PRECISION ECONOMICS, LLC
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Expert Report of Brian C. Becker, Ph.D.

by

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BECKER Transfer Pricing Report

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I. Executive Summary

A. Background

1. Coca-Cola Company

The Coca-Cola Company (the "Coca-Cola Company" or the "Company")[1] has achieved industry leading market shares, brand values,[2] and profit margins. See **Tables 3-5, & 19**. As it states in its Form 10-K:

> Along with Coca-Cola, which is recognized as the world's most valuable brand, we market four of the world's top five nonalcoholic sparkling brands.[3]

2. Brand, Formula, and Other Intangible Ownership

The Coca-Cola Company's U.S. parent ("TCCC") owned all of the Company's top brands (see **Table 3**), the formulas for its various beverages, and other intangible assets. This included contracts with bottlers to purchase concentrate from TCCC (or its designees). TCCC continued to own these assets throughout the 2007-2009 period.

3. Supply Chain

TCCC did not manufacture and sell the Coca-Cola Company's products to retail consumers by itself. Rather, it contracted with certain related and unrelated entities in a supply chain starting with intangible ownership and ending with retail sales of finished product. See **Table 1** below.

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[1] The "Coca-Cola Company" will refer to the worldwide Coca-Cola group. "Coca-Cola" will refer to the specific Coca-Cola product (as opposed to, for example, Diet Coke, Coke Zero, Sprite, Fanta, etc.). The sources to facts noted in this chapter are generally cited in Chapters II, III, and IV—or in tables attached to the report.

[2] I will use the term "brand" generally in this report to refer to both the corporate name and the name of products. A similar term—trademarks—is also used to refer to products.

[3] The Coca-Cola Company. (February 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008. Exhibit 240-J, p. 33. EXHJ_00004035.

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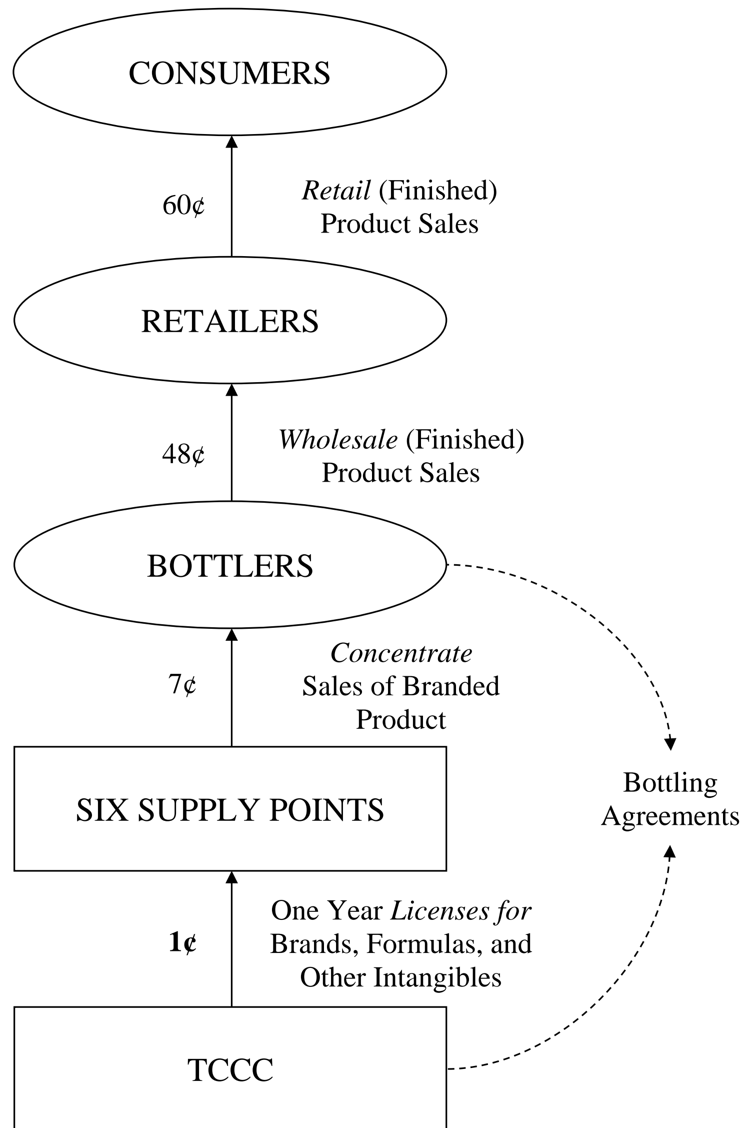
Table 1: Supply Chain From TCCC's Licenses to the Supply Points



Notes:
/1/: TCCC (and related entities) also charged the Supply Points allocated expenses and service fees.
/2/: Based on average international retail price per can and Coca-Cola Company's estimates of concentrate/wholesale and wholesale/retail price ratios.
/3/: Reported royalties--across all six Supply Points and three years--average 0.8 cents per 60 cent retail can.

Sources:
(1) **Tables 13 & 24**.
(2) Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (December 14, 2015). Petition, p. 3.
(3) Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (May 1, 2017). Petitioner's Objections and Answers to Respondent's Third Set of Interrogatories, p. 13. CC0011175.

In this supply chain, the first step was TCCC's licensing of its brands, formulas, and other intangibles. Specifically, TCCC entered into license agreements with six related companies ("Supply Points"):[4] SP Brazil; SP Chile; SP Costa Rica; SP Ireland; SP Mexico; and SP Swaziland to manufacture concentrate and syrups.[5] For an average royalty equivalent to approximately one penny (0.8 cents) per can of product, the Supply Points generally received a one-year license terminable by either side providing the rights to TCCC's brand, formulas, and other intangibles. The Supply Points sold all of the concentrate they manufactured to bottlers with whom TCCC contracted. The bottlers finished/bottled/canned the products before selling them to retailers (and some distributors). At the end of the supply chain, consumers purchased Coca-Cola products from retailers. Consumer prices varied by country (and channels, packaging, etc.), with an average worldwide price of approximately 60 cents per can as of this time (2008).

[4] It is my understanding that there are other Supply Points. However, my assignment is restricted to these six.

[5] More formally, the companies were: Coca-Cola Industria E Comercio, Limitada; Coca-Cola de Chile, S.A.; FTZ Coca-Cola Industrias S.A.; the Irish branch of Atlantic Industries ("AI"), a controlled foreign corporation owned by TCCC; the Mexican Branch of the Coca-Cola Export Corporation; and Conco, Ltd., respectively. See, Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J; Agreement between The Coca-Cola Company and Coca-Cola de Chile S.A. (January 1, 2002). License Agreement. Exhibit 95-J; Agreement between The Coca-Cola Company and FTZ Coca-Cola Industrias S.A. (November 6, 2001). License Agreement. Exhibit 96-J; Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J; Agreement between The Coca-Cola Company and the Mexican Branch of The Coca-Cola Export Corporation. (January 1, 1998). Licensing Agreement. Exhibit 56-J; Agreement between The Coca-Cola Company and Conco Limited, Swaziland Branch. (January 1, 1987). License Agreement. Exhibit 91-J. See also, Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (December 14, 2015). Petition, pp. 10-11.

4. Royalties Reported by the Coca-Cola Company

The six Supply Points did not report consistent royalties. Three of them reported no royalties. The largest Supply Points—SP Ireland—along with SP Mexico and SP Swaziland reported total royalties of approximately $3.1 billion. See **Table 2** below.

Table 2: Supply Points' Combined Income Statement: 2007-2009

Years Ended on December 31 (In USD Millions)	2007	2008	2009	Total	Formula
Net Revenue /1/	$8,636.8	$9,409.4	$8,980.7	$27,027.0	a
Total Cost of Goods and Services /1/	$865.1	$914.3	$884.2	$2,663.7	b
Total Non-Royalty Operating Expenses /1/	$3,412.0	$3,552.8	$3,196.9	$10,161.7	c
Operating Income (Pre-Royalty)	$4,359.7	$4,942.3	$4,899.6	$14,201.5	d = a-b-c
Royalty and License Fee Expense - IP	**$998.2**	**$1,072.0**	**$1,028.9**	**$3,099.1**	**e**
Operating Income (Post-Royalty)	**$3,361.4**	**$3,870.3**	**$3,870.6**	**$11,102.4**	**f = d-e**
Operating Margin (Post-Royalty)	**38.9%**	**41.1%**	**43.1%**	**41.1%**	**g = f/a**
Operating Margin (Pre-Royalty)	50.5%	52.5%	54.6%	52.5%	h = d/a

Combined Profit Being Split

22% Share to TCCC: $3,099.1/$14,201.5 = 22%

78% Share to Supply Points: $11,102.4/$14,201.5 = 78%

Note:
/1/: Includes deductions for Cosmos and Schweppes for SP Ireland. See **Table C4**.

While TCCC reported approximately $3.1 billion of royalties in revenues, the Supply Points reported net operating profits—post royalties—of approximately $11.1 billion per year. See **Table 2**. That is, the reported royalties split the combined concentrate operating profits approximately 22 percent to TCCC and 78 percent to the Supply Points.

5. Assignment

The Internal Revenue Service determined that the reported royalties summarized above are not consistent with arm's length pricing.[6] The IRS hired Precision Economics, LLC to determine if and how certain licensing agreements between TCCC and uncontrolled companies can be used to analyze whether the reported royalties are arm's length.

My rate for this project has been $650/hour.

[6] Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (December 14, 2015). Petition.

B. Materials Considered

I considered a number of documents supplied by the Coca-Cola Company to the IRS as well as a number of publicly available documents.[7] These documents include license agreements between the Coca-Cola Company and third parties. I provide a full list of the materials considered in Appendix B.

C. Qualifications

My name is Brian C. Becker. I am the founder and President of Precision Economics. A copy of my current curriculum vitae, which includes a complete listing of my publications, teaching experience, and expert testimony, is attached to this report as Appendix A.

I have been employed as a consulting economist for 25 years. Prior to founding Precision Economics in 2001, I gained experience while employed by several consulting firms. My primary areas of focus in those positions were in transfer pricing, business valuation, international trade, intellectual property, and financial damages. With a focus on litigation/disputes in transfer pricing, the bulk of my experience has been in industries with large amounts of intangible property, including software, pharmaceuticals, consumer products, and medical devices.

In the transfer pricing area, I have been engaged as an expert witness on behalf of taxpayers and tax authorities in multiple countries. In total, my transfer pricing experience includes more than 500 transfer pricing reports. Among assignments that are a matter of public record, I submitted transfer pricing expert reports in the Internal Revenue Service's (settled) litigation matters with GlaxoSmithKline and Guidant/Boston Scientific in 2006 and 2016, respectively. In 2010 and 2015, respectively, I testified as an expert witness in U.S. Tax Court transfer pricing matters involving Weekend Warrior Trailers, Inc. and Medtronic, Inc. In 2009-2014, I testified as a transfer pricing economic expert in Australia in three transfer pricing trials (Roche, SNF, and Chevron). In 2009-2011, I testified as a transfer pricing economic expert in transfer pricing disputes involving General Electric and McKesson in Canada.

My academic background includes teaching positions at four universities in Corporate Finance, Derivative Securities, Statistics, and Operations Management.

Most of my publications have been within the transfer pricing and valuation area, in books and journals, including: *Tax Management Transfer Pricing Report, Corporate Business Taxation Monthly, Business Valuation Review*, and Transfer Pricing Handbook.

[7] This includes historical financial statements for the Supply Points included in the June 2017 expert report of Stuart Harden. See "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

I received my B.A. as a double major in Applied Mathematics and Economics from the Johns Hopkins University. I received my M.A. and Ph.D. in Applied Economics from the Wharton School of the University of Pennsylvania.

D. Summary of Findings

The Coca-Cola Company's reported royalties from the Supply Points are inconsistent with arm's length results. The reported royalties result in operating margins that exceed 40 percent for the Supply Points, compared to 5 to 15 percent operating margins forecasted by the Coca-Cola Company as a licensee in uncontrolled agreements. See **Table 10**. More generally, the reported royalties result in a 78 percent split of the combined concentrate operating profit in favor of the Supply Points. That split is at odds with the limited bargaining power of the Supply Points. In particular: (a) TCCC can terminate the Supply Points' contracts without cause; and (b) the Supply Points' reported expenses are largely service fees and allocations from TCCC and related entities. Likewise, the reported royalties result in assigning only 22 percent of the combined operating profit to a licensor (TCCC) which: (a) owns the world's most valuable brand and other intangible assets; (b) performs most of the work (directly or through related entities) recorded as costs by the Supply Points; and (c) licenses intangibles that relate to mature businesses with stable operating profit margins. See **Tables 2-3, 6-7, & 9**.

I have found that some of the Coca-Cola Company's uncontrolled license agreements provide relevant benchmark information to assess the royalties paid by the Supply Points by virtue of their agreement form, industry, data availability, etc. The other uncontrolled agreements provided by the Coca-Cola Company were either of a different type (*e.g.,* co-branding, trinkets, etc.) or were lacking in profitability information to employ in a reliable manner.

The Coca-Cola Company uncontrolled agreements do not provide a reliable royalty rate benchmark due to significant differences in projected operating profit margins and other factors. They do, however, provide useful guidance for the projected operating profit margins the Supply Points would require in the licenses at issue—post-royalty. Such required/market projected profits were noticeably lower than the operating profit margins the Supply Points projected. Over all three years, the six Supply Points earned $8.6 billion more than if their royalties were set to required/market projected profit levels. See **Table 14**.

II. Background

A. Coca-Cola Company

In 2007-2009, the Coca-Cola Company had been operating for more than 100 years.[8] During that time, it kept key parts of its business and image consistent, including the essential formula for its main product, the well-known Spencerian script (font) for the company (and product) name, the use/promotion of the iconic contour bottle, and the standard optimal temperatures at which to serve its product.[9]

The Coca-Cola Company has been the world's largest beverage company for decades.[10] During the years in issue, it owned the world's leading soft drink brand in Coca-Cola and three others—Diet Coke, Fanta, and Sprite—within the top five.[11, 12] See **Table 3** below.

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[8] Retrieved May 26, 2017 from https://www.worldofcoca-cola.com/about-us/coca-cola-history/.

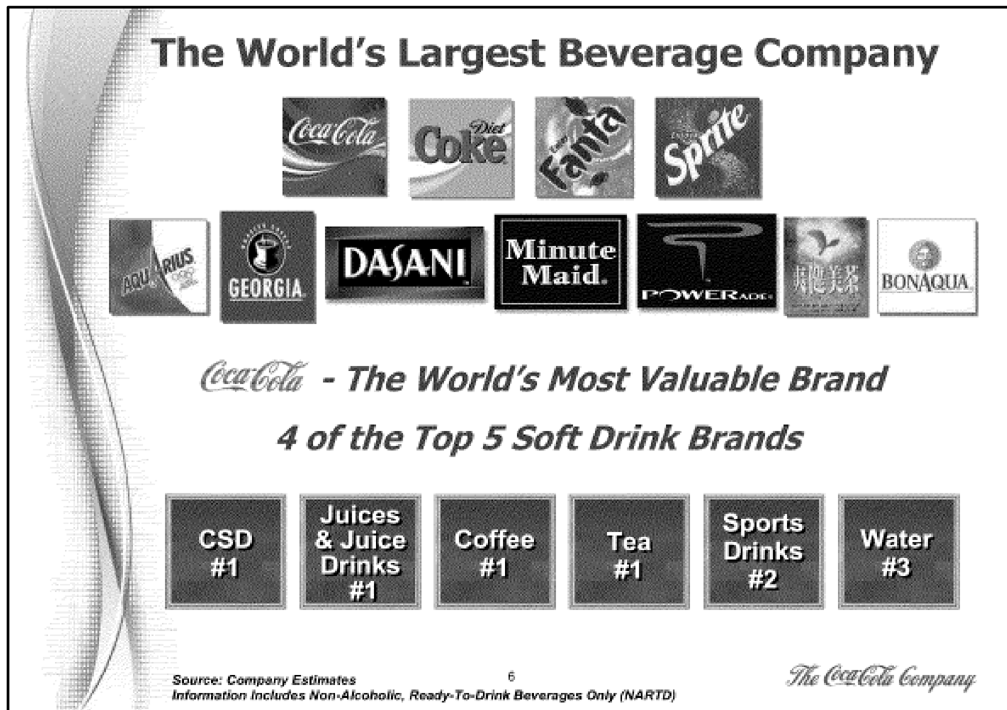
[9] Butler, David and Linda Tischler. (2015). Design to Grow: How Coca-Cola Learned to Combine Scale & Agility (And How You Can Too). Simon & Schuster: New York, pp. 53-55. See also **Table 18**.

[10] Retrieved May 31, 2017 from http://www.coca-colacompany.com/our-company/history-of-bottling.

[11] See, for example, The Coca-Cola Company. (February 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008. Exhibit 240-J, p. 1. EXHJ_00004001.

[12] Similarly, Haig (2004) describes Coca-Cola as the best known product in the world in a brand textbook. Haig, Matt. (2004). Brand Royalty: How the World's Top 100 Brands Thrive & Survive. Kogan Page Limited: London, United Kingdom, pp. 226, 230. Ruder (2008) also describes Coca-Cola as one of the world's most storied trademarks, known for the power of its brand, in a valuation textbook. Ruder, David S. (2008). Strategies for Investing in Intellectual Property: Intangible Valuations, Real Returns. Beard Books: Washington, D.C., pp. 39, 48.

Table 3: Coca-Cola Company's Presentation of Brands



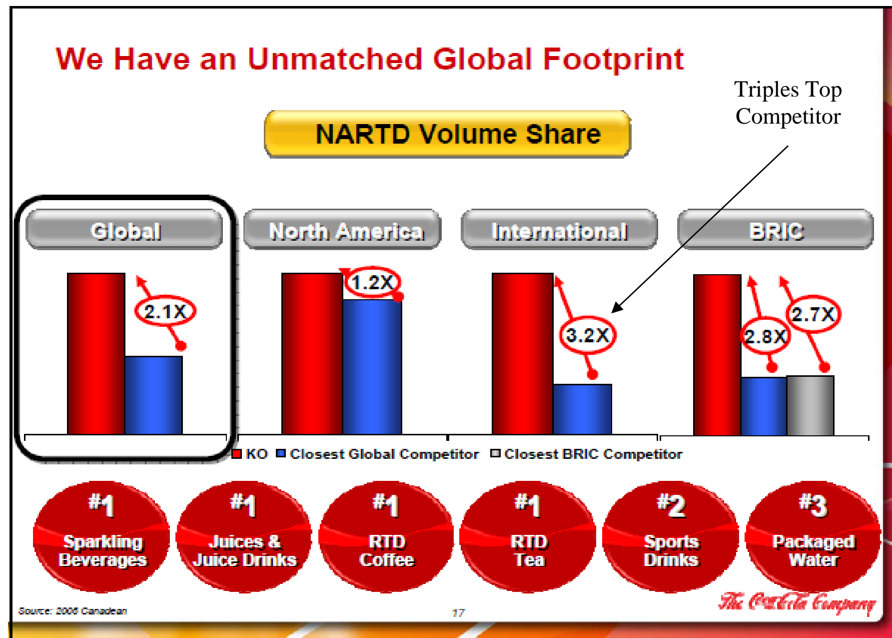
1. Market Share

The Coca-Cola Company enjoyed approximately twice the global market share of its closest competitor (PepsiCo), and almost five times that of its next closest competitor (Dr Pepper Snapple Group) over the years in issue.[13]

The Coca-Cola Company's market share varied by region. In particular, it reported that its market share in international markets was more than triple that of its strongest competitors—while being near parity in North America. See **Table 4** below.

[13] Datamonitor. (August 2009). Global Carbonated Soft Drinks Industry Profile, p. 13.

Table 4: Coca-Cola Company's Presentation of Regional Market Share Competition



Note:
/1/: Arrow and text added.

2. Brand Value

Contemporaneous brand studies estimated the Coca-Cola Company's brand value significantly above its competitors' brand values.[14] See **Table 17**.

Every company's value—that is, its future discounted profits[15]—reflects the value of its brand and other assets (less liabilities). As seen in **Table 17**, the Coca-Cola Company's brand value constituted approximately one-half of its market value (market capitalization plus book value of liabilities).[16, 17] By contrast, approximately one-tenth of PepsiCo's market value was

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[14] Brand valuations vary by study. Dr Pepper Snapple was not listed in the Top 100 in the Interbrand brand valuation study. The Interbrand study seen in **Table 17** was one of the more commonly cited studies during the years in issue. The Coca-Cola Company references this study in several contexts. See, for example, Tripodi, Joe. (Undated). "The World's Most Innovative and Effective Marketing," Slide 19. TCCC-00055306.

[15] Berk, Jonathan and Peter DeMarzo. (2007). Corporate Finance. 1st Edition. Pearson Education, Inc.: Boston, p. 245.

[16] The market value of the Coca-Cola Company exceeded its book value. Book value included entries for various intangibles, but in general only purchased, not self-developed intangibles. As such, the figures on its balance sheet for intangibles tend to be notably lower than estimates of the market value of its brand. See **Tables 16-17**.

from its brand value. Similarly, the Coca-Cola Company's brand value typically represented a larger share of its market value than other companies owning top rated brands (in other industries).[18, 19]

3. Profitability

The Coca-Cola Company earned net revenues of approximately $91.8 billion during the years in issue. After subtracting its costs of manufacturing and of operations (including marketing) from these revenues, its *operating profit*[20] totaled $23.9 billion. See **Table 15**.

The Coca-Cola Company's profitability varied by region. In order to "normalize" or compare on an "apples to apples" basis, operating profit comparisons are often stated as a percentage of revenue—that is, an "operating margin". [21] In particular, the Coca-Cola Company's combined operating margin in the areas served by the Supply Points was approximately twice the levels earned by the Coca-Cola Company on a worldwide basis. See **Table 5** below.

