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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/11/49/2022

**Decision¹ of the Ninety-First (91st) Committee Responsible for
Initial Determinations Regarding the Proposed Acquisition of
Solevo Holding B.V. and its subsidiaries by Development
Partners International LLP**

ECONOMIC SECTOR: Agriculture



10 February 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 13 December 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed acquisition of Solevo Holding B.V. ("**Solevo**") and its subsidiaries (the "**Solevo Group**") by Development Partners International LLP ("**DPI**"), pursuant to Article 24(1) of 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

DPI (the acquiring firm)

4. DPI is a limited liability partnership registered in England and Wales. DPI is a specialist investment group in Africa and invests primarily in fast-growing companies operating in growth sectors, with a focus on generating a positive and sustainable impact on the economy, employment and environment across the African continent.
5. DPI's investment portfolio consists of companies active in a wide range of economic sectors namely: financial services, mobile solutions for financial services (fintech), pharmaceuticals, agro-processing, food services, facilities management services, education, logistics, bedding, packaging, consumer goods sales on credit, irrigation systems and solutions, and building materials.
6. Within the Common Market, DPI operates in Burundi, Comoros, the Democratic Republic of Congo, Egypt, Kenya, Libya, Malawi, Mauritius, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Solevo (the target firm)

7. Solevo is a private company with limited liability registered in the Netherlands. The Solevo Group is a distributor of chemicals and inputs for specific agricultural segments across a number of African markets mainly in Angola, Ivory Coast, Cameroon, Burkina Faso, Mali, Senegal and Madagascar.
8. Solevo operates in Madagascar through Solevo Madagascar, a company incorporated and registered in Madagascar which is active in the distribution of crop protection products, plant nutrition fertilisers, and seeds.

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 COM\$ 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 COM\$ 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 annual asset value in the Common Market exceeds the threshold of USD 50 million and each of at least two of the parties hold turnover or 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 turnover or 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

11. The proposed transaction concerns the acquisition of control over Solevo and its subsidiaries (the "**Solevo Group**") by DPI through its two investment funds, African Development Partners III L.P. and African Development Partners III Mauritius L.P.

Competition Assessment

Relevant Product Market

12. The acquiring firm is an investment portfolio company with entities active in a range of economic sectors such as financial services; mobile solutions for financial services (fintech); pharmaceuticals; agro processing; food services; facilities management services; education; logistics; bedding; packaging; consumer goods sales on credit; irrigation systems and solutions; and building materials. Within COMESA, the acquirer's investment portfolio companies are active in the manufacture of water supply and drainage solutions; corrugated cardboard packaging; facilities management solutions; food and grocery retail chain; specialty generic business focused on emerging markets; provision of consumer finance and microfinance; tomato processing and agri-business.
13. The target is active in the distribution of crop protection products (fungicides and insecticides); plant nutrition fertilisers; and seeds only in Madagascar.
14. The CID noted that the parties' activities are not similar hence horizontal overlapping effects are unlikely to result from the merger. The CID also noted that the parties' activities are not vertically related. Further, the CID observed that the parties' activities do not portray any functional relationships given that they are involved in totally unrelated business activities.
15. In its consideration of the relevant product market, the CID focused on the activities of the target undertaking since any changes in the structure of the market were likely to be felt in the markets where the target operates.

Distribution of crop protection products

16. Crop protection is the practice of protecting agricultural crops from damage caused by pests, weeds, or plant diseases thereby promoting crop productivity. The various crop protection products (insecticides, herbicides, fungicides) are intended to prevent specific and unique damage to agricultural crops. For instance, herbicides are applied



on crop fields to prevent the growth of unwanted plants such as weeds; insecticides are used to specifically target and kill insects while fungicides are meant to prevent damage of crops from diseases caused by fungi.

17. The various crop protection products can be segmented into narrower markets on account of intended use. The CID observed that while insecticides, herbicides and fungicides are generally considered as crop protection products – each product is unique and not substitutable with the other products. A farmer who is facing an infestation of insects in their field is not likely to apply a fungicide or herbicide to kill such insects but rather an insecticide. Similarly, the CID observed that herbicides are more suited to remove weeds from a crop field as opposed to a fungicide or insecticide. Thus, given a small but significant non-transitory increase in the price of an insecticide, it is unlikely for a farmer to switch to the purchase pesticides or fungicides in order to deal with an infestation of insects in a crop field.
18. The CID concluded that from a demand perspective, and based on the product characteristics and intended use, substitution is unlikely to occur among the various crop production products. The CID recalled its decisional practice in *GAP/Zaad*² where narrow markets under crop protection products were considered namely insecticides, fungicides and herbicides.
19. The CID observed that a further segmentation may be considered based on crop type or the type of disease. However, the CID did not undertake a further segmentation of the market given that the transaction was unlikely to affect the market structure.
20. **In view of the foregoing, the CID considered the relevant market as the distribution of insecticides and fungicides.**

Distribution of fertilisers

21. Fertilizers are intended to improve the soil nutrients that directly affect plant growth. Fertilisers are available in synthetic/mineral or organic/natural form, with the major difference being the production process that each undergoes. Synthetic fertilisers are made from an industrial process that produces fertilisers containing one or more of the following key nutrients required for plant growth, in measured quantities: nitrogen (N), phosphorous (P) and potassium (K). To the contrary, organic fertilisers are basically manure made from animal or plant products containing a significant quantity of one or more of the primary nutrients for plant growth but the nutrients are not in specific measured quantities i.e., the amounts of each of the nutrients may be higher or lower depending on how the organic manure was made. Despite both types having the potential to improve plant growth, differences can be drawn on the grounds of synthetic fertilisers being more suited to target a specific plant nutrient deficiency as opposed to organic fertilisers.

² GAP/Zaad - Case No MER/08/33/2019, decision dated 20 February 2019



22. The CID recalled its decisional practice³ where synthetic/mineral and organic fertilisers were distinguished into separate markets based on, *inter alia*, the different production processes and the precise nutrient content contained in mineral fertilisers as opposed to organic fertilisers. The CID noted that in the current transaction, the target undertaking is only active in the distribution of mineral fertilisers. Therefore, the CID limited its consideration of the relevant product market to the distribution of mineral fertilisers.
23. The CID observed that the market for mineral fertilizers can be narrowed according to the specific type of plant nutrient contained in the fertilisers such as straight Nitrogen, straight Phosphorous, and straight Potassium or in a complex form which may contain any combination of N, P and K. The CID noted that this approach of delineating the market according to the nutrient content has also been adopted by other jurisdictions such as the European Commission (EC)⁴.
24. The CID recalled that the target undertaking is active in the distribution of mineral agricultural fertilisers, particularly NPK for rice and NPK for potato. The CID observed that this suggests that the target distributes mineral fertilisers particularly compound fertilisers comprising the three key nutrients, N, P and K which are meant specifically for rice and potato. Therefore, the CID observed that the market may further be narrowed by crop type. Whilst the CID observed that narrower markets could exist, it did not undertake to delineate the market further given that this was not likely to alter the competitive assessment of the transaction.
25. **In view of the above, the CID considered the distribution of Nitrogen, phosphate and potassium-based fertilisers as a relevant market.**

Distribution of seeds

26. The CID noted that the target undertaking imports and distributes a limited variety of vegetable seeds (onion, cabbage and carrots) within Madagascar. Further, the target does not supply or distribute corn or other broad acre seeds. The CID recalled that in its previous decisional practice, the market for the distribution of seeds was considered as a distinct market. In *ETG/GEPP*⁵, the CID further considered that the various types of seeds are not mutually substitutable and can be held to constitute separate narrower markets within the broad market for seeds. The CID observed that each seed type can constitute a market according to its use or characteristics. The CID observed that vegetable seeds can further be segmented by type of vegetable such as carrots, onion, or cabbage).

³ See case No. MER/12/33/2021, the proposed acquisition of Curechem Zambia Limited and Curechem Overseas (Private) Limited by ETG Inputs Zambia Ltd and ETG Inputs Zimbabwe (Private) Ltd

⁴ See EC Case No COMP/M.4730 - YARA/KEMIRA GROWHOW, paragraph 11, decision dated 21/09/2007, https://ec.europa.eu/competition/mergers/cases/decisions/m4730_20070921_20212_en.pdf

⁵ See <http://www.comesacompetition.org/wp-content/uploads/2014/10/CID-Decision-in-the-merger-involving-GEPP-and-ETG-1.pdf>



27. The CID observed that a further delineation of the market should be justified by a need to assess any likely competition concerns that may arise from the merger transaction. The CID further observed the market structure for the distribution of seeds was not likely to be affected by the transaction. Therefore, the CID undertook not to delineate the market further since the competitive assessment was not likely to be altered under narrower markets. **Therefore, the CID considered the market for the distribution of seeds as a relevant market.**

Relevant Geographic Market

28. The CID noted that the crop production products distributed by the target in Madagascar are predominantly imported in ready to use form. Approximately 80% of the products are sold directly via distribution channels to retailers and 20% is sold directly to customers via tenders. The CID considered that the competitive constraints faced by the target undertaking in the market for the distribution of insecticides and fungicides are likely to include imports by other players into Madagascar. The CID observed that the geographic scope for the distribution of insecticides and fungicides may be broader than Madagascar. Further, the CID recalled its previous decisional practice where the relevant geographic market for the distribution of agro-chemicals such as insecticides and fungicides was considered as COMESA-wide⁶. In the current transaction the CID noted that while the market for the distribution of insecticides and fungicides can be broadened to COMESA-wide, the competitive assessment was unlikely to be altered under any alternative geographic scope of the market. **Therefore, the CID resorted to leave the geographic scope for the distribution of insecticides and fungicides open.**
29. With regard to the distribution of nitrogen, phosphate and potassium-based fertilisers, the CID acknowledged that the geographic scope of the market is likely to be broader than national. The CID observed that Solevo imports majority of its fertilisers from China or Vietnam for distribution in Madagascar through distribution channels with limited direct sales through tenders. The CID considered that the geographic market may be broader than Madagascar and COMESA since the products originate from outside the Common Market. Further, the CID observed that the market for fertilisers is characterised by global producers whose products are supplied globally including the Common Market. This notwithstanding, the CID observed that the competition assessment was unlikely to be altered under any alternative geographic scope of the market. Therefore, the CID left the market for the **distribution of nitrogen, phosphate and potassium-based fertilisers open.**
30. With regard to the distribution of seeds, the CID observed that seeds may be easily traded within the Common Market under the COMESA Seed Harmonization Implementation Plan that seeks to facilitate the trade of seeds in COMESA.

⁶ See Case No. MER/12/33/2021, the proposed acquisition of Curechem Zambia Limited and Curechem Overseas (Private) Limited by ETG Inputs Zambia Ltd and ETG Inputs Zimbabwe (Private) Ltd



Notwithstanding, the CID also observed that Madagascar may present a unique environment as an island nation which may limit the adaptability of seeds grown beyond Madagascar thus narrowing the scope of the geographic market to Madagascar. **However, the CID undertook to leave the geographic scope for the distribution of seed open given that the transaction was not likely to change the market structure under any alternative geographic markets.**

Market Shares and Concentration

31. The CID noted that the proposed transaction will not result in a change in the market structure in the identified relevant markets given that the parties do not offer competing products. Therefore, the CID observed that there will be no accretion of market shares by virtue of the transaction. The CID considered that a further examination of the market shares for the identified relevant markets was not warranted given that the market share will remain unchanged post-merger.
32. The CID noted that barriers to entry in the relevant markets may include routine registrations and licensing to distribute. The CID reached the view that the entry barriers were not likely to be prohibitive and this is evidenced by the numerous players in the relevant markets with fragmented market shares.
33. The CID considered that the transaction was not likely to lead to competition concerns resulting from an increase in the market shares of the parties in the relevant markets.

Consideration of Third-Party Views

34. Submissions were received from the national competition authorities of Egypt, Kenya, Madagascar, Mauritius and Zimbabwe 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. The CID, therefore, approved this transaction.
36. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 10th day of February 2023

Commissioner Mahmoud Momtaz (Chairperson)



Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

