



COMESA Competition Commission
Kang'ombe House
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesa.int



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/07/34/2022

**Decision¹ of the Eighty-Eighth (88th) Committee Responsible for
Initial Determinations Regarding the Proposed Merger involving
Tucano Bidco B.V. and TMF Sapphire Topco B.V.**

ECONOMIC SECTOR: Compliance and general business services

18 November 2022

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

A handwritten signature in black ink, appearing to be a stylized name.

A handwritten signature in black ink, appearing to be a stylized name.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 8 September 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed Merger involving Tucano Bidco B.V. ("**Tucano Bidco**") as the acquiring undertaking and TMF Sapphire Topco B.V. ("**TMF**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the "**Regulations**").
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.



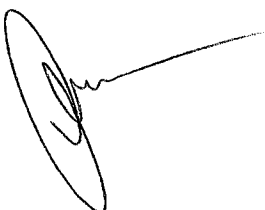
The Parties

Tucano Bidco (the acquiring undertaking)

4. Tucano Bidco is a newly established entity, jointly controlled by affiliates of CVC Capital Partners SICAV-FIS S.A. ("**CVC**") and Platinum Ivy B 2018 RSC Limited ("**Platinum Ivy**"). The primary business activities of CVC and/or its subsidiaries relate to the management of investment funds and platforms whereas Platinum Ivy makes investments into the private equities asset class.
5. While Tucano Bidco is newly incorporated with no operations in the Common Market, its parents (CVC and Platinum Ivy) operate in the Common Market as follows:
 - a. CVC provides investment advice to, and/or managements investments on behalf of, CVC funds (CVC Funds). CVC Funds have interest in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution; and
 - b. Platinum Ivy has no operations in the Common Market. Platinum Ivy is indirectly a wholly owned subsidiary of the Abu Dhabi Investment Authority that manages a global investment portfolio across more than two dozen asset classes and sub-categories including developed equities, emerging market equities, small cap equities, government bonds, credit, fixed income, real estate, infrastructure, private equity, cash and alternatives
6. Currently, the target undertaking, TMF (together with its controlled affiliates, the TMF Group) is wholly owned and controlled by CVC, and the proposed transaction envisions CVC moving from sole, to joint control of the TMF Group with Platinum Ivy. Tucano Bidco and Platinum Ivy are referred to as the "**Acquiring Group**".
7. The Acquiring Group and CVC are active in the following COMESA Member States: Burundi, the Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Zambia and Zimbabwe.

TMF (the target undertaking)

8. TMF is a private limited company incorporated under the laws of the Netherlands and is currently indirectly solely controlled by CVC. TMF primarily provides locally-delivered outsourced business and compliance services (including corporate secretarial, tax & accounting, legal & administration, and human resources & payroll) to multi-national corporates, financial institutions, investment funds, and high-net worth individuals.
9. TMF is active in two COMESA Member State, namely Kenya and Mauritius. It provides locally delivered outsourced business and compliance services such as corporate secretarial; tax & accounting; legal & administration; and human resources & payroll to multi-national corporates, financial institutions, investment funds, and high-net worth



individuals. More specifically, within the Common Market, the TMF Group provides the following services in Kenya and Mauritius, respectively:

- a) accounting services, reporting and tax compliance services, human resource and payroll services and global entity management services; and
- b) accounting services, corporate secretarial services, compliance services and international business operations services

Jurisdiction of the Commission

10. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
- b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million,*

unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

11. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and each of at least two of the parties hold an asset value of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

12. The proposed transaction entails the acquisition of the entire issued share capital of TMF by Tucano Bidco. The proposed transaction will give rise to a change in the quality of control of TMF from sole control by CVC to indirect joint control by CVC and Platinum Ivy.



Competitive Assessment

Relevant Markets

Relevant Product Market

13. The CID noted that while Tucano Bidco is newly incorporated with no operations in the Common Market, its parents CVC and Platinum Ivy operate in the Common Market as follows:
 - a. CVC provides investment advice to, and manages investments on behalf of, CVC Funds which have interests in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution; and
 - b. Platinum Ivy has no operations in the Common Market. It is indirectly a wholly owned subsidiary of Abu Dhabi Investment Authority that manages a global investment portfolio across more than two dozen asset classes and sub-categories including in the Common Market.
14. The CID noted that the target undertaking provides locally delivered outsourced business and compliance services such as corporate secretarial; tax & accounting; legal & administration; and human resources & payroll to multi-national corporates, financial institutions, investment funds, and high-net worth individuals. More specifically, within the Common Market, the target provides the following services in Kenya and Mauritius, respectively:
 - a) accounting services, reporting and tax compliance services, human resource and payroll services and global entity management services; and
 - b) accounting services, corporate secretarial services, compliance services and international business operations services.
15. The CID observed that the proposed transaction will entail a change in the quality of control of TMF Group from indirectly sole control by CVC to indirect joint control by CVC and Platinum Ivy through Tucano Bidco which is the acquisition vehicle. Thus, the merger will not entail the removal of a competitor on the market neither a change in the structure of the market as the parties are not offering competing products in the same market. The CID considered that the indirect joint control by CVC and Platinum Ivy would raise conglomerate or vertical effects given that Platinum Ivy which had no control of TMF Group pre-merger, will assume joint control of TMF Group. Such effect may arise depending on the relationship between the activities of Platinum Ivy and the TMF Group.
16. The CID observed that conglomerate effects may arise where the merging parties' products are not in the same market, nor are they inputs or outputs of one another's businesses but where nonetheless the products are linked such that a fall in the demand of one product may influence the demand of the other. The CID noted that the

products/services are not in the same market neither are they used as inputs/outputs into one another's businesses. For instance, TMF Group's outsourced business and compliance are not the main input/output into the services that Platinum Ivy provides in the Common Market being investment and financing activities primarily in the fields of industry, mining, energy, transportation, tourism, housing, urban development, reclamation of waste land, finance lease, and holdings shares in existing companies, and banking and financial services activities. Therefore, the CID considered that it is not likely that a fall in the demand of outsourced business and compliance services will influence the demand patterns for investment and financing activities.

17. The CID also observed that vertical effects may arise where the merging parties operate at different levels of the supply chain in one industry such that their activities are complementary i.e., the case of a manufacturer and distributor. The CID considered that such a scenario does not arise in the current case since outsourced business and compliance services are not in the same industry as the services supplied by either Platinum Ivy or CVC.
18. The above notwithstanding, the CID considered that outsourced business and compliance services are services that different players including the parties and their competitors may require to support their businesses. The CID considered that an undertaking with market power in the provision of outsourced business and compliance services may leverage such market power and foreclose or discriminate against other players from accessing these services. For instance, this may be by reserving such access to itself or by offering the services on favourable terms to itself or its affiliated companies.
19. In assessing the relevant market, the CID focused on business process outsourcing solutions and compliance services as the relevant product market where likely concerns may arise. The CID considered that any alternative relevant product market is not likely to alter the disposition of the case given that the structure of the market is unlikely to change since no competitors will exit the market.

Business process outsourcing solutions and compliance services

20. The CID noted that Business Process Outsourcing (i.e., BPO) entails hiring a third-party service provider (or another outside business) to fulfil a process that ones business needs to operate. Such processes are essential but non-primary business functions for one's business². A range of services can be outsourced but the most common ones include accounting, human resource, secretarial and IT services. The CID noted that the main reasons why a company outsources some of its processes include saving

² rdi-connect.com/services/business-process-outsourcing/ accessed on 10 October 2022



costs and the need to focus on its core competencies and strategies and to access skilled resources³.

