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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/09/24/2021

Decision¹ of the Eightieth (80th) Committee Responsible for Initial Determination Regarding the Proposed Establishment of Full Function Greenfield Joint Ventures in Kenya and Uganda by Nutreco International B.V. and each of Unga Farm Care E.A Limited and Unga Millers (Uganda) Limited

ECONOMIC SECTOR: Agriculture

6th December 2021

¹ In the published version of this decision, some information has been omitted pursuant to Rule 71 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 30th September 2021, the COMESA Competition Commission (the "Commission") received a notification regarding the proposed establishment of full function greenfield joint ventures in Kenya and Uganda by Nutreco International B.V. ("Nutreco") and each of Unga Farm Care E.A. Limited ("Unga") and Unga Millers (Uganda) Limited ("UMUL"), pursuant to Article 24(1) of the COMESA Competition 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 CID is responsible for making determinations on cases before the Commission. The decision of the CID is set out below.

The Parties

Unga

4. Unga is a company incorporated under the laws of Kenya, with registered address, P.O. Box 30386 Ngano House, Commercial Street, Industrial Area, Nairobi, Kenya. It is part of Unga Group Plc which is listed on the Nairobi Securities Exchange and is active in the manufacture and supply of human nutrition, animal nutrition and animal health products. The parties submitted that Unga is a leading animal feed manufacturer in Kenya. It manufactures, markets and supplies complete feeds for various farmed animal species including poultry, pigs, ruminants and fish under the brand name FUGO. Unga has several production plants in Kenya and over 250 full-time employees. It also exports complete feed and feed equivalents from Kenya to Rwanda and Uganda.

UMUL

5. UMUL is a dormant company within the Unga Group, under common control with Unga. UMUL has been incorporated under the laws of Uganda, with registered address at Plot M299, Factory Close, Ntinda Industrial Area, P.O. Box 16382, Kampala, Uganda.
6. Within the Common Market, the Unga group operates in Kenya, Uganda and Rwanda under the following entities:

Table 1 – Activities of the Unga Group in the Common Market

Name of Entity	Member State	Description of sector of operation in the Common Market
Unga Farm Care E.A. Limited	Kenya	Complete animal feed and equivalents
Unga Farm Care E.A. Limited/Unga Millers (U) Limited	Uganda	
Unga Farm Care E.A. Limited	Rwanda	



Nutreco

7. Nutreco is a company incorporated under the laws of Netherlands, with registered address at Stationsstraat 77, 3811 MH Amersfoort, The Netherlands. It is a global leader in animal nutrition and aquafeed with its headquarters in The Netherlands. It is part of the SHV Holdings group which is a global family business with a portfolio of companies active in energy distribution, cash-and-carry wholesale, heavy lifting and transport activities, industrial services, animal feed, exploration, development and production of oil and gas and providing private equity. Nutreco supplies complete feeds for various farmed animal species including poultry, pigs, ruminants and fish under two global brands, Skretting and Trouw Nutrition. It also supplies complete feed equivalents (including premixes, macropacks and concentrates) and animal feed ingredients such as vitamins, minerals, amino acids, additives, protein and starch sources. Nutreco has over 12,100 employees in more than 37 countries across the world. Nutreco currently exports complete feed and feed equivalents from Europe and Egypt to Kenya, Rwanda, Uganda and several other countries within the Common Market.
8. Within the Common Market, Nutreco is active in DRC, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Jurisdiction of the Commission

9. 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*
10. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover 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 turnover 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

11. The notified transaction concerns Nutreco and Unga consolidating certain parts of their animal feed and aquafeed businesses currently conducted in Kenya, Rwanda, and Uganda within the COMESA region.

