

RRA v. SRDS LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM00017/2022/SC (Mukamulisa, P.J., Cyanzayire na Hitiyaremye, J.) 22 Ukuboza 2023]

Amategeko agenga umusoro – Umusoro ku Nyongeragaciro(TVA) – Gusonerwa umusoro ku nyongeragaciro(TVA) – Ubwikorezi bukorwa mu rwego rwo gukwirakwiza ibicuruzwa nubwo bwaba bukorwa n'uwabihereye uruhushya ariko atari wo murimo w'ibanze, bufatwa nka serivisi yunganira (accessoire) icyo gikorwa cy'ibanze cyo gukwirakwiza ibicuruzwa, iyo icyo gikorwa cy'ibanze kidasonewe TVA, n'ubwo bwikorezi ntibusonerwa – Ubwikorezi busonewe TVA ni ubukorwa n'abantu bakora umwuga w'ibanze wo gutwara ibintu (professionnels du transport) – Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 6 niya 9.

Incamake y'ikibazo: Uru rubanza rukomoka ku kutumvikana kwabaye hagati y'Ikigo cy'Imisoro n'Amahoro (Rwanda Revenue Authority) na sosiyete SRDS Ltd ku bijyanye n'umusoro ku nyongeragaciro (TVA) yaciwe kubera ibikorwa by'ubwikorezi ikora ikwirakwiza ibinyobwa bya BRALIRWA.

SRDS Ltd ivuga ko itagombaga gucibwa uwo musoro kubera ko ujyanye na serivisi y'ubwikorezi yakoraga kuko ibifitiye ibyangombwa yahawe n'urwego rubifitiye ububasha (RURA), bityo ko iyo serivisi isonewe uwo musoro. RRA yo ivuga ko SRDS Ltd yagabanyije igiciro yahawe na BRALIRWA, igice kimwe cyacyo icyita ubwikorezi igamije kunyereza umusoro, kandi mu by'ukuri nta bwikorezi busonewe umusoro ku nyongeragaciro yakoraga.

SRDS Ltd na RRA baburanye kuva mu Rukiko rw'Ubucuruzi kugeza mu Rukiko rw'Ubujurire, maze mu rubanza RCOMAA 00001/2022/CA rwaciwe ku wa 25/03/2022, Urukiko rw'Ubujurire rwemeza ko SRDS Ltd yaciwe umusoro ku nyongeragaciro mu buryo bunyuranyije n'amategeko kuko ikora akazi k'ubwikorezi, ikaba ifite uruhushya rwo gutwarira abaguzi bayo ibinyobwa icuruza kandi ko iyo serivisi yo gutwara ibicuruzwa (transport) isonewe TVA ku bw'Itegeko.

RRA yasabye ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane, ivuga ko Urukiko rw'Ubujurire rwemeje ko amafaranga yasoreshye SRDS Ltd yari asonewe TVA kuko yari ay'ubwikorezi kandi atari byo kuko nta bwikorezi yakoraga, ko amafaranga y'ubwikorezi agaragara ku nyemezabuguzi zayo atari ay'ubwikorezi, ko kandi ibiciro by'ibinyobwa yemeranyijweho na BRALIRWA nabyo bigaragaza ko nta serivisi y'ubwikorezi ikora.

RRA yiregura ivuga ko Urukiko rw'Ubujurire rwayirenganyije ruvuga ko itegeko rigenga ihiganwa mu bucuruzi no kurengera abaguzi ibuza amasezerano agamije gushyiraho ibiciro kuko abangamira ihiganwa, ivuga kandi ko ubucuruzi buri hagati y'izo sosiyete ari ubujyanye no gukwirakwiza ibicuruzwa (*distribution*) hanyuma BRALIRWA igaha SRDS Ltd *commission*, bivuze ko ukwirakwiza adashobora na rimwe kujya muni y'ibiciro aba yarahawe na nyiri ibicuruzwa bikwirakwizwa.

RRA ikomeza ivuga ko Urukiko rw'Ubujurire rwasesenguye mu buryo butari bwo ibikubiye mu masezerano yabaye hagati y'impande zombi kuko rwavuze ko *distributeur* ashobora guhindura ibiciro yahawe kubera ko mu masezerano bagiranye yiswe *recommended price*, ariko ko iryo

jambo ritavuga ko ibiciro biba bigomba guhinduka bikagabanywa, bityo ko isanga igiciro BRALIRWA yashyizeho ari icyo umuntu atajya muni.

SRDS Ltd nayo yiregura ivuga ko ikirego cya RRA nta shingiro gifite kubera ko isumbanya ikanavangura abasoreshwa, kandi ko ifata ba *distributors* nk'aho atari abacuruzi nk'abandi, kuko idasobanura neza ibyiciro by'abacuruzi kugira ngo habeho gusobanukirwa neza uburyo ba *distributors* atari abacuruzi nyamara bakora ubucuruzi bwo gukwirakwiza ibinyobwa bya BRALIRWA, inatwarira uyiguriye wese mu rwego rwo kumuha serivise nziza kandi ikaba ibifitiye ibyangombwa yahawe na RURA biyemerera gukora ubwikorezi (*transport*) ikishyurwa n'igiciro cyabwo.

SRDS Ltd ikomeza ivuga ko *recommended prices* atari igiciro ntakuka, kuko ingingo ya 8 y'amasezerano yo ku wa 01/02/2015 yasinywe hagati ya SRDS Ltd na BRALIRWA ivuga ko *The Distributor buys the products at the price determined by Bralirwa and resells the products at the recommended distribution price*, bityo ko asaba Urukiko gusuzuma neza ijambo "recommend" rukemeza ko ridategeka ahubwo riganisha ku kugira inama.