21. Each of the services under business process outsourcing is used by a client for a specific requirement. For instance, accounting services are required to complete a company's accounting obligations which include the preparation of financial statements to allow the company to meet its statutory reporting obligations. Similarly, human resource and payroll services are contracted out to third party accounting companies which handle, *inter alia*, the salary payment obligations and its leave management of employees. On the other hand, tax advisory services form part of the broad market for legal compliance services. Compliance with the national laws on taxation is very important for any company and the provision of tax compliance services requires a strong specialisation and a constant update of know-how due to frequent and significant changes in tax legislation. Tax reporting obligations are also very important obligations for any company and strict adherence to statutory timelines along with specialised documents, such as audited financial statements are required by any company. Failure to adhere to such tax reporting requirements may lead to hefty penalties levied by national tax regulators along with possible ensuing reputational damages.
22. In relation to the provision of corporate secretarial services, the CID noted that this may be a legal requirement in certain jurisdictions. For instance, in Mauritius all incorporated companies, to the exception of small private companies⁴, are required to have a company secretary. A company secretary under the Companies Act 2001 of Mauritius as a general rule should be a natural person of full age and capacity who shall ordinarily be resident in Mauritius. However, the Registrar of Companies under the Companies Act 2001 has the power to approve the appointment of a firm or corporation to act as the company secretary. A company secretary has prescribed duties and functions under the latter Act and is mainly responsible to ensure that the company meets all its statutory obligations, including financial and legal requirements, as legislated in the relevant law. The duties of a Company Secretary include maintaining the company's records, the shares register and keeping the records updated, ensure that the company meets all its statutory filing requirements and that the company is at all times compliant with the national legislative framework.
23. Based on the above description of some of the services under business process outsourcing, the CID considered that each service is required for a specific intended purpose i.e., each service serves a distinct purpose that may not be substitutable with the other services. Accounting services are required for the company to meet its financial reporting obligations. Corporate secretarial services on the other hand seek to ensure that a company remains compliant with various statutory obligations as required

³ www.cio.com/article/272355/outsourcing-outsourcing-definition-and-solutions.html accessed 1 October 2022

⁴ A small private company is defined under the Companies Act 2001 of Mauritius as a company which turnover does not exceed 100 million rupees and does not hold a global business licence.



by the relevant national laws. Tax advisory and reporting services are specifically intended to ensure compliance with tax obligations.

24. From a demand perspective, a customer is not likely to substitute accounting services with human resource and payroll services in an event of a 5 - 10% increase in the price of accounting services. Substitution is also unlikely to occur between human resources and payment services or accounting services and corporate secretarial services given the distinct nature of the services and their distinct intended purposes.
25. From a supply perspective, the CID noted that limited overlaps may exist in instances where one or more of the services can be provided by one skilled labour. For instance, an accountant may be responsible for accounting, human resource and payroll, tax advisory and compliance services. Further, a company secretary may provide administrative secretarial services in addition to providing compliance services. The CID also noted that companies offering business process outsourcing solutions and compliance services, tend to offer a package of services under one roof comprising accounting, tax advisory and compliance services. Thus, supply side substitution is possible hence the market can be construed as the broad market for business outsourcing and compliance services.
26. The CID considered that while there may exist sub-markets within this broad category, a further segmentation of the market was not necessary given that such delineation is not likely to alter the disposition of the case given the absence of any overlap between the activities of the merging parties.
27. On the basis of the foregoing assessment, and without prejudice to the approach in similar future cases, the CID construed the relevant product market as the **provision of business process outsourcing and compliance services.**

Relevant Geographic Market

2. The CID observed that business process outsourcing services are provided to ensure compliance with relevant national legislation of the country where the companies providing such services are incorporated. These services may require specialised skills and a thorough understanding of the relevant regulatory framework and the company's local operating environment without which companies risk non-compliance which may result into severe consequences and personal liability for the officers. The CID noted that similar consideration was taken by the European Commission ("EC") in ***Price Waterhouse/Coopers & Lybrand***⁵ in respect of audit and accounting services; and tax advisory and compliance services. In this instance, it was stated that significant national differences existed for the services' main features such as the specific professional

⁵ Case No IV/M.1016 - Price Waterhouse/Coopers & Lybrand



expertise required, applicable regulations, and the relevant laws for which the advisory services are provided which narrowed the geographic scope of the market to national.

