

## **CASE STUDY**

*COMMISSION DECISION of 21.10.2015 ON STATE AID SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks*

### **Instructions to participants**

- Please read the part of the decision that highlights the facts relevant for the class discussion.
- Accordingly, pages 1-10, are relevant.
- You may read the full case if you wish (not mandatory for the class discussion).
- The discussion will focus on the transfer pricing aspects AND NOT State aid.
- Participants may read the judgment of the General Court after the class.

### **Questions**

1. What were the main challenges of the commission to Starbucks?
2. With your knowledge of TP (ignoring any information you may have read in the press later about the case), how would you defend the tax payer?



Brussels, 21.10.2015  
C(2015) 7143 final

**COMMISSION DECISION**

**of 21.10.2015**

**ON STATE AID SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks**

(Text with EEA relevance)

(Only the Dutch version is authentic)

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
---	---

## COMMISSION DECISION

**of 21.10.2015**

### **ON STATE AID SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks**

(Text with EEA relevance)

(Only the Dutch version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above<sup>1</sup> and having regard to their comments,

Whereas:

#### **1. PROCEDURE**

- (1) By letter dated 30 July 2013, the Commission requested the Dutch authorities to provide information on the tax ruling practice in the Netherlands as well as all rulings related to Starbucks Coffee EMEA BV (hereinafter: “Starbucks Coffee BV”) and Starbucks Manufacturing EMEA BV (hereinafter: “SMBV”), both companies indirectly controlled by Starbucks Corporation. Starbucks Corporation and all the companies controlled by that corporation are referred to hereinafter collectively as “Starbucks” or the “Starbucks group”.
- (2) By letter dated 2 October 2013, the Dutch authorities submitted the requested information to the Commission, including the advance pricing agreement (hereinafter “APA”)<sup>2</sup> concluded in 2008 between the Dutch tax administration and Starbucks Coffee BV (hereinafter: the “Starbucks Coffee BV APA”), the APA concluded in

<sup>1</sup> OJ C 460, 19.12.2014, p.11.

<sup>2</sup> Throughout the decision, the terms “tax ruling” and “APA” are used synonymously.

2008 between the Dutch tax administration and SMBV (hereinafter: the “SMBV APA”) and supporting documents. Those documents concern, in particular, a transfer pricing report supporting the request for the two aforementioned APAs (hereinafter: the “transfer pricing report”) and other exchanges between the Dutch tax administration and the tax advisor of Starbucks Corporation, [the tax advisor]\*, (hereinafter: “the tax advisor”) on behalf of Starbucks Coffee BV and SMBV<sup>3</sup>.

- (3) On 9 January 2014, in preparation of a meeting to be held on 15 January 2014, the Commission sent an email to the Dutch authorities listing a number of questions concerning, among others, the transfer pricing arrangement agreed upon in the Starbucks Coffee BV APA and the SMBV APA concluded by the Dutch tax administration.
- (4) On 15 January 2014, a meeting was held between the Commission services and representatives of the Dutch tax administration in which the Commission services sought, among others, further clarifications on the adjustments made to the cost base in the transfer pricing report as regards the SMBV APA and the fluctuating royalty payments made by SMBV.
- (5) By letter dated 28 January 2014, in response to the questions posed in the meeting of 15 January 2014, the Dutch authorities provided information on the comparability adjustments, the choice of the comparable companies and the fluctuating royalty. Further information on the documents provided is described in Recitals 59 to 62 of the Opening Decision as mentioned in recital (9).
- (6) By letter dated 7 March 2014<sup>4</sup>, the Commission informed the Dutch authorities that it was considering whether the APAs in favour of Starbucks Coffee BV and SMBV could constitute new State aid within the meaning of Article 107(1) of the Treaty and invited the Dutch authorities to comment on the compatibility of such aid. The Commission invited the Dutch authorities to provide any additional information relating to the Starbucks Coffee BV and SMBV APAs, as well as the tax returns of Starbucks Coffee BV and SMBV and companies related to those two companies in the Netherlands.
- (7) By letter dated 21 March 2014, the Dutch authorities responded to the letter of 7 March 2014 and provided the requested tax returns. The Dutch authorities also confirmed that all relevant documents regarding the APAs submitted previously to the Commission had already been provided to the Commission.
- (8) On 6 May 2014, a meeting was held between the Commission services and representatives of the Dutch tax administration.
- (9) On 11 June 2014, the Commission adopted the decision to open the formal investigation procedure under Article 108(2) of the Treaty on the SMBV APA on the

