



**COMESA Competition Commission**

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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/08/22/2021**

**Decision<sup>1</sup> of the Eightieth (80<sup>th</sup>) Committee Responsible for Initial  
Determination Regarding the Proposed Merger involving Ukarimu  
Limited and Fairview Hotel Limited**

**ECONOMIC SECTOR: Hospitality**

**6<sup>th</sup> December 2021**

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<sup>1</sup> 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

## Introduction and Relevant Background

1. On 15<sup>th</sup> September 2021, the COMESA Competition Commission (the “**Commission**”) received a notification of the indirect acquisition by Actis Hospitality Mauritius Limited (“**Actis**”) and Jamison Valley Holdings Limited (“**Jamison**”), through Ukarimu Limited (“**Ukarimu**”), of the entire share capital of Fairview Hotel Limited (“**Fairview**”), 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

### *Actis*

4. The parties submitted that Actis is a special purpose vehicle controlled by Actis Africa Real Estate Fund 3. Actis Africa Real Estate Fund 3 is a private equity fund comprised of Actis Africa Real Estate 3 LP and Actis Africa Real Estate 3A LP, registered in the United Kingdom. In the Common Market, Actis group operates in the broader real estate development market and is active in the following Member States: Egypt, Kenya, Mauritius, Rwanda, Tunisia, and Uganda.

### *Jamison*

5. The parties submitted that Jamison is a private limited company incorporated under the laws of the British Virgin Islands. Jamison’s activities include real estate investments; including but not limited to hotels in Europe and North America. Jamison does not operate in the Common Market and does not control any entities within the Common Market.

### *Ukarimu*

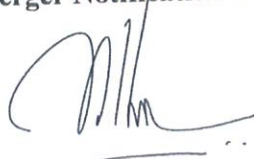
6. The parties submitted that Ukarimu was incorporated by Msafiri Limited (“**Msafiri**”), a special purpose vehicle incorporated under the laws of Mauritius by Actis. It was submitted that, before the completion of the transaction, Jamison will subscribe for shares in Msafiri.

### *Fairview (the target)*

7. The parties submitted that Fairview is a company limited by shares which has been incorporated and registered in Kenya. Fairview operates the Fairview Hotel, the Town Lodge Hotel, and the City Lodge at Two Rivers, all located in Nairobi, Kenya. In the Common Market, Fairview is active in Kenya only.

## Jurisdiction of the Commission

8. Article 24(1) of the Regulations requires ‘notifiable mergers’ to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the “**Merger Notification Thresholds Rules**”) 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.*
9. 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 they each hold 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**

10. The notified transaction involves the indirect acquisition by Actis and Jamison of the entire issued share capital of Fairview, which acquisition will be undertaken through a special purpose vehicle named Ukarimu. The transaction will confer the sole control of Fairview to Ukarimu.

### **Competitive Assessment**

#### **Relevant Market**

##### *Relevant Product Market*

11. The CID noted from the parties' submission that Actis has investments in healthcare, automotive, renewable energy, residential and commercial real estate investment, in the Common Market. Jamison on the other hand does not operate nor control any entities within the Common Market.
12. Fairview, the target, is involved in the business of providing hotels rooms for short stay in Nairobi, under the names of Fairview Hotel, Town Lodge Hotel and City Lodge. Fairview hotel<sup>2</sup> is a 4-stars hotel with a capacity of 127 rooms. Town Lodge Hotel is 84-room hotel located on the same property as the Fairview Hotel<sup>3</sup>. Town Lodge hotel is also listed as a 2-stars hotel<sup>4</sup>. The City Lodge at Two Rivers Mall is a 171-room hotel, which is located at Runda on the outskirts of Nairobi and is listed as a 3-stars hotel<sup>5</sup>.



