Mediation Representation Plan for Real Quik Convenience Stores Pty Ltd

Background to the dispute

Conglomerated Nanyu Tobacco Ltd (**'CNTL'**) and Real Quik Convenience Stores Ltd (**'Real Quik'**), collectively (**'the parties'**), commenced a ten-year period tobacco Distribution Agreement in 2000. On 14 December 2010, the parties renewed the contract by signing a new ten-year period Distribution Agreement (**'the Agreement'**), which provided *inter alia* that Real Quik purchase CNTL's tobacco products at a fixed price and be supplied with promotional merchandise by CNTL.

Pursuant to the Agreement, Real Quik was obliged to purchase ten million cartons/packages of tobacco products from CNTL per annum with a period of no longer than three months between orders. On 1 January 2013, plain-packaging tobacco legislation (**'Bill 275'**) was introduced in Gondwana where Real Quik operates its stores. Following the introduction of Bill 275, Real Quik maintains to be unable to meet its obligations and sought to renegotiate the terms of the Agreement. The parties met on 11 April 2013 to discuss the Agreement but nothing was resolved nor agreed to and accordingly, the Agreement remained afoot. On 1 May 2013, Real Quik sent notice to CNTL that it would no longer be able to perform its duties under the Agreement, and that as a result it would be terminating the Agreement, effective from 1 June 2013. Real Quik was unable to continue to perform the contract due to the passing of Bill 275. Real Quik therefore seeks that it be exempt from paying liquidated damages of $USD 75 million, pursuant to the early termination provision contained within the Agreement, due to non-performance being outside its control.

Real Quik's Interests

Real Quik has an interest in preserving the business relationship between the parties. However, rejects any liability to pay compensation or liquidated damages to CNTL. Real Quik was unable to continue to perform the contract due to the passing of Bill 275 so it should be released from its obligations under the Agreement. It is in Real Quik's interests for the Agreement to be declared at an end and pursue negotiation of a new Agreement. It is further in Real Quik's interest to include provision for a force majeure clause so as to avoid situations of similar nature in the future.

Real Quik comes to mediation with the following five (5) interests and seeks to:

1. Be exempt from liability to pay liquidated damages;
2. Be released from their current obligations under the Agreement dated 14 December 2010;
3. Negotiate terms for a new Distribution Agreement;
4. Include provision in the new Agreement for a force majeure clause to provide for a resolution in the end of a re-occurrence of a similar situation going forward; and
5. Maintain a positive and lasting commercial relationship with CNTL's.

Real Quik's Mediation Strategy

During the opening statements, Mr. Mancuso will outline his understanding of the issues and his respective interests. Mr. Worthington will ensure Mr. Mancuso remains open minded and considers all possible positions. During the negotiation phase of the mediation, Mr. Mancuso and Mr. Worthington will work together to explore all possible options to resolve the dispute and emphasise the greater cost to both parties if the commercial relationship were to end. At the conclusion of the mediation, it will be Mr. Mancuso who ultimately decides whether an acceptable outcome has been put on the table in light.