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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/1/2/2023

Decision[1] of the Ninety-Fifth (95th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of control by GIAP Western Portfolio Limited of each of ALP One Ltd, ALP North TWO Mauritius Ltd, and ALP North THREE Mauritius Ltd.

ECONOMIC SECTOR: Real Estate

26 JUN 2023

26 June 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 7 March 2023, the Commission received a notification for approval of a merger involving GIAP Western Portfolio Limited ("**GIAP**" or the "**acquiring undertaking**") and ALP One Ltd, ALP North TWO Mauritius Ltd and ALP North THREE Mauritius Ltd ("**ALP One**", "**ALP North TWO**", and "**ALP North THREE**" or the "**target undertakings**"), 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

GIAP (the "Acquiring Undertaking")

4. GIAP Western Portfolio Limited ("**GIAP**") is a company incorporated under the laws of the Republic of Mauritius. GIAP is a holding company whose indirect operating subsidiaries hold a diverse portfolio of prime commercial real estate outside the Common Market. GIAP and all entities managed by or under the control of its parent company, Lango Real Estate Limited ("**Lango**"), are together referred to as the "**Acquiring Group**". Lango is a company limited by shares, incorporated under the laws of Mauritius.

5. The Acquiring Group is a real estate investment company focused on generating compelling and sustainable investor returns through the acquisition of prime commercial real estate assets in key gateway cities across Africa. The Acquiring Group, through its portfolio companies, is active in Mauritius and Zambia within the Common Market. Further, GIAP's operations in Mauritius are limited to activities of a holding company for the Acquiring Group's various operations across various other African countries outside the Common Market.

6. The Acquiring Group operates in Zambia through its wholly owned subsidiary, Manda Hill Centre Limited. Manda Hill Centre Limited's operations in Zambia are entirely comprised of its ownership of the Manda Hill Shopping Centre in Lusaka, which provides commercial assets, specifically, rentable retail and office properties/spaces.

ALP One, ALP North TWO, and ALP North THREE (the "target undertakings")

7. The Target Undertakings are holding companies registered in Mauritius. Each of the Target Undertakings is controlled by Africa Logistics Properties Holdings Ltd, a company also registered in Mauritius.

8. ALP One, ALP North TWO and ALP North THREE operate in Kenya through their respective subsidiaries, namely ALP North Limited, ALP North Two Limited (Kenya), and ALP North Three Limited (Kenya) which are also registered in Kenya and operate in the Tatu Industrial Park in Nairobi, Kenya. The Tatu Industrial Park is the largest new private light industrial zone in East Africa, with more than 70 companies operational or under development, located in Kiambu County, Kenya[2].

9. Each of the Target Undertakings is a holding company performing holding company functions only. The Target Undertakings, through their respective operating subsidiaries in Kenya, operate a logistics and distribution park north of Nairobi, comprising of three parcels of land. Each parcel of land has leasable logistics park or a warehouse, held separately by each Target Undertaking through its respective Kenyan operating subsidiary.

[2] https://www.tatucity.com/now-selling/tatu-industrial-park/,accessed on 14 March 2023.

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 the parties derived 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 notified transaction involves GIAP acquiring the entire issued share capital of each of ALP One, ALP North TWO and ALP North THREE.

Competitive Assessment

Consideration of the Relevant Markets

Relevant Product Market

13. The CID noted that the Acquiring Group operates in Zambia through Manda Hill Centre Limited which owns the Manda Hill Shopping Centre in Lusaka where it provides rentable retail and office space. The Acquiring Group is present in Mauritius as a holding company for various operations in the Common Market and other African countries outside the Common Market.

14. The CID noted that the target undertakings, through their respective operating subsidiaries in Kenya, provide rentable commercial industrial warehousing space. Each target undertaking has a leasable industrial park or modern warehouse property with office & ablution facilities, held separately through its respective operating subsidiary in Kenya.

15. The CID observed that based on the activities of the parties, the merger has features of a horizontal merger given that the merging parties are both active in the broader real estate property market. Therefore, the CID focused is assessment of relevant product market on provision of rentable real estate properties.

Provision of rentable real estate properties

16. The CID observed that the real estate market can be segmented into residential and commercial properties, based on the nature of the properties, and intended purpose. "*...any property that can be used explicitly for business purposes can be termed as commercial real estate while any property that is created solely for the purpose of living is termed residential real estate...the major difference between residential real estate and commercial real estate lies in the way they are rented/leased, along with the legalities involved with the same...*"[3].

17. Residential real estate properties are limited largely to either homeowners or renters who use the properties as living space while commercial real estate properties are an investment property used by different entities for different business activities. Commercial real estate includes all non-residential real estate used exclusively for business, commerce, and industry[4].

18. The CID considered that residential properties and commercial properties can therefore be categorised as separate market segments given the nature and intended purpose for the properties.

