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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/43/2022

**Decision¹ of the Eighty-Ninth (89th) Committee Responsible for
Initial Determinations Regarding the Proposed Acquisition of
control by OEP Capital Advisors, L.P., USA of Xtech Invest SAS,
France**

ECONOMIC SECTOR: Electronic Manufacturing Services



28 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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 3 October 2022, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the proposed acquisition of control by OEP Capital Advisors, L.P., USA (“**OEP**”) as the acquiring undertaking of Xtech Invest SAS, France (“**Xtech Invest**”) as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations (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

OEP (the acquiring undertaking)

4. OEP is a company registered in accordance with the corporate law of the United States of America. It is a middle-market private equity firm focused on transformative combinations within the industrial, healthcare and technology sectors in North America and Europe.
5. OEP portfolio companies operate in the following COMESA Member States: Comoros, Djibouti, Egypt, Eritrea, eSwatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Xtech Invest (the target undertaking)

6. Xtech Invest is a simplified joint stock company incorporated under the laws of France. It is the sole shareholder of Clayens NP ("**Clayens**"). Clayens and the group of companies it controls (the "**Clayens Group**") are active in the processing of high-performance polymers, composites and precision metal parts used in a number of industries. Within the Common Market, the Clayens Group is active in the wider market for the provision of electronic manufacturing services to original equipment manufacturers in Egypt, Mauritius, and Tunisia.

Jurisdiction of the Commission

7. 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.



8. 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

9. The proposed transaction concerns the acquisition by OEP of sole control over Xtech Invest.

Competitive Assessment

Relevant Markets

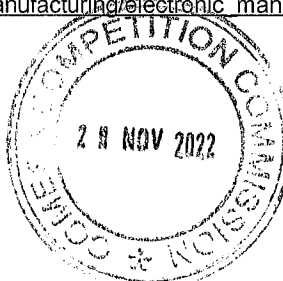
Relevant Product Market

10. The CID noted that the acquiring undertaking, OEP, is a middle-market private equity firm focused on transformative combinations within the industrial, healthcare and technology sectors. The acquirer is also active in the provision of electronic manufacturing services to original equipment manufacturers.
11. The CID noted that the target undertaking is a manufacturer of high-performance polymers, composites and precision metals machining and engineering parts. The target undertaking supplies plastic components for electrical harnesses in the automotive sector in Egypt; plastic components for medical device connectors in Mauritius; and plastic components for internet connection boxes, roller shutter motors and electrical appliances (such as circuit breakers) in Tunisia.
12. In determining the relevant product market, the CID considered the extent to which the products supplied by the target undertaking within the Common Market have any horizontal, vertical or conglomerate relations with the products/services of the acquiring undertaking. The CID noted that both parties are active in the provision of electronic manufacturing services to original equipment manufacturers.

Provision of Electronic Manufacturing services

13. Electronic manufacturing services ("**EMS**") involves the manufacturing and supply of electronic parts and systems used by final electronic product manufacturers or Original Equipment Manufacturers ("**OEM**"). EMS are provided by companies that design, assemble, produce, and test electronic components and printed circuit board assemblies for OEM². EMS include the whole range of services involved in the

²https://www.globalspec.com/learnmore/electrical_electronic_manufacturing/electronic_manufacturing_services_ems, accessed on 29 October 2022.



production of electronics products for OEMs from the design of the product, component selection and procurement, prototyping, product assurance, production, assembly, testing, failure analysis, logistics, distribution and after-sales services.³

14. The CID considered that the EMS market may be segmented based on the application of the components. For instance, components for electronics, telecommunications, computer, medical, and automotive industries are bound to be different and distinguishable from automotive industry components. For instance, telecommunication component products for cellphones may not be applicable on automotive industry products hence not substitutes. In *Celestica/MSL*⁴, the European Commission (the "EC") considered the possible existence of narrower markets for EMS based on different end user sectors, such as communications, IT, consumer electronics, automotive, medical, industrial and avionics.
15. The CID considered that from supply side, companies engaged in electronic manufacturing services are likely to possess the facilities and technical expertise to allow them to easily switch to manufacturing of component parts for difference applications. Therefore, the market may be considered as the broad market for EMS. The CID observed that this assertion may be confirmed and supported by considering the parties activities which range from providing EMS to the OEM in various industries such as consumer electronics, telecommunications, computer, medical, and automotive industries⁵.
16. In *Flextronics/Alcatel*⁶, the EC argued that EMS providers are normally capable of manufacturing, on outsourcing/procurement basis, various types of electronic products for OEMs operating in different end user sectors. The EC considered that all EMS providers seem to have the capability to switch their production, as required, according to orders received from time to time from OEMs. The EC particularly noted that the fixed assets, manufacturing personnel and the process required to manufacture such products can easily be shifted over and/or modified to manufacture any of the various electronic products required for different companies operating in the various end user sectors.
17. In view of the above, the CID considered construed the provision of EMS to Original Equipment Manufacturers as the relevant product market.