<sup>2</sup> <https://clhg.com/hotels/901/Fairview-Hotel-Nairobi> accessed 7<sup>th</sup> October 2021

<sup>3</sup> <https://clhg.com/hotels/902/town-lodge-upper-hill-nairobi-kenya> accessed 7<sup>th</sup> October 2021

<sup>4</sup> Information submitted by CAK and is also listed as a 2-stars hotel on Tripadvisor [www.tripadvisor.com/Hotel\\_Review-g294207-d897049-Reviews-Town\\_Lodge\\_Upper\\_Hill\\_Nairobi-Nairobi.html](http://www.tripadvisor.com/Hotel_Review-g294207-d897049-Reviews-Town_Lodge_Upper_Hill_Nairobi-Nairobi.html) accessed 19 November 2021

<sup>5</sup> Information submitted by CAK

*Market for short term accommodation services*

13. The CID noted that the market for short term accommodation can be broadly segmented according to the price and standard of comfort provided which is indicated by the number of stars grading<sup>6</sup>.
14. The CID also took note of the classification by the Smith Travel Research (“STR”) classes<sup>7</sup>, According to STR, and based on international hotel industry standards, hotels can be classified into three main categories, namely (a) luxury and upper upscale; (b) upscale and upper midscale; (c) midscale and economy. These three categories could be further expanded, as per industry standards, into six segments into (i) luxury; (ii) upper-upscale; (iii) upscale; (iv) upper-midscale; (v) midscale; and (vi) economy. Categories (iii) and (iv) correspond to a 3 to 4 stars hotel rating; categories (ii) to (iv) cover 4-star hotels, whereas categories (iii) to (vi) would cover 2- 4 stars hotels<sup>8</sup>.
15. Furthermore, hotel star ratings can vary between one star to five stars, where one star is the lowest rating and five stars is the highest rating. The hotel ratings are an internationally recognised symbol reflecting the standard of accommodation and the hotel facilities<sup>9</sup>. Star ratings are offered to different types of accommodation categories, namely hotels, motels, serviced apartments, guest houses and self-catering accommodation<sup>10</sup>. The core difference between the star rating lies in the price where the higher the price, the better is the standard of accommodation in terms of the comfort level offered *inter alia* in respect of the facilities offered in the room, including the bedding, room furniture, toiletry and décor and washroom and hotel facilities offered *inter alia* in respect of the meals, additional facilities to enhance the comfort of the guest relating to recreational facilities including spa and gymnasium.
16. The CID also took into consideration the fact that a one-star rating means that the hotel will offer only basic accommodation at a very cheap rate, which may not go beyond providing a bed to the guest. A two-stars hotel also offers affordable accommodation with basic accommodation but with a comfort level slightly higher than a one-star hotel. A three-stars hotel offers a decent comfort level at an affordable price. A four-stars hotel offers upscale quality and extraordinary comfort<sup>11</sup>. A five-stars hotel offers high-end and luxury comfort level to the guests in a flawless infrastructure and décor with additional facilities such as fine dining and personalised services to the guest<sup>12</sup>.
17. The rate and the comfort level of hotel is material in determining the choice of the provider, where a customer will choose an accommodation based on his budget and the desired level of

<sup>6</sup> This was the approach adopted by the European Commission in *Bank of Scotland/ Barclays Bank/ Kew Green Hotels* (Case No COMP/M.6058), and *Jin Jiang/Radisson* (Case M.9099). The European Commission further identified another possible segmentation according to ownership of hotels (i.e., independent owners compared to hotel chains).

<sup>7</sup> STR collects, analyses and reports on hotel industry data.

<sup>8</sup> Case No Comp/M.6738 - Goldman Sachs / Kkr / Qmh

<sup>9</sup> [www.starratings.com.au/info/what-are-star-ratings](http://www.starratings.com.au/info/what-are-star-ratings) accessed 7<sup>th</sup> October 2021

<sup>10</sup> Ibid n. 9

<sup>11</sup> [www.warehousehotel.com/manheim/blog/hotel-star-ratings-system](http://www.warehousehotel.com/manheim/blog/hotel-star-ratings-system) accessed 8<sup>th</sup> October 2021

<sup>12</sup> Ibid n. 11



comfort. The European Commission's market investigation in *Jin Jiang/Radisson*<sup>13</sup> revealed that customers are familiar, or very familiar, with the classification of hotels on the basis of star rating.