19. The CID noted that the merging parties were only active in the commercial real estate property segment, hence, it limited its assessment to the provision of commercial real estate properties. The CID considered that there exist distinct products offered to different customers under the commercial real estate property segment, namely retail, office, and industrial properties[5]. The CID observed that the acquirer is active in leasing space in real estate properties for retail and office whose core purpose is to cater for offices and retail outlets meant for the buying/selling of grocery items. On the other hand, the target undertakings lease industrial warehouse properties to their customers which are meant for bulk storage of various goods. The CID considered that these market segments were different.

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[3] https://www.forbes.com/advisor/in/investing/commercial-vs-residential-real-estate-investing/, accessed on 3 March 2023.
[4] https://www.lee-associates.com/orange/aspects-of-commercial-real-estate/, accessed on 22 February 2023.
[5] https://www.forbes.com/advisor/in/investing/commercial-vs-residential-real-estate-investing/, accessed on 3 March 2023.

20. From a demand perspective, the properties are sufficiently differentiated to fulfil the needs and client requirements in each product sub-segment. Thus, retail properties cannot be comparable to industrial warehouse properties due to their distinct functionalities. Retail properties[6] are used to market and sell consumer goods and services which require the property to have sufficient parking space more than required by their employees. On the other hand, industrial warehouse properties are used primarily to store inventories and they incorporate distribution warehouses, general warehouses, and truck terminals.

21. The CID also noted that a legal distinction can be drawn across jurisdictions within the Common Market. The CID noted that under the Warehouse Receipt System Act No.8 of 2019 of Kenya a 'warehouse' is defined as, *"a licensed building or other protected enclosure in which goods are stored for the purpose of safekeeping, issuance of warehouse receipts or license and includes field warehouses and a plant or other facility where the goods are packed, processed, or otherwise transformed".*[7] On the other hand, Office properties[8] are rentable real estate spaces that are equipped to provide tenants with space for, *inter alia*, cubicles, conference rooms, a reception area, etc.

22. From the supply perspective, rentable real estate properties and office properties are usually located around main city centres that have access to intensive interactions with the wider public while industrial warehouse properties are commonly located outside of residential or urban areas. As the primary function of these real estate properties differs, there are normally zoning or clustering regulations that must be followed. For instance, the target undertakings are located within the Tatu City Industrial zone[9], in North of Nairobi. The CID noted that the real estate sector is governed by zoning and safety regulations, town planning and building characteristics which differ across sectors[10]. Commercial zoning ordinances regulate commercial structures such as apartment buildings, shopping centers, office parks, and industrial facilities. The CID observed that Zoning entails '*a regulation that defines land in a specific geographic location which can be developed and used*'[11]. For instance, a warehouse operator shall apply to the respective county executive committee member for a license to operate within the Warehouse Receipt System[12].

23. The CID considered that due to the nature of real estate, the significant redesigning costs involved, location, and existing distinctive requirements, it is highly unlikely that the target undertakings can swiftly switch their warehouse properties into retail or office properties

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[6]https://www.hi-reit.com/retail-space-vs-office-space/, accessed on 22 February 2023.
[7]https://www.the-star.co.ke/business/kenya/2021-10-11-grade-a-warehousing-boosts-tenants-operations-in-kenya--report/, accessed on 27 February 2023.
[8] https://learn.g2.com/what-is-commercial-real-estate, accessed on 22 February 2023.
[9]https://africawarehouses.com/wp-content/uploads/2023/01/ALP_ALP-North_Brochure_2022_WEB-OCT.pdf, accessed on 23 February 2023.
[10] See para 13, Grit Real Estate Income Group Limited and Stellar Warehousing and Logistics Limited, decision dated 31 May 2022.
[11] http://kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=No.%2013%20of%202019, accessed on 14 March 2023.
[12] See Article 17(1), part III of Warehouse Receipt System Act_No._8 of 2019 of Kenya. Available online at http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%208%20of%202019#:~:text=%22warehouse%20receipt%20system%22%20means%20part,includes%2C%20but%20is%20not%20limited, accessed on 27 February 2023.

in response to a small but significant non-transitory increase in the rental price for retail or office properties.

24. In view of the above, the CID considered that the relevant market can be narrower than the provision of rentable real estate properties since each segment presents unique features that would limit substitution. Therefore, the markets for the provision of industrial warehousing properties, the provision of rentable retail properties and provision of rentable office properties are construed as distinct product markets. However, since the target undertakings are active only in the warehouse property segment, the CID considered this as the relevant market segment for purposes of conducting a competitive assessment of this transaction. The CID presumed that any changes in the market structure including any competitive effects are more likely to be felt in this market where the target undertakings are active.

25. The CID noted that a further segmentation of the industrial warehouse property market segment was possible according to the quality of the facilities (i.e., Grades A, B and C), location, and space[13]. For example, some of the key specifications of each warehousing grade (A, B and C), although other distinctions exist, includes that each has load-bearing capacity (tones per sqm) of 5, 3, and 2, respectively[14].