---

\* Parts of this text have been hidden so as not to divulge confidential information; those parts are enclosed in square brackets. Profit margins and mark-ups of SCTC concerning the green coffee beans are rounded to the closest multiple of 3%.

<sup>3</sup> A previous tax ruling concluded between the Dutch tax administration and Starbucks Coffee BV and SMBV in 2001 was also submitted as part of the supporting documents.

<sup>4</sup> That letter was sent to the Netherlands in the English language on 7 March 2014, followed by a version in Dutch of this same letter sent on 14 March 2014.

grounds that that APA could constitute State aid within the meaning of Article 107(1) of the Treaty (hereinafter “the Opening Decision”)<sup>5</sup>.

- (10) By letter dated 16 July 2014, the Dutch authorities submitted their comments on the Opening Decision. The submission included, among others, the Roasting Agreement between Alki Limited Partnership (hereinafter: “Alki LP”) and SMBV and the Green Coffee Purchase Agreement between SMBV and Starbucks Coffee Trading Company SARL (hereinafter: “SCTC”).
- (11) By letter dated 25 November 2014, the Commission requested the Dutch authorities to provide the information asked for in the Opening Decision which was only partly submitted by the Dutch authorities on 16 July 2014 and to provide additional information necessary to analyse the SMBV APA.
- (12) By letter dated 19 December 2014, the Dutch authorities replied to the letter of 25 November 2014, indicating that part of the requested information is not in the possession of the Dutch authorities.
- (13) On 19 December 2014, the Opening Decision was published in the Official Journal of the European Union. The Commission invited interested parties to submit their comments on the measure.
- (14) By letter dated 16 January 2015, Starbucks submitted its observations on the Opening Decision. Comments on the Opening Decision were also submitted by the Dutch Association of Tax Advisors (De Nederlandse Orde van Belastingadviseurs, hereinafter: “NOB”), the Confederation of Netherlands Employers and Industry (Verbond van Nederlandse Ondernemingen & Nederlands Christelijk Werkgeversverbond, hereinafter: “VNO-NCW”), ATOZ Tax Advisers Luxembourg, Oxfam International and the Austrian Chamber of Commerce (the Bundesarbeitskammer Österreich, hereinafter: “BAK”).
- (15) By letter dated 8 January 2015, in response to the Commission’s letter of 25 November 2014, the Dutch authorities provided the limited partnership deed constituting Alki LP.
- (16) On 12 February 2015, the Commission informed the Netherlands that, in accordance with Article 6a of Council Regulation (EC) No 659/1999<sup>6</sup>, it had identified the formal investigation procedure on the SMBV APA as ineffective to date<sup>7</sup>. By letter dated 6 February 2015 and in accordance with Article 6a(2)(b) of Regulation (EC) No 659/1999, the Commission requested the agreement of the Dutch authorities to contact Starbucks directly to obtain the missing information.
- (17) By letter dated 18 February 2015, the Commission informed the Dutch authorities that it had received observations by a competitor on the value added of the roasting process to green coffee beans and invited the Dutch authorities to comment on this

---

<sup>5</sup> See footnote 1.

<sup>6</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p.1. Regulation (EC) No 659/1999 is repealed by Regulation (EU) No 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), OJ L 248, 24.9.2015, p. 9, with effect from 14 October 2015. All the procedural steps taken during the course of the proceedings were adopted under Regulation (EC) No 659/1999. Any reference to Regulation (EC) No 659/1999 may be construed as a reference to Regulation (EU) No 2015/1589 and should be read in accordance with the correlation table in Annex II to the latter regulation.

<sup>7</sup> C (2015) 862, 12.02.2015.

observation. The Dutch authorities submitted their comments on those observations by letter dated 11 March 2015.