SRDS Ltd ivuga kandi ko icuruza igahita inatwaza umukiliya ariko ku giciro cya *transport* ariko ntimuce TVA bitewe n'uko *transport* isonewe, ikavuga ko ibyo nta gihombo na kimwe bitera RRA kuko ntacyo itakaza, ivuga kandi ko gukwirakwiza ibinyobwa bya BRALIRWA atari ubucuruzi bushyirirwaho igiciro na Leta (*regulated prices*), ko ahubwo igiciro kigenwa ku bwumvikane hagati y'umuguzi n'ugurisha (*free market*), bityo ko RRA itavuga ko igiciro cyagurishijweho kiri muni y'igiciro.

Incamake y'icyemezo: Ubwikorezi busonewe TVA ni ubukorwa n'abantu bakora umwuga w'ibanze wo gutwara ibintu (*professionnels du transport*).

Ikirego cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashyirahweho:

Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 6, iya 9 niya 11.

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, Société Rwandaise de Distribution et Services Ltd (yiswe SRDS Ltd muri uru rubanza) irega Ikigo cy'Imisoro n'Amahoro (cyiswe RRA muri uru rubanza), ivuga ko yaciwe 222.316.907 Frw y'umusoro ku nyongeragaciro (TVA) hamwe n'ihazabu yawo ku myaka ya 2015, 2016, 2017 na 2018, ikajuririra kwa Komiseri Mukuru yerekana ko yaciwe umusoro ku mafaranga y'ubwikorezi bw'ibinyobwa bya BRALIRWA kandi

iyo serivisi (*transport*) isonewe, ayisubiza ko ubujurire bwayo nta shingiro bufite, bituma itanga ikirego isaba gukurirwaho uwo musoro yaciwe kuri serivisi y'ubwikorezi kandi isonewe.

[2] RRA yireguye ivuga ko ikirego cya SRDS Ltd nta shingiro gifite kuko umusoro yaciwe ukomoka ku mafaranga yacurujye ikayamenyekanisha nyamara ntiyatangeho umusoro, kandi agaciro gasoreshwa gashingirwa ku kiguzi cyose kiba cyishyurwa n'umuguzi.

[3] Mu rubanza RCOM 01210/2020/TC rwaciwe ku wa 17/11/2021, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya SRDS Ltd gifite ishingiro, rutegeka ko uwo musoro ungana na 222.316.907 Frw yaciwe ku myaka ya 2015, 2016, 2017 na 2018 hamwe n'ibihano ukurwaho, runategeka RRA kwishyura SRDS Ltd 700.000 Frw y'igihembo cy'Avoka.

[4] Mu gufata icyo cyemezo, Urukiko rw'Ubucuruzi rwashingiye ku kuba Serivisi y'ubwikorezi SRDS Ltd itanga, yarayihereye uruhushya n'Ikigo kibishinzwe (RURA), kandi ko iyo serivisi isonewe nk'uko biteganywa n'ingingo ya 6 y'Itegeko N° 37/2012 ryo ku wa 09/12/2012 rishyiraho umusoro ku nyongeragaciro nk'uko ryahinduwe kandi ryujujwe kugeza ubu. Urwo Rukiko rwasanze kandi nta kimenyetso RRA yigeze itanga kigaragaza ko SRDS Ltd ishira ikiguzi cya serivise y'ubwikorezi cyishyurwa n'umukiriya ku nyemezabwishyu zayo, kandi iyo serivise itarayitanze, runibutsa ko RRA ari yo ifite inshingano zo kugaragaza ukuri kw'ibyo ivuga nk'uko biteganywa n'ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[5] RRA yajuriye mu Rukiko Rukuru rw'Ubucuruzi isaba ko rwasuzuma niba amafaranga SRDS Ltd igaragaza kuri fagitire zayo yita ay'ubwikorezi ari yo koko no gusuzuma niba ibiciro byo kugurishaho ibinyobwa SRDS Ltd yemeranyijweho na BRALIRWA bigaragaza ko nta serivisi y'ubwikorezi SRDS Ltd ikora.

[6] Mu rubanza RCOMA 00869/2020/HCC rwaciwe ku wa 17/11/2021, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa RRA nta shingiro bufite, ko imikirize y'urubanza RCOM 01210/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi idahindutse. Rwategetse ko umusoro wose wa TVA hamwe n'ibihano SRDS Ltd yaciwe mu myaka ya 2015, 2016, 2017 na 2018, ungana na 222.316.907 Frw, bikuweho. Rwanategetse RRA guha SRDS Ltd 2.000.000 Frw y'igihembo cy'Avoka na 200.000 Frw y'ikurikiranarubanza yo ku rwego rw'ubujurire yiyongera ku yatanzwe ku rwego rwa mbere, yose hamwe akaba 2.940.000 Frw.

[7] Mu gufata icyo cyemezo, Urukiko Rukuru rw'Ubucuruzi rwasanze amasezerano BRALIRWA yagiranye na SRDS Ltd ntaho yabujije SRDS Ltd gushyiraho ibiciro by'ubwikorezi. Uru rukiko rwanasanze mu myiregurire y'ababuranyi, bigaragara ko SRDS Ltd ifite uruhushya rwo gutwarira abaguzi bayo ibinyobwa icuruzwa kandi ko iyo serivisi yo gutwara ibyo bicuruzwa isonewe ku bw'itegeko, ko rero RRA ari yo ifite inshingano zo kwerekana ibimenyetso by'uko inyemezabuguzi za SRDS Ltd zishyiraho serivise y'ubwikorezi zitari iz'ubwikorezi koko nk'uko ibivuga.