Relevant Geographic Market

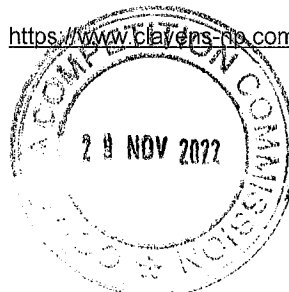
18. The CID observed that electronic manufacturing parts are sourced from global EMS providers who have manufacturing facilities and supply networks around the world. The CID further noted that the target, and to a limited extent the acquirer, exports its

³ See Case No COMP/M.4766 - Flextronics/Soletron.

⁴ Case No COMP/M.3316 - Celestica/MSL.

⁵ See at <https://www.clayens-np.com/en/implantation/np-tunisia>, and <https://www.clayens-np.com/en>, accessed on 30 October 2022.

⁶ See Case No COMP/M.2479 - Flextronics/Alcatel



electronic manufacturing component parts to its global customers, including in Egypt and Mauritius in the Common Market. The target also has a manufacturing facility/factory in Tunisia from where it manufactures plastic components for internet connection boxes, roller shutter motors and electrical appliances (circuit breakers, etc.) for export to the global market.

19. The CID considered that the geographic scope for the EMS is likely to be global in scope given the global presence of manufacturers and customers alike. The CID noted that the top EMS providers such as Solectron, Flextronics operate globally with factories and supply networks around the world. Therefore, the CID considered that competition in this market takes place on a global scale to the extent that customers can source supplies of EMS products beyond the national boundaries of one country. The geographic scope of the market is therefore likely to be global.
20. The CID noted that in *Flextronics/Alcatel*⁷, the EC considered geographic scope of EMS to be wide than national and defined it as at least EEA-wide, given the low transport costs, low customs duties and the increased level of sourcing from various countries around the globe.
21. In light of the above, the CID determined the geographic scope of view of **the provision of EMS to Original Equipment Manufacturers as global.**

Market Shares and Concentration

22. The CID noted that the target undertaking's activities in each of the COMESA Member States in which it operates are the following:
 - i) Egypt – the target undertaking generates turnover the supply of plastic components for electrical harnesses in the automotive sector from Egypt. The target estimates that it has a market share of between [0 – 5]% in Egypt.
 - ii) Mauritius - The target undertaking generates turnover through the supply of plastic components for medical device connectors. The target undertaking's activities in Mauritius are highly limited and it is unable to provide any reliable market share estimates.
 - iii) Tunisia – the target undertaking has a physical presence in Tunisia through Societe NP Tunisia. Societe NP Tunisia supplies plastic components for internet connection boxes, roller shutter motors and electrical appliances (circuit breakers, etc.) Societe NP Tunisia has a market share of between [0 – 5]% in Tunisia.
23. The CID noted that the major global players in the electronic manufacturing services market include: Foxconn, Wistron, Flex, Benchmark Electronics, Creation; Technologies, Flextronics International, Integrated Microelectronics, Inc., Jabil Circuit,

⁷ Ibid



Inc., Key Tronic EMS, Celestica, Kimball Electronics, Inc., Plexus Corp, ESCATEC, Sanmina Corporation, Sparton Corporation, Foxconn, Venture Corporation Limited⁸.

24. The CID observed that increasing rivalry in the EMS industry has prompted enterprises to adopt many technology transformations, including augmented reality, the Internet of Things (IoT), and 3D printing, to increase their manufacturing capacity⁹. The CID also observed that many global corporations have established presence in the Common Market and pose competitive pressures on merging parties and local players.
25. The CID noted that the merging parties do not have overlapping activities within the Common Market and the target is currently subject to significant competitive pressure from a wide range of larger global players, most of which are active globally including in the Common Market as well as in the specific Member.
26. The CID noted that entry requirements such as capital and skilled/trained employees requirement; time lags related with production phases and getting the required inputs may constrain the number of new EMS entering the market and the swiftness of such entry in the electronic manufacturing services market. However, despite the existence of these barriers, The CID observed that the electronic manufacturing services market is characterised by many established global players that have presence within the Common Market hence entry is not likely to be significantly limited.
27. The CID observed that the relevant market is likely to be characterised by countervailing power since most customers are sophisticated entities with experience in the sector and detailed knowledge of the relevant products. Further, the CID considered that the presence of other global players is likely to offer alternative supply to the relevant products.
28. Having regard to the foregoing, the CID considered that the transaction would not lead to any change in the existing market structure for the electronic manufacturing services particularly in Egypt, Mauritius, and Tunisia where the target has operations.

Consideration of Public Interests

29. 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.

⁸ <https://www.adroitmarketresearch.com/industry-reports/electronic-manufacturing-services-market>, accessed on 31 October 2022.

⁹ <https://www.maximizemarketresearch.com/market-report/global-electronic-manufacturing-services-market/112137/>, accessed on 31 October 2022.



Consideration of Third-Party Views

30. Submissions were received from national competition authorities of Egypt, Kenya, Mauritius and Seychelles 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

31. 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.
32. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Decision of the 89th CID in the matter regarding the Proposed Acquisition of control by OEP Capital Advisors, L.P., USA of Xtech Invest SAS, France issued on 28 November 2022 by:

- 1. Commissioner Dr Mahmoud Momtaz (Chairperson)**
- 2. Commissioner Lloyds Vincent Nkhoma**
- 3. Commissioner Islam Tagelsir Ahmed Alhasan**