- (18) By letter dated 12 March 2015, the Netherlands provided its permission to contact Starbucks directly in response to the Commission's letter of 6 February 2015. Following that permission, by letter dated 16 March 2015, the Commission requested Starbucks, based on Article 6(a)(6) of Regulation (EC) No 659/1999, to provide information on the legal structure, the business model with regard to the Starbucks shops, and the raw material used by SMBV, i.e. the green coffee beans (hereinafter: the "Starbucks MIT request").
- (19) By letters dated 20 and 26 March 2015, the Dutch authorities submitted their observations on the comments of third parties to the Opening Decision.
- (20) On 7 April 2015, following the adoption of the decision of 12 February 2015 and in accordance with Article 6a(6) of Regulation (EC) No 659/1999, the Commission contacted four competitors of Starbucks to provide market information on their business model and their value creating activities so as to enable the Commission to complete its assessment of the case (hereinafter: the "competitor MIT request"). Those four competitors included Company Y, Alois Dallmayr Kaffee oHG (hereinafter: "Dallmayr"), Nestlé S.A. (hereinafter: "Nestlé") and Melitta Europa GmbH & Co. KG (hereinafter: "Melitta"). The Commission simultaneously informed the Dutch authorities that it had sent requests for information to competitors of Starbucks.
- (21) On 13 April 2015, Starbucks submitted the information requested in the Commission's letter of 16 March 2015.
- (22) By letters dated 27 April 2015, Dallmayr and Company Y replied to the Commission's request for market information of 7 April 2015.
- (23) On 29 April 2015, a meeting was held between the Commission services and Starbucks at which the Commission services provided clarifications on how certain questions in the Starbucks MIT request should be understood in the context of the investigation.
- (24) By letter dated 6 May 2015, following the reply of Starbucks of 13 April 2015, the Commission requested Starbucks to provide additional information.
- (25) By letter dated 11 May 2015, the Commission requested Company Y to provide further clarifications on the submitted market information. Those clarifications were provided by Company Y by letter dated 21 May 2015.
- (26) By letters dated 20 May 2015 and 26 May 2015, Nestlé and Melitta replied to the Commission's competitor MIT request of 7 April 2015.
- (27) By letter dated 27 May 2015, the Dutch authorities submitted their comments on the information provided by Company Y and Dallmayr.
- (28) By letter dated 29 May 2015, Starbucks submitted their replies to the Commission's request of 6 May 2015.
- (29) By letter dated 19 June 2015, the Dutch authorities provided their comments on the information submitted by Starbucks on 13 April 2015 and 29 May 2015.
- (30) By letter dated 26 June 2015, the Dutch authorities submitted their comments on the market information provided by Nestlé, Melitta and the clarifications provided by Company Y.

- (31) On 29 June 2015, in addition to its submissions of 13 April 2015 and 29 May 2015, Starbucks provided a further substantiation of the supposed arm's length nature of the transfer prices applied by SCTC for the supply of green coffee beans.
- (32) By letter dated 24 July 2015, Starbucks spontaneously submitted additional information on the functions performed by SCTC, SMBV and Starbucks US<sup>8</sup> and provided new figures relating to Alki LP.
- (33) By letter dated 5 August 2015, the Commission requested Starbucks to provide clarifications and other documents with regard to its submission of 24 July 2015 to be able to fully analyse the new information.
- (34) By letter dated 24 August 2015 and email sent on 26 August 2015, Starbucks partially submitted the information requested by the Commission in its letter of 5 August 2015. The Commission forwarded this information to the Dutch authorities on 28 August 2015.
- (35) By letter dated 10 September 2015 and email sent on 11 September 2015, Starbucks submitted the remaining information to the Commission. By letter dated 23 September 2015, Starbucks complimented the information submitted to the Commission on 10 and 11 September 2015.
- (36) By letters dated 25 September 2015 and 7 October 2015, the Dutch authorities provided their comments on the information submitted by Starbucks on 10, 11 and 23 September 2015.