Table 5: Coca-Cola Company Operating Margins: Consolidated Worldwide and Combined Profits by Supply Points

Year Ended December 31 (In Percentages)	2007	2008	2009
Coca-Cola Company Consolidated (Form 10-K)	25.1%	26.4%	26.6%
Pre-Royalty Operating Profit Margin for Supply Points	50.5%	52.5%	54.6%

[17] An analysis by Ruder (2008) also highlights that the Coca-Cola Company's market capitalization is driven largely by its intellectual property. Ruder, David S. (2008). Strategies for Investing in Intellectual Property: Intangible Valuations, Real Returns. Beard Books: Washington, D.C., p. 54.

[18] None of the other top ten companies were in the beverage industry during these years. Only Google in the 2009 ranking had a higher ratio of brand to market value. Brand Finance. (April 2009). The Annual Report on the World's Most Valuable Brands, p. 7.

[19] The Coca-Cola Company described its trademarks as its most valuable assets. See, for example, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 9, 2017). Deposition of Joseph Vincent Tripodi. United States Tax Court, Docket No. 31183-15, pp. 42-43. CC0013884-CC0013885.

[20] Operating profit is equivalent to net revenues less the costs of manufacturing and operating expenses. Berk, Jonathan and Peter DeMarzo. (2007). Corporate Finance. 1st Edition. Pearson Education, Inc.: Boston, p. 27.

[21] Berk, Jonathan and Peter DeMarzo. (2007). Corporate Finance. 1st Edition. Pearson Education, Inc.: Boston, p. 29.

This combined operating profit on the sales of concentrate was set to be split between TCCC (in the form of royalties received from the Supply Points) and the Supply Points. The split of this combined profit—22 percent to TCCC and 78 percent to the Supply Points—is shown in **Table 2**.

B. Brand, Formula, and Intangible Ownership

TCCC owned all of the core brand/trade names, product formulas/specifications for the Coca-Cola Company's products, and other intangibles[22] during the years in issue. In addition, it entered into contracts with bottlers[23] who would purchase all of the Supply Points' concentrate.[24]

C. Terminable One-Year Licenses

Under the agreements with TCCC, the Supply Points licensed, but did not own the rights to TCCC's brands, trademarks, formulas, and other intangibles upon contract termination.[25] For example:

> … [TCCC] reserves the right to control all things and acts related to or involving the Trademarks used in connection with the Products and the Beverages.[26]

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[22] See, for example, Agreement between The Coca-Cola Company and Atlantic Industries Limited. (October 1, 1987). License Agreement. Exhibit 84-J, p. 2. TCCC-00002908.

[23] The Coca-Cola Company. (December 18, 2013). Request for Advance Pricing Agreement with Respect to Atlantic Industries and Coca-Cola de Chile, S.A., Appendix B: Factual Background, Covered Transactions, Industry Analysis, and Functional Analysis, p. 11. CCADMIN0000392. See also, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 11, 2017). Deposition of Denis Kearney. United States Tax Court, Docket No. 31183-15, pp. 117-118. CC0012414-CC0012415.

[24] See, Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-2. TCCC-00002902-TCCC00002903; and Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, p. 2. TCCC-00007792.

[25] The Coca-Cola Company's Vincent Gioe states that intangibles and any improvements revert to the licensor upon termination of the license agreements. See, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 10, 2017). Deposition of Vincent Gioe. United States Tax Court, Docket No. 31183-15, p. 83. CC0014754.

[26] Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, p. 3. TCCC-00007793. See also, Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, p. 3. TCCC-00002904.

> Upon termination of this agreement…all rights which may have accrued to [SP Brazil] hereunder shall terminate…[27]

The Supply Points did not buy (through a buy-in or otherwise) TCCC's assets, and the Supply Points would not receive a payment (through a buy-out or otherwise) upon termination. TCCC generally licensed these rights to its brands, trademarks, formulas, and other intangibles to the Supply Points on a year-to-year basis,[28] with TCCC (and most of the Supply Points) having the ability to terminate on short notice without cause.[29, 30]

D. Supply Points in the Supply Chain

The Supply Points took on three types of roles in the supply chain for Coca-Cola Company products. First, the Supply Points were charged service fees and allocated expenses for work performed by TCCC and related parties. Second, the Supply Points supplied concentrate of Coca-Cola Company products to the bottlers that contracted with TCCC. Third, some of the Supply Points incurred other direct expenses for administrative activities and local marketing. See **Table 7**.

E. TCCC Licenses with Unrelated Parties

The Coca-Cola Company entered into several uncontrolled license agreements—as a licensee—with unrelated parties. See **Tables 20-21**. These agreements provided the Coca-Cola Company with certain selling and manufacturing rights for branded beverage products, like Honest Tea, Nestea, and Canada Dry. For five of these agreements the Coca-Cola Company

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[27] Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, p. 5. TCCC-00002906.

[28] The SP Brazil license stated it was of indefinite time period, with payment amounts updated "from time to time" by TCCC; however, TCCC had the right to terminate with 30 days' notice. Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906. See also, Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, p. 4. TCCC-00007794; and Agreement between The Coca-Cola Company and the Mexican Branch of The Coca-Cola Export Corporation. (January 1, 2001). License and Supply Agreement. Exhibit 57-J, p. 6. TCCC-00002976.

[29] See, for example, Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, p. 4. TCCC-00007794. TCCC also had an ongoing operational role in the business. It sourced ingredients and incurred administrative and marketing expenditures for the Supply Points. I assume these other transactions were made at prices consistent with arm's length expectations.

[30] Under the SP Brazil license, only TCCC could terminate without cause. Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, p. 2. TCCC-00002903.

provided schedules showing licensees' projected (pre-royalty) operating profit margins from the intangibles being licensed. These operating profit margin projections varied, but did not exceed 18 percent. See **Table 11**.

III. Royalties Reported by the Coca-Cola Company

A. Royalties Paid

The Supply Points paid TCCC a total of approximately $1 billion in royalties per year. See **Table 2**. Whether such payments are consistent with the expectations of parties at arm's length can first be analyzed using tests of reasonableness. As is typical in transfer pricing, such tests involve analyses of levels of profitability:

> Therefore, tests of reasonableness, viz., implied profitability, are important in the economic evaluation of a transfer pricing system.[31]

B. Tests of Reasonableness

I examine the bargaining strength of TCCC and the Supply Points on an annual basis prior to each of the years at issue because parties would negotiate based on financial forecasts. For example, the royalties negotiated for the year 2007 would be based upon financial forecasts available prior to January 1, 2007.[32]

In total, the reported royalties provide the brand owner (TCCC) with less than one-quarter of the total combined projected profits. By contrast, the Supply Points received the bulk of the profits and were forecasted to receive 40 percent operating profit margins. See **Table 6** below.[33]

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[31] Chandler, Clark and Irving Plotkin. (October 20, 1993). "Economic Issues in Intercompany Transfer Pricing." Tax Management Transfer Pricing Special Report. Vol. 2, No. 12, p. 5.

[32] The Coca-Cola Company did not supply annual projections of profitability for the Supply Points. I have used the prior year's actual operating profit margins as projections unless otherwise noted. The Coca-Cola Company's projections (in other contexts) typically resulted in the next year's profit margin projections being similar to the current year's actual profit margin. See, for example, The Coca-Cola Company. (January 25, 2010). Operating Committee – Financial Book, pp. 11, 19. TCCC-00059970, TCCC-00059978; The Coca-Cola Company. (December 2006). Board of Directors' Review: 2007-2009 Business Plan, p. 4. TCCC-00028184; and The Coca-Cola Company. (December 2007). Board of Directors' Review: 2008-2010 Business Plan, p. 4. TCCC-00027798. Applying historical profit margins as a projection for the next year is also a standard projection technique for mature companies like the Coca-Cola Company. See, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 10, 2017). Deposition of Vincent Gioe. United States Tax Court, Docket No. 31183-15, p. 70. CC0014741; and Robinson, Thomas R., Hennie van Greuning, Elaine Henry, and Michael Broihan. (2009). International Financial Statement Analysis. 1st Edition. John Wiley & Sons, Inc.: Hoboken, New Jersey, p. 358.

[33] As actual operating profits were similar to expectations (see **Table 22**), the actual split of combined operating profits was similar to the split of expected operating profits. See **Table 2**.

Table 6: Total Projected Operating Margins for Supply Points by the Coca-Cola Company: 2007-2009

In USD Millions Except Percentages	2006	2007	2008	2009	2007-09 Total	Formula
Worldwide Sales of Concentrate (Third Party)	$7,420.6	$8,636.8	$9,409.4	$8,980.7	$27,027.0	a
Operating Profit (Pre-Royalty)	$3,809.0	$4,359.7	$4,942.3	$4,899.6	$14,201.5	b
Actual Operating Margin (Pre-Royalty)	51.3%	50.5%	52.5%	54.6%	52.5%	c = b/a
Projected Operating Margin /1/	**--**	**51.3%**	**50.5%**	**52.5%**	**51.4%**	**d = prior(c)**
Reported Royalty Rate on Concentrate Sales	--	11.6%	11.4%	11.5%	11.5%	e
Projected Post-Royalty Operating Margin	**--**	**39.8%**	**39.1%**	**41.1%**	**40.0%**	**f = d-e**

Projected Combined Profit to Split

78% Projected Share to Supply Points

22% Projected Share to TCCC

40.0%/51.4% = 78%

11.5%/51.4% = 22%

Note:
/1/: Prior year operating margins serve as current year projections.

These results are inconsistent with the high value of the Coca-Cola brand noted above and the overall functions of the parties.

1. Bargaining Power

a. TCCC

TCCC's bargaining position as of December 31, 2006, if the Supply Points and TCCC were unrelated, would have been strong for several reasons.[34] First, the license agreement gave TCCC the right to terminate without cause. Such a termination would require no buy-out or other payment.

Second, TCCC controlled the supply chain by requiring the Supply Points to sell all of their concentrate to bottlers specified by TCCC. TCCC signed the contracts with such bottlers.

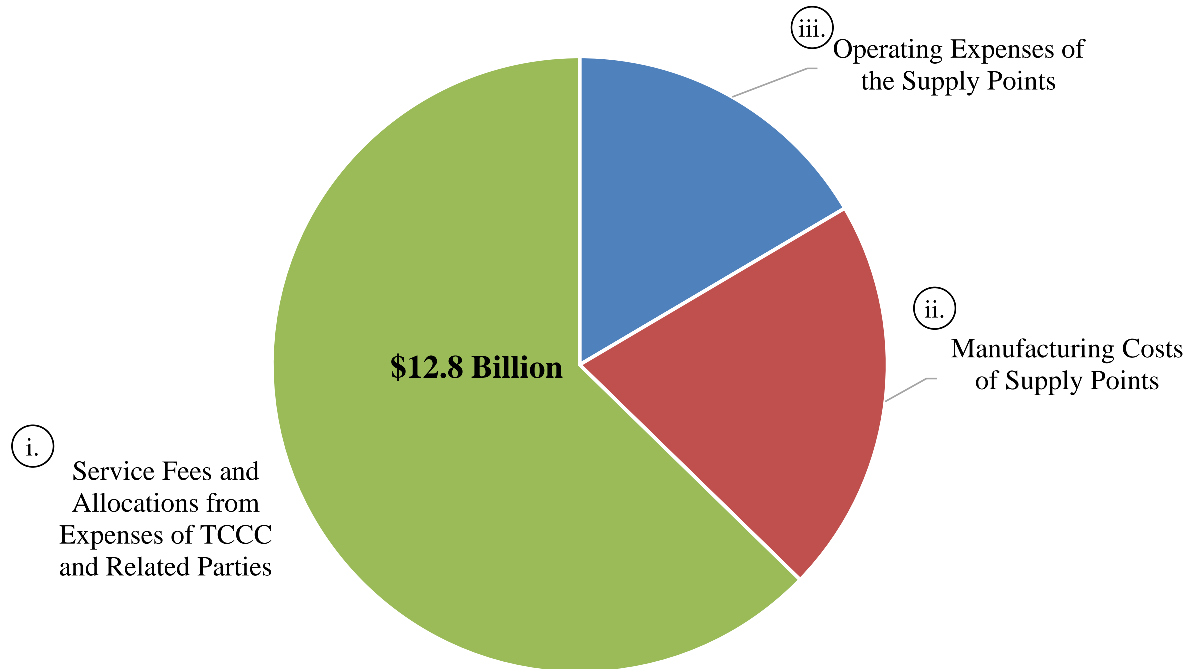
Third, upon a license termination, TCCC would still own and retain uncontested rights to all of the primary product formulas, the bottler contracts, other intangibles, and the world's most valuable brand name. In that sense, TCCC could continue this business by performing the Supply Points' roles and/or engaging another entity in that capacity. How easily and quickly TCCC could fully make that transition defines the Supply Points' bargaining power.

[34] The analysis is generally similar for each of the three years at issue with respect to each of the six Supply Points; that is, each of the 18 royalty valuations at issue.

b. The Supply Points

The Supply Points performed important roles in the Coca-Cola Company supply chain that would provide the Supply Points with certain bargaining power. The six Supply Points reported somewhat different expenses in the Coca-Cola supply chain, but broadly they can all be grouped into three categories. See **Table 7** below.

Table 7: Expenses Reported by the Supply Points



i. Service Fees and Allocations from Expenses of TCCC and Related Parties

A majority of the Supply Points' reported (non-royalty) expenses were service fees and allocations from TCCC and related parties.[35] No company can realistically develop a valuable, unique position or comparative advantage by virtue of its ability to pay an allocation of costs or pay a service fee based on activities of another entity. Any company can wire money or write

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[35] See, The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue. (Undated). Segmentation of Fees & Commission Expenses with Originating Service Companies. Exhibit 35-J, EXHJ00000125-EXHJ00000151; and The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue. (Undated). Summary of Related Party Charges (excl. Fees & Commission Expenses) with Originating Related Parties. Exhibit 36-J, EXHJ00000152-EXHJ00000156.

checks. Also, regardless of whether the Supply Points or other entities served as TCCC's licensees, these functions would continue to be performed by TCCC and related entities.

ii. Manufacturing Costs of Supply Points

Approximately one-fifth of the Supply Points' (non-royalty) reported costs were for manufacturing (cost of goods and services).[36] These functions would be hard to classify as unique to the Supply Points, but they would require switching costs if the Supply Points were terminated.

TCCC had the knowledge and experience to manufacture with or without the Supply Points. In fact, the Coca-Cola Company noted it had the ability to increase capacity in some of its already existing plants.[37] It had shifted production from one plant to another several times before.[38] In addition, dozens of concentrate manufacturers for the Coca-Cola Company and its competitors operated around the world.[39]

Shifting production to different plants could involve increases in transportation costs or time. Building new plants in the same locales would take time and require construction expenditures.[40] Thus, TCCC would expect to face certain switching costs. This "switching cost bargaining chip" held by the Supply Points is also held by every uncontrolled

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[36] **Tables 2 & 7** show approximately $2.7 billion in manufacturing costs, plus another $10.2 billion in operating expenses. Thus, the manufacturing costs represent approximately one-fifth of the total.

[37] See, The Coca-Cola Company. (February 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008. Exhibit 240-J, p. 21. EXHJ_00004022. It is my understanding that an Irish plant shut down in 2008 with its capacity made up elsewhere. Retrieved May 1, 2017 from http://www.rte.ie/news/business/2007/0829/92920-coke.

[38] See, The Coca-Cola Company. (Undated). The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue, Response to 5th Request for Production of Documents No. 10. 1986-2009 Concentrate Plants and Predecessors. TCCC-00102034.

[39] The Coca-Cola Company owned more than 900 plants, of which 29 manufactured concentrate (as of 2008). The Coca-Cola Company's competitors also used facilities to manufacture their concentrate. See, Kent, Muhtar. (February 22, 2008). "The Coca-Cola Company: Winning Today…Winning Tomorrow," Slide 15. CC0000787; and The Coca-Cola Company. (February 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008. Exhibit 240-J, p. 21. EXHJ_00004022. See also, Dr Pepper Snapple Group. (March 1, 2010). Form 10-K for the Fiscal Year Ended December 31, 2009, p. 5; and ChangeLab Solutions. (2012). "Breaking Down the Chain: A Guide to the Soft Drink Industry," p. 7.

[40] In Swaziland, for example, it took one year for the Coca-Cola Company to build and open one of its concentrate plants. See, Sharife, Khadija. (December 3, 2015). "Trade Secrets: Coca-Cola's Hidden Formula for Avoiding Taxes." Retrieved May 10, 2017 from https://100r.org/2015/12/trade-secrets-coca-colas-hidden-formula-for-avoiding-taxes-4/. The Coca-Cola Company estimated an approximately two year payback period for a shift in production from plants in Ireland and Swaziland to a new plant in Singapore. The Coca-Cola Company. (September 13, 2007). Request for Authorization. 2008 CB CPR: CPS Other – Asia Initiative (Initial), p. 31. TCCC-00028511.

licensee/manufacturer, and it is built into the profit margins they can demand.[41] Thus, this function is important but not likely to be noticeably distinct or unique.

iii. Operating Expenses of the Supply Points

The remaining portion of the Supply Points' (non-royalty) costs reflected their own marketing and administrative functions. Some of these costs are administrative and do not create intangible value. Two of the Supply Points perform marketing functions, and these are examined below.

Value could potentially exist through a distribution network or in a unique marketing role. With regard to the former, by many accounts, the bottler structure in the supply chain is a strength of the Coca-Cola Company, as it helps with scaling the business.[42] However, TCCC held the contracts with the bottlers.[43] See **Table 1**. Thus, no intangibles of this type would need to be re-created if the Supply Points were replaced by other licensees.

Focusing on the relatively small portion of the Supply Points' reported costs devoted to marketing, it is helpful to describe which Supply Points had marketing operations. Four of the Supply Points (SP Costa Rica, SP Ireland, SP Mexico, SP Swaziland) did no marketing. The remaining two Supply Points (SP Brazil and SP Chile) provided some marketing within the framework of TCCC.[44, 45]

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[41] See, for example, Farrell, Joseph and Carl Shapiro. (Spring 1998). "Dynamic Competition with Switching Costs." RAND Journal of Economics. Vol. 19, No. 1, p. 123.

[42] See, Butler, David and Linda Tischler. (2015). Design to Grow: How Coca-Cola Learned to Combine Scale & Agility (And How You Can Too). Simon & Schuster: New York, p. 38; and The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 9, 2017). Deposition of Joseph Vincent Tripodi. United States Tax Court, Docket No. 31183-15, p. 265. CC0014107.

[43] The Coca-Cola Company. (February 26, 2010). Form 10-K for the Fiscal Year Ended December 31, 2009. Exhibit 241-J, p. 3. EXHJ_00004273.

[44] See, for example, The Coca-Cola Company. (December 30, 2013). Request for Advance Pricing Agreement with Respect to Coca-Cola Industrias, Ltda. (Brazil), Appendix B: Factual Background, Covered Transactions, Industry Analysis, and Function Analysis, pp. 18, 23. CCADMIN0000038, CCADMIN0000043; and The Coca-Cola Company. (December 18, 2013). Request for Advance Pricing Agreement with Respect to Atlantic Industries and Coca-Cola de Chile, S.A., Appendix B: Factual Background, Covered Transactions, Industry Analysis, and Function Analysis, pp. 26, 32. CCADMIN0000407, CCADMIN0000413.

[45] The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 9, 2017). Deposition of Joseph Vincent Tripodi. United States Tax Court, Docket No. 31183-15, pp. 104, 188-189 CC0013946, CC0014030-CC0014031; The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (April 13, 2017). Deposition of Amhet Bozer. United States Tax Court, Docket No. 31183-15, p. 153. CC0011644; and The Coca-Cola Company. (July 17, 2007). "Q2 2007 The Coca-Cola Company Earnings Conference Call – Final," p. 10. CC0000077.

iv. Summary

The Supply Points took on important roles in the supply chain. A majority of the Supply Points' reported (non-royalty) expenses were service fees and allocations from TCCC and related parties. The Supply Points' manufacturing—like other manufacturers/licensees—would be replicable, but with transportation or construction costs/time. For the Supply Points that performed marketing activities, some of this marketing experience would also potentially require time and switching costs to replace.

2. Market Rates

TCCC's bargaining power from the agreement terms and the relative strengths of its brands, formulas, and other intangibles is important, but it has limits. TCCC would know that uncontrolled licensees would not accept a high royalty that would leave them with no projected profit (or losses). Rather, an uncontrolled licensee would demand an expected rate of profitability after paying the royalty in order to compensate the licensee for its risks and licensee activities. As licenses are signed *before* the resulting combined (pre-royalty) profits are known, the focus is on projected or expected profits. Thus, I look for the returns expected to be earned by licensees in uncontrolled transactions to quantify the bargaining factors at play for TCCC.

To consider what licensees expected to earn at the time they enter into license agreements, economists examine arm's length license negotiations and associated profit projections. The Coca-Cola Company provided financial projections associated with some uncontrolled license agreements to which the Coca-Cola Company was a party. I reviewed and analyzed these licenses—and associated financial data—where the Coca-Cola Company served as a licensee to unrelated licensors.[46]

The data available for the uncontrolled license agreements between the Coca-Cola Company as licensee and third parties shows that the Coca-Cola Company as the licensees in the agreements projected to pay royalties that would net them operating margins of approximately 5 to 15 percent—post-royalty. See **Table 10**. In the related party transactions at issue, TCCC as a licensor would likely be forced to concede such projected profits in a royalty negotiation, as such profits are available to uncontrolled licensees in the marketplace.

The above can be seen with an example. The Coca-Cola Company's projected combined (pre-royalty) operating profit margin was 50.0 percent in SP Mexico's markets in 2007. TCCC could *not* charge the full 50.0 percent as a royalty to SP Mexico in 2007 because that would leave SP Mexico with no projected profit. See **Table 8** below. Rather, TCCC would need to

[46] I also reviewed some agreements with the Coca-Cola Company as licensor to uncontrolled entities, but they did not offer the relevant financial information. See **Table 21**.

offer an arm's length licensee a projected positive return in the form of a royalty *lower than* 50.0 percent. TCCC could, for example, charge a royalty that would leave the licensee with an expected operating margin at the median of the 5 to 15 percent operating margin range noted above (8.3 percent) which would be a royalty of 41.7 percent in the context of SP Mexico in 2007.

Table 8: Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Mexico

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin	50.0%	45.9%	46.5%	a	Table C5
Arm's Length Licensee Return	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	41.7%	37.7%	38.3%	c = max(0,a-b)	Calculation

One way for TCCC and a potential licensee to determine *where* in the 5 to 15 percent operating profit margin range to target—higher operating profits to the licensee are accomplished through lower royalties and vice versa—is through an assessment of the *risk* of the intangibles (and resulting operations) being licensed. Like any investment, more risk requires higher expected returns.[47] The royalties to be paid in 2007, 2008, and 2009 for these licenses would have likely been seen as having *less* operating profit margin risk (fluctuations in profitability) than many typical licenses for several reasons. The relatively short one-year contract term is important because it limits these Supply Points' abilities to potentially "cash in" if operating profit margins exceed expectations, as described further below.[48]

The operating profit margin risk (fluctuations in profitability) would have been seen as relatively modest in this case—even for a longer term license. That is, the Coca-Cola Company was a mature company with consistent operating profit margins.[49] The same was true of its operations in the territories supplied by the Supply Points. For example, the relatively flat pattern of SP Ireland's combined pre-royalty operating profit margins seen in **Table 9** below

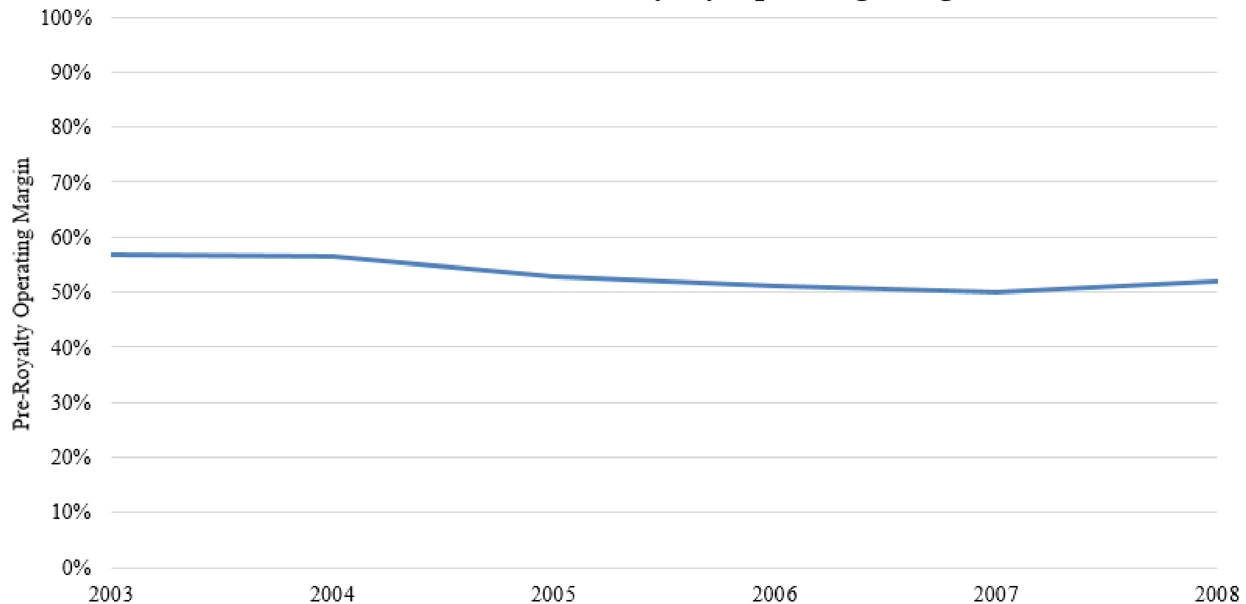
[47] See, Berk, Jonathan and Peter DeMarzo. (2007). Corporate Finance. 1st Edition. Pearson Education, Inc.: Boston, pp. 68-69; and Becker, Brian C. (October 9, 2008). "Projected and Actual Profits' Impact on Licensees." Tax Management Transfer Pricing Report. Vol. 17, No. 11. See also, Fadairo, Muriel, Cintya Lanchimba, and Josef Windsperger. (March 2016). "The Trade-Off between Risk and Royalties in Franchise Contracting," p. 22.

[48] Even that period may be overstated, as both sides could terminate without waiting until the end of the year.

[49] An industry report notes that the global market for soft drinks has been in the mature phase of its economic development for decades, and as a result, demand for these products does not fluctuate substantially with economic cycles. See, IBISWorld. (May 2, 2011). IBISWorld Industry Report: Global Soft Drink and Bottled Water Manufacturing, p. 23. CCADMIN0004117.

with modest annual fluctuations would not be typical of most licensees without a long track record and/or with variable returns over time.[50]

Table 9: SP Ireland's Combined Pre-Royalty Operating Margins: 2003-2008



The above makes clear that the Supply Points were not licensing intangibles that would have relatively high operating profit margin risk. That is, at arm's length they would not project highly variable operating profit margins, but rather operating profit margins that had demonstrated stability. All else being equal, licensing more mature, stable assets would reduce risk and required returns. The Supply Points would *not* expect to (net) operating profit at the high end of the 5 to 15 percent operating margins earned by uncontrolled licensees.[51] Certainly, they would not expect to earn *multiples of the top end* of the returns expected by other licensees,[52] as the reported royalties provide. See **Table 10** below.

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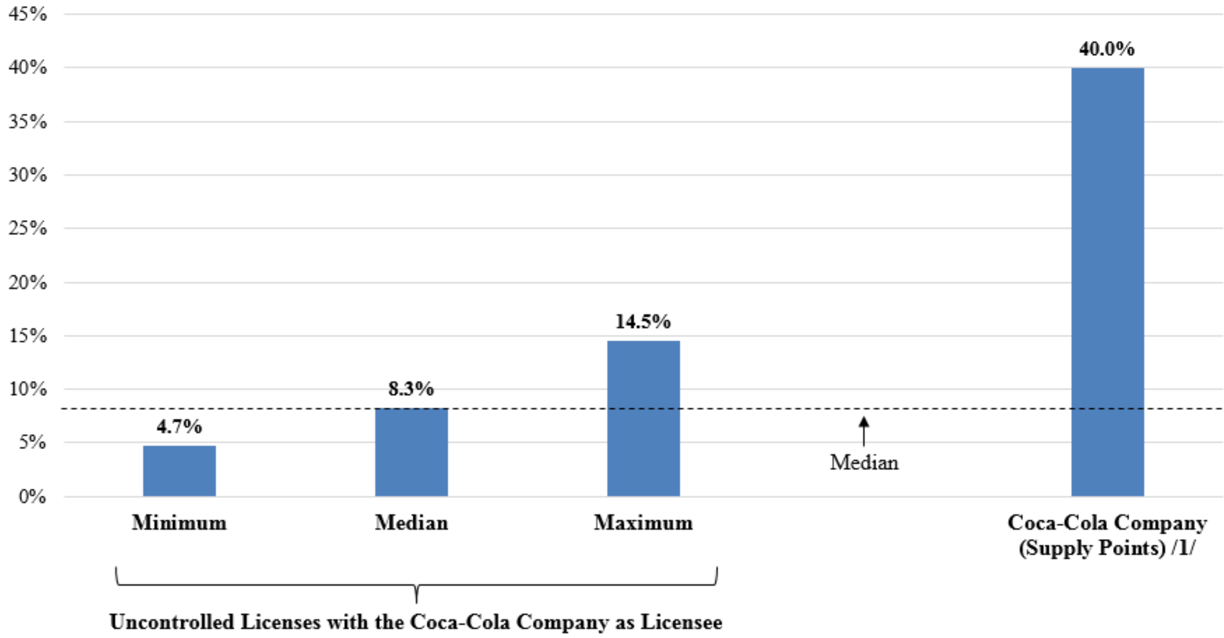
[50] The Coca-Cola Company's Chief Marketing Officer stated that an existing brand would probably have less risk than a new brand. The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 9, 2017). Deposition of Joseph Vincent Tripodi. United States Tax Court, Docket No. 31183-15, p. 72. CC0013914.

[51] The smaller Supply Points also showed stable operating margins. The most variance was seen by the smallest Supply Point, SP Costa Rica (approximately 1/30th the size of SP Ireland). See **Tables C1-C6**.

[52] I use the Coca-Cola Company agreements noted above exclusively to quantify the returns expected by other licensees in this report. To the degree other agreements of this type could be found, the range of expected returns might move up or down. That being said, a study of 4,000 licensing companies found operating profit margins generally consistent with the range in the Coca-Cola Company agreements I used. Kemmerer, Jonathan E. and Jiaqing Lu. (2012). "Profitability and Royalty Rates Across Industries: Some Preliminary Evidence." KPMG, p. 8.

Table 10: Comparison of Projected Post-Royalty Operating Margins



Note:
/1/: Projected operating margin is a weighted average based on revenues for 2007-2009.

IV. Coca-Cola Company as a Licensee with Uncontrolled Parties

The prior chapter showed that the royalties reported by the Supply Points were not consistent with arm's length expectations. In this chapter, I determine whether the agreements with the Coca-Cola Company as a licensee to uncontrolled companies can be used to analyze the royalties reported from the Supply Points to TCCC.

A. Use of Benchmarks

Transfer pricing valuation methods largely center on the consideration of: (1) benchmark data (comparables) that have been determined by arm's length market forces; and (2) the potential comparables' ability to serve as benchmarks in the pricing of the transaction at issue. Before considering whether any of the uncontrolled agreements TCCC provided can be used as a comparable to assist in the pricing evaluation for the licenses at issue, it is first helpful to understand why licensees pay royalties.

Royalties split the income of the business between the licensor and the licensee in a negotiated way that recognizes the value of the licensor's intangible. A number of intangible characteristics may indirectly influence royalty rates, but ultimately licensees simply pay more for the use of more valuable intangibles—all else being equal.[53] Economists recognize this as royalties being influenced by higher profits:

> Each of these considerations [*e.g.,* stage of development, uniqueness, duration of license, etc.] often determines expected profit potential differences, and should be reflected in the royalty rate….[54]
>
> … [T]he economic or market value of an intangible is dependent upon its ability to generate above-average profits.[55]

Intellectual property valuation literature offers similar points:

> The primary forces driving the value of IP and royalty rates are listed below. …

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[53] See, King, Elizabeth. (2004). Transfer Pricing and Valuation in Corporate Taxation: Federal Legislation vs. Administrative Practice. Kluwer Academic Publishers: Boston, p. 218.

[54] Axelsen, Dan and Irving Plotkin et. al. (2015). "Transfer Pricing: Perspectives of Economists and Accountants (Part 1)." BNA Tax Management Portfolios: Transfer Pricing Series. No. 6908, Section III, B., 1.

[55] Chandler, Clark and Irving Plotkin. (October 20, 1993). "Economic Issues in Intercompany Transfer Pricing." Tax Management Transfer Pricing Special Report. Vol. 2, No. 12, p. 25.

Amount of Profits
Duration of Profits
Risk Associated with the Expected Profits.[56]

Profitability is important when benchmarking royalties, but it is even more so when the target licenses—TCCC's licenses to the Supply Points—project operating profit margins that are *statistical outliers* to the operating profit margins in the uncontrolled licenses—in this case, in excess of 50 percent. In other words, comparing the *royalty rates* charged for a 15 percent operating profit margin intangible in a benchmark uncontrolled license group to the royalty rates charged for a 17 percent operating profit margin intangible in a controlled license would be far less problematic than comparing the 15 percent uncontrolled case to the royalty rates charged for a 50 percent profit margin intangible. To provide some context for considering whether the Supply Points' 50 percent projected operating profit margins at issue are outliers, I reviewed research on licensee profitability. KPMG computed the operating (EBIT) margins of nearly 4,000 licensing companies (those with requisite data) and found the median company earned less than 11 percent. Similarly, licensees in each of the industries reported average EBIT margins below 20 percent.[57]

B. Whether to Use the Benchmark Agreements

Various benchmarks can potentially assist in analyzing intercompany royalties. I focus my attention as to whether the agreements between the Coca-Cola Company and uncontrolled third parties can be used to evaluate whether the royalties at issue are priced at arm's length. In particular, because of the importance of profitability as noted above, I focused on the agreements with third parties provided by the Coca-Cola Company which included profitability information.[58] See also **Table 20**.

Cadbury Schweppes (1990)

Coca-Cola (Japan) Co, Ltd. ("CCJC") entered into a license agreement with Cadbury Schweppes Investments B.V. ("CSI"), in which CCJC licensed the rights to CSI's Canada Dry brand/formula to manufacture and sell Canada Dry extracts in Japan.[59] The CSI/Canada Dry

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[56] Parr, Russell. (2007). Royalty Rates for Licensing Intellectual Property. John Wiley & Sons, Inc: Hoboken, New Jersey, pp. 124-128.

[57] These figures were not clearly labeled pre- or post-royalty. To the degree they are post-royalty, it appears that the median pre-royalty operating margin would be approximately 16 percent. Kemmerer, Jonathan E. and Jiaqing Lu. (2012). "Profitability and Royalty Rates Across Industries: Some Preliminary Evidence." KPMG, pp. 8-9.

[58] The licenses without profitability information do not reflect top brands in their core usage, so they are unlikely to involve similar outlier/blockbuster profit margins. See **Table 21**.

[59] Agreement between Cadbury Schweppes Investments, B.V. and Coca-Cola (Japan) Co, Ltd. (March 30, 1990). Agreement, p. 4. CCADMIN0000277.

brand is not ranked as one of the world's most valuable brands. The licensee in this context is projected to earn 16.3 percent operating margins pre-royalty and 8.3 percent post-royalty. See **Table D1**.

Caribou (2007)

TCCC entered into a license agreement with Caribou Coffee Company, Inc. ("Caribou"), granting TCCC the rights to manufacture/sell coffee beverages in North America under Caribou's trademark/brand name.[60] This agreement's sales base (wholesale/retail) differs from that of the license agreements at issue (concentrate/syrup) and Caribou's brand/trademark is also not ranked among the world's most valuable brands. The licensee in this context is projected to earn 14.7 percent operating margins pre-royalty and 14.5 percent post-royalty. See **Table D2**.

Godiva (2006)

TCCC entered into a license agreement with Godiva Brands, Inc. ("Godiva"), in which TCCC licensed the rights to Godiva's trademark/brand to manufacture/sell non-alcoholic ready-to-drink beverages with chocolate flavoring in the United States and Canada.[61] In general, this agreement differs from the license agreements at issue in that TCCC licensed Godiva's brand to manufacture/sell new products in an unestablished market. That is, the license is not part of Godiva's core confectionary business. Moreover, this agreement's sales base (wholesale/retail) differs from that of the license agreements at issue (concentrate/syrup), and Godiva's brand is not ranked as one of the world's most valuable brands.[62] The licensee in this context is projected to earn 10.7 percent operating margins pre-royalty and 4.7 percent post-royalty. See **Table D3**.

Honest Tea (2008)

TCCC entered into a license agreement with Honest Tea, Inc. ("Honest Tea"), granting TCCC the rights to manufacture fruit flavored beverages/pouch products under Honest Tea's trademark/brand name. This agreement's sales base (wholesale/retail) differs from that of the license agreements at issue (concentrate/syrup)[63] and Honest Tea's brand/trademark is also not

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[60] Agreement between Caribou Coffee Company, Inc. and The Coca-Cola Company. (January 1, 2007). License Agreement, p. 1. CCADMIN0011516.

[61] Agreement between Godiva Brands, Inc. and The Coca-Cola Company. (January 1, 2006). License Agreement, p. 1. CCADMIN0011582.

[62] See, Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008; and Brand Finance. (May 2008). "Brand Finance Global 500 2008."

[63] Agreement between Honest Tea, Inc. and The Coca-Cola Company. (February 3, 2009). Manufacturing and License Agreement, p. 1. TCCC-00038149.

ranked among the world's most valuable brands. The licensee in this context is projected to earn 17.6 percent operating margins pre-royalty and 5.9 percent post-royalty.[64] See **Table D4**.

Nestlé (2007)

TCCC entered into a license agreement with Nestlé USA, Inc. ("Nestlé"), in which TCCC licensed the rights to manufacture/sell tea beverages using Nestlé's (and its Enviga) trademark/brand name.[65] This agreement's sales base (concentrate and wholesale) differs in part from that of the license agreements at issue (concentrate). The Nestlé brand is estimated to be worth less than one-tenth of the value of the Coca-Cola Company's brand. See **Table E5**. The licensee in this context is projected to earn 17.7 percent operating margins pre-royalty and 9.3 percent post-royalty.[66] See **Table D5**.

Certain factors suggest that these agreements can provide assistance in determining royalties between TCCC and the Supply Points. First, all of the agreements provide benchmark data—pre-royalty margins, royalties, and post-royalty margins. Second, they all broadly cover a similar industry to the Coca-Cola Company.[67] Third, they all involve the license of brands and related intangibles.[68] Thus, I conclude that these five agreements can provide data to help determine whether the reported royalties were set at arm's length levels.

C. How to Use the Benchmark Agreements

Whether and how one applies arm's length results from licensing transactions is case dependent. In some cases, uncontrolled licenses with similar projected profitability and other

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[64] It is my understanding that TCCC paid an additional fee for access to Honest Tea's distribution network. This access fee provided additional value to Honest Tea. See, "TCCC-00055137." Excel Spreadsheet. TCCC-00055137.

[65] Agreement between Nestlé USA, Inc. and The Coca-Cola Company. (March 26, 2007). Master Sublicense Agreement, pp. 1-4. CCADMIN0011694-CCADMIN0011697.

[66] It is my understanding that the Nestlé license agreement followed from a joint venture that was being terminated. See, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 10, 2017). Deposition of Vincent Gioe. United States Tax Court, Docket No. 31183-15, pp. 116-117. CC0014787-CC0014788.

[67] The Coca-Cola Company provided 9 additional agreements for trinkets, attire, etc. that did not include profit projections. I did not apply these nine agreements due to product differences as well as lack of financial information. The Coca-Cola Company. (April 16, 2013). "Merchandise Licensing Agreements." IDR-01EC-SP-251. CCADMIN0010247.

[68] I also removed co-branding agreements (that is, products with the brands of two different unrelated companies where one is the licensor), as that would not isolate the value of a particular brand. This, for example, was the case on drink products that co-branded Coca-Cola and Adidas. See, Agreement between Adidas AG and The Coca-Cola Company. (November 1, 2009). License Agreement, p. 4. TCCC-00037457.

features in common with the target license exist. In such cases, and if the royalty rates cover the same "base" (*e.g.,* concentrate, wholesale, retail, etc.); royalty *rates* can be directly applied to the target. Such a situation has a lot of "ifs" that can be difficult to confirm or adjust.[69]

The projected profitability (post-royalty) of licensees can potentially be a more *robust* benchmark, as licensees facing similar risks and performing similar functions would generally be expected to project similar post-royalty operating profit margins. This is true whether or not they were licensing intangibles projected to produce high or low operating profit margins.[70] In other words, a licensor licensing out both a 50 and a 15 percent projected operating margin intangible would typically not be willing to accept the same royalty on the former as on the latter.[71] However, investment theory would imply that a *licensee* would be willing to accept the same return (post-royalty projected operating margin) on both options if it faced similar risks—fluctuations in profitability.[72, 73] I consider whether the uncontrolled agreements with the Coca-Cola Company can be used to provide potential royalty rate benchmarks and post-royalty payment profitability benchmarks.

1. Uncontrolled Agreements as Royalty Rate Benchmarks

The Coca-Cola Company enjoys the highest brand values in the market and it enjoys noticeably higher levels of sales and profitability (operating profit margins) than its competitors. This makes it inappropriate to compare the royalty rates on these controlled licenses to the royalty rate in any *standard* beverage license—an arm's length licensor would demand a higher royalty for offering more valuable brands, formulas, and other intangibles.

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[69] In particular, the Coca-Cola Company generally does not license out its primary trademarks for beverages. See, The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 9, 2017). Deposition of Joseph Vincent Tripodi. United States Tax Court, Docket No. 31183-15, p. 258. CC0014100.

[70] Similarly, economists generally do not assign higher profit levels to similarly situated distributors, manufacturers, or service companies who happen to operate in higher profit margin businesses, unless the target company demonstrates unique assets/talent/intangibles. See, Pogge, Thomas and Krishen Mehta. (April 4, 2016). Global Tax Fairness. 1st Edition. Oxford University Press, p. 161.

