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**Common Market for
Eastern and Southern Africa**

Case No. CCC/MER/06/22/2018

**Decision¹ of the Forty-Sixth Committee Responsible for Initial
Determination on the Application for Authorisation of the Merger
Involving Catalyst Mattress Africa Ltd and Mammoth Foam
Africa**

ECONOMIC SECTOR: Manufacturing

5th October 2018 – Johannesburg, South Africa

¹ In the published version of this decision, some information may have 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 5th June 2018, the COMESA Competition Commission (hereinafter referred to as the “Commission”) received an application for authorisation of a merger between Catalyst Mattress Africa Ltd (“**CMA**”), Mammoth Foam Africa (“**Mammoth**”), Super Foam Limited (“**Super Foam**”), Euroflex Limited (“**Euroflex**”), and Vitafoam (A) Limited (“**Vitafoam**”).
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (hereinafter referred to as the “Regulations”). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed 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. The Committee Responsible for Initial Determination (hereinafter referred to as the “CID”) established that the parties operated in more than one COMESA Member State. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations was satisfied and asserted jurisdiction on the Commission to assess the transaction.

The Parties

CMA

4. The parties submitted that CMA was a newly created entity for the purpose of making the investment in the proposed transaction. CMA is a limited liability GBC1² company incorporated under the laws of Mauritius. CMA was owned indirectly by Catalyst Fund II LLP, a private equity fund that has investments in East Africa. The parties further submitted that the Catalyst Fund group has operations in the following countries in the Common Market: Ethiopia, Kenya, Rwanda, Uganda, and Zambia.

Mammoth

5. The parties submitted that Mammoth was a newly created entity for the purpose of making the investment in the proposed transaction. Mammoth

² A Mauritius GBC-1 is a corporation registered through the Mauritius Registrar of Companies and regulated by the Financial Services Commission to hold a Category 1 Global Business Licence that enables the company to carry out business activities outside the country.

was a limited liability GBC1 company incorporated and existing under the laws of Mauritius. Mammoth had no activities in the Common Market.

Super Foam

6. The parties submitted that Super Foam was a private limited liability company incorporated in Kenya involved in the manufacture of foam mattresses in Kenya.

Euroflex

7. The parties submitted that Euroflex was a private limited liability company incorporated in Uganda and involved in the manufacture of foam mattresses and spring mattresses.

Vitafoam

8. The parties have submitted that Vitafoam is a limited liability company incorporated in Malawi and is involved in the manufacture of foam mattresses in Malawi.

Nature of the Transaction

9. The parties submitted that the notified transaction entailed the amalgamation of three entities (Super Foam, Euroflex, and Vitafoam) under a holding company, Mammoth. Mammoth will subscribe for shares equivalent to a 99% equity interest in Euroflex, a 99.9% equity interest in Vitafoam, and will acquire 100% of the issued share capital in Super Foam. Thereafter CMA will acquire 78.65% of the shares in Mammoth. Avuma will acquire 14.42% of the shares in Mammoth, and the remaining 6.93% shares will be issued to Foamex Holdings (a holding company in Mauritius and which has no activities in the Common Market).

Competition Analysis

10. The CID defined the relevant markets as the national market for the supply of foam mattresses in Malawi, Uganda, and Kenya.
11. The CID observed that there were no horizontal overlaps in the activities of the merging parties pre-merger and thus the merger would not lead to any accretion of market shares in the relevant markets.

Determination

12. The CID determined that the merger was not likely to appreciably lessen competition in the Common Market and was compatible with the COMESA Treaty objective of full market integration. The CID therefore ratified the authorisation issued by the Director of the Commission on 2nd July 2018.
13. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5th of October 2018



Commissioner Patrick O. Okilangole
(Chairperson)



Commissioner Brian M. Lingela
(Member)



Commissioner Thembelihle P. Dube
(Member)