several emails with her counterparts in the OP companies, discussing:
 - (a) the need for a coordinated price increase of packaged cigarettes due to the ever-increasing excise duty imposed on tobacco products;
 - (b) the need for making a joint representation to the FTA to raise industry grievances, including the increased regulatory scrutiny as well as the high excise duty burden on the tobacco industry; and
 - (c) the option of stopping the supply of packaged cigarettes in the market until the demands of the cigarette manufacturers were accepted by the FTA;
- (iii) There was routine exchange of dispatch quantity information as well as information on residual unsold inventory (of cigarettes) between Stella, Venus, BAT and Arboris; and
- (iv) There was routine exchange of price sensitive information such as cost price, mark-up, profit margin and market share forecasts between Stella, Venus, BAT, and Arboris;

17. Arboris opposed these observations in the DG Report by making several submissions including:

- (i) The discussions using the platform of VTA were genuine industry issues which threatened the viability of cigarette manufacturers;
- (ii) The exchange of “alleged” price sensitive information between the cigarette manufacturers is not an anticompetitive practice if the same is not implemented;
- (iii) The cigarette manufacturers did not implement any of the pricing discussions since the FTA did not accept any price increase requests made by them;

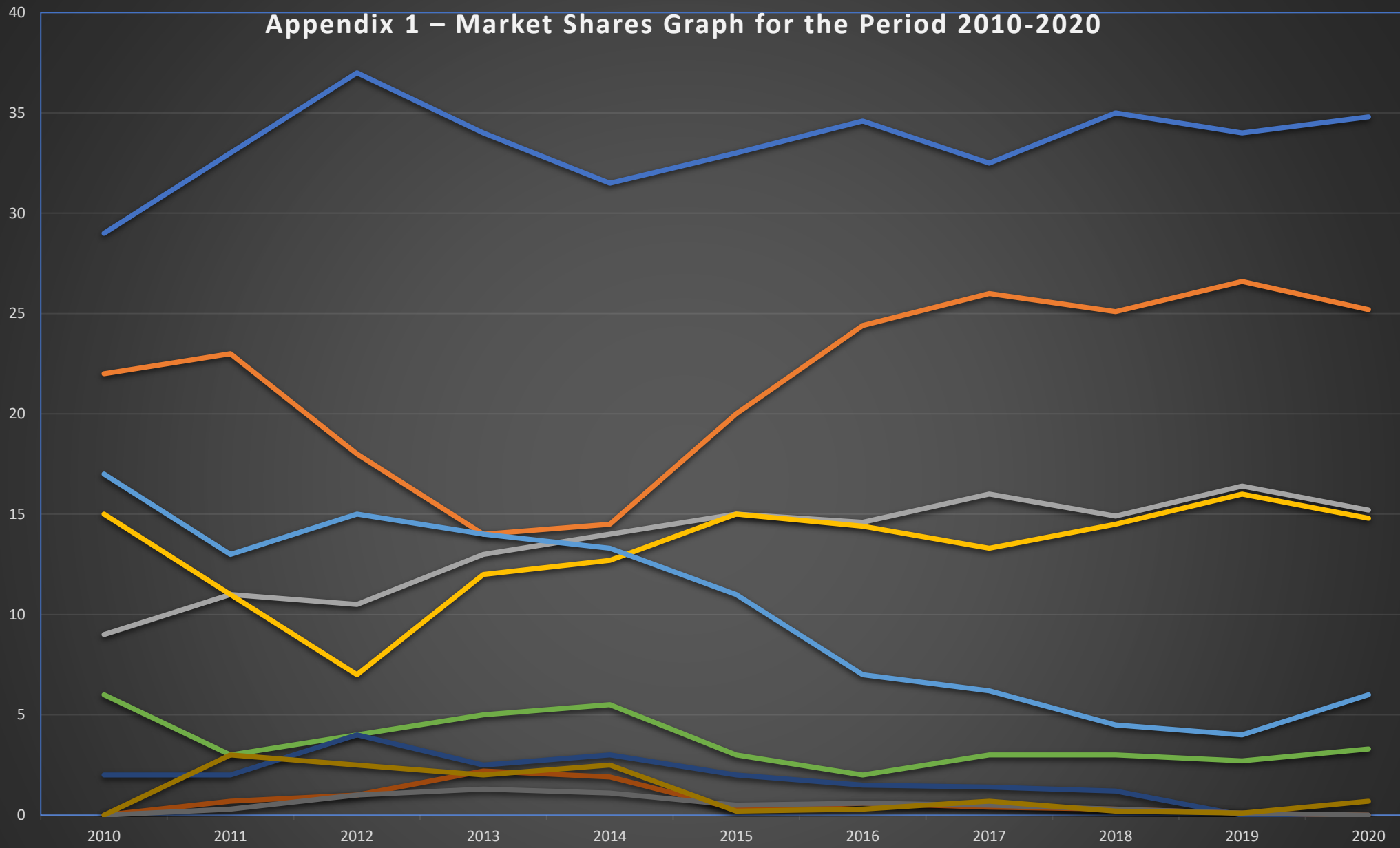
- (iv) The only price increases that were approved by the FTA were in response to excise duty hikes;
- (v) The exchange of monthly dispatch quantity information between the cigarette manufacturers was undertaken not for the purposes of *inter se* production monitoring. The regional commissioner's office had made an informal request to the VTA to gather such information (to discharge its duties under the Tobacco Production, Distribution and Sales Regulation Policy 2006) by liaising with the cigarette manufacturers. Since the information gathering process was a massive administrative responsibility with significant manpower and financial costs, the cigarette manufacturers internally decided to discharge this responsibility *inter se* on rotation. Therefore, Arboris on three occasions (2007, 2011, 2016) discharged this obligation and in furtherance of it, exchanged emails/texts with other cigarette manufacturers to gather the requisite information;
- (vi) The access to such information did not result in any price hikes and therefore had no AAEC on the market; and
- (vii) The DG's investigation is incomplete without deposing relevant officers from the regional commissioner's office whose practices on several occasions compelled the cigarette manufacturers to exchange commercially sensitive information *inter se*.