## **2. DESCRIPTION OF THE CONTESTED MEASURE**

### **2.1. Description of the beneficiary**

- (37) The beneficiary of the measure is SMBV. SMBV is a subsidiary incorporated in the Netherlands of the Starbucks group. The Starbucks group is composed of the Starbucks Corporation and all the companies controlled by that corporation. The Starbucks Corporation is headquartered in Seattle, United States of America (hereinafter "US"). The corporate structure of the Starbucks group is explained in more detail in Recital (27) and Figure 1 of the Opening Decision.
- (38) Starbucks is a roaster, marketer and retailer of specialty coffee, operating in 65 countries. It purchases and roasts coffees that are sold, along with handcrafted coffee, tea and other beverages and fresh food items, through company-operated stores. It also sells a variety of coffee and tea products and licenses its trademark through other channels, such as licensed stores, grocery and national foodservices accounts<sup>9</sup>. In 2014, the Starbucks group had worldwide net revenues of USD 16 448 million and post-tax earnings of USD 2 067 million<sup>10</sup>.
- (39) SMBV is the only wholly controlled Starbucks group entity outside of the US which roasts coffee.

---

<sup>8</sup> Starbucks US refers to all companies that are members of the Starbucks group that are resident in the United States of America.

<sup>9</sup> This description is based on Starbucks' 2014 Annual Report, p.2.

<sup>10</sup> See Recital 20 of the Opening Decision for more detailed information on the Starbucks Group.



## 2.2. The contested measure

- (40) This Decision concerns the SMBV APA, an advance pricing agreement concluded by the Dutch tax administration with SMBV on 28 April 2008 (*Vaststellingsovereenkomst APA*). The SMBV APA is binding for 10 years, from 1 October 2007 to 31 December 2017<sup>11</sup>.
- (41) An APA is an agreement between a tax administration and a taxpayer on the application of tax law regarding (future) transactions, i.e. it determines the amount of profit that the taxpayer generates from its activities that are taken into account in that tax jurisdiction. An APA determines, in advance of intra-group transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of an arm's length pricing for those transactions over a fixed period of time. An APA is formally initiated by a taxpayer.

### 2.2.1. The SMBV APA

- (42) By concluding the SMBV APA, the Dutch tax administration accepted that the remuneration determined by Starbucks' tax advisor in the transfer pricing report for the functions performed by SMBV in the Netherlands (including risk assumed and assets used) constitutes an arm's length remuneration<sup>12</sup>.
- (43) That remuneration consists of a mark-up of [9-12] % of the relevant cost base. The relevant cost base used to calculate that remuneration includes all personnel costs engaged in both manufacturing and supply chain activities, the cost of production equipment (i.e. depreciation) and plant overheads. It does not include the costs of the Starbucks cups, paper napkins, etc., the costs of green coffee beans (cost of raw materials), the logistics and distribution cost for services provided by third parties, the remuneration for activities provided by third parties under so-called "consignment manufacturing contracts" and the royalty payments to Alki LP.
- (44) In the SMBV APA, the Dutch tax administration further accepted that the level of the royalty payment from SMBV to Alki LP would be determined at the end of each year as the difference between the realised operating profit before royalty expenses and the aforementioned [9-12] % mark-up on operating expenses. The SMBV APA further provides that "*this royalty payment is deductible for corporate income tax purposes and is not subject to Dutch withholding tax*"<sup>13</sup>.
- (45) The SMBV APA thus endorses a profit allocation to SMBV within the Starbucks group that enables it to determine its corporate income tax liability to the Netherlands

---

<sup>11</sup> The SMBV APA states that after the sixth accounting year, i.e. end 2013, a half-term check will be made to see whether all the facts and circumstances have remained the same.

<sup>12</sup> From the original Dutch: "[SMBV] wordt geacht een arm's length vergoeding te ontvangen voor haar activiteiten zoals beschreven [in het transfer pricing report] indien de operationele marge [9-12] % van de relevante kostgrondslag bedraagt."