18. The CID observed that there is some degree of competitive pressure exerted between hotels across different star ratings. Further, that it is not unreasonable to assume that a significant number of guests may consider shifting to a 4-star hotel in response to a five to ten percent increase in the price of a similar room at a 5-star hotel. The CID took note of the *Accor/Blackstone/Colony/Vivendi* case where the European Commission (the "EC") noted that *"even if significant price differences exist between the 'bottom' and the 'top' of the chain of stars (a 1-star hotel will rarely compete with a 4 stars hotel), a distinction relying on stars might be too rigid and does not reflect the actual substitutability between hotels, especially within hotel chains. Several sub-markets might be rather identified like 1- and 2-stars hotel, 2 and 3 stars hotel, 3 and 4 stars hotel, or 1,2,3 stars hotels and 2,3,4 stars hotels..."*<sup>14</sup>.
19. In line with the EC's reasoning, the CID considers that a grouping of hotel accommodation by grading would be more appropriate. For the purpose of this transaction, and considering that the acquirer does not operate in the market for short term accommodation, the following relevant product markets were identified:
- a) **2-star and 3-star short term accommodation; and**
  - b) **4-star and 5-star short term accommodation.**

#### *Relevant Geographic Market*

20. The CID considered the nature of short-term accommodation and the immobility of physical properties to suggest that the geographic markets would be constrained to particular regions within national borders at best. On the demand-side, a customer chooses the location of his/her hotel based on the required place to stay. A customer visiting Kenya and looking for short-term accommodation will choose a hotel in Kenya itself, irrespective of movements in the price of short-term accommodation outside Kenya.
21. The CID further noted that there is a high possibility of narrowing the markets, especially in Kenya as there are significant distances between cities. On the supply-side, arguably, some providers may relocate their operations to other regions within a single Member State or to other Member States where demand conditions are more competitive, but such decisions would incur significant cost and time, and are therefore unlikely to be triggered by a small but significant increase in price.
22. Given that the target operates in Kenya only, and specifically in Nairobi, the CID considered that the geographic scope of the relevant product markets identified is Nairobi.

  
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<sup>13</sup> Case M.9099 - Jin Jiang/Radisson

  
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<sup>14</sup> See COMP/M. 1596 - Accor/Blackstone/Colony/Vivendi, paragraphs 24 and 25.

### **Market Shares and Concentration**

23. The CID noted from information provided by the CAK that the Fairview Hotel has an estimated market share of less than 3% among 4-star hotels in Nairobi, while City Lodge's market share is less than 4% among 3-star hotels and Town Lodge's market share is less than 2% in the market for 2-star hotel. Given that the activities of the acquirers and the target did not overlap at the time of the notification, the transaction will not result in any market share accretion in the relevant market.
24. The CID considered that there may not be prohibitive barriers to entry in the relevant markets, having regard to the number of players operating within Nairobi and evidence of the number of entrants in the last three years in the relevant market.

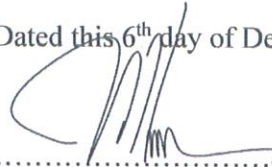
### **Third Party Views**

25. Submissions were received from the national competition authorities of Egypt, Mauritius, and Kenya who submitted that the transaction was unlikely to raise competition concerns due to the absence of overlap in the parties' activities pre-merger.

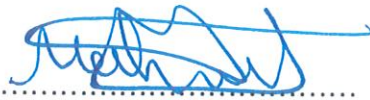
### **Determination**

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

Dated this 6<sup>th</sup> day of December 2021



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**Commissioner Deshmuk Kowlessur (Chairperson)**



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**Commissioner Mahmoud Momtaz**



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**Commissioner Islam Tagelsir Ahmed Alhasan**