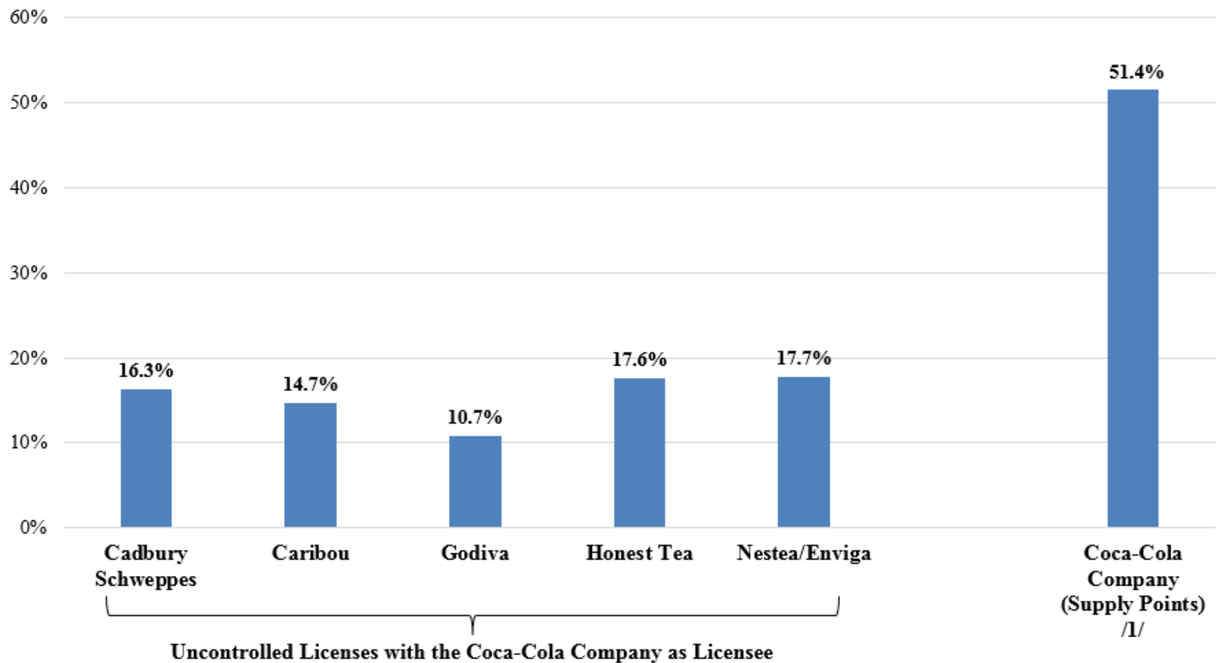
[71] As the Coca-Cola Company's Vincent Gioe states, "Those businesses … typically have higher margins. … there's more of an opportunity to pay a higher rate in those industries." The Coca-Cola Company and Subsidiaries, Petitioner, v. Commissioner of Internal Revenue, Respondent. (May 10, 2017). Deposition of Vincent Gioe. United States Tax Court, Docket No. 31183-15, pp. 66-67. CC0014737-CC0014738.

[72] Berk, Jonathan and Peter DeMarzo. (2007). Corporate Finance. 1st Edition. Pearson Education, Inc.: Boston, pp. 68, 298, 307.

[73] That is, royalty rates in similar risk licenses would move with pre-royalty operating margins to result in similar post-royalty operating margin projections.

These uncontrolled agreements do not project close enough operating profitability to apply their *royalty rates* to the Supply Points. That is, the Coca-Cola Company intangibles project to earn operating profit margins approximately 30 to 40 percentage points higher than the assets being licensed in these uncontrolled transactions. See **Table 11** below.

Table 11: Comparison of Projected Pre-Royalty Operating Margins



Note:
/1/: Projected operating margin is a weighted average based on revenues for 2007-2009.

An adjustment for such significant operating profit differences would need to be of such magnitude as to (inappropriately) dominate the valuation. That is, the benchmark would be the *adjustment* as opposed to the underlying royalty rate itself. Most of such an analysis would focus on how much higher to set the royalty rate to account for the fact that the licenses at issue are 30 to 40 percentage points higher in projected operating profit margins.

The large differences in profitability would translate to royalty rates in the uncontrolled agreements that are not comparable to the royalties at issue here. The uncontrolled agreements also differ from the Supply Point agreements with regard to brand value and license terms. As such, I do not consider these royalty rates reliable in analyzing the reported royalties at issue.

2. Uncontrolled Agreements as Post-Royalty Profitability Benchmarks

The uncontrolled licensees described above would expect to *net similar profits* to the Supply Points in question.[74] As seen in **Table 10**, the licensees in the uncontrolled agreements provided by the Coca-Cola Company project to earn *post-royalty* operating margins of approximately 5 to 15 percent.

Where royalty rates are set (ex-ante) without knowledge of actual operating profits, the relevant operating profits in such negotiations are projections. An uncontrolled licensee would not be willing to pay a royalty that would project it to lose money—or to earn less money than was available to uncontrolled licensees in the marketplace for a similar type of venture/investment. That is, an uncontrolled licensee would only pay royalty rates that would allow it to earn at least market level operating profit margins.

Under this approach, licensees receive all of the benefit if the intangibles generate higher operating profit margins than expected.[75] At the time these licenses were signed, of course, neither party knew whether the operating profits on concentrate would be more successful than projected. As seen below, I apply a valuation method that provides the Supply Points with all of this "upside" operating margin by setting a royalty ex-ante that provides them with an arm's length *projected* operating profit margin post-royalty.[76, 77]

The Coca-Cola Company as licensee in the uncontrolled agreements projected to earn between 5 and 15 percent operating margins, after paying a royalty. See **Table 10**. I apply the median of 8.3 percent from these projections as a projected operating profit margin for licensees at arm's length. See **Tables F1-F6**. It should be noted that because actual (combined) results slightly exceeded expectations (see **Table 22**), this approach would yield to the Supply Points *more than* 8.3 percent.[78]

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[74] See, for example, Heberden, Tim. (2011). International Licensing and Technology Transfer: Practice and the Law. Wolters Kluwer Law & Business, Chapter 4, p. 16. Retrieved May 9, 2017 from http://brandfinance.com/images/upload/ip_valuation_royalty_rates.pdf.

[75] The same is true of any investment. An investor can be profitable if the investment exceeds expectations, ex-post. Bartov, Givoly, and Hayn. (December 5, 2001). "The Rewards to Meeting or Beating Earnings Expectations." Journal of Accounting and Economics. Vol. 33, Iss. 2, p. 202.

[76] The licensor will benefit if *volume* exceeds expectation. See, Becker, Brian C. (February 6, 2002). "Comparable Profits Method: Accounting for Margin and Volume Effects of Intangibles." Tax Management Transfer Pricing Report. Vol. 10, No. 9, pp. 831-833.

[77] As the risk taker, the licensee will also suffer if profit margins fall below expectations.

[78] **Table 25** shows the Supply Points netting 9.2 percent under this approach.

The royalty rate calculation mathematically represents the difference between the expected combined operating profit margins on the transactions at issue[79] and the operating profit margins post-royalty earned by similarly situated uncontrolled licensees—*i.e.*, the controlled licensees' required rate of (expected) return. That is, a licensee will pay a royalty up to the amount that will net it an expected profitability level consistent with similarly situated licensees. **Table 12** below computes the royalties that would be owed in total by the Supply Points based on this approach.[80]

Table 12: Royalties Using Coca-Cola Company's Uncontrolled Agreements: Supply Points by Year

USD Millions Except Percentages	2007	2008	2009	Total	Formula	Source
SP Brazil	$536.0	$627.4	$639.4	$1,802.8	a	Table F1
SP Chile	$139.1	$167.1	$184.6	$490.9	b	Table F2
SP Costa Rica	$52.5	$49.7	$55.6	$157.9	c	Table F3
SP Ireland	$2,423.3	$2,600.7	$2,518.5	$7,542.4	d	Table F4
SP Mexico	$331.6	$311.8	$288.1	$931.5	e	Table F5
SP Swaziland	$257.1	$231.3	$293.5	$781.9	f	Table F6
Total	**$3,739.7**	**$3,988.0**	**$3,979.7**	**$11,707.4**	**g = sum(a:f)**	**Calculation**

These computed royalties can also be presented as a rate based on a price. For example, these royalties translate to 5.2 percent, 6.5 percent, and 43.3 percent of retail, wholesale, and concentrate prices; respectively.[81] See **Table 13** below.

[79] These expected profit margins are only from the perspective of the Supply Points and do not adjust for split invoicing. For example, the bottlers to whom SP Brazil sells concentrate also pay Coca-Cola Company service companies. Those service companies report approximately $340 million in profit on such invoices (100 percent markup on their costs). Such profit is not part of my royalty rate calculation. See, The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue. (May 25, 2017). Supplemental Response to Interrogatory No. 35. TCCC-00155317.

[80] Similar calculations are shown for each Supply Point in **Tables F1-F6**.

[81] These rates are provided to put the computed royalties into context, as are the corresponding 1.4 percent, 1.7 percent, and 11.5 percent calculations, respectively, using the reported royalties. See **Table 13**.

Table 13: Royalties as a Rate of Concentrate, Wholesale, and Retail Prices

2007-2009 Total (Percentages)	Using Coca-Cola Company Uncontrolled Agreements	Coca-Cola Company Reported Royalties	Formula	Source
Royalty as Percent of Concentrate Price	43.3%	11.5%	a	Tables 6 & 12
Ratio of Concentrate Price to Wholesale Price /1/	15.0%	15.0%	b	Table 23
Royalty as Percent of Wholesale Price	6.5%	1.7%	c = a*b	Calculation
Ratio of Wholesale Price to Retail Price /1/	80.0%	80.0%	d	Table 23
Royalty as Percent of Retail Price	5.2%	1.4%	e = c*d	Calculation

Note:
/1/: Ratios are taken from the Coca-Cola Company (see **Table 23**), but are illustrative. Other ratios could change wholesale, retail, and cent per can rates, but not the total royalty (dollars) calculation in **Table 12**.

The royalty rates above can also be stated as approximately three pennies (3.1 cents) per can. See **Table 24**.

Regardless of whether they are considered as a percentage of concentrate, wholesale, retail, or in cents per can, the total arm's length royalties would be approximately $11.7 billion using these agreement benchmarks. This is approximately $8.6 billion more than the royalties reported by the Coca-Cola Company. That is, these agreements provide additional information—beyond that noted in Chapter III—showing that the reported royalties are not consistent with arm's length pricing. See **Table 14** below.[82]

[82] SP Brazil, SP Chile, and SP Costa Rica each paid no royalties. As such, their results in **Table 14** are the same as their computed royalties in **Table 12**.

Table 14: Differences in Coca-Cola Company's Royalties as Reported and Using Coca-Cola Company's Uncontrolled Agreements

USD Millions /1/	2007	2008	2009	Total	Formula	Source
SP Brazil	$536.0	$627.4	$639.4	$1,802.8	a	Table F1
SP Chile	$139.1	$167.1	$184.6	$490.9	b	Table F2
SP Costa Rica	$52.5	$49.7	$55.6	$157.9	c	Table F3
SP Ireland	$1,657.6	$1,763.1	$1,729.3	$5,149.9	d	Table F4
SP Mexico	$219.1	$193.1	$178.0	$590.3	e	Table F5
SP Swaziland	$137.1	$115.5	$163.9	$416.5	f	Table F6
Total	**$2,741.5**	**$2,916.0**	**$2,950.8**	**$8,608.3**	**g = sum(a:f)**	**Calculation**

Note:
/1/: SP Brazil, SP Chile, and SP Costa Rica paid no royalties. As such, these figures are the same as the royalty calculations in **Table 12**.

D. Conclusion

The Coca-Cola Company's reported royalties from the Supply Points are inconsistent with arm's length results. The reported royalties result in operating margins that exceed 40 percent for the Supply Points, compared to 5 to 15 percent operating margins forecasted by the Coca-Cola Company as a licensee in uncontrolled agreements. See **Table 10**. More generally, the reported royalties result in a 78 percent split of the combined concentrate operating profit in favor of the Supply Points. That split is at odds with the limited bargaining power of the Supply Points. In particular: (a) TCCC can terminate the Supply Points' contracts without cause; and (b) the Supply Points' reported expenses are largely service fees and allocations from TCCC and related entities. Likewise, the reported royalties result in assigning only 22 percent of the combined operating profit to a licensor (TCCC) which: (a) owns the world's most valuable brand and other intangible assets; (b) performs most of the work (directly or through related entities) recorded as costs by the Supply Points; and (c) licenses intangibles that relate to mature businesses with stable operating profit margins. See **Tables 2-3, 6-7, & 9**.

I have found that some of the Coca-Cola Company's uncontrolled license agreements provide relevant benchmark information to assess the royalties paid by the Supply Points by virtue of their agreement form, industry, data availability, etc. The other uncontrolled agreements provided by the Coca-Cola Company were either of a different type (*e.g.*, co-branding, trinkets, etc.) or were lacking in profitability information to employ in a reliable manner.

The Coca-Cola Company uncontrolled agreements do not provide a reliable royalty rate benchmark due to significant differences in projected operating profit margins and other factors. They do, however, provide useful guidance for the projected operating profit margins the Supply

Points would require in the licenses at issue—post-royalty. Such required/market projected profits were noticeably lower than the operating profit margins the Supply Points projected. Over all three years, the six Supply Points earned $8.6 billion more than if their royalties were set to required/market projected profit levels. See **Table 14**.

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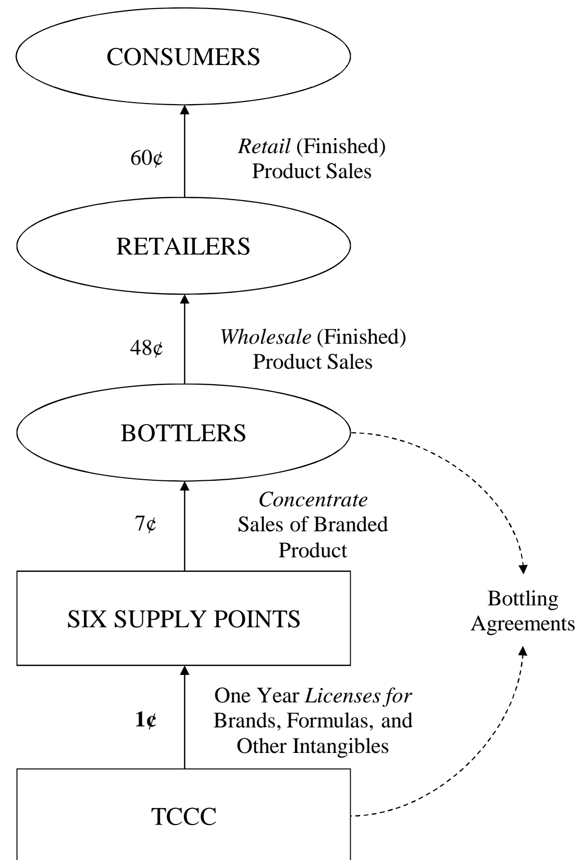
TABLES

Table 1:

Supply Chain From TCCC's Licenses to the Supply Points



Notes:
/1/: TCCC (and related entities) also charged the Supply Points allocated expenses and service fees.
/2/: Based on average international retail price per can and Coca-Cola Company's estimates of concentrate/wholesale and wholesale/retail price ratios.
/3/: Reported royalties--across all six Supply Points and three years--average 0.8 cents per 60 cent retail can.

Sources:
(1) **Tables 13 & 24**.
(2) Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (December 14, 2015). Petition, p. 3.
(3) Coca-Cola Company & Subsidiaries v. Commissioner, No. 31183-15. (May 1, 2017). Petitioner’s Objections and Answers to Respondent’s Third Set of Interrogatories, p. 13. CC0011175.

Table 2:

Supply Points' Combined Income Statement: 2007-2009

Years Ended on December 31 (In USD Millions)	2007	2008	2009	Total	Formula
Net Revenue /1/	$8,636.8	$9,409.4	$8,980.7	$27,027.0	a
Total Cost of Goods and Services /1/	$865.1	$914.3	$884.2	$2,663.7	b
Total Non-Royalty Operating Expenses /1/	$3,412.0	$3,552.8	$3,196.9	$10,161.7	c
Operating Income (Pre-Royalty)	$4,359.7	$4,942.3	$4,899.6	$14,201.5	d = a-b-c
Royalty and License Fee Expense - IP	**$998.2**	**$1,072.0**	**$1,028.9**	**$3,099.1**	**e**
Operating Income (Post-Royalty)	**$3,361.4**	**$3,870.3**	**$3,870.6**	**$11,102.4**	**f = d-e**
Operating Margin (Post-Royalty)	**38.9%**	**41.1%**	**43.1%**	**41.1%**	**g = f/a**
Operating Margin (Pre-Royalty)	50.5%	52.5%	54.6%	52.5%	h = d/a

Combined Profit Being Split

22% Share to TCCC

$3,099.1/$14,201.5 = 22%

78% Share to Supply Points

$11,102.4/$14,201.5 = 78%

Note:
/1/: Includes deductions for Cosmos and Schweppes for SP Ireland. See **Table C4**.

Source:
(1) **Tables C1-C6**.

Table 3:

Coca-Cola Company's Presentation of Brands

The World's Largest Beverage Company

Coca-Cola
Diet Coke
Fanta
Sprite
AQUARIUS
GEORGIA
DASANI
Minute Maid
POWERADE
BONAQUA

Coca-Cola - The World's Most Valuable Brand

4 of the Top 5 Soft Drink Brands

CSD #1
Juices & Juice Drinks #1
Coffee #1
Tea #1
Sports Drinks #2
Water #3

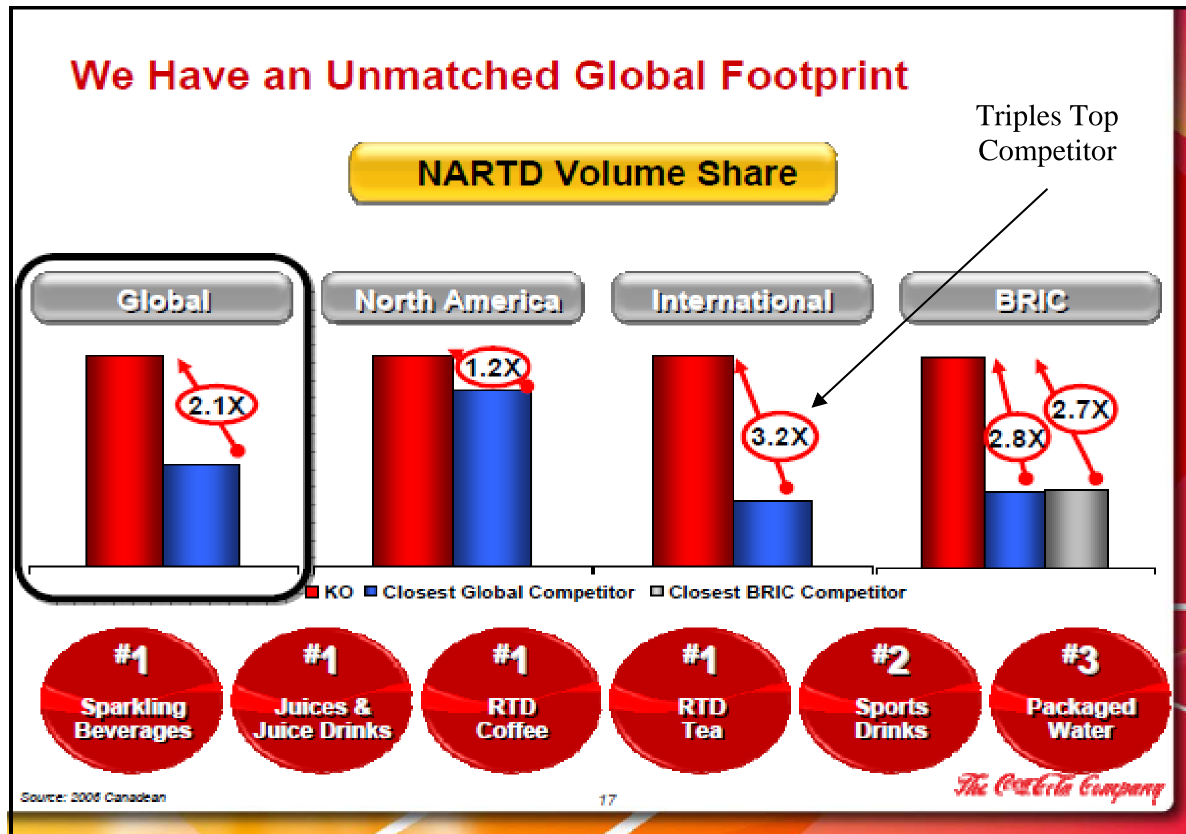
Source: Company Estimates
Information Includes Non-Alcoholic, Ready-To-Drink Beverages Only (NARTD)
6
The Coca-Cola Company

Source:

(1) Kent, Muhtar. (February 23, 2006). "The Coca-Cola Company: Capturing International Growth--CAGNY 2006," Slide 6. TCCC-00029155.

Table 4:

Coca-Cola Company's Presentation of Regional Market Share Competition



Note:
/1/: Arrow and text added.

Source:
(1) Kent, Muhtar. (February 22, 2008). "The Coca-Cola Company: Winning Today… Winning Tomorrow," Slide 17. CC0000788 in Color.

Table 5:

Coca-Cola Company Operating Margins: Consolidated Worldwide and Combined Profits by Supply Points

Year Ended December 31 (In Percentages)	2007	2008	2009
Coca-Cola Company Consolidated (Form 10-K)	25.1%	26.4%	26.6%
Pre-Royalty Operating Profit Margin for Supply Points	50.5%	52.5%	54.6%

Source:
(1) **Tables 2 & 15**.

Table 6:

Total Projected Operating Margins for Supply Points by the Coca-Cola Company: 2007-2009

In USD Millions Except Percentages	2006	2007	2008	2009	2007-09 Total	Formula
Worldwide Sales of Concentrate (Third Party)	$7,420.6	$8,636.8	$9,409.4	$8,980.7	$27,027.0	a
Operating Profit (Pre-Royalty)	$3,809.0	$4,359.7	$4,942.3	$4,899.6	$14,201.5	b
Actual Operating Margin (Pre-Royalty)	51.3%	50.5%	52.5%	54.6%	52.5%	c = b/a
Projected Operating Margin /1/	**--**	**51.3%**	**50.5%**	**52.5%**	**51.4%**	**d = prior(c)**
Reported Royalty Rate on Concentrate Sales	--	11.6%	11.4%	11.5%	11.5%	e
Projected Post-Royalty Operating Margin	**--**	**39.8%**	**39.1%**	**41.1%**	**40.0%**	**f = d-e**

Projected Combined Profit to Split

78% Projected Share to Supply Points

22% Projected Share to TCCC

40.0%/51.4% = 78%

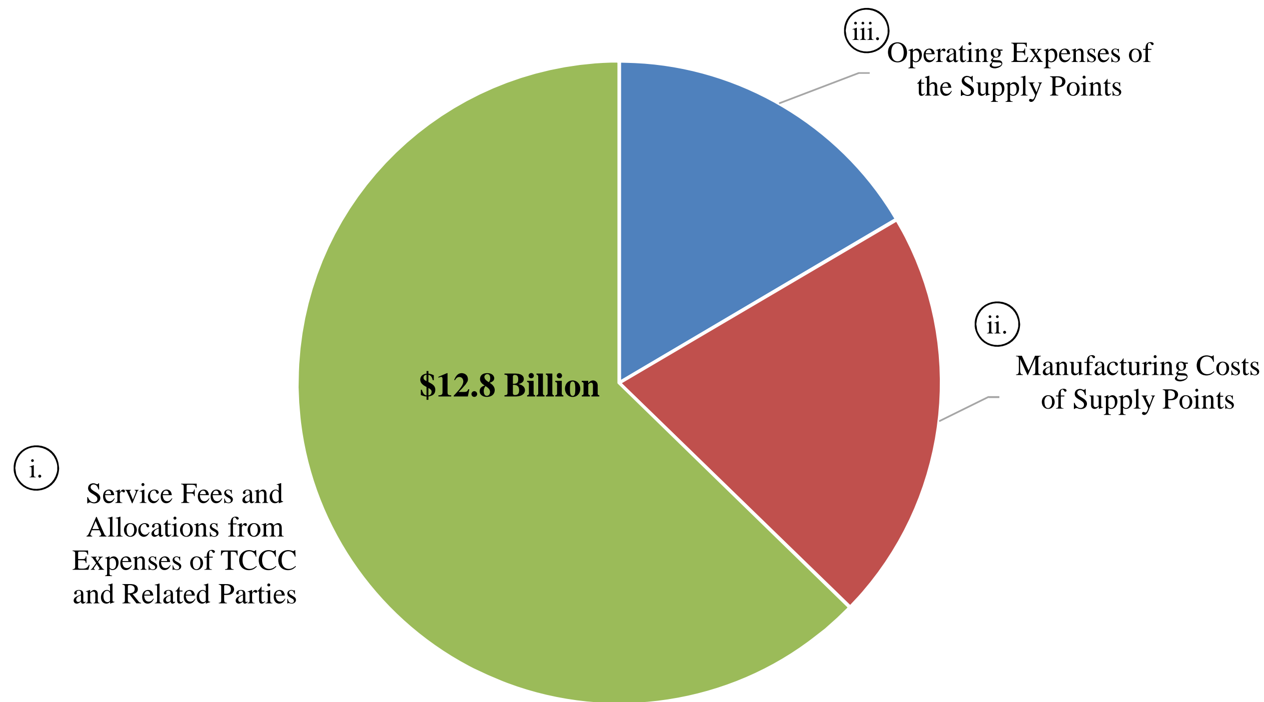
11.5%/51.4% = 22%

Note:
/1/: Prior year operating margins serve as current year projections.

Source:
(1) **Tables C1-C6**.

Table 7:

Expenses Reported by the Supply Points



Sources:

(1) **Table 2**.

(2) The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue. (Undated). Segmentation of Fees & Commission Expenses with Originating Service Companies. Exhibit 35-J, EXHJ00000125-EXHJ00000151.

(3) The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue. (Undated). Summary of Related Party Charges (excl. Fees & Commission Expenses) with Originating Related Parties. Exhibit 36-J, EXHJ00000152-EXHJ00000156.

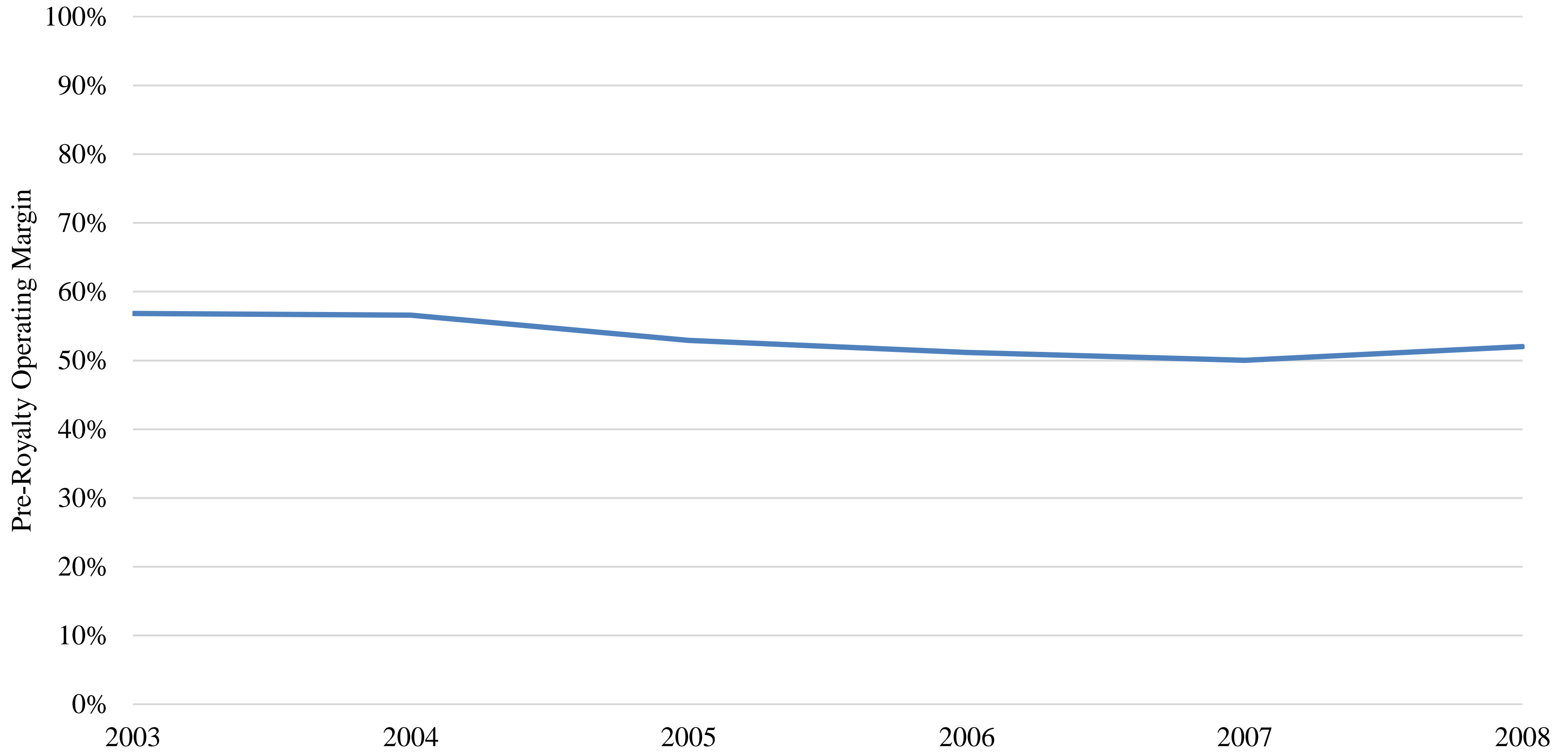
Table 8:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Mexico

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin	50.0%	45.9%	46.5%	a	Table C5
Arm's Length Licensee Return	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	41.7%	37.7%	38.3%	c = max(0,a-b)	Calculation

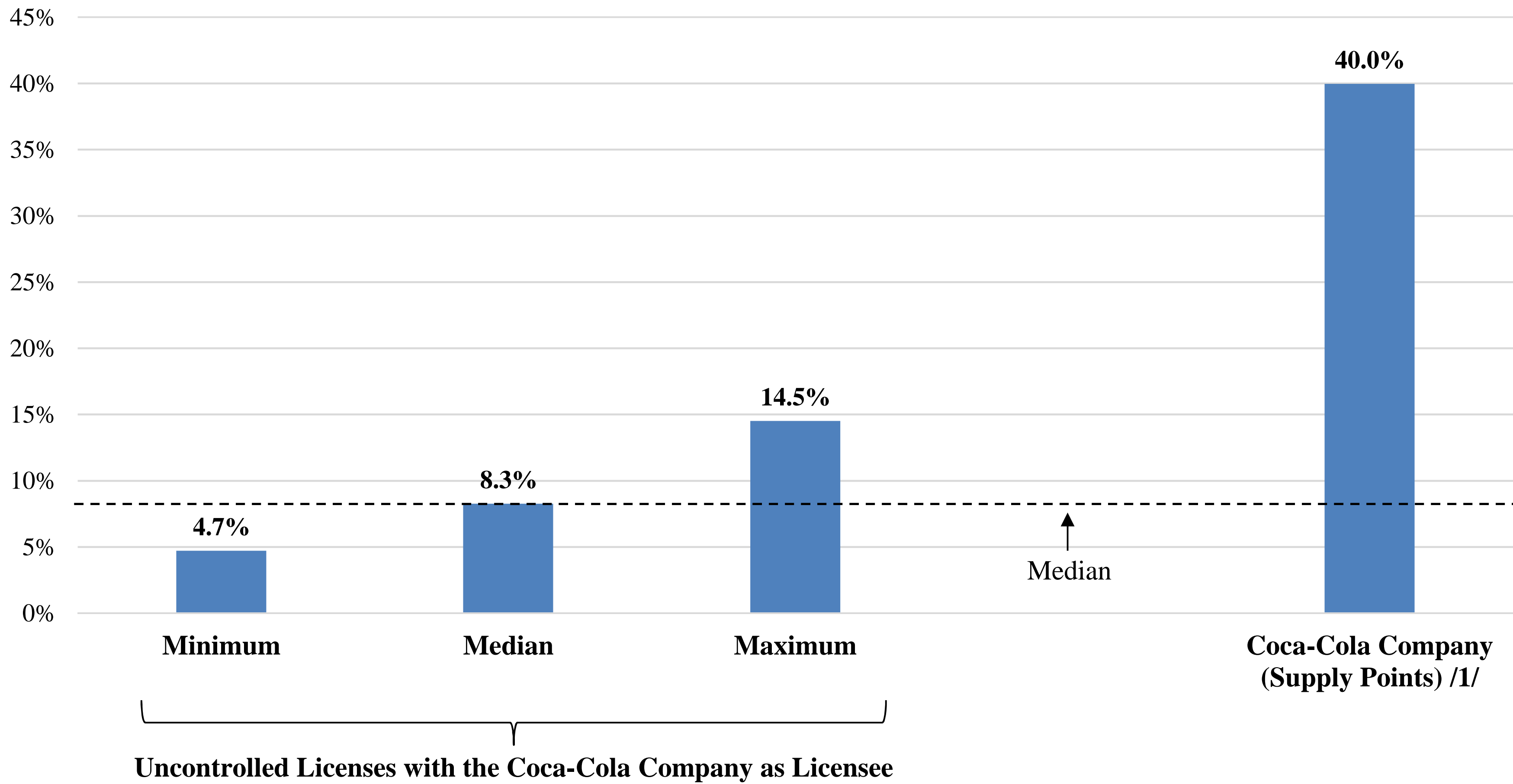
Table 9:

SP Ireland's Combined Pre-Royalty Operating Margins: 2003-2008



Source:
(1) **Table C4**.

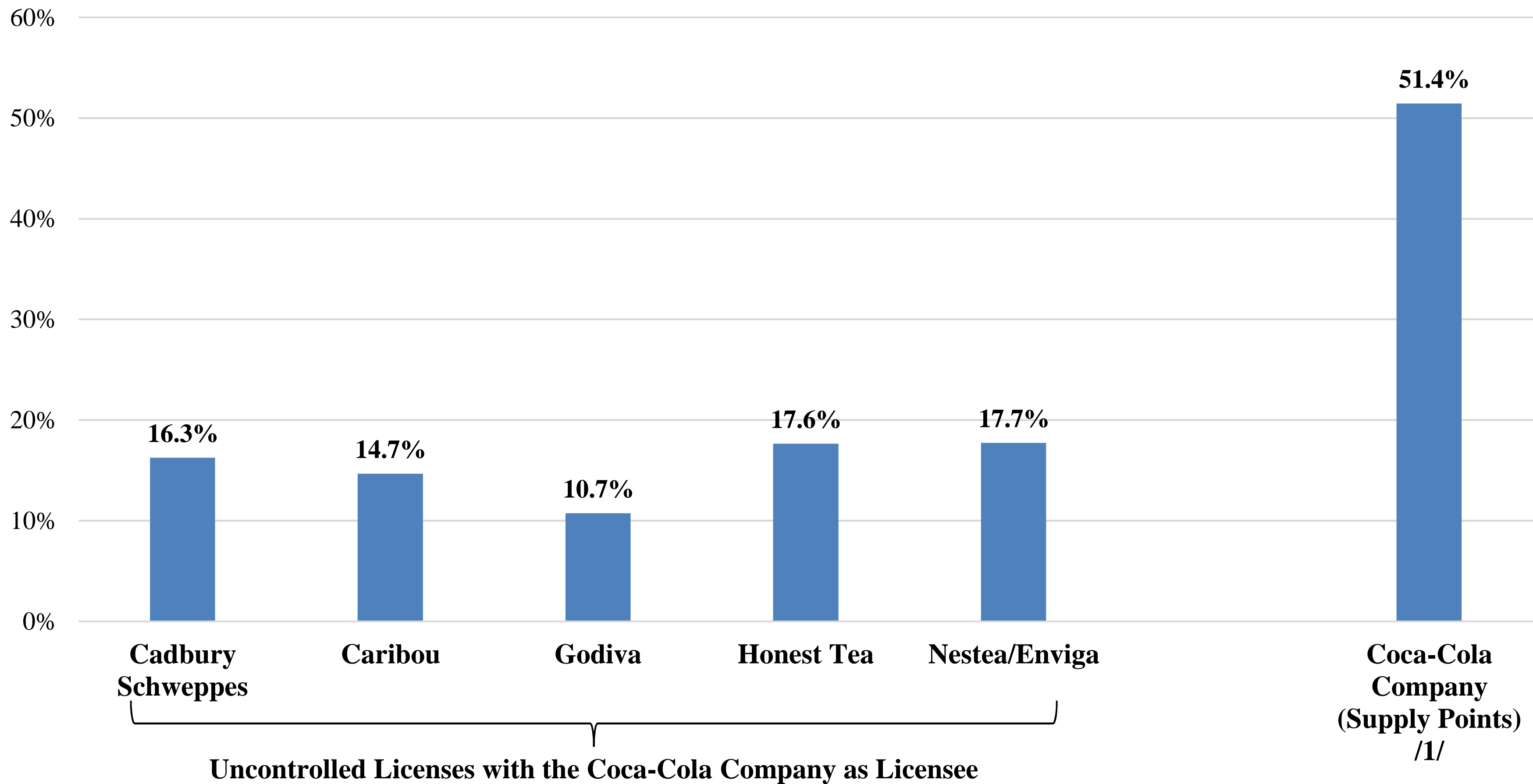
Table 10:



Note:
/1/: Projected operating margin is a weighted average based on revenues for 2007-2009.

Source:
(1) **Tables D1-D5 & 6**.

Table 11:



Note:
/1/: Projected operating margin is a weighted average based on revenues for 2007-2009.

Source:
(1) **Tables D1-D5 & 6**.

Table 12:

Royalties Using Coca-Cola Company's Uncontrolled Agreements: Supply Points by Year

USD Millions Except Percentages	2007	2008	2009	Total	Formula	Source
SP Brazil	$536.0	$627.4	$639.4	$1,802.8	a	Table F1
SP Chile	$139.1	$167.1	$184.6	$490.9	b	Table F2
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SP Ireland	$2,423.3	$2,600.7	$2,518.5	$7,542.4	d	Table F4
SP Mexico	$331.6	$311.8	$288.1	$931.5	e	Table F5
SP Swaziland	$257.1	$231.3	$293.5	$781.9	f	Table F6
Total	**$3,739.7**	**$3,988.0**	**$3,979.7**	**$11,707.4**	**g = sum(a:f)**	**Calculation**
Actual Revenue	$8,636.8	$9,409.4	$8,980.7	$27,027.0	h	Table 2
Projected Royalty Rate on Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	43.3%	42.4%	44.3%	43.3%	i = g/h	Calculation

Table 13:

Royalties as a Rate of Concentrate, Wholesale, and Retail Prices

2007-2009 Total (Percentages)	Using Coca-Cola Company Uncontrolled Agreements	Coca-Cola Company Reported Royalties	Formula	Source
Royalty as Percent of Concentrate Price	43.3%	11.5%	a	Tables 6 & 12
Ratio of Concentrate Price to Wholesale Price /1/	15.0%	15.0%	b	Table 23
Royalty as Percent of Wholesale Price	6.5%	1.7%	c = a*b	Calculation
Ratio of Wholesale Price to Retail Price /1/	80.0%	80.0%	d	Table 23
Royalty as Percent of Retail Price	5.2%	1.4%	e = c*d	Calculation

Note:
/1/: Ratios are taken from the Coca-Cola Company (see **Table 23**), but are illustrative. Other ratios could change wholesale, retail, and cent per can rates, but not the total royalty (dollars) calculation in **Table 12**.

Table 14:

Differences in Coca-Cola Company's Royalties as Reported and Using Coca-Cola Company's Uncontrolled Agreements

USD Millions /1/	2007	2008	2009	Total	Formula	Source
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SP Mexico	$219.1	$193.1	$178.0	$590.3	e	Table F5
SP Swaziland	$137.1	$115.5	$163.9	$416.5	f	Table F6
Total	**$2,741.5**	**$2,916.0**	**$2,950.8**	**$8,608.3**	**g = sum(a:f)**	**Calculation**

Note:
/1/: SP Brazil, SP Chile, and SP Costa Rica paid no royalties. As such, these figures are the same as the royalty calculations in **Table 12**.

Table 15:

Coca-Cola Company Consolidated Income Statement: 2004-2009

In USD Billions	2004	2005	2006	2004-06 Total	2007	2008	2009	2007-09 Total	Formula
Net Operating Revenues	$21.7	$23.1	$24.1	$68.9	$28.9	$31.9	$31.0	$91.8	a
Cost of Goods Sold	$7.7	$8.2	$8.2	$24.0	$10.4	$11.4	$11.1	$32.9	b
Gross Profit	$14.1	$14.9	$15.9	$44.9	$18.5	$20.6	$19.9	$58.9	c = a-b
Selling, General and Administrative Expenses	$7.9	$8.7	$9.4	$26.1	$10.9	$11.8	$11.4	$34.1	d
Other Operating Charges	$0.5	$0.1	$0.2	$0.8	$0.3	$0.4	$0.3	$0.9	e
Operating Income	$5.7	$6.1	$6.3	$18.1	$7.3	$8.4	$8.2	$23.9	f = c-d-e
Operating Margin	**26.2%**	**26.3%**	**26.2%**	**26.2%**	**25.1%**	**26.4%**	**26.6%**	**26.1%**	**g = f/a**

Sources:
(1) The Coca-Cola Company. (February 21, 2007). Form 10-K for the Fiscal Year Ended December 31, 2006. Exhibit 238-J, p. 67. EXHJ_00003627.
(2) The Coca-Cola Company. (February 26, 2010). Form 10-K for the Fiscal Year Ended December 31, 2009. Exhibit 241-J, p. 67. EXHJ_00004342.

Table 16:

Coca-Cola Company Consolidated Balance Sheet: 2004-2009

December 31 (In USD Billions)	2004	2005	2006	2007	2008	2009	Formula
Cash, Cash Equivalents	$6.7	$4.7	$2.4	$4.1	$4.7	$7.0	a
Short-Term Investments	--	--	--	--	--	$2.1	b
Marketable Securities	$0.1	$0.1	$0.2	$0.2	$0.3	$0.1	c
Trade Account Receivables, Less Allowance	$2.2	$2.3	$2.6	$3.3	$3.1	$3.8	d
Inventories	$1.4	$1.4	$1.6	$2.2	$2.2	$2.4	e
Prepaid Expenses and Other Current Assets	$1.8	$1.8	$1.6	$2.3	$1.9	$2.2	f
Total Current Assets	$12.3	$10.3	$8.4	$12.1	$12.2	$17.6	g = sum(a:f)
Equity Method Investments	$5.9	$6.6	$6.3	$7.3	$5.3	$6.2	h
Other Investments, Principally Bottling Companies	$0.4	$0.4	$0.5	$0.5	$0.5	$0.5	i
Other Assets	$3.0	$2.6	$2.7	$2.7	$1.7	$2.0	j
Property, Plant and Equipment, Net	$6.1	$5.8	$6.9	$8.5	$8.3	$9.6	k
Trademarks With Indefinite Lives	$2.0	$1.9	$2.0	$5.2	$6.1	$6.2	l
Goodwill	$1.1	$1.0	$1.4	$4.3	$4.0	$4.2	m
Other Intangible Assets	$0.7	$0.8	$1.7	$2.8	$2.4	$2.4	n
Total Assets	$31.4	$29.4	$30.0	$43.3	$40.5	$48.7	o = sum(g:n)
Current Liabilities	$11.1	$9.8	$8.9	$13.2	$13.0	$13.7	p
Long-Term Debt	$1.2	$1.2	$1.3	$3.3	$2.8	$5.1	q
Other Liabilities	$2.8	$1.7	$2.2	$3.1	$3.0	$3.0	r
Deferred Income Taxes	$0.4	$0.4	$0.6	$1.9	$0.9	$1.6	s
Total Liabilities	$15.5	$13.1	$13.0	$21.5	$19.7	$23.3	t = sum(p:s)
Total Equity	$15.9	$16.4	$16.9	$21.7	$20.9	$25.3	u
Total Liabilities and Equity	$31.4	$29.4	$30.0	$43.3	$40.5	$48.7	v = t+u

Sources:

(1) The Coca-Cola Company. (February 26, 2010). Form 10-K for the Fiscal Year Ended December 31, 2009. Exhibit 241-J, p. 68. EXHJ_00004343.