<sup>13</sup> From the original Dutch: "De jaarlijks door SMBV aan Alki LP te betalen royalty wordt aan het einde van het jaar vastgesteld op het verschil tussen de gerealiseerde operationele winst met betrekking tot de productie en distributie functie als genoemd [in het transfer pricing report], vóór royalty uitgaven ('gerealiseerde operationele winst voor royalty uitgaven') en de hierboven omschreven beloning van [9-12] % cost-plus. Deze royalty betaling is aftrekbaar voor de vennootschapsbelasting en is niet onderworpen aan Nederlandse dividendbelasting." For an explanation of why the royalty payment is not subject to tax in the Netherlands or in the UK, see Recital (28) of the Opening Decision.



on a yearly basis for 10 years. Since the APA entered into force on 1 October 2007, this Decision analyses the SMBV APA under the State aid rules as from that date.

### 2.2.2. *The transfer pricing report*

(46) The remuneration accepted by the Dutch tax administration in the SMBV APA is based on the transfer pricing analysis prepared by Starbucks' tax advisor in the transfer pricing report, which forms an integral part of that APA.

(47) The objective of the transfer pricing report is to support the proposed profit allocation to SMBV within the Starbucks group as being based on an arm's length pricing of intra-group transactions. The transfer pricing report presents a company overview, a functional analysis and a selection of transfer pricing methods. The report presents the following relevant information about Starbucks Coffee BV and SMBV<sup>14</sup>:

#### 2.2.2.1. Starbucks Coffee BV

(48) Starbucks Coffee BV functions as the Starbucks group's head office for the Europe Middle-East and Africa ("EMEA") region, supporting the group's EMEA business operations. Starbucks Coffee BV assists with identifying developers to develop and operate Starbucks retail stores in the EMEA territories. In its capacity as head office, Starbucks Coffee BV licenses certain Starbucks trademarks, technology and know-how<sup>15</sup> from its shareholder, Alki LP, in return for a royalty payment. Starbucks Coffee BV enters into what is referred to as an "Area Development and Operation Agreement" (hereinafter: "ADOA") with related and unrelated operators of Starbucks shops in the EMEA region. Those operators are called Developers, also referred to hereinafter as "Shops". Starbucks Coffee BV sub-licenses intellectual property (hereinafter: "IP") rights to the Developers to enable them to develop and operate their shops as Starbucks Shops. For the use of the IP, the Developers pay a royalty and other fees to Starbucks Coffee BV based on a percentage of turnover. According to the submission of the Netherlands of 2 October 2013, both related and unrelated Developers pay the same percentage of turnover as a royalty to Starbucks Coffee BV. Therefore, Starbucks' tax advisor considers that a comparable uncontrolled price method<sup>16</sup> is applied to determine the arm's length price of intra-group royalty payments to the EMEA head office Starbucks Coffee BV<sup>17</sup>.

#### 2.2.2.2. SMBV

(49) Starbucks' tax advisor, when presenting the most important transactions and inter-company flows for SMBV in the transfer pricing report<sup>18</sup>, limits itself to describing that SMBV primarily processes green coffee and sells roasted coffee to affiliated and non-affiliated parties. It also explains that the green coffee beans sourced by SMBV

<sup>14</sup> Recitals 27 and 28 of the Opening Decision provide a full description of the legal structure of Starbucks as presented in the transfer pricing report.

<sup>15</sup> These trademarks, technology and know-how include mainly the Starbucks Shop format and the Starbucks corporate identity.

<sup>16</sup> See Recital (71) for a description of the CUP method.

<sup>17</sup> This definition is based on paragraphs 2.13 until 2.20 of the 2010 OECD TP Guidelines. A (external) Comparable Uncontrolled Price is applied if independent third parties under the same circumstances pay the same price for the same product or service as related parties. In this case, the intra-group royalty payments concern the payments made by the EMEA Starbucks-owned Developers to Starbucks Coffee BV.

<sup>18</sup> Section II.G of the transfer pricing report.

are sourced from an affiliated Starbucks' subsidiary in Switzerland (SCTC). Furthermore, it explains that SMBV operates as an intermediary distribution entity for a variety of non-coffee items. In addition to the supply chain function for its own manufacturing activities, the tax advisor further explains that certain markets also receive some supply chain support from SMBV. The tax advisor does not describe the roasting IP licencing arrangement under which SMBV pays royalties to Alki LP for licensed IP among the most important transactions and inter-company flows, but only shows it in a graph and describes it in a separate section in the transfer pricing report describing the EMEA market and Netherlands operations<sup>19</sup>.