[8] RRA yajuririye mu Rukiko rw'Ubujurire, isaba gusuzuma niba amafaranga yasoreshwe SRDS Ltd yaba asonewe koko umusoro wa TVA. Mu rubanza RCOMAA 00001/2022/CA rwaciwe ku wa 25/03/2022, urwo Rukiko rwemeje ko ubujurire bwa RRA nta shingiro bufite, ko imikirize y'urubanza RCOMA 00869/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi

idahindutse. Rwategetse RRA kwishyura SRDS Ltd 500.000 Frw y'igihembo cy'Avoka na 200.000 Frw y'ikurikiranarubanza, yiyongera ku yo yagenewe n'inkiko zabanje angana na 2.940.000 Frw, yose hamwe akaba 3.640.000 Frw.

[9] Mu gufata icyo cyemezo, Urukiko rw'Ubujurire rwasanze ibivugwa na RRA ko nta serivisi y'ubwikorezi SRDS Ltd yakozwe nta shingiro bifite kubera ko usibye kubivuga gusa, nta bimenyetso yatanze bivuguruzwa ibimenyetso bya SRDS Ltd bigaragaza ko yakoraga serivisi z'ubwikorezi. Urukiko rw'Ubujurire rwasanze kandi nta gushidikanya ko SRDS Ltd nka sosiyete ishinzwe ikwirakwizwa ry'ibinyobwa bya BRALIRWA ikora ubwikorezi, kuko nta kuntu byaba byumvikana uburyo umurimo w'ikwirakwizwa (*distribution*) wakorwa nta serivisi y'ubwikorezi ikozwe, ibi bikanagaragazwa n'amasezerano SRDS Ltd yagiranye na BRALIRWA, kuko yakozwe mu rwego rwo gukwirakwiza ibinyobwa byayo.

[10] Ku wa 23/04/2022, RRA yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/03/2022 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma raporo yakozwe kuri urwo rubanza, ku wa 17/11/2022, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo n° 272/CJ/2022 ko urubanza RCOMAA 00001/2022/CA rwongera kuburanishwa, ikirego gihabwa RS/INJUST/RCOM 00017/2022/SC.

[11] Mu myanzuro yayo, RRA ivuga ko SRDS Ltd yagiye ikora za factures igakata amafaranga kuri buri kinyobwa igurishije, ntiyasorere TVA iyita ko asonewe kuko ari ay'ubwikorezi, nyamara atari byo ahubwo ari ukunyereza umusoro wa TVA, kuko serivisi yakoraga idasonewe uwo musoro. SRDS Ltd yo ivuga ko ibyo yakozwe bikurikije amategeko igasaba Urukiko kwemeza ko yaciwe umusoro ku nyongeragaciro (TVA) ku bikorwa by'ubucuruzi bisonewe.

[12] Urubanza rwaburanishijwe mu ruhamwe ku wa 18/07/2023, RRA ihagarariwe na Me Twahirwa Jean Baptiste, naho SRDS ihagaraririwe na Me Irazirikana Israël hamwe na Me Habimana Pie, ababuranyi bajya impaka ku kibazo cyo kumenya niba SRDS Ltd yaraciwe umusoro ku nyongeragaciro (TVA) ku bikorwa by'ubucuruzi bisonewe n'ikibazo kirebana n'indishyi zasabwe muri uru rubanza. Iburanisha rirangiye, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 22/09/2023, isomwa ryarwo rigenda ryimuka ku mpamvu zitandukanye, irya nyuma rikaba ryarashyizwe ku ya 22/12/2023. Mbere y'uko iyo tariki igera ariko, bamwe mu bacamanza bagize inteko byabaye ngombwa ko basimburwa, bituma iburanisha ry'urubanza ryongera gufungurwa rishyirwa ku itariki ya 21/11/2023 kugira ngo inteko ihinduke. Kuri uwo munsu RRA yari ihagarariwe na Me Gatera Clément, naho SRDS ihagarariwe nka mbere.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba SRDS Ltd yaraciwe umusoro ku nyongeragaciro (TVA) ku bikorwa by'ubucuruzi bisonewe.

[13] Me Twahirwa Jean Baptiste, uhagarariye RRA, avuga ko Urukiko rw'Ubujurire rwemeje ko amafaranga RRA yasoreshye SRDS Ltd yari asonewe TVA kuko yari ay'ubwikorezi kandi atari byo kuko SRDS Ltd nta bwikorezi yakoraga, ko amafaranga y'ubwikorezi agaragara ku

nyemezabuguzi za SRDS Ltd atari ay'ubwikorezi, ko kandi ibiciro by'ibinyobwa SRDS Ltd yemeranyijweho na BRALIRWA nabyo bigaragaza ko nta serivisi y'ubwikorezi SRDS Ltd ikora.

[14] Avuga ko ibyo SRDS Ltd ivuga ko amafaranga agaragara kuri buri nyemezabuguzi yakoreye abakiriya bayo yari ajyanye n'ubwikorezi, atari ukuri kuko buri nyemezabuguzi ya SRDS Ltd igaragaraho ko igaziye y'inzoga cyangwa iya Fanta itwarirwa 300Frw yiswe ubwikorezi, kandi ayo mafaranga akaba agaragara kuri buri nyemezabuguzi yayo mu myaka itandukanye, hatitawe ku mukiriya uwo ari we wese. Avuga ko ibyo bitera kwibaza niba SRDS Ltd yaratwariraga abakiriya bose inzoga cyangwa niba bo ubwabo batarazitwariraga. Atanga urugero rw'inyemezabuguzi n° 14256/14469NS yo ku wa 23/06/2015, SRDS Ltd yakoze igurisha ibinyobwa, igaragaza ko igurishije igaziye ya TURBO (50 cl) kuri 9.550 Frw, mu gihe amasezerano yagiranye na BRALIRWA ku wa 01/02/2015 yateganyaga ko igomba kuyigurisha ku giciro cya 10.000 Frw (*distributor selling price VAT included (RWF/Crate)*), ariko yo ikagabanyaho 450 Frw iyita ay'ubwikorezi.