(2) The Coca-Cola Company. (February 28, 2008). Form 10-K for the Fiscal Year Ended December 31, 2007. Exhibit 239-J, p. 67. EXHJ_00003882.

(3) The Coca-Cola Company. (February 28, 2006). Form 10-K for the Fiscal Year Ended December 31, 2005. Exhibit 237-J, p. 65. EXHJ_00003480.

Table 17:

Market and Brand Values of the Coca-Cola Company and PepsiCo: 2007-2009

Fiscal Year (In USD Billions) /1/	**Coca-Cola Company**				**PepsiCo**				**Formula**	**Source**
	2007	**2008**	**2009**	**Average**	**2007**	**2008**	**2009**	**Average**		
Market Value of Assets /2/	$124.9	$163.8	$124.3	$137.7	$117.7	$142.3	$109.7	$123.2	a	(1)-(5)
Brand Value /3/	$65.3	$66.7	$68.7	$66.9	$12.9	$13.2	$13.7	$13.3	b	(6)-(8)
Ratio of Brand to Market Value	52.3%	40.7%	55.3%	**48.6%**	10.9%	9.3%	12.5%	**10.8%**	c = a/b	Calculation

Notes:
/1/: Value as of beginning of calendar year (*e.g.,* December 31, 2006; 2007; and 2008).
/2/: Equals market value of equity plus total liabilities.
/3/: Brand values are for 2007, 2008, and 2009, respectively.

Sources:
(1) **Table 16**.
(2) The Coca-Cola Company. (February 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008. Exhibit 240-J, p. 32. EXHJ_00004033.
(3) PepsiCo, Inc. (February 19, 2009). Form 10-K for the Fiscal Year Ended December 27, 2008, pp. 72, 110.
(4) PepsiCo, Inc. (February 15, 2008). Form 10-K for the Fiscal Year Ended December 29, 2007, p. 61.
(5) Retrieved April 27, 2017 from https://finance.yahoo.com.
(6) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2007.
(7) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.
(8) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2009.

Table 18:

Evolution of PepsiCo and Coca-Cola Company Logos: Since 1900

Source:
(1) Retrieved May 26, 2017 from https://www.as.uky.edu/blogs/ccamp2/model.

Table 19:

International Operations of the Coca-Cola Company's Competitors: 2007-2009

In USD Billions	Net Revenue				Operating Profit				Operating Margin			
	2007	2008	2009	2007-2009	2007	2008	2009	2007-2009	2007	2008	2009	2007-2009
PepsiCo /1/												
Latin America Foods	$4.9	$5.9	$5.7	$16.5	$0.7	$0.9	$0.9	$2.5	14.7%	15.2%	15.9%	15.3%
Europe	$5.9	$6.9	$6.7	$19.5	$0.9	$0.9	$0.9	$2.7	14.5%	13.2%	13.9%	13.8%
Asia, Middle East and Africa	$4.2	$5.1	$5.6	$14.9	$0.5	$0.6	$0.7	$1.8	11.2%	11.6%	12.8%	11.9%
International Operations	$14.9	$17.9	$18.0	$50.9	$2.0	$2.4	$2.6	$7.0	13.6%	13.4%	14.2%	**13.7%**
Dr Pepper Snapple Group												
Latin America Beverages	$0.4	$0.4	$0.4	$1.2	$0.1	$0.1	$0.1	$0.2	23.1%	20.4%	15.1%	**19.7%**
Formula	a	b	c	d = sum(a:c)	e	f	g	h = sum(e:g)	i = e/a	j = f/b	k = g/c	l = h/d

Notes:
/1/: Fiscal years ended December 29, 2007, December 27, 2008, and December 26, 2009.
/2/: PepsiCo Americas Beverages includes Latin American beverage businesses.

Sources:
(1) PepsiCo, Inc. (February 22, 2010). Annual Report for the Fiscal Year Ended December 26, 2009, pp. 35, 51, 53.
(2) PepsiCo, Inc. (February 19, 2009). Annual Report for the Fiscal Year Ended December 27, 2008, pp. 57, 59.
(3) Dr Pepper Snapple Group. (March 1, 2010). Form 10-K for the Fiscal Year Ended December 31, 2009, pp. 115-116.
(4) Dr Pepper Snapple Group. (March 26, 2009). Form 10-K for the Fiscal Year Ended December 31, 2008, pp. 104-105.

Table 20:

(Non-Cobranded) Internal Agreements with Projected Profit Data Between the Coca-Cola Company and Third Parties Provided by Taxpayer

#	Licensor	Licensee	Product Licensed/Services	Royalty	Differences from Supply Points Agreements /1/ /2/	Source
1	Cadbury Schweppes Investments, B.V.	Coca-Cola (Japan) Co, Ltd.	Canada Dry Corporation Trademarks; Cadbury Schweppes' Flavorings, Colors, etc.	8 Percent of Gross Sales of Extracts	Brand Less Valuable than Coca-Cola; 20-Year Term	(1)
2	Caribou Coffee Company	TCCC	Caribou Trademarks for Use on Beverage Products	0 to 5 Cents Per Case (Wholesale)	Use of Trademarks Only (No Formulas); Brand Less Valuable than Coca-Cola; 5-Year Term	(2)
3	Godiva Brands, Inc.	TCCC	Godiva Trademarks and Chocolate Flavoring/Ingredients for Use on Beverage Products	4 to 6 Cents Per Case (Wholesale)	Not Godiva's Core Product; Brand Less Valuable than Coca-Cola; 5-Year Term	(3)
4	Honest Tea, Inc.	TCCC	Honest Kids Trademarks and Formulas	11.8 to 26.6 Percent of Wholesale	Brand Less Valuable than Coca-Cola; 3-Year Term	(4)
5	Nestlé USA, Inc.	TCCC	Nestlé Trademarks; Nestea and Enviga Beverage Bases and Concentrates	8.4 Percent of Concentrate/Wholesale	Brand Less Valuable than Coca-Cola; 5-Year Term	(5)

Notes:
/1/: There may be additional differences.
/2/: Also includes amendments to the original agreement.

Sources:
(1) Agreement Between Cadbury Schweppes Investments, B.V. and Coca-Cola (Japan) Co, Ltd. (March 30, 1990). Agreement, pp. 1, 4-6, 9,13-14, 27-28 . CCADMIN0000584, CCADMIN0000587- CCADMIN0000589, CCADMIN0000596-CCADMIN0000597, CCADMIN0000610-CCADMIN0000611.
(2) Agreement Between Caribou Coffee Company, Inc. and The Coca-Cola Company. (January 1, 2007). License Agreement, pp. 1-2, 5-9. CCADMIN0011516-CCADMIN0011517, CCADMIN0011520-CCADMIN0011524.
(3) Agreement Between Godiva Brands, Inc. and The Coca-Cola Company. (January 1, 2006). License Agreement, pp. 1-2, 4, 10-11. CCADMIN0011582- CCADMIN0011583, CCADMIN0011585, CCADMIN0011591-CCADMIN0011592.
(4) Agreement Between Honest Tea, Inc. and The Coca-Cola Company. (February 3, 2009). Manufacturing and License Agreement, pp. 1, 14, Exhibits A, E. TCCC-00038149, TCCC-00038162.
(5) Agreement Between Nestlé USA, Inc. and The Coca-Cola Company. (March 26, 2007). Master Sublicense Agreement, pp. 1, 9-10, 16-17. CCADMIN0011694, CCADMIN0011702-CCADMIN0011703, CCADMIN0011709-CCADMIN0011710.

Table 21:

(Non-Cobranded) Internal Agreements without Projected Profit Data Between the Coca-Cola Company and Third Parties Provided by Taxpayer

#	Licensor	Licensee	Product Licensed/Services	Source
1	Bacardi & Company Limited	Coca-Cola Fountain	Bacardi and Bat Device Trademarks for Use on Mixer Products	(1)
2	Bacardi & Company Limited	Coca-Cola North America	Bacardi and Bat Device Trademarks for Use on Mixer Products	(2)
3	Disney Enterprises, Inc.	TCCC	Disney Character Trademarks for Use on Beverage Products	(3)
4	TCCC	Neverfail Spring Water Limited	Neverfail Trademarks and Related Intellectual Property for Use on Water Products	(4)
5	TCCC	PT AdeS Waters Indonesia Tbk.	AdeS and AdeS Royal Trademarks Related Intellectual Property for Use on Water Products	(5)
6	TCCC	PT Bangun Wenang Beverages Coy	AdeS Trademarks and Related Intellectual Property	(6)
7	TCCC	PT Coca-Cola Bottling Indonesia	AdeS and AdeS Royal Trademarks and Related Intellectual Property for Use on Water Products	(7)

Sources:

(1) Agreement Between Bacardi & Company Limited. and Coca-Cola Fountain. (October 31, 2001). License Agreement, pp. 1-3, 8. CCADMIN0011374-CCADMIN0011376, CCADMIN0011381, CCADMIN0011392.

(2) Agreement Between Bacardi & Company Limited. and Coca-Cola North America. (May 11 , 2007). License Agreement, CCADMIN0011358-CCADMIN0011360, CCADMIN0011364, CCADMIN0011392.

(3) Agreement Between Disney Enterprises, Inc. and The Coca-Cola Company. (January 1, 2001). License Agreement, pp. 1-4, Schedule 1. CCADMIN0011395-CCADMIN0011398, CCADMIN0011442.

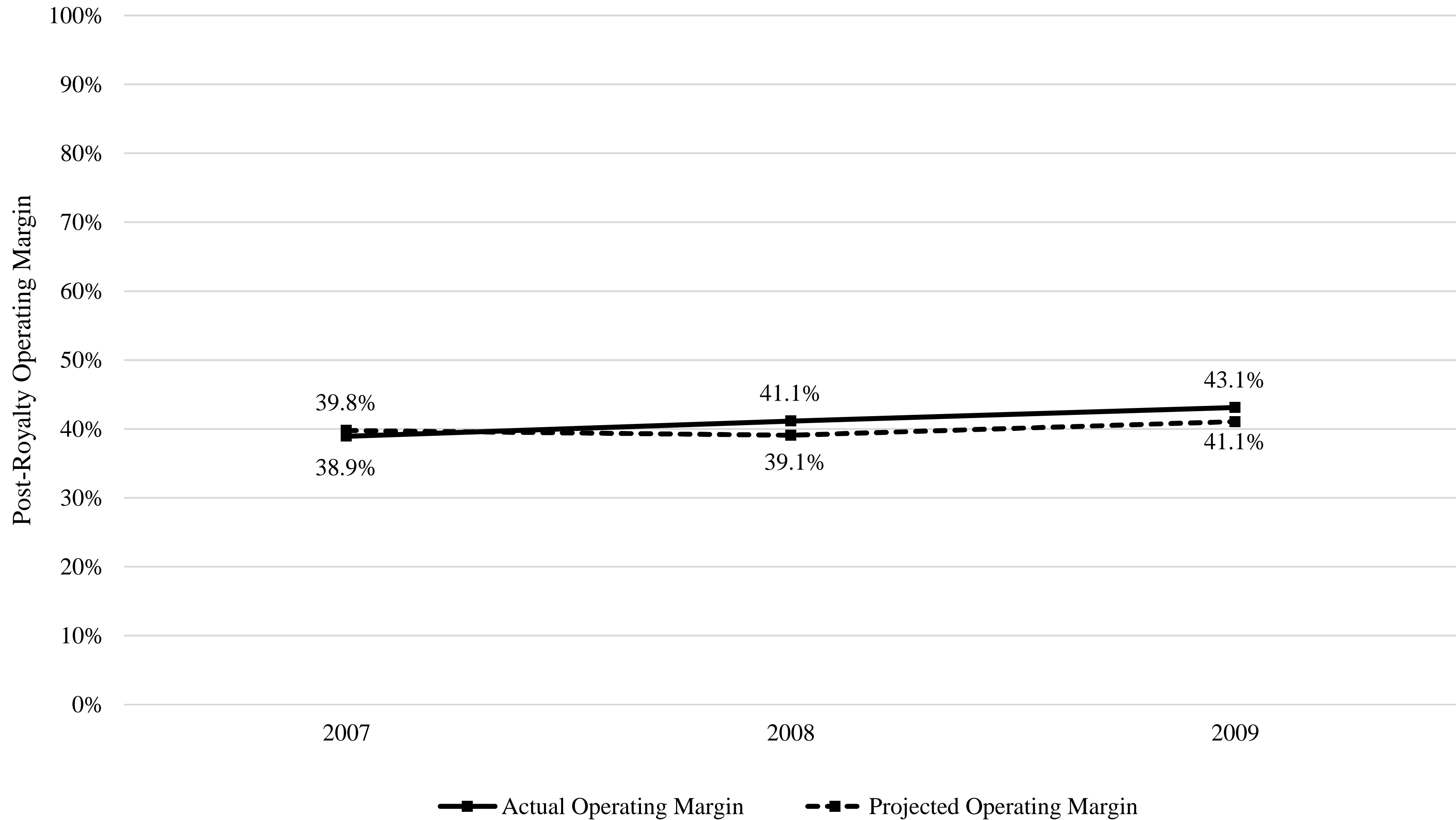
(4) Agreement Between The Coca-Cola Company and Neverfail Spring Water Limited. (November 21, 2003). Licence Agreement, pp. 15-17, 22-23. TCCC-00055154-TCCC-00055156, TCCC-00055161-TCCC-00055162.

(5) Agreement Between The Coca-Cola Company and PT AdeS Waters Indonesia Tbk. (June 2008). Licence Agreement, pp. 1-3, 11-12, 18. TCCC-00055248-TCCC-00055250, TCCC-00055258-TCCC-00055259, TCCC-00055265.

(6) Agreement Between The Coca-Cola Company and PT Bangun Wenang Beverages Coy. (March 1, 2012). Licence Agreement. TCCC-00062039, TCCC-00062055, TCCC-00062066.

(7) Agreement Between The Coca-Cola Company and PT Coca-Cola Bottling Indonesia. (June 2, 2011). Licence Agreement, pp. 1-2, 8. TCCC-00055233-TCCC-00055234, TCCC-00055240 .

Table 22:



Source:
(1) **Tables 2 & 6**.

Table 23:

Coca-Cola Company's Value Chain Analysis: Concentrate to Wholesale and Wholesale to Retail Price Ratios

In Percentages	**Ratio**
Ratio of Concentrate Price to Wholesale Price	15.0%
Ratio of Wholesale Price to Retail Price	80.0%

Source:
(1) The Coca-Cola Company. (2001). Global Finance Standard Practices and Procedures. TCCC-00047917.

Table 24:

Average Royalty per 12 oz. Can of Coca-Cola

Amount in USD Unless Stated	**Using Coca-Cola Company Uncontrolled Agreements**	**Reported by Coca-Cola Company**	**Formula**	**Source**
Average Retail Price of 12 oz. Can of Coca-Cola (2015)	$0.66	$0.66	a	(1)
U.S. Consumer Price Index Deflator (2015 to 2008)	0.91	0.91	b	(2)
Average Retail Price of 12 oz. Can of Coca-Cola (2008)	$0.60	$0.60	c = a*b	Calculation
Royalty Rate at Retail Level	5.2%	1.4%	d	Table 13
Average Royalty per 12 oz. Can of Coca-Cola (Cents)	3.1 Cents	0.8 Cents	e = c*d	Calculation

Sources:
(1) Retrieved June 16, 2017 from http://www.globalbrandprices.com/rankings/Coca_cola/.
(2) Retrieved May 24, 2017 from https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913.

Table 25:

Supply Points' Actual Combined Income Statement Using Royalties Based on Coca-Cola Company's Uncontrolled Agreements: 2007-2009

Years Ended on December 31 (In USD Millions)	2007	2008	2009	Total	Formula	Source
Net Revenue	$8,636.8	$9,409.4	$8,980.7	$27,027.0	a	Table 2
Total Cost of Goods and Services	$865.1	$914.3	$884.2	$2,663.7	b	Table 2
Total Non-Royalty Operating Expenses	$3,412.0	$3,552.8	$3,196.9	$10,161.7	c	Table 2
Operating Income (Pre-Royalty)	$4,359.7	$4,942.3	$4,899.6	$14,201.5	d = a-b-c	Calculation
Royalty and License Fee Expense - IP	**$3,739.7**	**$3,988.0**	**$3,979.7**	**$11,707.4**	**e**	**Table 12**
Operating Income (Post-Royalty)	**$619.9**	**$954.3**	**$919.8**	**$2,494.1**	**f = d-e**	**Calculation**
Operating Margin (Post-Royalty)	**7.2%**	**10.1%**	**10.2%**	**9.2%**	**g = f/a**	**Calculation**
Operating Margin (Pre-Royalty)	50.5%	52.5%	54.6%	52.5%	h = d/a	Calculation

APPENDICES

APPENDIX A

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The Wharton School of the University of Pennsylvania, Philadelphia, PA

- Ph.D., Applied Economics (1993)
- M.A., Applied Economics (1991)

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EXPERT TESTIMONY, SUBMISSIONS AND HEARINGS

1) "Critical Analysis of the March 3, 2017 Expert Report of William O. Kerr, Ph.D. and Calculation of Damages Under AIS's Counterclaim," LISCR, LLC Claimant v. Applied Information Sciences, Inc., Respondent, The American Arbitration Association, Case No. 01-15-0005-7786-1-JB, April 17, 2017.
2) "Damages Expert Report of Brian C. Becker, Ph.D.," Sean McEnroe, Plaintiff v. Mantissa Corporation, Defendant, Civil Action No. 14-cv-12320, United States District Court for the District of Massachusetts, October 27, 2016.
3) "Critical Analysis of Comments in Reports by Daniel Broadhurst, Ron Johnson, Irving Plotkin, and David West Regarding Choices and Applications of Transfer Pricing Valuations in Audit Reports of Brian C. Becker," Guidant LLC et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, United States Tax Court, Washington, DC, Docket Nos. 5989-11, 5990-11, 10985-11, 26876-11, 5501-12, 5502-12, June 20, 2016.
4) "Critical Analysis of the May 2, 2016 Expert Reports of Clark Chandler and Michael Cragg: Guidant LLC v. Commissioner of Internal Revenue," Guidant LLC et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, United States Tax Court, Washington, DC, Docket Nos. 5989-11, 5990-11, 10985-11, 26876-11, 5501-12, 5502-12, June 20, 2016.
5) "Economic Analysis of the Intercompany Prices Between Guidant (and Successor) Related Entities: 2001-2007," Guidant LLC et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, United States Tax Court, Washington, DC, Docket Nos. 5989-11, 5990-11, 10985-11, 26876-11, 5501-12, 5502-12, May 2, 2016.
6) "Impact of Different Transfer Prices on Guidant's Valuation of Assets Transferred from Its Section 936 Possessions Corporation to Puerto Rico Successor Company as of May 14, 1999," Guidant LLC et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, United States Tax Court, Washington, DC, Docket Nos. 5989-11, 5990-11, 10985-11, 26876-11, 5501-12, 5502-12, May 2, 2016.