Competition Analysis and Relevant Observations

Consideration of the Relevant Markets

Relevant Product Market

12. The CID noted that the activities of Unga in the Common Market comprise of the manufacture and supply of complete animal feed and equivalents (including premixes, macropacks and concentrates) for the main farmed animal species including poultry, pigs, ruminants and fish. It was noted that this specifically includes the supply of complete feeds, feed concentrates, feed premixes and macropacks, and mineral licks and blocks. It was also noted that Unga supplies mineral licks and blocks in Kenya and Uganda and supplies only animal feed equivalents in Rwanda.
13. The CID noted that Nutreco supplies complete feeds for various farmed animal species including poultry, pigs, ruminants and fish under two global brands, Skretting and Trouw Nutrition. It also supplies complete feed equivalents (including premixes, macropacks and concentrates) and animal feed ingredients such as vitamins, minerals, amino acids, additives and protein and starch sources.
14. With respect to the establishment of the joint ventures, the CID noted that the principal business of the Kenya JV shall be the manufacture, packaging, importation, distribution, sales, advertising and promoting fish feed, aquaculture nutritional solutions and equipment and other aquaculture services or devices to produce fish and crustaceans in the Common Market. On the other hand, the Uganda JV principal business shall be manufacturing, packaging, distributing, selling, advertising and promoting complete feed and concentrates for livestock in Uganda and potentially, other East African Countries in the future.
15. In view of the above, the CID categorized the transaction as a horizontal merger given that the parties are active in the supply of competing products at the same level of the supply chain and in the same geographic market. The CID observed that under the proposed transaction, the parties are transferring their respective manufacture, packaging, importing, distributing, selling, advertising and promoting fish feed, aquaculture nutritional solutions and equipment and other aquaculture services or devices to produce fish and crustaceans to the Kenya JV and the manufacturing, packaging, distributing, selling, advertising and promoting complete feed and concentrates for livestock to the Uganda JV.
16. In view of the activities of the parties, the CID considered that the complete animal feeds market can be segmented into the supply of complete animal feed and equivalents (equivalents include premixes, macropacks and concentrates).



17. The CID observed that farmed animals require a well-balanced diet comprising protein, energy, vitamins and all nutritionally important minerals for their well-being and in order to enable them to perform at their optimal levels. The required nutritional requirements come from the animal feeds. Further, the complete feed is a quantitative mixture of all dietary ingredients, blended thoroughly to prevent separation and selection, fed as a sole source of nutrients except water and is formulated in a desired proportion to meet the specific nutrient requirements. The concentrate and roughage levels may vary according to the nutrient requirement of ruminants for different production purposes. The complete feed with the use of fibrous crop residue is a noble way to increase the voluntary feed intake and thus an animal's production performance.
18. The CID noted that Pre-mixes refers to a blend of micronutrients that are individually added to pet food in "micro" amounts. Combining these ingredients in a premix simplifies the weighing process and improves accuracy in mixing and distribution of these micronutrients throughout the food. It was noted that premixes and concentrates are designed to provide a balanced contribution to the animal's needs and are usually adapted to each state of age and development of animals. Macropacks include all the added vitamins and minerals, macro ingredients required in the feed of the animal.
19. Feed represents a significant cost in total animal cost. It is estimated that feed represent at least 60% of the costs of rearing livestock.
20. The CID noted that from a demand perspective, an animal farmer can either choose to buy the complete feed from the market for the livestock or choose to make its own feed where the raw materials are easily available. However, compounding of the animal feed may be a difficult process beyond the reach of certain animal farmers, where critical knowledge is required about the appropriate techniques for processing, handling and storage of ingredients with minimum loss of feed quality; accurate weighing of each ingredient, thorough mixing of weighed ingredients and the correct interpretation of each formula is required. Such challenges may therefore limit demand-side substitutability.
21. Based on the activities of the parties, the CID considered the relevant product market as the market for the supply of complete animal feed and equivalents (equivalents include premixes, macropacks and concentrates). The CID noted that there are indications that the relevant market could be further segmented according to the nutritional requirement by type of livestock (e.g. chicken, cattle, fish, etc.). However, it was noted that even under the narrowest market definition, the outcome of the assessment would not be materially altered.

Relevant Geographic Market

22. The CID noted that the respective markets for the supply of complete animal feed and equivalents (equivalents include premixes, macropacks and concentrates) is likely to be national in scope, i.e., the Member States where the activities of the parent companies overlap being Kenya, Rwanda and Uganda. It was considered that on the demand-side, an animal farmer is likely to buy animal feeds from a local source in view of the financial costs and lead time involved in



imports. Animal feed already comprise a significant cost in the livestock production value chain. The costs of importing animal feed from a foreign supplier may also pose impediments to the animal farmer considering the importation costs involved, especially when there are available substitutes nationally in each Member State.