26. The above notwithstanding, the CID considered not to segment the market further given that the acquirer is not active in the industrial warehouse property market within the Common Market. The CID considered that a further narrowing of the market was not necessary as any alternative market definition would not alter the competitive assessment with respect to the industrial warehouse property.

27. Based on the foregoing assessment and without prejudice to the approach in similar future cases, the relevant product market was construed as **the provision of rentable industrial warehousing properties.**

Relevant Geographic Market

28. The CID noted that the target undertakings' industrial warehouse properties are in Tatu Industrial Zones, North of Nairobi's Central Business District[15], where most industrial zones are domiciled in Nairobi, Kenya. The CID observed that in real estate property markets, competition is localized, due to the geographic location of the asset. Thus, location of the property is an important consideration when determining substitutability of competing properties since location is very often linked to the profitability, target market and the products or services to be rendered to customers[16].

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[13]https://www.the-star.co.ke/business/kenya/2021-10-11-grade-a-warehousing-boosts-tenants-operations-in-kenya--report/, accessed on 28 February 2023.
[14]https://assets.bii.co.uk/wp-content/uploads/2021/08/14160939/Whats-the-impact-of-investing-in-warehousing-in-Kenya_September-2021.pdf, accessed on 28 February 2023.
[15] https://africawarehouses.com/our-locations/alp-north/, accessed on 22 February 2023.
[16] See para 17, Grit Real Estate Income Group Limited and Stellar Warehousing and Logistics Limited, CID decision dated 31 May 2022.

29. The CID noted that from the demand side, investors will seek out industrial properties in specific regions where important facilities such as airports or ports are located and will face competition from properties typically located within a limited radius. The CID noted that the target undertakings' customers are likely to benefit from the site since it has close access to both the Thika Superhighway and Eastern Bypass[17]. The CID also noted that with the localized nature of the real estate market, customers would not consider the services supplied in the Common Market by the merging parties as reasonably interchangeable or substitutable.

30. From the supplier perspective, industrial warehouse properties are fixed assets which are immovable by their nature and this limits switching to different areas in response to a small but significant increase in rentals without incurring significant costs and risks.

31. In view of the above and having consideration to the areas where the parties' properties are located, the CID considered the relevant geographic market as **the market for the provision of industrial warehouse properties in Nairobi, Kenya**.

Conclusion of Relevant Market Definition

32. For the purpose of assessing the proposed transaction, and without prejudice to the approach in future similar cases, the CID identified the relevant market as **the market for the provision of rentable industrial warehouse properties in Nairobi, Kenya**.

Market Shares and Concentration

33. The CID noted that the transaction is not likely to result in a change in the market structure given the absence of a horizontal overlaps between the activities of the parties. The CID observed that only the target undertakings provide rentable industrial warehouse properties in Nairobi, Kenya, but the acquirer does not have any operations in Kenya.

34. The CID observed that the relevant market will remain competitive, post-merger, given the presence of alternative providers of industrial warehousing property space. The CID noted that the target undertakings are located in the vicinity of other players providing similar services. For instance, some of the competitors include the Improvon Group, private equity fund Actis[18] and Nairobi Gate Industrial Park.

35. The CID also noted the parties' estimated market shares and the market shares for their competitors in Nairobi, Kenya as follows:

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[17] *Ibid.*
[18] https://content.knightfrank.com/research/1487/documents/en/kenya-market-update-2nd-half-2018-6170.pdf, accessed on 2 March 2023.

Table 1: Estimated Market Shares in the provision of industrial warehouse properties, Nairobi, Kenya[19]

Name of Company	Product/Service	Estimated Market Share (%)
Improvon/Actis	Warehouse developer	[8–11]%
Target Undertakings	***Warehouse developer***	***[5–8]%***
Purple Dot	Warehouse developer	[4–7]%
GRIT	Warehouse developer & Real estate investment trusts (REIT)	[<4]%
Mitchell Cotts	Warehouse developer	[<3]%
others	Warehouse developer	[<75]%
Total	-	**100**

36. The CID noted that the industrial warehouse property market is fragmented with several players that closely compete with the target undertakings such as Improvon/Actis and Purple Dot which hold [8–9] % and [4–7]%, respectively. The CID noted that post-merger, the market share of the target undertakings will remain the same given the absence of a horizontal overlap in the activities of the parties. The CID further noted that the CR3 for the industrial warehouse properties pre- and post-merger will be at 20%. Therefore, the CID considered that the relevant market was not concentrated and was competitive.

37. In view of the above, the CID considered that the transaction was not likely to negatively affect competition in the market for the provision of industrial warehouse properties in Nairobi, Kenya.

Consideration of Third-Party Views

38. Submissions were received from the national competition authorities of Kenya, Mauritius 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

39. 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.

[19] Information claimed as confidential by the merging parties.

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

Dated this 26th day of June 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan