TEAM 576C

Representation Plan of Behalf of Conglomerated Nanyu Tobacco Ltd

Facts and Nature of Dispute

On 14 December 2010, Conglomerated Nanyu Tobacco, Ltd. (the Claimant) and Real Quik Convenience Stores Ltd. (the Respondent), entered into a 10-year distribution agreement. The Claimant is the largest tobacco producer in Nanyu and the Respondent is a fast growing convenience store chain in Gondwana. The Claimant and the Respondent (the Parties) have a long lasting business relationship and entering into 10-year distribution agreements is common practise between the Parties. The nature of the agreement between the Parties is that the Claimant would supply tobacco and tobacco products, including merchandise to the Respondent for the Respondent to advertise and sell in their stores.

In 2001, the Gondwandan Government began to establish a series of different reforms and policies regarding tobacco products. On 14 March 2011, the Gondwandan Government introduced Bill 275. If implemented into law, the effect of Bill 275 would be to restrict the packaging of tobacco products, and place limitations on the marketing and advertising of tobacco products and branded merchandise. On 21 March 2011, the Respondent wrote to the Claimant, expressing concerns at the ramifications of Bill 275 becoming law, and suggested renegotiation of the Agreement. The Claimant subsequently dismissed the Respondent's concerns. Bill 275 was passed into law on 13 April 2012, taking effect on 1 January 2013.

The Respondent wrote to the Claimant on 11 March 2013, requesting a renegotiation of the Agreement, as Bill 275 had rendered some of their obligations under the

Agreement illegal. The renegotiations between the Parties were unsuccessful. On 1 May 2013, the Respondent gave notice of termination of the Agreement. On 1 July 2013, the Claimant wrote to the Respondent, claiming the termination penalty provided for in cl. 60 of the Agreement.

On 26 September 2013, the Respondent wrote back to the Claimant, stating that they were not liable to pay the termination penalty, as they were forced to terminate the Agreement due to matters outside their control. The Claimant then applied to have the matter referred to arbitration.

<u>Interest of the Parties</u>

Conglomerated Nanyu Tobacco Ltd

Conglomerated Nanyu Tobacco Ltd would like to keep their significant share of the Tobacco market in Gondwana. They are interested in retaining their long-term commercial relationship with The Respondent, as they are a major holder of their market share in Gondwana. If there were a possibility of the Parties being able to renegotiate the agreement and re-enter into the contract on terms viable to both Parties, and to comply with the new laws, then the Claimant would be interested in continuing their commercial dealings.

Ideally, the Claimant would like to seek liquidated damages due to any losses that the early termination of the Agreement has caused them.

Real Quik Convenience Stores Ltd

The Respondent would like to not be bound to an Agreement that contravenes the tobacco laws in Gondwana. As a result, the Respondent wishes to renegotiate the Agreement in order to address compliance with the tobacco laws of Gondwana. In particular, the Respondent would like to renegotiate the promotional merchandise provisions of the Agreement.

The Respondent also would like to address the 20% premium, as a result of the impact the tobacco law have had on the intellectual property of the tobacco market in Gondwana. In other words, the Respondent would like to note that there has been a commoditisation of the tobacco products in Gondwana, and that the 20% premium is no longer commercially viable.

Overall, the Respondent wishes to continue the long-standing relationship with the Claimant, on terms viable to both parties.

<u>Negotiation Plan</u>

The Claimant would like to start off the negotiations by preparing an agenda of the issues relevant for both Parties. First, the Claimant would like to note and address the fact that the Parties have had a long standing profitable relationship, and to find ways that they can continue this relationship. This would involve noting the actual impact of the new laws on the Agreement between the Parties, and the overall effect on particular provisions. In particular, the Claimant notes that the sale of tobacco is still legal in Gondwana, and that the Agreement can still be performed.

If the Respondent is open to negotiations on the Agreement, then the Claimant will be willing to, in particular, specifically address the issue of the promotional merchandise. It is the Claimant's understanding that the Agreement can still be commercially viable without that provision remaining. The Claimant is willing to offer the striking out of the provision on the sale of promotional merchandise.

Based on the assumption that a renegotiation is possible, the Claimant would be willing to discuss an appropriate amount of compensation of losses incurred to date, in lieu of the entire liquidated damages sum. In other words, the Claimant would be willing to offer a settlement deal to the Respondent.