[15] Avuga kandi ko kuri iyo nyemezabuguzi, SRDS Ltd igaragaza ko yagurishije igaziye ya PRIMUS (50 cl) kuri 8.000 Frw mu gihe amasezerano yagiranye na BRALIRWA yo ayitegeka kuyigurisha kuri 8.450 Frw, bivuze ko yagabanyijeho 450 Frw. Anavuga ko kuri iyo nyemezabuguzi SRDS Ltd igaragaza ko yagurishije igaziye ya Petit TURBO (33 cl) kuri 7.550 Frw mu gihe amasezerano na BRALIRWA amutegeka kuyigurisha kuri 8.000 Frw, bivuze ko yagabanyijeho 450 Frw. Yongeraho ko iyo mikorere igaragara no ku nyemezabuguzi n° 14259/14472NS yo ku wa 23/06/2015 aho SRDS Ltd igaragaza ko iciye umukiliya amafaranga y'ubwikorezi angana na 350 Frw kandi atari ukuri, kuko ahubwo ari amafaranga SRDS Ltd yagabanyije ku giciro yemeranyijweho na BRALIRWA kiba gikubiyemo na TVA, bivuze ko nta gice na kimwe cy'icyo giciro gisonewe cyangwa kigenewe ubwikorezi nk'uko SRDS Ltd ishaka kubyumvikanisha.

[16] Akomeza avuga ko hari n'abandi ba *distributors* ba BRALIRWA batandukanye bari barumvikanye kuri iyo mikorere bagamije kunyereza umusoro wa TVA, barimo uwitwa SOVEPROA Ltd n'abandi bakoraga inyemezabuguzi zigaragaza ko *transport* ari 300 Frw kuri buri gaziye, ariko ko nta kuntu izi sosiyete zombi zari guhurira ku giciro kimwe cya *transport*, ko kandi ibyo binyuranye n'ingingo ya 11, 1° y'Itegeko N° 37/2012 ryo ku wa 09/12/2012 rishyiraho umusoro ku nyongeragaciro iteganya ko: “agaciro gasoreshwa kuri buri kintu cyangwa serivisi kagenwa ku buryo bukurikira: 1° uretse ibyo iri tegeko riteganya ukundi, agaciro gasoreshwa ku kintu cyangwa kuri serivisi ni ikiguzi cyabyo cyarishywe n'abaguzi mu mafaranga”.

[17] Me Twahirwa Jean Baptiste akomeza avuga ko Urukiko rw'Ubujurire rwarenganyije RRA aho mu gika cya 21 rwavuze ko ingingo ya 7 y'Itegeko N° 36/2012 ryo ku wa 09/11/2012 rigenga ihiganwa mu bucuruzi no kurengera abaguzi ibuza amasezerano agamije gushyiraho ibiciro kuko abangamira ihiganwa, agasanga rutarasobanukiwe n'ubucuruzi buri hagati ya SRDS Ltd na BRALIRWA kuko rwagize ngo ni ubucuruzi busanzwe aho umuntu agura hanyuma akagurisha akurikije uko isoko rihagaze, nyamara ubucuruzi buri hagati y'izo sosiyete ari ubujyanye no gukwirakwiza ibicuruzwa (*distribution*) hanyuma BRALIRWA igaha SRDS Ltd *commission*, bivuze ko ukwirakwiza adashobora na rimwe kujya muni y'ibiciro aba yarahawe na nyiri ibicuruzwa bikwirakwizwa.

[18] Anavuga ko mu gika cya 27 cy'urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, Urukiko rw'Ubujurire rwasesenguye mu buryo butari bwo ibikubiye mu masezerano yabaye hagati ya BRALIRWA na SRDS Ltd kuko rwavuze ko *distributeur* ashobora guhindura ibiciro yahawe na BRALIRWA kubera ko mu masezerano bagiranye byiswe *recommended price* ariko ko iryo jambo ritavuga ko ibiciro biba bigomba guhinduka bikagabanywa, ahubwo ko bishobora kwiyongera bitewe n'aho ibicuruzwa byafatiwe (muri hoteli cyangwa muri butike) kandi nabyo bigakorwa n'abadandaza. Asanga igiciro BRALIRWA yashyizeho ari icyo umuntu atajya munsu.

[19] Asoza avuga ko mu gika cya 29 cy'urubanza rwamaze kuvugwa, Urukiko rw'Ubujurire rwavuze ko RRA itatanze ibimenyetso byerekana ko SRDS Ltd yagabanyije ibiciro, ariko ko ibyo atari ukuri kuko RRA yatanze amasezerano BRALIRWA yahaye abakwirakwiza ibicuruzwa byayo agaragaramo ibiciro batagomba kujya munsu, inatanga za fagitire zigaragaza uko SRDS Ltd yagiye igabanya ibiciro. Asaba Urukiko kuzemeza ko umusoro RRA yaciye SRDS Ltd ungana na 222.316.907 Frw ugumyeho.

[20] Me Irazirikana Israël na Me Habimana Pie baburanira SRDS Ltd bavuga ko ikirego cya RRA nta shingiro gifite kubera ko isumbanya ikanavangura abasoreshwa, aho bamwe nka Ets FURAHA ibakuriraho umusoro¹, abandi nka SRDS Ltd ikawubaca nyamara bose bakwiye kuba bareshya imbere y'amategeko nk'uko biteganywa n'ingingo ya 15 y'Itegeko nshinga rya Republika y'u Rwanda .

[21] Bavuga kandi ko RRA yongeye gukorera igenzura SRDS Ltd ku myaka ya 2019, 2020, 2021 na 2022 yongera gusanga yaragiye ikora za *factures* igakata amafaranga kuri buri kinyobwa igurishije, ikayita ko asonewe kuko yari ay'ubwikorezi, nyamara muri iri genzura rya nyuma RRA ikaba itarigeze ivuga ko ibyo SRDS Ltd yakoze binyuranyije n'amategeko, ko iyo myitwarire ya RRA igaragaza ko ubu nayo yemera ko SRDS Ltd yaciye TVA ku bikorwa bya serivisi ya *transport* kandi isonewe.

[22] Bakomeza bavuga ko RRA isobanura nabi ibijyanye n'ibiciro bitangazwa na BRALIRWA kubera ko (a) RRA ifata ba *distributors* nk'aho atari abacuruzi nk'abandi; (b) *recommended price*

¹ SRDS Ltd yashyize muri dosiye ibaruwa yo ku wa 15/07/2022 Komiseri Mukuru wa RRA yandikiye Ets FURAHA asubiza ubujurire bwayo ku cyemezo cyayicaga umusoro, aho yayimenyesheje ko ashingiye ku ngingo ya 6(5°) y'itegeko n° 37/2012 rya kuba 09/11/2012 rishyiraho umusoro ku nyongeragaciro iteganywa ko serivisi z'ubwikorezi zikozwe n'ababihereye uruhushya isonewe umusoro ku nyongeragaciro aho kuri (d) bavuga ko gutwara ibintu ku nzira y'ubutaka muri serivisi z'ubwikorezi zisonewe TVA, no kuba Ets Furaha Ltd yaragaragaje ko mu mafaranga yaciwemo umusoro yari ifite uruhushya rutangwa na RURA rwo gutwara ibintu, anashingiye ku manza zaciwe (urubanza RCOMA 00190/2021/HCC na RCOMAA 00001/2022/CA (uru ni urubanza rwabaye hagati ya SRDS na RRA) aho RRA yaburanaga n'abandi bakora bimwe nk'ibyo Ets FURAHA ikora, aribyo gukwirakwiza ibinyobwa bya BRALIRWA, muri izo manza RRA ikaba yaratsinzwe, asanga ubujurire bwa Ets FURAHA bufite ishingiro, bityo ikaba ihanaguweho umusoro wose yaciwe kuri serivisi ya *transport* ungana na 77.781.312 Frw.

atari igiciro ntakuka; (c) ibiciro hagati ya BRALIRWA na *Distributors* bidakwiye kuba ikibazo cya RRA ndetse ko idakwiye kwifashisha amasezerano yo ku wa 01/02/2015 hagati ya BRALIRWA na SRDS Ltd kuko itari mu bayagize hashingiwe ku ihame rivuga ko amasezerano agira inkurikizi ku bayagiranye gusa.

[23] Me Irazirikana Israël na Me Habimana Pie bavuga kandi ko RRA ifata ba *distributors* nk'aho atari abacuruzi nk'abandi, kuko idasobanura neza ibyiciro by'abacuruzi kugira ngo habeho gusobanukirwa neza uburyo ba *distributors* atari abacuruzi nyamara bakora ubucuruzi bwo gukwirakwiza ibinyobwa bya BRALIRWA, ko ndetse buri *distributor* akora ibishoboka byose kugira ngo akore *distributions* nyinshi kugira ngo amafaranga yinjiza abe menshi ari nayo mpamvu SRDS Ltd inatwarira uyiguriye wese mu rwego rwo kumuha serivise nziza kandi ikaba ibifitiye ibyangombwa yahawe na RURA biyemerera gukora ubwikorezi (*transport*) ikishyurwa n'igiciro cyabwo.

[24] Banavuga ko *recommended prices* atari igiciro ntakuka, kuko ingingo ya 8 y'amasezerano yo ku wa 01/02/2015 yasinywe hagati ya SRDS Ltd na BRALIRWA mu rurimi rw'icyongereza ivuga ko *The Distributor buys the products at the price determined by Bralirwa and resells the products at the recommended distribution price*, ko ijambo "*recommend*" Urukiko rukwiye kuzarisuzuma rukemeza ko ridategeka ahubwo riganisha ku kugira inama, kandi ugiriwe inama ashobora kuyikurikiza cyangwa se ntayikurikize, bityo kudakurikiza igiciro cyatanzweho inama na BRALIRWA bikaba bitagize ikosa.

[25] Bakomeza bavuga ko kuba SRDS Ltd icuruza igahita inatwaza umukiliya ariko ku giciro cya *transport* ntimuce TVA bitewe n'uko *transport* isonewe, nta gihombo na kimwe bitera RRA kuko ntacyo itakaza kubera ko n'iyo SRDS Ltd itamutwaza, ibicuruzwa byari gutwarwa n'undi kandi nawe ntimuce TVA bitewe n'uko *transport* isonewe TVA.

[26] Bavuga kandi ko amategeko y'imisoro atabangamira cyangwa ngo akureho andi mategeko cyane cyane agenga ihiganwa mu bucuruzi; kuko kuba SRDS Ltd ari *distributor* wa BRALIRWA bidakuraho iyubahirizwa ry'Itegeko N°36/2012 ryo ku wa 09/11/2012 rigenga ihiganwa mu bucuruzi no kurengera abaguzi. Basobanura ko iyubahirizwa ry'ingingo ya 7 y'iryo tegeko ridashingira ku isano y'abacuruzi nko kuba hari *commission* itangwa kuri umwe muri bo, ko ndetse BRALIRWA na SRDS Ltd bemeranyijwe mu masezerano bagiranye ko amabwiriza agenga ipiganwa agomba kubahirizwa, bikaba bigaragara mu ngingo ya 1 (2), aho ivuga ko umuranguzi azakwirakwiza ibinyobwa yubahiriza amategeko y'u Rwanda, akubahiriza kandi amategeko n'amabwiriza yose y'u Rwanda harimo n'itegeko rigenga ihigana mu bucuruzi.

[27] Me Irazirikana Israël na Me Habimana Pie bavuga ko gukwirakwiza ibinyobwa bya BRALIRWA atari ubucuruzi bushyirirwaho igiciro na Leta (*regulated prices*), ko ahubwo igiciro kigenwa ku bwumvikane hagati y'umuguzi n'ugurisha (*free market*), ko rero nta hantu RRA ikwiye guhera ivuga ko igiciro cyagurishijweho kiri munsu y'igiciro. Banavuga ko amasezerano BRALIRWA Ltd yagiranye na SRDS Ltd muri 2015 ubwayo adategeka SRDS Ltd gukurikiza ibiciro biyarimo, RRA ikaba idakwiye kwitwaza ayo masezerano kandi ibiyakubiyemo byerekeranye n'ibiciro ari ibintu bibujiwe n'itegeko.

[28] Bongeraho ko ibimenyetso bijyanye na fagitire zitandukanye RRA yatanze nta shingiro gikwiye guhabwa kuko nka fagitire n° 14256-14469 NS igaragaza ko SRDS Ltd yagurishaga

ibinyobwa ku giciro kinyuranye n'amasezerano yagiranye na BRALIRWA, ubwabyo nta tegeko byishe kuko SRDS Ltd itari itegeko gukurikiza ibiciro bya BRALIRWA, naho fagitire n° 14259-14472 NS igaragaza ko SRDS Ltd iciye umukiriya amafaranga ya *transport* angana na 350 Frw kimwe n'izindi nyemezabuguzi SRDS Ltd yakoreraga abakiriya bayo igaragaraho 300 Frw ajyanye na *transport*, nabyo bikurikije amategeko kubera ko SRDS Ltd ifite uruhushya n'uburenganzira bwo gukora ubwikorezi nk'uko byemezwa n'ibyangombwa binyuranye byatanzwe na RURA.

[29] Bavuga kandi ko ikimenyetso kijyanye na raporo y'inama yo ku wa 16/01/2018 yahuje ubuyobozi bwa RRA n'aba *distributeurs* ba BRALIRWA Ltd idakwiye guhabwa agaciro kuko RRA yategekaga abacuruzi gucuruza bakurikije ibiciro byashyizweho na BRALIRWA kandi binyuranye n'ingingo ya 7 y'Itegeko N° 36/2012 ryo ku wa 21/09/2012 ryasobanuwe haruguru kandi iryo tegeko akaba ari ndemyagihugu.

[30] Me Irazirikana Israël na Me Habimana Pie banavugaga ko Urukiko rw'Ikirenga ruramutse ruhinduye urubanza rusubirishwamo ku mpamvu z'akarengane byatanga isura y'uko ubutabera butangirwa mu Rukiko rw'Ikirenga gusa. Ibyo babishingira ku ihame ry'uko "*Justice should not only be done, but should manifestly and undoubtedly be seen as to be done*" kubera ko urubanza rusubirishwamo rwaciye n'Urukiko rw'Ubujurire rwatangajwe mu mironko yafashwe n'urwo Rukiko, kuruhindura bikaba byagira ingaruka mbi kuri *system* y'ubutabera ishishikariza ababuranyi n'abacamanza kugendera mu murongo wafashwe n'inkiko.

[31] Basoza bavugaga ko imanza zisa n'uru rubanza, RRA isaba ko zashingirwaho zirimo urubanza rwa Ntawangwanabose aburana na RRA, n'urwa SOVEPROA Ltd na RRA, zitashingirwaho kubera ko atari imanza zitanga umurongo, zikaba zadahura n'ikiburanwa, ndetse zikaba zaraciye n'inkiko ziri muni y'Urukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 11, igika cya mbere, y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ryakurikizwaga igihe SRDS Ltd yacibwaga umusoro, ivuga ko *Uretse ibyo iri tegeko riteganywa ukundi, agaciro gashyirwa ku kintu cyangwa kuri serivisi ari ikiguzi cyabyo cyarishywe n'abaguzi mu mafaranga.*

[33] Ingingo ya 6, agace ka 5° y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rimaze kuvugwa, ivuga ko serivisi z'ubwikorezi zikoze n'ababihereye uruhushya zisonewe umusoro ku nyongeragaciro.

[34] Ingingo ya 9 y'iryo Tegeko ivuga ko "Haseguriwe ibivugwa muri iri tegeko, gutanga ibintu cyangwa serivisi zihariye nk'igikorwa cyunganira ikindi cy'ubundi bwoko cy'ibanze bifatwa nk'aho ari igice cy'igikorwa cy'ibanze.....".

[35] Ababuranyi bemeranya ko SRDS Ltd ari imwe muri za sosiyete zikwirakwiza ibicuruzwa bya BRALIRWA kandi ko ifite uruhushya ruyemerera kwikorera ibintu ku butaka n'Ikigo gishinzwe kugenzura imikorere y'inzego zimwe z'imirimo ifitiye Igihugu akamaro (RURA), icyo batemeranyaho ari nacyo kigize impaka muri uru rubanza, ni ukumenya niba ubwikorezi SRDS

Ltd ikora mu gihe cyo gukwirakwiza ibinyobwa bya BRALIRWA bukwiye gufatwa nk'ubwikorezi busonewe umusoro wa TVA.

