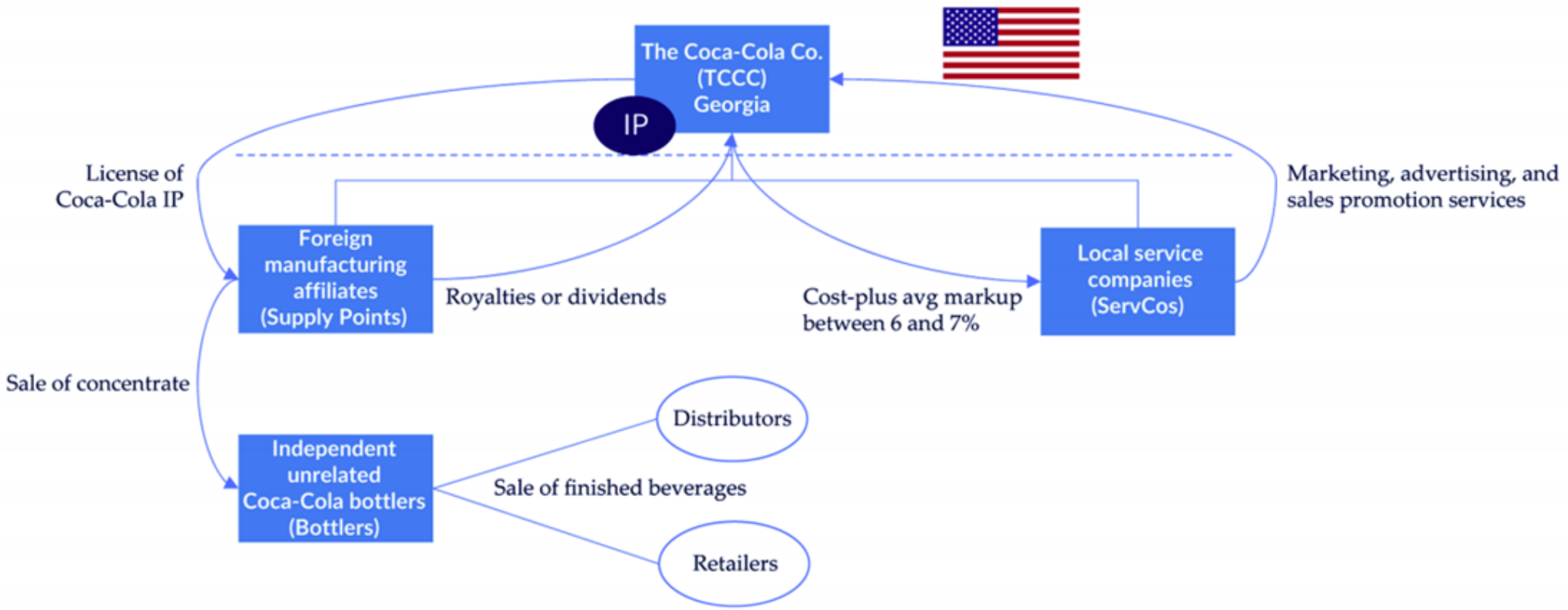


How to resolve the Coca Cola dispute with the IRS

Speaker:
Steef Huibregtse

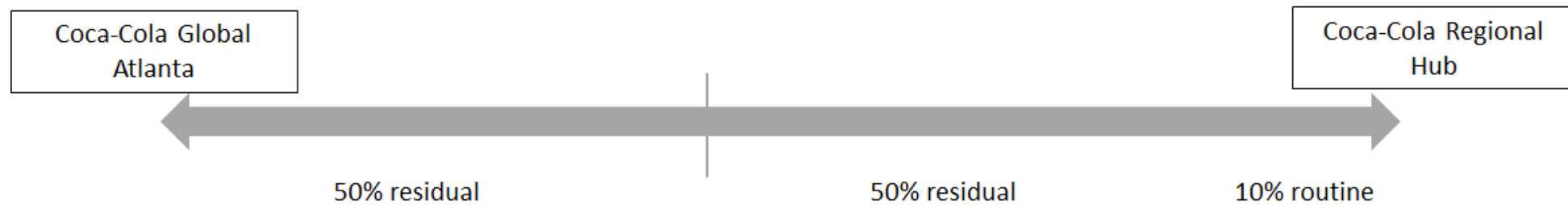
Panelists:
Seema Kejriwal, Ana Bosii

Coca-Cola's operations during 2007-2009

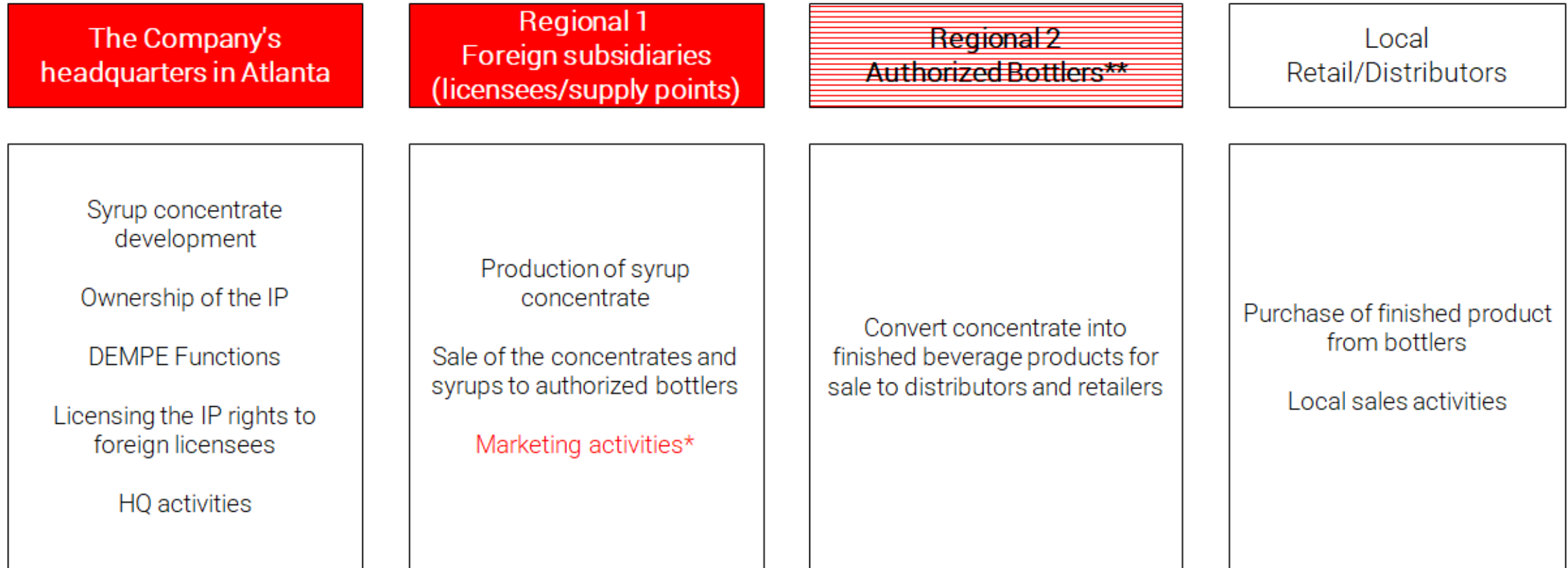


The 10-50-50 approach

- The Coca-Cola company and the IRS entered in a royalty closing agreement for the years **1987-1995** on how to allocate the profit between the licensees and the HQ.
- They agreed on an approach that granted the licensees (supply points) with a routine return equal to 10% of gross sales;
- The residual profits would be split evenly, with the royalty rate set to 50% of residual profits;
- **After 1995**, the closing agreement wasn't renewed, but Coca Cola had "prospective penalty protection" both during the term of the agreement and for the tax years after 1995 as long as it followed the agreed methodology.
- For the years **1996-2006**, the IRS has accepted Coca-Cola's application of the 10-50-50 formula and made no adjustments to the royalties.



Functional analysis of the participants in the Coca-Cola value chain



* Marketing activities are performed by a 3rd party on behalf of the Coca-Cola enterprise and charged to the hubs.

**Coca-Cola maintains business relations with 3 types of bottlers: (i) bottlers in which it has no ownership interest (ii) bottlers in which it has a noncontrolling ownership interest and (iii) bottlers in which it has a controlling ownership interest.

Reasons for rejection

- The comparable uncontrolled transaction (CUT method) cannot be applied ;
- Residual profit-split method (RPSM) cannot be applied ;
- Asset management method cannot be applied.

Reasons for acceptance

- The acceptance of the CPM as the most fit TP method ;
- The acceptance of bottlers as appropriate comparables to the supply points/concentrate manufacturers ;
- The court agreed with the IRS that the supply points did not enhance the value of the IP ;
- The court agreed with the IRS that the supply points were just allocated marketing costs and all the actual marketing was done by the parent and ServCos (cost + 6%) ;
- Legal ownership was the test for identifying intangibles.

Which ADR tools would make the dispute resolution process more effective



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- Informal arbitration;
- Baseball arbitration;
- Mediation;
- Data driven dispute resolution;
- Academic expert paper.

Speakers:



Steef Huibregtse
CEO, TPA Global

Panelists:



Seema Kejriwal
Partner, BMR Legal
Advocates



Ana Bosii
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