18. The VTA opposed the observations in the DG Report by arguing that its platform was utilised only for the purposes of legal and legitimate consensus building for putting pressure on the FTA, in order to relieve the cigarette industry from an unreasonable regulatory and taxation burden. The VTA did not enable the cigarette manufacturers to conspire and fix prices of cigarettes but instead to present a united front against the recurrent increase in the excise duty imposed on tobacco products. Furthermore, the VTA on some occasions took the issue of price hike to the FTA on behalf of all the cigarette companies (as against the cigarette companies independently going to the FTA) because historically, the FTA would not entertain individual pleas by the cigarette companies and wanted an industry consensus on price hikes.

19. The CCV has reviewed the written submissions made by all the OPs as well as the VTA, and it shall be hearing final arguments on the following questions on 20 March 2022:

- (i) Whether a leniency applicant can subsequently challenge the finding of a violation under Section 3(3)(a) of the Competition Act?
- (ii) Whether the exchange of price sensitive information in the context of the present case amounts to a violation of Section 3(3)(a) of the Competition Act?
- (iii) Whether Imperial and BAT can be considered as part of the single economic entity for the purposes of the present cartel?
- (iv) If yes, should the CCV also extend a similar percentage of reduction in penalty to Imperial pursuant to BAT's leniency application, if BAT's leniency application is successful?