[36] Urukiko rurasanga Itegeko N°37/2012 ryavuzwe haruguru ridasobanura neza abafatwa nk'abakora ubwikorezi busonewe TVA abo aribo, akaba ari yo mpamvu mu rwego rwo gukemura impaka ziri hagati y'ababuranyi, rwifashishije ibisobanuro bitangwa n'abahanga mu mategeko.

[37] Delebecque Philippe, Isabelle Bon-Garcin na Maurice Bernadet bavuga ko hari itandukaniro hagati y'ubwikorezi bukorwa n'umuntu ku giti cye n'ubwikorezi rusange. Babisobanura berekana ko ubwikorezi rusange bukorwa n'ababigize umwuga bakabihemberwa, naho ubwikorezi bukorwa n'abantu ku giti cyabo bukaba budakorwa n'ababigize umwuga kuko akenshi bukorwa hagamijwe kurangiza igikorwa cy'ibanze nk'ubucuruzi n'ibindi. (*Il y a une distinction entre transport pour compte propre (transports privés) et les transports pour compte d'autrui (transports publics). Les transporteurs publics sont des professionnels dont le métier consiste à exécuter des transports contre rémunération pour des clients qui sont des entreprises industrielles ou commerciales, des entreprises de services, des administrations ou encore des particuliers. Par opposition, le transport pour le compte propre n'est pas assuré par des professionnels du transport, mais par des entreprises industrielles ou commerciales qui disposent de leurs propres parcs de véhicules et de leurs conducteurs pour réaliser des transports liés à leur activité principale. Pour être qualifié de compte propre, un transport ne constitue qu'une activité accessoire de l'entreprise*)².

[38] Uwitwa Jean Pierre Kesteloot mu gitabo cye *Droit des Transports*, nawe avuga ko kuva kera amasezerano y'ubwikorezi yakunze gufatwa nk'amasezerano agamije inyungu kuko yinjira mu mirimo y'ubucuruzi, ariko ko icy'ingenzi atari igihembo umwikorezi ahabwa kuko ashobora no gukorwa habayeho cyangwa hatabayeho ibyo kwishyurana, ko ikirebwa cyane ari uko bwakozwe n'umwikorezi wabigize umwuga (*le contrat de transport a longtemps été considéré comme étant un contrat à titre onéreux puisqu'il s'agit d'une variété de contrat d'entreprise... l'élément constitutif à retenir n'est donc plus la rémunération en tant que telle puisqu'un contrat de transport peut être conclu à titre onéreux ou à titre gratuit, mais bien le caractère professionnel du transporteur*).³

[39] Ku bijyanye n'ibikorwa byunganira ibindi bivugwa mu ngingo ya 9 y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 ryavuzwe haruguru, Urukiko rurasanga Umushingamategeko atarabisobanuye; akaba ariyo mpamvu rwifashishije ibisobanuro bitangwa n'abahanga mu mategeko kugira ngo ibivugwa muri iyo ngingo byumvikane. Uwitwa Anon avuga ko serivisi y'inyunganizi ishobora gusobanura serivisi igendana n'igicuruzwa ihabwa umuguzi mu rwego rwo kumufasha kugikoresha (*A Complementary Service may be defined as a service that comes with a product for support. They are the services that are offered in addition to any business's core service and assist the customer in using that service [...]*).

[40] Ku birebana by'umwihariko n'ubwikorezi nka serivisi yunganira ikindi gikorwa cy'ibanze nk'ubucuruzi, umuhanga mu mategeko Jean Pierre Kesteloot avuga ko amasezerano y'ubugure ashobora guteganya ko ugurishije ikintu nk'imashini imesa cyangwa televiziyo azakigeza ku

² Delebecque Philippe, Isabelle Bon-Garcin et Maurice Bernadet, *Droit des transports*, 2018, Dalloz, p. 2932.

³ Kesteloot, Jean Pierre et HOC, Arnaud, *Droit des transports*, 2020, Larcier, p.29-30.

wakiguze kandi ntibiyitwe ko ari amasezerano y'ubwikorezi kubera ko ubwikorezi bukozwe muri ubwo buryo ari igikorwa gishingiye ku masezerano y'ibanze y'ubugure, ndetse n'amategeko arebana n'ubwikorezi akaba adakoreshwa muri icyo gihe (*Il y a d'autres contrats que le contrat de transport qui contiennent ou peuvent contenir un élément de déplacement. Un contrat de vente peut prévoir que le vendeur déplace la marchandise pour la livrer à l'acheteur. Comme par exemple lors de la vente d'une machine à laver ou d'une télévision... Le transport par le vendeur n'est qu'un accessoire du contrat de vente. Les règles propres au contrat de transport ne s'appliquent donc pas dans les relations entre le vendeur et l'acheteur*)⁴.