- (50) According to the functional analysis provided in the transfer pricing report<sup>20</sup>, the focus of SMBV's activities is its Amsterdam-based roasting facility. The main raw material component of that roasting process is green coffee beans. The actual roasting process for a particular coffee blend depends on the particular type of green coffee bean used in the recipe and the desired flavour profile. SMBV is responsible for executing roasting forecasts provided by Starbucks US and ensuring that the resulting product meets the quality standards of Starbucks US. SMBV buys the green coffee beans from SCTC, a designated supplier<sup>21</sup>. The beans for the EMEA market are roasted and packaged in the Netherlands by SMBV.
- (51) SMBV licenses a sub-set of IP from Alki LP, which is not mentioned in the functional analysis, but described in a separate section on the EMEA market and Netherlands operations as *"necessary to utilize the coffee roasting manufacturing process and the right to supply coffee to [D]evelopers. In return [SMBV] remits a royalty to Alki LP for the licensed IP"*<sup>22</sup>. That coffee roasting related IP consists, in particular, of roasting curves, which according to the transfer pricing report dictates the temperature and the length of time required to complete the roasting process.
- (52) According to the transfer pricing report, SMBV employed [40-60] people, of which [20-30] perform supply chain operations including procurement, planning, logistics and distribution planning<sup>23</sup>. SMBV has a distribution centre in the United Kingdom (hereinafter: "UK") operated under contract by a third party<sup>24</sup>. SMBV has a supply and logistics agreement with a third party in the Netherlands, whereby the third party purchases inventory for resale to developers at arranged prices<sup>25</sup>. SMBV also engaged another third party to open a distribution centre in Germany during 2006.

---

<sup>19</sup> Section II.E of the transfer pricing report.

<sup>20</sup> Section III.B of the transfer pricing report.

<sup>21</sup> SCTC buys those beans for the benefit of the entire Starbucks group worldwide and its independent licensees.

<sup>22</sup> Section II. E of the transfer pricing report.

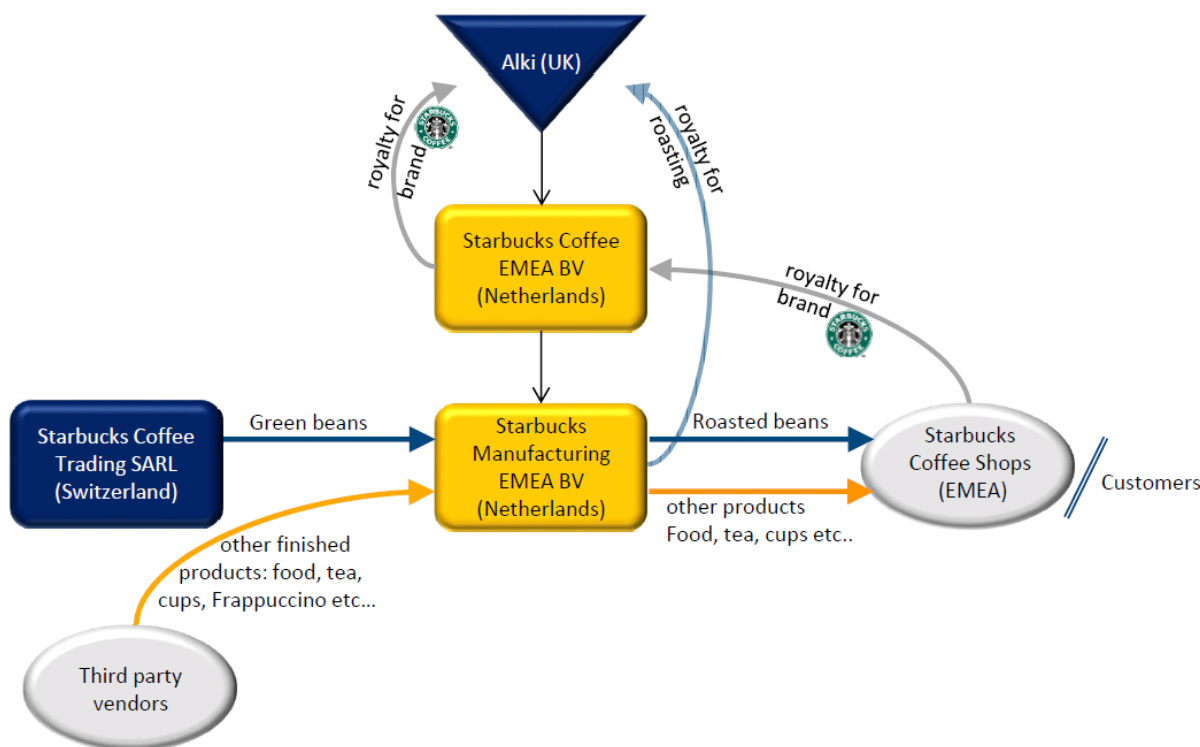
<sup>23</sup> In 2011, SMBV employed approximately [70-80] people. According to the observations of Starbucks to the Opening Decision [40-50] persons were active in coffee roasting and [30-40] persons in logistic and administrative services.