Appendix 1 – Market Shares Graph for the Period 2010-2020



Stella Arboris Venus BAT PMI Imperial Supersniffs Tigris Klaus Others

APPENDIX 1 – MARKET SHARES FOR THE PERIOD 2010-2020

	Stella	Arboris	Venus	BAT	PMI	Imperial	Superniffs	Tigris	Klaus	Others
2010	29	22	9	15	17	6	2	0	0	0
2011	33	23	11	11	13	3	2	0.7	0.3	3
2012	37	18	10.5	7	15	4	4	1	1	2.5
2013	34	14	13	12	14	5	2.5	2.2	1.3	2
2014	31.5	14.5	14	12.7	13.3	5.5	3	1.9	1.1	2.5
2015	33	20	15	15	11	3	2	0.3	0.5	0.2
2016	34.6	24.4	14.6	14.4	7	2	1.5	0.6	0.6	0.3
2017	32.5	26	16	13.3	6.2	3	1.4	0.4	0.5	0.7
2018	35	25.1	14.9	14.5	4.5	3	1.2	0.3	0.3	0.2
2019	34	26.6	16.4	16	4	2.7	0	0.1	0.1	0.1
2020	34.8	25.2	15.2	14.8	6	3.3	0	0	0	0.7
Average	33.49	21.70	13.6	13.24	10.09	3.68	1.78	0.68	0.51	1.10

APPENDIX 2 – THE TOBACCO PRODUCTION, DISTRIBUTION AND SALES REGULATION POLICY, 2006

The Tobacco Production, Distribution and Sales Regulation Policy

By Authority of the Federal Trade Authority of the Republic of Volta
1 July, 2006

Regulation No – FTA 1/7/2006/31A

I. Introduction

- By virtue of the authority vested on the Federal Trade Authority of the Republic of Volta by the Constitutional Charter of the Republic of Volta; and
- To regulate the production, distribution, supply, and sale of tobacco and its derivative products, in order to balance the need to conserve the larger public health, and public morality as well as to preserve the competition in the tobacco industry; and
- To curtail the pernicious effects of consumption of tobacco and its derivative products, especially by minors; and
- To prevent the illegal production, distribution, supply, and sale of tobacco within the Republic of Volta, the Federal Trade Authority issues The Tobacco Production, Distribution and Sales Regulation Policy, 2006 effective from the date of its publication on the National Gazette of the Republic of Volta.

II. Farm Production

1. Over and above the stipulations provided in Section 24A of the Agricultural Goods (Cultivation and Production) Act, 1952, in relation to the cultivation of any of the plants of the Nicotiana genus (i.e., tobacco plants), the regional commissioner of each autonomous region of the Republic of Volta shall be responsible for documenting:

- 1.1. the total land area of cultivated tobacco;
- 1.2. the total production of tobacco from such cultivated land area;
- 1.3. the sale of such cultivated tobacco; and
- 1.4. the payment of adequate tax on such sale proceeds in consultation with the regional tax commissioner as provided in the Voltan Tax Code, 1961.

III. Farm to Business Sales

2. The regional commissioner shall also be responsible for liaising with all private enterprises involved in the purchase of tobacco for further commercial processing into various products, in order to:
 - 2.1. ensure that the total sale of harvested tobacco from a given autonomous region corresponds to the total purchase of harvested tobacco made by various private enterprises from the said region;
 - 2.2. identify potential gap(s) (if any) in the total sale of harvested tobacco from an autonomous region vis-à-vis the total purchase of harvested tobacco, over and above one (1) ton of such harvested tobacco leaves; and
 - 2.3. report any potential gap(s) to the regional investigation officer of the Federal Narcotic Agency of Volta within 15 days of identifying such gap(s).

IV. Commercial Distribution of Tobacco and Tobacco Products

3. The regional commissioner shall also be responsible for undertaking quarterly audits of all the private enterprises registered with the Federal Trade Authority of the Republic of Volta, to commercially produce, manufacture, distribute, sell, or

undertake a downstream commercial activity involving tobacco in the Republic of Volta, which shall include:

- 3.1. tallying the total purchase quantity of harvested tobacco *vis-à-vis* the total quantity of processed tobacco and tobacco products for commercial sales, including the total quantity of harvested tobacco that is wasted in the commercial production process;
- 3.2. reporting wastage of harvested tobacco in excess of one (1) ton to the regional investigation officer of the Federal Narcotic Agency of Volta within 15 days of identifying such wastage;
- 3.3. reviewing the monthly sales record of each private enterprise for all sales made to downstream players through various distribution channels;
- 3.4. reviewing the license status of all downstream supply channels (including distributors, direct sellers) through which the sale of tobacco and tobacco products are undertaken;
- 3.5. issuing show-cause notices to all downstream supply channels (including distributors, direct sellers) that have failed to renew their license within 30 days of expiry of such license; and
- 3.6. cancelling the license of any downstream supply channel participant (including distributors, direct sellers) that undertake the sale of tobacco and tobacco products to minors.