23. The CID noted that from the supply-side, suppliers of animal feed and equivalents are likely to manufacture complete animal feed and equivalents in given Member States where they have operations since this is likely to be cheaper as compared to importation. This notwithstanding, the CID noted the presence of imports of animal feed and equivalents in the relevant markets. The CID noted that Nutreco currently exports complete feed and feed equivalents from Europe and Egypt to Kenya, Rwanda, Uganda and several other countries within the Common Market.
24. The CID further noted that the principal business of the Kenya JV shall be the manufacture, packaging, importation, distribution, sales, advertising and promotion of fish feed, aquaculture nutritional solutions and equipment and other aquaculture services or devices to produce fish and crustaceans in the Common Market. Based on the information gathered, the Commission notes that the market shares of relevant players, including those of importers are fragmented and small.
25. The CID noted that from the supply-side, a 5-10% increase in the price of complete animal feed and equivalent is not likely to be sufficient to immediately incentivize importers to enter the relevant market in anticipation of profits. This is the case since such an importation strategy in response to the 5 - 10% price increase would also have to factor in the transportation and logistical costs involved in the importation.
26. The CID similarly noted that given a 5-10% increase in the prices of animal feed and equivalent in another Member State, it might not be feasible for the respective joint ventures or parent companies to shift their activities and services to the other Member State, without significant investment which may go beyond the reasonable time period of two years. Given that the geographic scope of overlap is Kenya, Rwanda and Uganda, the CID considered that the geographic markets are the respective territories of these Member States where the activities of the parties overlap.

Conclusion of Relevant Market Definition

27. For the purpose of assessing the proposed transaction only, and without prejudice to future cases, the CID identified the relevant market as the market for the supply of complete animal feed and equivalents (equivalents include premises, macropacks and concentrates) in Kenya, Rwanda and Uganda.

Market Shares and Market Concentration

28. The CID noted Unga estimated market shares and market shares of its competitors as presented in Table 2 and 3 below



Table 2 – Unga's estimated Market Shares

Geographic Market	Name of Entity	Sub-category in the relevant Product Market	Estimated Market Shares
Kenya	Unga	Complete animal feeds and equivalents	[18 – 21]%
Rwanda	Unga	Complete animal feeds and equivalents	[10 – 13]%
Uganda	Unga	Complete animal feeds and equivalents	[3 – 6]%

Table 3 – Unga's Competitors and their Market Shares

Geographic Market	Sub-category in the relevant Product Market	Name of Entity	Estimated Market Shares
Kenya	Complete animal feeds and equivalents	Pembe Flour Mills Limited	[8 – 11]%
		Isinya Feeds Limited	[6 – 9]%
		Bideo Africa Limited	[4 – 7]%
		Faida Feeds	[4 – 7]%
		Wonder Feeds Limited	[3 – 6]%
		Nutreco	<2%
Rwanda	Complete animal feeds and equivalents	Prodev (R) Limited	[22 – 25]%
		Trouw Nutrition Africa (Nutreco Africa)	[17 – 20]%
		Gorilla Feeds limited	[9 – 12]%
		Fine Fish (R) Limited	[7 – 10]%
Uganda	Complete animal feeds and equivalents	HMI Rainbow Limited	[17 – 20]%
		Trouw Nutrition Africa (Nutreco)	[7 – 10]%

		Biyinzika Poultry International Limited	[7 - 10]%
		Ugachik Poultry Breeders Uganda Limited	[2 - 5]%

29. The CID also noted that the submission by Nutreco that the volume of the complete animal feeds and equivalents market within the COMESA is approximately 16,864,436 metric tons per annum with a value of approximately USD 6 - 10 billion. Nutreco's estimated its market shares and market shares of its competitors were submitted as presented in Table 4 and 5 below.