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7) "Valuation of Intangible Irish Assets Transferred to Abbott Laboratories, Inc. as of April 21, 2006 and Explanation of Impact of Changing Transfer Prices," Guidant LLC et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, United States Tax Court, Washington, DC, Docket Nos. 5989-11, 5990-11, 10985-11, 26876-11, 5501-12, 5502-12, May 2, 2016.
8) "Reply Class Certification Report of Brian C. Becker," Lisa A. Abraham, Lisa Cave, Scott Cave, Lee Ann Kaminski, and Mark E. Kaminski, Plaintiffs v. Ocwen Loan Servicing, Inc., Defendant, United States District Court, Eastern District of Pennsylvania, Case No. 5:14-cv-04977-JP, February 12, 2016, Deposition Testimony, Washington, DC, July 20, 2016.
9) "Class Certification Report of Brian C. Becker," Lisa A. Abraham, Lisa Cave, Scott Cave, Lee Ann Kaminski, and Mark E. Kaminski, Plaintiffs v. Ocwen Loan Servicing, Inc., Defendant, United States District Court, Eastern District of Pennsylvania, Case No. 5:14-cv-04977-JP, December 21, 2015, Deposition Testimony, Washington, DC, July 20 2016.
10) "Expert Report of Brian C. Becker," Forest Laboratories, Inc. et al., Plaintiffs v. Teva Pharmaceuticals USA, Inc. et al., Defendants, In The United States District Court for the District of Delaware, Case 1:14-cv-00121-LPS; 1:14-cv-00686-LPS, December 18, 2015.
11) "Rebuttal Analysis of Expert Report of Dr. Sanjay Unni Dated August 4, 2015," Canadian Imperial Bank of Commerce, Appellant v. Her Majesty the Queen, Tax Court of Canada, 2010-1413(IT)G/2010-1414(IT)G/2010-2864(IT)G/2013-4005(IT)G, September 18, 2015.
12) "Expert Report of Brian C. Becker," Afilias, PLC, Plaintiff v. Architelos, Inc. and Alexa Raad, Defendants, Case No. 1.15-CV-14, Before the United States District Court, Eastern District of Virginia (Alexandria Division), May 29, 2015, Deposition Testimony, Washington, DC, June 5, 2015, Direct and Cross Examination Testimony, Alexandria, Virginia, August 19-20, 2015.
13) "Economic Analysis of Dumping of Certain Steel Nails from Korea, Malaysia, Oman, Taiwan, and Vietnam," U.S. International Trade Commission Investigation Nos. 701-TA-516-519 & 521 and 731-TA-1252-1255 &1257 (Final), Washington, DC, May 6, 2015, Testimony at Hearing, May 14, 2015.
14) "Expert Report of Brian C. Becker," Afilias, PLC, Plaintiff v. Architelos, Inc. and Alexa Raad, Defendants, Case No. 1.15-CV-14, Before the United States District Court, Eastern District of Virginia (Alexandria Division), April 27, 2015, Deposition Testimony, Washington, DC, June 5, 2015, Direct and Cross Examination Testimony, Alexandria, Virginia, August 19-20, 2015.
15) "Expert Report of Brian C. Becker," Darby Latin American Mezzanine Fund, L.P. and EI Barranquilla LLC v. PricewaterhouseCoopers LLP, Case No. 2013 CA 006215 B, Before the Superior Court of the District of Columbia, Civil Division, January 22, 2015, Deposition Testimony, Washington, DC, February 19, 2015.
16) "Critical Analysis of Taxpayer's October 2014 Expert Reports: Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner of Internal Revenue," United States Tax Court, Dkt No. 6944-11, December 3, 2014, Direct and Cross Examination Testimony, Chicago, Illinois, March 10, 2015.

17) "Affidavit of Brian Charles Becker in Support of Notice of Appeal Against Appealable Objection Decision Under Section 14ZZ of the Taxation Administration Act 1953 Affirmed on 28 July 2014," Federal Court of Australia, New South Wales District Registry, Between Chevron Australia Holdings Pty Ltd, Applicant, and The Commissioner of Taxation of the Commonwealth of Australia, Respondent, No. NSD 569 of 2012, No. NSD 151 of 2013, July 28, 2014, Direct and Cross Examination Testimony, Sydney, Australia, October 14-16, 2014.
18) "Affidavit of Brian Charles Becker in Support of Notice of Appeal Against Appealable Objection Decision Under Section 14ZZ of the Taxation Administration Act 1953 Affirmed on 10 March 2014," Federal Court of Australia, New South Wales District Registry, Between Chevron Australia Holdings Pty Ltd, Applicant, and The Commissioner of Taxation of the Commonwealth of Australia, Respondent, No. NSD 569 of 2012, No. NSD 151 of 2013, March 10, 2014, Direct and Cross Examination Testimony, Sydney, Australia, October 14-16, 2014.
19) "Affidavit of Brian Charles Becker in Support of Notice of Appeal Against Appealable Objection Decision Under Section 14ZZ of the Taxation Administration Act 1953 Affirmed on 6 March 2014," Federal Court of Australia, New South Wales District Registry, Between Chevron Australia Holdings Pty Ltd, Applicant, and The Commissioner of Taxation of the Commonwealth of Australia, Respondent, No. NSD 569 of 2012, No. NSD 151 of 2013, March 6, 2014, Direct and Cross Examination Testimony, Sydney, Australia, October 14-16, 2014.
20) "Rebuttal Statement of Brian C. Becker," AZSA Holdings Pty Ltd vs. Commissioner of Taxation, Administrative Appeals Tribunal, Taxation Appeals Division, New South Wales District Registry, AAT Proceedings 2010/3229-3232, March 6, 2014.
21) "Declaration of Brian C. Becker in Support of Ricoh Company, Ltd.'s Motion for Relief from Judgment," United States District Court, Southern District of New York, Case No. 12-CV-3109 (DLC), February 26, 2014.
22) "Rebuttal Analysis of Expert Report and Videotaped Deposition Testimony of Michael G. Kessler," United States District Court, Southern District of California, Case No. 12-CV-2188-GPC (BGS), February 3, 2014.
23) "Economic Analysis of Intercompany Transfers Between Altec Lansing, LLC and Altec Lansing, BV: 2010-2012," United States District Court, Southern District of California, Case No. 12-CV-2188-GPC (BGS), December 9, 2013.
24) "Expert Report in Eastman Kodak Company, Plaintiff v. Ricoh Company, Ltd., Defendant," United States District Court, Southern District of New York, Case No. 12-CV-3109, September 23, 2013 Supplement, October 12, 2013 Second Supplement.
25) "Economic Analysis of Intercompany Transactions Between DeCoro USA and DeCoro Ltd.: 2004-2007." United States Bankruptcy Court, Middle District of North Carolina In Re: DeCoro USA, Ltd., Debtor, Chapter 11 Bankruptcy Case No. 09-10846, September 11, 2012, Deposition Testimony, Washington, DC, November 2, 2012, Direct and Cross Examination Testimony, Greensboro, NC, September 24, 2013.

26) "Affidavit of Brian Charles Becker in Support of Notice of Appeal Against Appealable Objection Decision Under Section 14ZZ of the Taxation Administration Act 1953 Affirmed on 2 August 2013," Federal Court of Australia, New South Wales District Registry, Between Chevron Australia Holdings Pty Ltd, Applicant, and The Commissioner of Taxation of the Commonwealth of Australia, Respondent, No. NSD 569 of 2012, No. NSD 151 of 2013, August 2, 2013, Direct and Cross Examination Testimony, Sydney, Australia, October 14-16, 2014.
27) "Expert Report in Eastman Kodak Company, Plaintiff v. Ricoh Company, Ltd., Defendant," United States District Court, Southern District of New York, Case No. 12-CV-3109, July 8, 2013, Deposition Testimony, Washington, DC, August 8, 2013.
28) "141 Repellent, Inc., Plaintiff v. International Flavors & Fragrances, Inc., Defendant and Counterclaim Plaintiff v. Dennis Tracz, Counterclaim Defendant" United States District Court, District of Western Virginia, Between 141 Repellent, Inc., Plaintiff, and International Flavors & Fragrances, Inc., Defendant, Case No. 6:12-00054 (NKM), June 14, 2013.
29) "Altana Pharma AG and Wyeth vs. Teva Pharmaceuticals USA, Inc., et al., Altana Pharma AG and Wyeth vs. Sun Pharmaceuticals Industries, Ltd., et al." United States District Court, District of New Jersey Between Altana Pharma AG, and Wyeth, Plaintiffs, and Teva Pharmaceuticals USA, Inc., et al., Defendants, May 4, 2012 Supplement, Deposition Testimony, Washington, DC, May 10, 2012.
30) "Altana Pharma AG and Wyeth vs. Teva Pharmaceuticals USA, Inc., et al., Altana Pharma AG and Wyeth vs. Sun Pharmaceuticals Industries, Ltd., et al." United States District Court, District of New Jersey Between Altana Pharma AG, and Wyeth, Plaintiffs, and Teva Pharmaceuticals USA, Inc., et al., Defendants, March 15, 2012, Deposition Testimony, Washington, DC, May 10, 2012.
31) "Economic Analysis of Arm's Length Service Fees Between General Atlantic Service Company LLC and M/s General Atlantic Private Limited: 2006-2007," Income Tax Appellate Tribunal "K" Bench, Mumbai, Between General Atlantic Private Limited, Appellant, and The Assistant Commissioner of Income Tax (OSD), Respondent, I.T.A. No. 7638/Mum/2011, India, February 9, 2012.
32) "Economic Analysis of Receivables Transactions Involving McKesson Canada Corporation and McKesson International Holdings III S.ar.l.: Fiscal Year 2003," Tax Court of Canada Between McKesson Canada Corporation, Appellant, and Her Majesty the Queen, Respondent, Court Files No. 2008-2949(IT)G and 2008-3471(IT)G, April 4, 2011, Direct and Cross Examination Testimony, Toronto, Canada, November 1-16, 2011.
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62) "Assessing the Impact of Imported Frozen Basa and Tra Fillets from Vietnam on the U.S. Frozen Catfish Fillet Industry," United States International Trade Commission, Inv. No. 731-TA-1012 (Final, with A. Salzberg), submitted June 11, 2003, Testimony at Hearing, June 17, 2003.
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76) Economic Witness on Changed Circumstances Review for Titanium Sponge from Japan, Kazakhstan, Russia, and Ukraine, United States International Trade Commission, Testimony at Hearing, June 8, 1998.
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2) "How Transfer Pricing Disputes are Resolved with Tax Authorities: Lack of Publicly Available Information," *Financier Worldwide: Global Reference Guide Corporate Tax 2011*, July 2011, pp. 4-6.
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5) "Benchmarking Manufacturing or Distribution Entities Against the Profits of Consolidated Companies," *Tax Management Transfer Pricing Report*, Vol. 13, No. 5, July 7, 2004, pp. 236-237.
6) "An Examination of Goodwill Valuation Methodologies," *Corporate Governance Advisor*, Vol. 10, No. 4, July/August 2002, pp. 35-40 (with M. Riedy and K. Sperduto).
7) "Comparable Profits Method: Accounting for Margin and Volume Effects of Intangibles," *Tax Management Transfer Pricing Report*, Vol. 10, No. 19, February 6, 2002, pp. 831-833.
8) "Cost Sharing Buy-Ins," Chapter in *Transfer Pricing Handbook*, 3rd Edition, and *Transfer Pricing International*, edited by Robert Feinschreiber, John Wiley & Sons, 2002, pp. A-3 - A-16.
9) "Cost Sharing Buy-Ins," *Corporate Business Taxation Monthly*, Vol. 3, No. 3, December 2001, pp. 26-35.
10) "Further Thoughts on Cost Sharing Buy-Ins: A Review of the Market Capitalization and Declining Royalty Methods," *Tax Management Transfer Pricing Report*, Vol. 10, No. 6, July 11, 2001, pp. 195-197.
11) "Valuing In-Process R&D for Acquisitions: Economic Principles Applied to Accounting Definitions," *Tax Management Transfer Pricing Report*, Vol. 9, No. 10, September 20, 2000, pp. 323-326.
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13) "Does a Small Firm Effect Exist when Using the CAPM? Not Since 1980 and Not when Using Geometric Means of Historical Returns," *Business Valuation Review*, Vol. 18, No. 3, September 1999, pp. 104-111 (with I. Gray).
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15) "The Control Premium: An Initial Look Into a Strict Monetary Value Approach," *Business Valuation Digest*, Vol. 5, No. 1, July 1999, pp. 12-15.
16) "Using Average Historical Data for Risk Premium Estimates: Arithmetic Mean, Geometric Mean, or Something Else?," *Business Valuation Review*, December 1998, Vol. 17, No. 4, pp. 136-140 (with I. Gray).
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22) "Capital Adjustments: A Short Overview," *Tax Management Transfer Pricing Report*, Vol. 5, No. 19, January 29, 1997, pp. 613-619.
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26) "The Final Transfer Pricing Regulations: The More Things Change, the More they Stay the Same," *Tax Notes*, Vol. 64, No. 4, July 25, 1994, pp. 507-523, (with G. Carlson, et. al.).
27) "Philadelphia's Luxury Hotels: Boom or Bust?," *The Cornell Hotel and Restaurant Administration Quarterly,* Vol. 33, No. 2, April 1992, pp. 33-42.

RECENT PROFESSIONAL SEMINARS

1) "EU State Aid – The Role of Transfer Pricing," Bloomberg BNA Tax Webinar, June 16, 2017.

2) "Transfer Pricing Concepts," Australian Taxation Office, Melbourne, Australia, October 21, 2016.
3) "Transfer Pricing Litigation," Bloomberg BNA Tax Webinar, March 11, 2015
4) "Effectively Managing Global Transfer Pricing," Panelist at the Life Sciences Tax Congress, Philadelphia, PA, November 18, 2014.
5) "Transfer Pricing," Guest Lecturer at the Georgetown University Law Center, Washington, DC, October 30, 2014.
6) "Distribution Rights Valuation Issues," Panelist at the CLE International's *Wine, Beer & Spirits Law Conference*, Washington, DC, September 19, 2014.
7) "Transfer Pricing," Guest Lecturer at the Georgetown University Law Center, Washington, DC, October 31, 2013.
8) "Treatment of Intangibles," Speaker on Transfer Pricing, Networking Seminars Inc., New York, NY, March 18, 2013.
9) "Potential Safe Harbor for Cost Sharing Buy-In Discount Rates," Speaker at the Transfer Pricing Symposium 2012, National Association for Business Economics, Arlington, VA, August 1, 2012.

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Senior Managing Economist

ECONOMIC CONSULTING SERVICES INC., Washington, DC, (1995-1999)
Senior Economist

ARTHUR ANDERSEN, L.L.P., Washington, DC, (1994-1995)
Manager

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APPENDIX B

Appendix B: List of Documents Considered

Documents Provided by the IRS:

1. CC0000001
2. CC0000123
3. CC0000220
4. CC0000437
5. CC0000705
6. CC0000728
7. CC0000750
8. CC0000780
9. CC0000800
10. CC0010402
11. CC0010403
12. CC0010404
13. CC0010407
14. CC0010408
15. CC0010422
16. CC0010426
17. CC0010429
18. CC0010600
19. CC0010877
20. CC0010891
21. CC0010903
22. CC0010949
23. CC0010961
24. CC0011022
25. CC0011036
26. CC0011058
27. CC0011068
28. CC0011095
29. CC0011126
30. CC0011163
31. CC0011204
32. CC0011220
33. CC0011245
34. CC0011492
35. CC0012298
36. CC0012962
37. CC0013450
38. CC0013843
39. CC0014672
40. CC0014947
41. CCADMIN0000001
42. CCADMIN0000059

BECKER Transfer Pricing Report

43. CCADMIN0000358
44. CCADMIN0001494
45. CCADMIN0004094
46. CCADMIN0005013
47. CCADMIN0005014
48. CCADMIN0005074
49. CCADMIN0005076
50. CCADMIN0005116
51. CCADMIN0009166
52. CCADMIN0010020
53. CCADMIN0010247
54. CCADMIN0010698
55. CCADMIN0010826
56. CCADMIN0011155
57. CCADMIN0011348
58. CCADMIN0011395
59. CCADMIN0011464
60. CCADMIN0011516
61. CCADMIN0011535
62. CCADMIN0011582
63. CCADMIN0011604
64. CCADMIN0011646
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66. CCADMIN0011745
67. CCADMIN0012125
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70. CCADMIN0012249
71. CCADMIN0012523
72. CCADMIN0025045
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74. CCADMIN0025049
75. CCADMIN0025052
76. CCADMIN0032809
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78. CCADMIN0032843
79. CCADMIN0032888
80. CCADMIN0032905
81. CCADMIN0033454
82. CCADMIN0033511
83. CCADMIN0033533
84. CCADMIN0033535
85. CCADMIN0033555
86. CCADMIN0033607
87. CCADMIN0044424
88. CCADMIN0044695

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89. CCADMIN0044736
90. CCADMIN0044818
91. CCADMIN0044858
92. CCADMIN0044898
93. CCADMIN0044938
94. CCADMIN0044952
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97. CCADMIN0045029
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122. CCADMIN0051277
123. CCADMIN0051331
124. CCADMIN0051360
125. CCADMIN0051396
126. CCADMIN0051430
127. CCADMIN0051760-T
128. CCADMIN0052161
129. CCADMIN0058918
130. CCADMIN0058946
131. CCADMIN0113192
132. CCADMIN0113220
133. CCADMIN0448478
134. CCADMIN0448492

BECKER Transfer Pricing Report

135. CCADMIN0448512
136. EXHJ_00000001
137. EXHJ_00000003
138. EXHJ_00000006
139. EXHJ_00000010
140. EXHJ_00000012
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143. EXHJ_00000023
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146. EXHJ_00000035
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172. EXHJ_00000157
173. EXHJ_00000176
174. EXHJ_00000186
175. EXHJ_00000191
176. EXHJ_00000191-T
177. EXHJ_00000199
178. EXHJ_00000199-T
179. EXHJ_00000208
180. EXHJ_00000208-T

BECKER Transfer Pricing Report

181. EXHJ_00000217
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202. EXHJ_00000601
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APPENDIX C

Supply Points' Income Statements: 2003-2009

Table C1:

SP Brazil Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	2003	2004	2005	2006	2007	2008	2009	2007-2009	Formula
Net Revenue	$339.1	$409.2	$556.4	$767.0	$1,038.6	$1,162.8	$1,159.1	$3,360.4	a
Total Cost of Goods and Services	$45.3	$55.8	$68.6	$88.9	$108.9	$118.5	$130.9	$358.3	b
Total Operating Expenses	$132.8	$127.0	$165.5	$219.0	$283.5	$306.9	$291.4	$881.8	c
Operating Income (Pre-Royalty)	$161.1	$226.4	$322.2	$459.2	$646.1	$737.4	$736.7	$2,120.2	d = a-b-c
Operating Margin (Pre-Royalty)	47.5%	55.3%	57.9%	59.9%	62.2%	63.4%	63.6%	63.1%	e = d/a
Operating Income (Post-Royalty)					**$646.1**	**$737.4**	**$736.7**	**$2,120.2**	**f = d**
Operating Margin (Post-Royalty)					**62.2%**	**63.4%**	**63.6%**	**63.1%**	**g = f/a**
Royalty Rate of Concentrate					**0.0%**	**0.0%**	**0.0%**	**0.0%**	**h = e-g**

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

Table C2:

SP Chile Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	2003	2004	2005	2006	2007	2008	2009	2007-2009	Formula
Net Revenue	$146.8	$163.7	$174.4	$214.9	$251.6	$297.4	$330.4	$879.4	a
Total Cost of Goods and Services	$20.0	$20.9	$23.3	$29.9	$34.3	$43.9	$52.2	$130.3	b
Total Operating Expenses	$31.2	$34.3	$45.0	$48.4	$55.2	$62.8	$64.9	$182.8	c
Operating Income (Pre-Royalty)	$95.7	$108.4	$106.1	$136.6	$162.2	$190.8	$213.3	$566.2	d = a-b-c
Operating Margin (Pre-Royalty)	65.2%	66.2%	60.8%	63.5%	64.4%	64.1%	64.6%	64.4%	e = d/a
Operating Income (Post-Royalty)					**$162.2**	**$190.8**	**$213.3**	**$566.2**	**f = d**
Operating Margin (Post-Royalty)					**64.4%**	**64.1%**	**64.6%**	**64.4%**	**g = f/a**
Royalty Rate of Concentrate					**0.0%**	**0.0%**	**0.0%**	**0.0%**	**h = e-g**

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

Table C3:

SP Costa Rica Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2007-2009**	**Formula**
Net Revenue	$113.8	$123.9	$125.2	$147.9	$167.0	$198.2	$198.0	$563.2	a
Total Cost of Goods and Services	$11.4	$12.5	$13.3	$15.9	$18.2	$22.2	$26.0	$66.5	b
Total Operating Expenses	$47.7	$54.7	$69.0	$73.2	$93.0	$104.0	$120.5	$317.5	c
Operating Income (Pre-Royalty)	$54.7	$56.8	$42.8	$58.7	$55.7	$72.0	$51.4	$179.2	d = a-b-c
Operating Margin (Pre-Royalty)	48.0%	45.8%	34.2%	39.7%	33.4%	36.3%	26.0%	31.8%	e = d/a
Operating Income (Post-Royalty)					**$55.7**	**$72.0**	**$51.4**	**$179.2**	**f = d**
Operating Margin (Post-Royalty)					**33.4%**	**36.3%**	**26.0%**	**31.8%**	**g = f/a**
Royalty Rate of Concentrate					**0.0%**	**0.0%**	**0.0%**	**0.0%**	**h = e-g**

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

Table C4:

SP Ireland Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	2003	2004	2005	2006	2007	2008	2009	2007-2009	Formula
Net Revenue /1/	$3,636.0	$4,230.3	$4,484.1	$4,880.7	$5,647.5	$6,226.3	$5,753.3	$17,627.1	a
Total Cost of Goods and Services /1/	$305.5	$357.6	$376.2	$428.5	$506.0	$545.6	$478.8	$1,530.4	b
Total Operating Expenses /1/	$1,264.2	$1,478.7	$1,735.2	$1,955.1	$2,316.4	$2,441.1	$2,151.3	$6,908.8	c = a-b-d
Operating Income (Pre-Royalty)	$2,066.2	$2,394.0	$2,372.8	$2,497.2	$2,825.1	$3,239.6	$3,123.2	$9,187.9	d
Operating Margin (Pre-Royalty)	56.8%	56.6%	52.9%	51.2%	50.0%	52.0%	54.3%	52.1%	e = d/a
Royalty and License Fee Expense - IP					**$765.7**	**$837.6**	**$789.2**	**$2,392.5**	**f = d-g**
Operating Income (Post-Royalty)					**$2,059.5**	**$2,402.0**	**$2,334.0**	**$6,795.4**	**g**
Operating Margin (Post-Royalty)					**36.5%**	**38.6%**	**40.6%**	**38.6%**	**h = g/a**
Royalty Rate of Concentrate					**13.6%**	**13.5%**	**13.7%**	**13.6%**	**i = e-h**

Note:
/1/: Deductions for Schweppes and Cosmos are made from these line items. See Source (1).