V. Taxation

4. The regional commissioner shall be responsible for gathering pricing information from individual private enterprises registered with the Federal Trade Authority of the Republic of Volta, to commercially produce, manufacture, distribute, sell, or

undertake a downstream commercial activity involving tobacco in the Republic of Volta, such as:

- 4.1. procurement costs incurred towards the purchase of harvested tobacco;
- 4.2. production cost of finished tobacco products;
- 4.3. price mark-up on finished tobacco products;

Issued by the First Minister of the Federal Trade Authority of the Republic of Volta

Date: 1 July, 2006

APPENDIX 3 – OFFICIAL COMMUNICATION BY THE COMPETITION COMMISSION OF
VOLTA

Official Communication by the Competition Commission of Volta

Consolidation Notification – Acquisition of 40% shareholding by Blue Andean Tobacco Volta Limited in Voltan Imperial Limited

9 November 2011

The Competition Commission of Volta (“CCV”) has conditionally approved a consolidation in the tobacco industry whereby the Voltan subsidiary of Blue Andean Tobacco A.G. i.e., Blue Andean Tobacco Volta Limited (“BVL”) acquired 40% of the shareholding in the Voltan subsidiary of Imperial B.V., i.e., Voltan Imperial Limited (“VIL”) through a share-swap agreement. The shareholders of VIL shall receive shares in BVL in the swap ratio of 12:1. Pursuant to this acquisition, BVL shall also be appointing 2 out of the 5 directors on the board of directors of VIL, and shall be able to exercise a veto right in a number of matters including (i) corporate restructuring or acquisition; and the (ii) introduction of a new line of business.

The CCV has approved the consolidation subject to BVL offering a commitment to not appoint common members to the pricing committee/finance committee of BVL and VIL. Therefore, the CCV notes that the consolidation would not significantly affect competition in the Voltan internal market due to the presence of several larger competitors such as Stella Tobacco Limited, Arboris Tobacco Products Limited, Venus Cigars Limited and Pollock & Morset International Volta Limited, which collectively constitute 80% of the market for tobacco and tobacco products. Further, with Klaus Tobacco Limited entering the market for tobacco and tobacco products in 2011 is positively indicative of the competition in it.

The CCV shall be closely monitoring the post consolidation behaviour of the parties to the consolidation to ensure that the competition in the internal market remains robust.

Ahara Roy

Commissioner, Competition Commission of Volta

APPENDIX 4 – LESSER PENALTY APPLICATION

A. Lesser Penalty Application Submitted by Blue Andean Tobacco Volta Limited

To 11 December 2019

The Secretary

The Competition Commission of Volta

16 Liberty Tower, 9th Cross Street

Aux, Volta – 45107

Subject: Filing of Confidential Application for and on behalf of Blue Andean Tobacco Volta Volta Limited, under Section 46 of the Competition Act, 2002 and the Competition Commission of Volta (Lesser Penalty) Regulations, 2009

Dear Madam,

We, 5 Barristers Cross LLP, are writing on behalf of our client, Blue Andean Tobacco Volta Limited (“**BVL**”), respectfully submit this Confidential Application under Section 46 of the Competition Act, 2002 (“**Competition Act**”) and the Competition Commission of Volta (Lesser Penalty) Regulations, 2009 (“**LPR**”) (“**Confidential Application**”). This is in furtherance to our email dated 1 December 2019 addressed to the Secretary, Competition Commission of Volta (“**CCV**”).