[41] Ibisobanuro bimaze gutangwa bigaragaza ibintu by'ingenzi bikurikira:

-Ubwikorezi busonewe TVA ni ubukorwa n'abantu bakora umwuga w'ibanze wo gutwara ibintu (*professionnels du transport*);

-Ubwikorezi bukorwa mu rwego rwo gukwirakwiza ibicuruzwa n'iyo bwaba bukorwa n'uwabihereye uruhushya ariko atari wo murimo w'ibanze, bufatwa nka serivisi yunganira (*accessoire*) icyo gikorwa cy'ibanze cyo gukwirakwiza ibicuruzwa. Iyo icyo gikorwa cy'ibanze kidasonewe TVA, n'ubwo bwikorezi ntibusonerwa ;

[42] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga ku bijyanye n'uru rubanza, n'ubwo SRDS Ltd ifite ibyangombwa biyemerera gukora serivisi y'ubwikorezi, amasezerano y'imikoranire hagati yayo na BRALIRWA agaragaza ko ikigamijwe ari ugukwirakwiza ibinyobwa bya BRALIRWA (*distribution*); ubwikorezi ikora muri urwo rwego akaba ari serivisi yunganira igikorwa cy'ibanze cyo gukwirakwiza ibinyobwa kidasonewe TVA. Kubera iyo mpamvu, Urukiko rurasanga ubwikorezi bukorwa na SRDS Ltd mu gihe cyo gukwirakwiza ibinyobwa bya BRALIRWA, budasonewe TVA.

[43] Ku bijyanye n'ibivugwa na SRDS Ltd ko RRA isumbanya abasoreshwa barimo Ets FURAHA no kuba yarakoreye igenzura SRDS Ltd ku myaka ya 2019 na 2020 ikongera gusanga itarahinduye imikorere nyamara ntivuge ko igomba kwishyura amafaranga yakase kuri buri kinyobwa igurishije ajyanye n'ubwikorezi, ko rero RRA nayo yemera ko SRDS Ltd ikora ubwikorezi busonewe TVA, Urukiko rurasanga koko muri dosiye hari ibaruwa ya RRA yo ku wa 15/07/2022 isonera Ets FURAHA TVA ku bikorwa by'ubwikorezi bw'ibinyobwa bya BRALIRWA ikwirakwiza, ariko iryo sonera rikaba ntaho ryari rishingiye mu rwego rw'amategeko kubera ko nk'uko byagaragajwe haruguru, ubwikorezi ikora ari bumwe n'ubukorwa na SRDS Ltd, akaba atari ubwikorezi busonewe TVA. Ibi bisobanuro biranareba igenzura RRA yakoreye SRDS Ltd ku myaka ya 2019 na 2020.

Umwanzuro rusange ku kibazo cyagombaga gusubizwa

[44] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga SRDS Ltd itaraciwe umusoro ku nyongeragaciro (TVA) ku bikorwa by'ubucuruzi busonewe; bityo ikirego cya RRA cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/03/2022, kikaba gifite ishingiro.

2.Ku bijyanye n'indishyi zisabwa muri uru rubanza

⁴ Idem, p.31.

[45] Me Twahirwa Jean Baptiste uhagarariye RRA avuga ko ashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, asaba ko SRDS Ltd itegekwa guha RRA 3.000.000Frw y'igihembo cy'Avoka n'ibyatanzwe kuri uru rubanza kuva rwatangira kugeza ubu.

[46] Me Irazirikana Israël na Me Habimana Pie baburanira SRDS Ltd bavuga ko indishyi RRA isaba nta shingiro zikwiye guhabwa kuko ari yo yakomeje gukurura izi manza, ko rero itakwitwaza amakosa yayo ngo iyasabire indishyi.

[47] Bakomeza bavuga ko ahubwo SRDS Ltd ari yo ikwiye guhabwa indishyi. Bashingiye ku ngingo ya 34 y'Amabwiriza agena ibihembo mbonera by'Abavoka, basaba ko kuri uru rwego, SRDS Ltd yagenerwa 3.000.000Frw y'igihembo cy'Avoka na 2.000.000Frw y'ikurikiranarubanza yatakaje kuri uru rubanza, yose hamwe akaba 5.000.000Frw. Basaba kandi ko ayo mafaranga yakwiyongera kuri 3.640.000Frw yategetswe n'inkiko zabanje.

UKO URUKIKO RUBIBONA

[48] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza.

[49] Ku bijyanye n'indishyi zisabwa muri uru rubanza, Urukiko rurasanga ibivuzwe mu gika kibanziriza iki, byumvikanisha ko umuburanyi watsinzwe urubanza agomba kwishyura uruhande rwatsinze indishyi z'ikurikiranarubanza kuko hari ibyo ruba rwatatakaje rukurikirana urubanza birimo igihembo cy'Avoka, n'andi mafaranga y'ikurikiranarubanza.

[50] Urukiko rurasanga kuba SRDS Ltd itsindwa uru rubanza nta n'indishyi ikwiye guhabwa, ahubwo zikaba zikwiye kugenerwa RRA kubera ko itsinze kandi ikaba hari ibyo yatakaje mu rwego rwo kuburana no gukurikirana uru rubanza kuva rutangiye kugeza kuri uru rwego.

[51] Urukiko rurasanga RRA ikwiye kugenerwa indishyi z'ibyagiye kuri uru rubanza, ariko kubera ko 3.000.000Frw asabwa ari menshi, kandi ikaba itayatangira ibimenyetso, igomba guhabwa 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza agenwe mu bushishozi bw'Urukiko.

III. ICYEMEZO CY'URUKIKO

[52] **Rwemeje** ko ikirego cyatanzwe n'Ikigo cy'Imisoro n'Amahoro (RRA) cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/03/2022, gifite ishingiro;

[53] **Rwemeje** ko imikirize y'urubanza RCOMAA 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/03/2022, ihindutse mu ngingo zarwo zose;

[54] **Rutegetse** SRDS Ltd kwishyura Umusoro ku Nyongeragaciro (TVA) ungana na 222.316.907 Frw yaciwe na RRA ku myaka ya 2015, 2016, 2017 na 2018.

[55] **Rutegetse** SRDS Ltd guha RRA 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe akaba angana na 800.000Frw.