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

Table C5:

SP Mexico Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2007-2009**	**Formula**
Net Revenue	$695.4	$596.4	$632.5	$718.3	$795.4	$827.8	$753.1	$2,376.3	a
Total Cost of Goods and Services	$62.3	$63.4	$69.0	$105.9	$127.4	$120.4	$122.1	$369.9	b
Total Operating Expenses	$217.8	$188.6	$227.0	$253.6	$302.8	$322.4	$276.7	$901.9	c = a-b-d
Operating Income (Pre-Royalty)	$415.2	$344.4	$336.5	$358.8	$365.2	$385.0	$354.3	$1,104.5	d
Operating Margin (Pre-Royalty)	59.7%	57.8%	53.2%	50.0%	45.9%	46.5%	47.0%	46.5%	e = d/a
Royalty and License Fee Expense - IP					**$112.5**	**$118.7**	**$110.0**	**$341.2**	**f = d-g**
Operating Income (Post-Royalty)					**$252.7**	**$266.4**	**$244.2**	**$763.3**	**g**
Operating Margin (Post-Royalty)					**31.8%**	**32.2%**	**32.4%**	**32.1%**	**h = g/a**
Royalty Rate of Concentrate					**14.1%**	**14.3%**	**14.6%**	**14.4%**	**i = e-h**

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

Table C6:

SP Swaziland Income Statement: 2003-2009

Years Ended on December 31 (In USD Millions)	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2007-2009**	**Formula**
Net Revenue	$469.9	$631.2	$681.8	$691.7	$736.7	$696.9	$787.0	$2,220.6	a
Total Cost of Goods and Services	$41.9	$50.9	$60.5	$58.1	$70.3	$63.8	$74.2	$208.2	b
Total Operating Expenses	$228.0	$282.6	$340.0	$335.1	$361.1	$315.7	$292.1	$969.0	c = a-b-d
Operating Income (Pre-Royalty)	$200.0	$297.7	$281.3	$298.5	$305.3	$317.5	$420.6	$1,043.4	d
Operating Margin (Pre-Royalty)	42.6%	47.2%	41.3%	43.2%	41.4%	45.6%	53.5%	47.0%	e = d/a
Royalty and License Fee Expense - IP					**$120.0**	**$115.7**	**$129.6**	**$365.4**	**f = d-g**
Operating Income (Post-Royalty)					**$185.3**	**$201.7**	**$291.0**	**$678.0**	**g**
Operating Margin (Post-Royalty)					**25.2%**	**28.9%**	**37.0%**	**30.5%**	**h = g/a**
Royalty Rate of Concentrate					**16.3%**	**16.6%**	**16.5%**	**16.5%**	**i = e-h**

Source:
(1) "CC0014947.xlsx." Excel Spreadsheet. CC0014947.

APPENDIX D

Profit Projections for the Coca-Cola Company's Uncontrolled Agreements

Table D1:

Licensee Profit Projections: Cadbury-Schweppes License

In JPY Millions Except Percentages	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Formula
Gross Revenues	5,325.0	5,850.0	6,437.5	7,087.5	7,787.5	32,487.5	a
Cost of Goods Sold	2,284.0	2,495.0	2,719.5	3,032.5	3,328.5	13,859.5	b = a-c
Gross Profit	3,041.0	3,355.0	3,718.0	4,055.0	4,459.0	18,628.0	c
Marketing Expense	1,710.0	1,881.0	2,070.0	2,277.0	2,502.0	10,440.0	d
Less Cannibalization in Present CCJC Vend.	567.0	624.0	686.0	755.0	831.0	3,463.0	e
Less Discontinued Santiba/Fanta	249.0	274.0	301.0	331.0	364.0	1,519.0	f
Payment to CD Japan	186.0	205.0	225.0	0.0	0.0	616.0	g
CD Payoff to Independents System	233.0	256.0	0.0	0.0	0.0	489.0	h
Profit from Coke Product Sales by Donated Vend.	(118.0)	(130.0)	(143.0)	(157.0)	(173.0)	(721.0)	i
Profit from Coke Product Sales by Present CD Vend.	(403.0)	(443.0)	(487.0)	(536.0)	(590.0)	(2,459.0)	j
Operating Expenses /1/	2,424.0	2,667.0	2,652.0	2,670.0	2,934.0	13,347.0	k = sum(d:j)
Royalty Payment to CD	426.0	468.0	515.0	567.0	623.0	2,599.0	l
Operating Income (Pre-Royalty)	617.0	688.0	1,066.0	1,385.0	1,525.0	5,281.0	m = c-k
Operating Income (Post-Royalty)	191.0	220.0	551.0	818.0	902.0	2,682.0	n = m-l
Operating Margin (Pre-Royalty)	11.6%	11.8%	16.6%	19.5%	19.6%	**16.3%**	o = m/a
Operating Margin (Post-Royalty)	3.6%	3.8%	8.6%	11.5%	11.6%	**8.3%**	p = n/a

Note:
/1/: Does not include SG&A expenses.

Source:
(1) The Coca-Cola Company. (May 4, 2015). "IDR 01EC-SP-286, Cadbury Schweppes Information." CCADMIN0046788.

Table D2:

Licensee Profit Projections: Caribou License

In USD Except Percentages	2007 /1/	2008	2009	2010	2011	Total	Formula
Net Revenue	$14,733	$36,229	$59,403	$80,426	$94,902	$285,693	a
Total COGS	$10,079	$24,783	$40,636	$55,017	$64,921	$195,436	b
Gross Profit	$4,654	$11,446	$18,767	$25,409	$29,981	$90,257	c = a-b
Total Marketing Expenses	$4,515	$5,723	$9,383	$12,552	$14,682	$46,855	d
Allocated Operating Expenses	$134	$331	$341	$351	$361	$1,518	e
Total Operating Expenses	$4,649	$6,054	$9,724	$12,903	$15,043	$48,373	f = d+e
Total License Fee (Royalty)	$0	$0	$0	$152	$309	$461	g
Operating Income (Pre-Royalty)	$5	$5,392	$9,043	$12,506	$14,938	$41,884	h = c-f
Operating Income (Post-Royalty)	$5	$5,392	$9,043	$12,354	$14,629	$41,423	i = h-g
Operating Margin (Pre-Royalty)	0.0%	14.9%	15.2%	15.5%	15.7%	**14.7%**	j = h/a
Operating Margin (Post-Royalty)	0.0%	14.9%	15.2%	15.4%	15.4%	**14.5%**	k = i/a

Note:
/1/: Estimated September 2007 launch.

Source:
(1) "2007-2011 VALUE CHAIN ESTIMATE - Parity Pricing / 100% DSD / Tiered License Fee (per Term Sheet)." Excel Spreadsheet. TCCC-00039504.

Table D3:

Licensee Profit Projections: Godiva License

In USD Except Percentages	2006 /1/	2007	2008	2009	2010	Total	Formula
Net Revenue	$20,065	$38,649	$58,262	$78,441	$95,193	$290,610	a
Total COGS	$15,435	$29,563	$44,565	$60,000	$72,814	$222,377	b
Gross Profit	$4,630	$9,086	$13,697	$18,441	$22,379	$68,233	c = a-b
Total Marketing Expenses	$3,280	$3,767	$6,849	$9,221	$11,168	$34,285	d
Allocated Operating Expenses	$189	$362	$546	$736	$893	$2,726	e
Total Operating Expenses	$3,469	$4,129	$7,395	$9,957	$12,061	$37,011	f = d+e
Total License Fee (Royalty)	$1,161	$3,000	$3,352	$4,513	$5,499	$17,525	g
Operating Income (Pre-Royalty)	$1,161	$4,957	$6,302	$8,484	$10,318	$31,222	h = c-f
Operating Income (Post-Royalty)	$0	$1,957	$2,950	$3,971	$4,819	$13,697	i = h-g
Operating Margin (Pre-Royalty)	5.8%	12.8%	10.8%	10.8%	10.8%	**10.7%**	j = h/a
Operating Margin (Post-Royalty)	0.0%	5.1%	5.1%	5.1%	5.1%	**4.7%**	k = i/a

Note:
/1/: Estimated July 2006 launch.

Source:
(1) "Project ALI: 2006-2010 Value Chain Estimate - Parity Pricing - Summary Value Chain." Excel Spreadsheet. TCCC-00039505.

Table D4:

Licensee Profit Projections: Honest Kids License

In USD per Case Except Percentages	32-Count	24-Count	18-Count	Total	Formula
Net Revenue	$9.2	$6.9	$5.7	$21.8	a
Total COGS	$6.2	$5.7	$4.5	$16.4	b
Gross Profit	$3.0	$1.2	$1.2	$5.4	c = a-b
Total Operating Expenses	$0.7	$0.4	$0.4	$1.6	d
Total License Fee (Royalty) /1/	$1.8	$0.4	$0.4	$2.6	e
Operating Income (Pre-Royalty)	$2.3	$0.8	$0.8	$3.9	f = c-d
Operating Income (Post-Royalty)	$0.5	$0.4	$0.4	$1.3	g = f-e
Operating Margin (Pre-Royalty)	24.6%	11.8%	13.6%	**17.6%**	h = f/a
Operating Margin (Post-Royalty)	5.4%	5.9%	6.7%	**5.9%**	i = g/a

Note:
/1/: Royalty net of cost plus arm's length margin for services provided by TCCC.

Source:
(1) "TCCC-00055137.xlsx." Excel Spreadsheet. TCCC-00055137.

Table D5:

Licensee Profit Projections: Nestea/Enviga License

In USD Thousands Except Percentages	2007	2008	2009	2010	2011	2007-2011 Total	Formula
Net Revenue	$202,119	$259,621	$306,309	$340,012	$362,326	$1,470,387	a
Total COGS	$112,135	$132,148	$149,288	$161,624	$170,355	$725,550	b
Gross Profit	$89,985	$127,473	$157,021	$178,388	$191,971	$744,837	c = a-b
Direct Marketing Expense	$38,732	$63,451	$82,139	$96,837	$105,786	$386,945	d
Other Operating Expenses	$19,246	$19,119	$19,035	$19,685	$20,277	$97,362	e = c-d-h
Total Operating Expenses	$57,978	$82,570	$101,174	$116,522	$126,063	$484,307	f = d+e
Royalty to Nestlé	$16,978	$21,808	$25,730	$28,561	$30,435	$123,512	g
Operating Income (Pre-Royalty)	$32,007	$44,903	$55,846	$61,867	$65,908	$260,530	h
Operating Income (Post-Royalty)	$15,029	$23,095	$30,116	$33,305	$35,473	$137,018	i = h-g
Operating Margin (Pre-Royalty)	15.8%	17.3%	18.2%	18.2%	18.2%	**17.7%**	j = h/a
Operating Margin (Post-Royalty)	7.4%	8.9%	9.8%	9.8%	9.8%	**9.3%**	k = i/a

Notes:
/1/: Figures combine projections for Nestea and Enviga licenses.
/2/: Figures combine Retail and Food Service for Nestea license.

Source:
(1) "TCCC-00062067.xlsx." Excel Spreadsheet. TCCC-00062067.

APPENDIX E

Comparison of Licenses to Supply Points with the Coca-Cola Company's Uncontrolled Agreements

Table E1:

Comparison of Supply Points with Cadbury Schweppes License

Characteristics	TCCC to Supply Points	Cadbury Schweppes to the Coca-Cola Company	Source
Brand Valuation Ranking	1	N/A	(4)
Value of Brand Being Licensed (2008)	$66.7 Billion	N/A	(4) & Table 17
Projected Combined Operating Margin (Pre-Royalty) in Licensed Territory	51.4%	16.3%	Tables 6 & D1
Licensing Existing Product?	Yes	Yes	(1)-(3)
Base of Sales	Concentrate/Syrup	Canada Dry Extracts	(1)-(3)
Licensor's Termination Rights	Without Cause	With Cause (Event)	(1)-(3)
License Term/Renewable?	1 Year /1/	20 Years; Renewable for 5 Years by Mutual Agreement	(1)-(3)

Note:
/1/: The SP Brazil license is perpetual with TCCC able to terminate without cause on 30 days notice.

Sources:
(1) Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906.
(2) Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, pp. 1-4. TCCC-00007791-TCCC-00007794.
(3) Agreement Between Cadbury Schweppes Investments, B.V. and Coca-Cola (Japan) Co, Ltd. (March 30, 1990). Agreement, pp. 1, 4-6, 9, 13-14, 27-28. CCADMIN0000584, CCADMIN0000587-CCADMIN0000589, CCADMIN0000596-CCADMIN0000597, CCADMIN0000610-CCADMIN0000611.
(4) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.

Table E2:

Comparison of Supply Points with Caribou License

Characteristics	TCCC to Supply Points	Caribou to the Coca-Cola Company	Source
Brand Valuation Ranking	1	N/A	(4)
Value of Brand Being Licensed (2008)	$66.7 Billion	N/A	(4) & Table 17
Projected Combined Operating Margin (Pre-Royalty) in Licensed Territory	51.4%	14.7%	Tables 6 & D2
Licensing Existing Product?	Yes	Yes	(1)-(3)
Base of Sales	Concentrate/Syrup	Wholesale/Retail	(1)-(3)
Licensor's Termination Rights	Without Cause	With Cause (Event)	(1)-(3)
License Term/Renewable?	1 Year /1/	5 Years; Renewable at Licensee's Option	(1)-(3)

Note:
/1/: The SP Brazil license is perpetual with TCCC able to terminate without cause on 30 days notice.

Sources:
(1) Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906.
(2) Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, pp. 1-4. TCCC-00007791-TCCC-00007794.
(3) Agreement Between Caribou Coffee Company, Inc. and The Coca-Cola Company. (January 1, 2007). License Agreement, pp. 1-2, 5-9. CCADMIN0011516-CCADMIN0011517, CADMIN0011520-CADMIN0011524.
(4) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.

Table E3:

Comparison of Supply Points with Godiva License

Characteristics	TCCC to Supply Points	Godiva to the Coca-Cola Company	Source
Brand Valuation Ranking	1	N/A	(4)
Value of Brand Being Licensed (2008)	$66.7 Billion	N/A	(4) & Table 17
Projected Combined Operating Margin (Pre-Royalty) in Licensed Territory	51.4%	10.7%	Tables 6 & D3
Licensing Existing Product?	Yes	No	(1)-(3)
Base of Sales	Concentrate/Syrup	Wholesale/Retail	(1)-(3)
Licensor's Termination Rights	Without Cause	With Cause (Event)	(1)-(3)
License Term/Renewable?	1 Year /1/	5 Years; Conditional Renewal /2/	(1)-(3)

Notes:
/1/: The SP Brazil license is perpetual with TCCC able to terminate without cause on 30 days notice.
/2/: TCCC shall have the option to renew the agreement for another 3 years if the volume of sales in the fourth contract year exceeds 3.5 million cases. If not, the parties may mutually agree to renew.

Sources:
(1) Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906.
(2) Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, pp. 1-4. TCCC-00007791-TCCC-00007794.
(3) Agreement Between Godiva Brands, Inc. and The Coca-Cola Company. (January 1, 2006). License Agreement, pp. 1-2, 10-11. CCADMIN0011582-CCADMIN0011583, CCADMIN0011591-CCADMIN0011592.
(4) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.

Table E4:

Comparison of Supply Points with Honest Tea License

Characteristics	TCCC to Supply Points	Honest Tea to the Coca-Cola Company	Source
Brand Valuation Ranking	1	N/A	(4)
Value of Brand Being Licensed (2008)	$66.7 Billion	N/A	(4) & Table 17
Projected Combined Operating Margin (Pre-Royalty) in Licensed Territory	51.4%	17.6%	Tables 6 & D4
Licensing Existing Product?	Yes	Yes	(1)-(3)
Base of Sales	Concentrate/Syrup	Wholesale/Retail	(1)-(3)
Licensor's Termination Rights	Without Cause	With Cause (Event)	(1)-(3)
License Term/Renewable?	1 Year /1/	3 Years; Renewable Yearly	(1)-(3)

Note:
/1/: The SP Brazil license is perpetual with TCCC able to terminate without cause on 30 days notice.

Sources:
(1) Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906.
(2) Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, pp. 1-4. TCCC-00007791-TCCC-00007794.
(3) Agreement Between Honest Tea, Inc. and The Coca-Cola Company. (February 3, 2009). Manufacturing and License Agreement, pp. 1-2, 14, Exhibits A, E. TCCC-00038149-TCCC-00038150, TCCC-00038162, CCADMIN00323836-CCADMIN00323842.
(4) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.

Table E5:

Comparison of Supply Points with Nestlé License

Characteristics	TCCC to Supply Points	Nestlé to the Coca-Cola Company	Source
Brand Valuation Ranking	1	63	(4)
Value of Brand Being Licensed (2008)	$66.7 Billion	$5.6 Billion	(4) & Table 17
Projected Combined Operating Margin (Pre-Royalty) in Licensed Territory	51.4%	17.7%	Tables 6 & D5
Licensing Existing Product?	Yes	Yes	(1)-(3)
Base of Sales	Concentrate/Syrup	Beverage Bases and Wholesale/Retail	(1)-(3)
Licensor's Termination Rights	Without Cause	With Cause (Event)	(1)-(3)
License Term/Renewable?	1 Year /1/	5 Years; Conditional Renewal /2/	(1)-(3)

Notes:

/1/: The SP Brazil license is perpetual with TCCC able to terminate without cause on 30 days notice.

/2/: TCCC shall have the option to extend the agreement if it meets both sales and market targets for Nestea and/or Enviga.

Sources:

(1) Agreement between The Coca-Cola Company and Coca-Cola Industria E Comercio, Limitada. (February 1, 1963). License Agreement. Exhibit 60-J, pp. 1-5. TCCC-00002902-TCCC00002906.

(2) Agreement between The Coca-Cola Company and Atlantic Industries Limited, Republic of Ireland Branch. (October 1, 1984). License Agreement. Exhibit 82-J, pp. 1-4. TCCC-00007791-TCCC-00007794.

(3) Agreement Between Nestlé USA, Inc. and The Coca-Cola Company. (March 26, 2007). Master Sublicense Agreement, pp. 1, 9-10, 16-17. CCADMIN0011694, CCADMIN0011702-CCADMIN0011703, CCADMIN0011709-CCADMIN0011710.

(4) Retrieved April 10, 2017 from http://interbrand.com/best-brands/best-global-brands/previous-years/2008.

APPENDIX F

Royalties for Supply Points Using the Coca-Cola Company's Uncontrolled Agreements

Precision Economics, LLC

Table F1:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Brazil

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	59.9%	62.2%	63.4%	a	Table C1
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	51.6%	54.0%	55.2%	c = max(0,a-b)	Calculation
Actual Revenue	$1,038.6	$1,162.8	$1,159.1	d	Table C1
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$536.0	$627.4	$639.4	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$0.0	$0.0	$0.0	f	Table C1
Difference	$536.0	$627.4	$639.4	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.

Table F2:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Chile

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	63.5%	64.4%	64.1%	a	Table C2
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	55.3%	56.2%	55.9%	c = max(0,a-b)	Calculation
Actual Revenue	$251.6	$297.4	$330.4	d	Table C2
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$139.1	$167.1	$184.6	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$0.0	$0.0	$0.0	f	Table C2
Difference	$139.1	$167.1	$184.6	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.

Table F3:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Costa Rica

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	39.7%	33.4%	36.3%	a	Table C3
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	31.5%	25.1%	28.1%	c = max(0,a-b)	Calculation
Actual Revenue	$167.0	$198.2	$198.0	d	Table C3
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$52.5	$49.7	$55.6	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$0.0	$0.0	$0.0	f	Table C3
Difference	$52.5	$49.7	$55.6	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.

Table F4:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Ireland

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	51.2%	50.0%	52.0%	a	Table C4
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	42.9%	41.8%	43.8%	c = max(0,a-b)	Calculation
Actual Revenue	$5,647.5	$6,226.3	$5,753.3	d	Table C4
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$2,423.3	$2,600.7	$2,518.5	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$765.7	$837.6	$789.2	f	Table C4
Difference	$1,657.6	$1,763.1	$1,729.3	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.

Table F5:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Mexico

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	50.0%	45.9%	46.5%	a	Table C5
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	41.7%	37.7%	38.3%	c = max(0,a-b)	Calculation
Actual Revenue	$795.4	$827.8	$753.1	d	Table C5
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$331.6	$311.8	$288.1	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$112.5	$118.7	$110.0	f	Table C5
Difference	$219.1	$193.1	$178.0	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.

Table F6:

Determination of Projected Royalties Using the Coca-Cola Company's Uncontrolled Agreements: SP Swaziland

USD Millions Except Percentages	2007	2008	2009	Formula	Source
Projected (Pre-Royalty) Operating Margin /1/	43.2%	41.4%	45.6%	a	Table C6
Arm's Length Licensee Return /2/	8.3%	8.3%	8.3%	b	Tables D1-D5
Projected Royalty Rate of Concentrate Sales Using Coca-Cola Company's Uncontrolled Agreements	34.9%	33.2%	37.3%	c = max(0,a-b)	Calculation
Actual Revenue	$736.7	$696.9	$787.0	d	Table C6
Actual Royalties Using Coca-Cola Company's Uncontrolled Agreements	$257.1	$231.3	$293.5	e = c*d	Calculation
Reported Royalties by Coca-Cola Company	$120.0	$115.7	$129.6	f	Table C6
Difference	$137.1	$115.5	$163.9	g = e-f	Calculation

Notes:
/1/: Prior year operating margins serve as current year projections.
/2/: I apply the median operating margins in **Tables D1-D5**.