The Confidential Application is in relation to cartelisation in the tobacco industry, and specifically (i) cigarettes, (ii) cigars, and (iii) roll-your-own/make-your-own tobacco, of various lengths and packages.

The Hon'ble CCV was pleased to allow BVL's application through its order dated 5 December 2019, and has granted appropriate priority status to BVL. The Hon'ble CCV

had directed BVL to file the detailed application in terms of the LPR within 15 days from the date of communication of its order. Hence, we are hereby filing this Confidential Application on behalf of BVL within the stipulated deadline, and also pray for an opportunity of an oral hearing to explain the case made out by BVL at the earliest convenience of the Hon'ble CCV.

BVL reiterates its commitment to cooperate in the ongoing investigation.

Yours Sincerely

Max Alcott

Advocate for Blue Andean Tobacco Volta Limited

CONFIDENTIAL – RESTRICTION OF PUBLICATION CLAIMED

ANNEXURE – 1 TO APPENDIX 4 | INCRIMINATING EMAIL EVIDENCE

From: Atul Leander
Sent: December 23, 2015 12:11 PM
To: Sanya Das <sanya@arboris.com>; 'Karl Willhem' karl.willhem@bat.com; 'James Vellanki' james.vellanki@stella.com
Cc: Ramya Hindwani <ramya.hind@venuscigars.com>
Subject: RE: Negotiations for Price Hike

The Commissioner's office rejected the hike till 82. They are amenable to a hike proportionate to the increased levy from April 15. They may also compensate us for the revenue loss due to the hike between the months of April till whenever the revised price goes on the shelves. This is the best we could do.

From: Atul Leander
Sent: December 21, 2015 4:47 PM
To: Sanya Das <sanya@arboris.com>; 'Karl Willhem' karl.willhem@bat.com; 'James Vellanki' james.vellanki@stella.com
Cc: Ramya Hindwani <ramya.hind@venuscigars.com>
Subject: RE: Negotiations for Price Hike

Copying Ramya from the team. The Commissioner will understand the industry's plight, and we shall secure the hike. Stay positive folks.

From: James Vellanki
Sent: 21 December 2015 16:10 PM
To: Sanya Das <sanya@arboris.com>; 'Atul Leander' <atul.lea@venuscigars.com>;

'Karl Willhem' <karl.willhem@bat.com>

Subject: RE: Negotiations for Price Hike

Stella commits to saving the industry. We shall follow suit.

Regards

JV

From: Sanya Das

Sent: 21 December 2015 12:40 PM

To: 'James Vellanki' <james.vellanki@stella.com>; 'Atul Leander' <atul.lea@venuscigars.com>; 'Karl Willhem' <karl.willhem@bat.com>

Subject: RE: Negotiations for Price Hike

External communication. Exercise caution in accessing contents and attachments.

Dear all

The final price hike for a 20 pack, long cigarette box will be 82 Voltan Francs. Let the proposal be taken to the Commissioner, and an emphatic appeal be made before his office. The future of the industry is at stake. Looking forward to your cooperation.

Best

Sanya

From: Suryakant Acharya

Sent: 21 December 2015 15:28

To: Sanya Das <sanya@arboris.com>; Joseph Matthew <joseph.matthew@venus cigars.com>; Tanushree Hota <tanushree.hota@bat.com>; >; Karl Wilhelm <karl.willheim@bat.com>;

Cc: Logan Pax <logan@arboris.com>; Rohan Dasgupta <rohan.dasgupta@bat.com>; Viral Joshi <viral@arboris.com>; Lalit Karun <lalit.karun@stella.com>; James Vellanki <james.vellanki@stella.com>

Subject: RE: Price Book.1.xls.

+ James from the team. We are available at 7.30PM for the concall. Also attached our price pitch.