<sup>24</sup> According to information submitted by Starbucks to the Netherlands at the moment of the rulings request, SMBV and Starbucks Corporation entered into an agreement with [unaffiliated logistics company A] in 2003 under which [unaffiliated logistics company A] will provide inventory management services (supporting forecast provided by Starbucks), import coordination and export documentation services, vendor contracts administration and warehousing operations.

<sup>25</sup> According to information submitted by Starbucks to the Netherlands at the moment of the rulings request, SMBV entered into a supply chain and coffee operations warehousing services agreement with [unaffiliated logistics company B] in 2004 under which [unaffiliated logistics company B] will perform warehouse services with respect to various Starbucks products including administrative and handling services, vehicle loading and unloading, inspections and storage.

- (53) SMBV also has a relationship with a consignment manufacturer, [unaffiliated manufacturing company 1]. [Unaffiliated manufacturing company 1] mainly produces [a trademark registered coffee product] powder for the Starbucks [trademark registered coffee] product. SMBV is responsible<sup>26</sup> for managing this toll manufacturing relationship<sup>27</sup> and sells the majority of the product produced by [unaffiliated manufacturing company 1] to Starbucks' US resident companies.
- (54) Figure 1 is based on the description of the transfer pricing report to illustrate the part of the structure of Starbucks which is relevant for this Decision<sup>28</sup>.

Figure 1 – Structure of Starbucks based on the description in the transfer pricing report



- (55) According to the transfer pricing report, the transactional net margin method (hereinafter: “TNMM”<sup>29</sup>) was selected by the tax advisor to estimate an arm’s length remuneration due to SMBV over other transfer pricing methods, because, “in the specific set of Starbucks’ circumstances; the net margin is less affected by transactional differences and functional differences, as in the case with measures employed in standard traditional methods”<sup>30</sup>. For a more detailed description of the

<sup>26</sup> According to the transfer pricing report, SMBV is responsible for the contractual relationship with [unaffiliated manufacturing company 1]. The contracts between [unaffiliated manufacturing company 1] and SMBV are however negotiated by Starbucks [...] according to Starbucks.

<sup>27</sup> Toll manufacturing is usually understood to mean an arrangement in which a company processes raw materials or semi-finished goods for another company.

<sup>28</sup> This graph is not contained in the report, it was produced by the Commission in order to facilitate the reading of this Decision.

<sup>29</sup> See Recital (72) for a description of the TNMM.

<sup>30</sup> Transactional differences refers to differences between the transactions concluded by the company for which the taxable basis is approximated through a transfer pricing method and the transactions concluded between independent companies used to determine the arm’s length pricing. In the TNMM method this refers to the transactions concluded by comparable companies used to approximate an arm’s length margin. Functional differences refers to differences between the functions performed by