3. The CID observed that TMF offers business process outsourcing and compliance services in Kenya and Mauritius. From a demand perspective, the CID considered that it is unlikely that a significant number of customers located in Kenya or Mauritius would prefer substituting purchase of business process outsourcing services from suppliers located in other countries in response to a small but significant deterioration of the terms and conditions in each of the latter Member States. Such substitution is likely to be limited considering that companies located in other jurisdictions may not be entirely familiar with the legislative framework of Kenya and Mauritius including the local business environment within which the target operates. From a supply perspective, the CID considered that it is unlikely that due to more favourable conditions in other countries, the merged entity would timely switch to set up operations or branches in such countries, as they would need to obtain the relevant skills and mastery of the national legislative framework in these jurisdictions.
4. The CID considered that the above demonstrates that the geographic scope for the relevant markets is likely to be national given the limited possibility for timely substitution of the products/services. The CID concluded that in an event of a SSNIP, the target is unlikely to swiftly shift its operations to another country to take advantage of the prospect of profits.
28. In view of the above and given that the target's activities in the provision of Business Process Outsourcing Solutions and Compliance Services are limited to Kenya and Mauritius only, the CID determined the geographic scope of the relevant market as national and that it pertained to Kenya and Mauritius.
29. For the purposes of assessing the proposed transaction only, and without prejudice to future cases, the CID identified the relevant markets as **the national markets for the provision of business process outsourcing and compliance services in Kenya and Mauritius.**

Market Shares and Concentration


5. The estimated market shares for the TMF Group and its competitors in Kenya and Mauritius in the provision of business and compliance services were submitted as per Table 1 below.

Table 1 – Market Shares for TMF Group and competitors in business and compliance services

Member State	Competitor	Approximate Market Shares (%)
Mauritius	Apex Fund Services/ Sanne	[5 – 15]
	IQ EQ Mauritius	[0-10]



9



	Ocorian Mauritius	[0-10]
	DTOS Ltd	[0-10]
	Intercontinental Trust	[0-10]
	TMF Group	[0-10]
	Others	[25-35]
Kenya	PKF Kenya	[0-10]
	RSM Kenya	[0-10]
	Mazars	[0-10]
	Grand Thornton	[0-10]
	KPMG	[0-10]
	TMF Group	[0-10]
	Others	55 - 65

30. The CID considered that the proposed transaction will not result in a change in the market structure, by way of market share accretion, given the absence of any overlap in the activities provided by the parties. The CID further noted that the relevant market is fragmented in each Member State hence it is unlikely that any one firm can wield market power. The CID noted that the existence of these players it likely to provide competitive discipline which will overrule any potential competition concerns likely to arise from the transaction within Kenya and Mauritius.
31. The CID noted that the barriers to entry in the relevant markets may typically include professional labour, mastery of the national legislative framework, licensing requirements by the Financial Services Regulator, the capital requirements and access to a customer base. The CID considered that entry barriers are not prohibitive and this is evidenced by the presence of a number of players in the relevant markets with fragmented market shares.
32. The CID further noted that the relevant market is replete with a number of players and the target is a small player which holds insignificant market shares. The merged enterprise will still be constrained by the other players in the relevant markets and this will thwart any attempt on its part to engage in unilateral conduct. This will reduce the incentive and ability of the merged enterprise to increase its prices post-merger.

Consideration of Public Interests

33. The proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are relatively small within the Common Market. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers who will still have access to alternative suppliers.




Consideration of Third-Party Views

34. Submissions were received from national competition authorities of Egypt, Eswatini, Ethiopia, Kenya, Malawi, Mauritius, Rwanda, Seychelles and Zambia which submitted that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

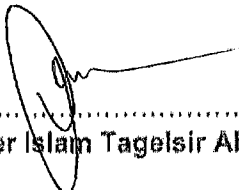
35. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

36. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 18th day of November 2022


.....
Commissioner Mahmoud Momtaz (Chairperson)


.....
Commissioner Lloyds Vincent Nkhoma


.....
Commissioner Islam Tagelsir Ahmed Alhasan