Regards

S

From Karl Wilhelm

Sent: 15 March 2016 15:37 PM

To: Sanya Das <sanya@arboris.com>; Suryakant Acharya <suryakant.acharya@stella.com>; Joseph Matthew <joseph.matthew@venus cigars.com>; Tanushree Hota <tanushree.hota@bat.com>

Cc: Logan Pax <logan@arboris.com>; Rohan Dasgupta <rohan.dasgupta@bat.com>; Viral Joshi <viral@arboris.com>; Lalit Karun <lalit.karun@stella.com>

Subject: RE: Price Book.1.xls.

External communication. Exercise caution in accessing contents and attachments.

+ price list of the BAT team

Guys, can you suggest a few slots post 7 PM today for a discussion?

Best

Karl

From: Sanya Das

Sent: 15 March 2016 8:45 AM

To: Suryakant Acharya <suryakant.acharya@stella.com>; Joseph Matthew <joseph.matthew@venus cigars.com>; Tanushree Hota <tanushree.hota@bat.com>

Cc: Logan Pax <logan@arboris.com>; Karl Willheim <karl.willheim@bat.com>; Rohan Dasgupta <rohan.dasgupta@bat.com>; Viral Joshi <viral@arboris.com>; Lalit Karun <lalit.karun@stella.com>

Subject: RE: Price Book.1.xls.

Copying Karl and Logan as well.

Tentative price list for Arboris is attached.

Kind regards

Sanya

From: Atul Leander

Sent: 14 March 2016 16:01 PM

To: Sanya Das <sanya@arboris.com>; Suryakant Acharya <suryakant.acharya@stella.com>; Joseph Matthew

<joseph.matthew@venuscigars.com>; Tanushree Hota <tanushree.hota@bat.com>
Cc: Rohan Dasgupta <rohan.dasgupta@bat.com>; Viral Joshi <viral@arboris.com>;
Lalit Karun <lalit.karun@stella.com>

Subject: Price Book.1.xls.

This email came from outside Venus Cigars

PFA a tentative price list. Look forward to receiving your respective lists and inputs.

Regards,

Atul

Atul Leander I Sales Manager
Venus Cigars

ANNEXURE – 2 TO APPENDIX 4 | INCRIMINATING TEXT EVIDENCE

Ramya (14 April 2017, 10.15AM): Viral, when are you sharing the price and monthly output figures for the March 17?

Viral (14 April 2017, 10.23 AM): Still waiting to hear back from boss. Have the others shared their figures?

Ramya (14 April 2017, 10.56AM): Yes, Rohan sent their figures yesterday, and Lalit sent in Stella's figures earlier in the day.

Viral (14 April 2017, 11.05AM): Sorry for the hold-up. You'll have time till tomorrow to collate and submit, right?

Ramya (14 April 2017, 11.14 AM): Collation will take time, and I don't want to create a hold up at the Commissioner's office. Please send ASAP.

DRAFTER'S NOTE TO THE PARTICIPANTS

1. Unless stated otherwise in the moot proposition, **only** the laws of the Republic of Volta are *pari materia* with the laws of the Republic of India.
2. Since the proceedings arise out of multiple lesser penalty applications, due to reasons of confidentiality, the Competition Commission of Volta has drawn up a confidentiality ring pursuant to which only the counsels representing the parties and select employees of the parties have access to each other's confidential/sensitive information (including past written submissions and future oral arguments). Such counsels and individuals have submitted an affidavit each to not disclose such confidential/sensitive information.
3. The participants are requested to make reasonable inferences from the various pieces of evidence provided in the moot proposition.
4. When representing the Prosecutorial Wing of the Office of the DG, the participants shall be the Prosecution. Similarly, when representing the opposite parties (as necessary), the participants shall be the defendant(s).
5. The precedents of Indian courts/tribunals hold persuasive value. The precedents of courts/tribunals from other jurisdictions may also be relied upon.
6. The submissions made by various parties in the moot proposition are simply factual submissions. The participants are expected to build on these submissions as well as come up with their own arguments.
7. The moot proposition is a hypothetical, and holds no correlation to any ongoing matter before any court/tribunal/authority in the Republic of India.