Table 4 - Nutreco's estimated Market Shares

Geographic Market	Name of Entity	Sub-category in the relevant Product Market	Estimated Market Shares
Kenya	Nutreco	Complete animal feeds and equivalents	<2%
Rwanda	Nutreco	Complete animal feeds and equivalents	[17 - 20]%
Uganda	Nutreco	Complete animal feeds and equivalents	[7 - 10]%

Table 5 - Nutreco's Competitors and their Market Shares

Geographic Market	Sub-category in the relevant Product Market	Name of Entity	Estimated Market Shares
Kenya	Complete animal feeds and equivalents	Unga	[18 - 21]%
		Pembe Flour Mills Limited	[8 - 11]%
		Isinya Feeds Limited	[6 - 9]%
		Bideo Africa Limited	[4 - 7]%
		Faida Feeds	[4 - 7]%
		Wonder Feeds Limited	[3 - 6]%

Parties submitted that there are many other exports and local companies in Kenya

Rwanda	Complete animal feeds and equivalents	Unga	[10 – 13]%
		Prodev (R) Limited	[22 – 25]%
		Gorilla Feeds limited	[9 – 12]%
		Fine Fish (R) Limited	[7 – 10]%
<i>Parties submitted that there are several other exporters and local companies in Rwanda</i>			
Uganda	Complete animal feeds and equivalents	Unga	[3 – 6]%
		HMH Rainbow Limited	[17 – 20]%
		Biyinzika Poultry International Limited	[7 – 10]%
		Ugachik Poultry Breeders Uganda Limited	[2 – 5]%
<i>Parties submitted that there are many more importers and local producers in Uganda</i>			

30. The CID observed that the estimated combined market shares of the parties in the market for complete animal feeds and equivalents of the parties post transaction will be as follows.

Table 6 – Estimated Combined Market Shares of parties' post transaction

Geographic Market	Sub-category in the relevant Product Market	Estimated Combined Market Shares of parties
Kenya	Complete animal feeds and equivalents	< [20 – 23]%
Rwanda		[27 – 33]%
Uganda		[10 – 16]%

31. In light of the above, the CID considered that the parties are likely to have an estimated market shares of *[20% – 23%]* in Kenya and will be the biggest player on the relevant market. However, the CID noted that the next biggest competitor will have an estimated market share of *[8% – 11%]* and other small competitors are present on the market with market share varying between 6% to 9%. The CID noted that the relevant market in Kenya is characterised by the presence of imports and other local companies engaged in manufacturing of relevant products.



In this respect, the CID concluded that despite the parties having high market shares, the survival of other small players on the market is indicative that the market is competitive.

32. The CID noted that the merged entity's estimated market share in Rwanda will be [30% - 33%]. However, the CID observed that although the post-merger market share may seem to be significant, the merged entity's closest competitor, Prodev (R) Limited, holds a market share of [22% - 23%]. The CID therefore observed that Prodev (R) Ltd is likely to present a competitive constraint to the merged entity. It was considered that the merged entity's ability to increase prices or reduce quality of complete animal feeds and equivalents will be constrained and the parties will hence not have the incentive to do so. Further, the CID noted that while the merged entity holds [30% - 33%] market shares alone in Rwanda, the remaining market players represent 47% and the market is open to other small players. The CID noted that the survival of small players in the relevant market is a proof that the market is open to competition.
33. With respect to the Ugandan market, the CID noted that merged entity will hold an estimated market share of [13% - 16%] while the market leader is HMH Rainbow Limited with a market share of [17 - 20%]. The CID considered that the merged entity will be competitively constrained by HMH Rainbow Limited in the relevant market.
34. In view of the existence of competition in the relevant market, the CID concluded that the transaction will not lead to any significant market share accretion in the relevant market given the small market share of the target undertaking. Further, the transaction is unlikely to raise any competition concerns as the parties are likely to face competitive constraints from its competitors in the respective markets.
35. The CID also observed that barriers to entry in the relevant markets are not prohibitive given the presence of a large number of small players, including importers.

Third Party Views

36. Submissions were received from the national competition authorities of Mauritius, Malawi, Ethiopia and Egypt which did not identify any competition or public interest concern likely to arise from the transaction.

Determination

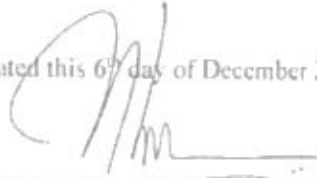
37. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is not likely to frustrate the Treaty² objective of full market integration.



²Treaty refers to the Treaty establishing the Common Market for Eastern and Southern Africa.

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

Dated this 6th 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 Albasan