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Common Market for Eastern and Southern Africa

**Case File No. CCC/MER/12/31/2021**

# Decision[1] of the Eighty-First (82nd) Committee Responsible for Initial Determination Regarding the Proposed Merger involving DAWAA'A Restricted Ltd and Pharma Strategy Partners GmbH

**ECONOMIC SECTOR**: Pharmaceutical

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

## Introduction and Relevant Background

1. On 10th January 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving DAWAA'A Restricted Ltd ("**DAWAA'A**") as the acquiring undertaking and Pharma Strategy Partners GmbH ("**Pharma Strategy**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (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

***DAWAA'A (the Acquiring undertaking)***

4. DAWAA'A is a company incorporated in the Abu Dhabi Global Market, which is an international financial centre and free zone market located in Abu Dhabi, United Arab Emirates ("**UAE**"). It is a special purpose company for professional investment institution. DAWAA'A has its principal business address at 3408, 34th Floor, Al Maqam Tower, Abu Dhabi Global Market, Al Maryah Island, Abu Dhabi, UAE.

5. DAWAA'A is ultimately controlled by Abu Dhabi Developmental Holding Company PJSC ("**ADQ**"). ADQ is incorporated in accordance with the laws of Abu Dhabi, with its registered address at Capital Gate Building, 10th floor, Khaleej Al Arabi, Abu Dhabi, UAE. ADQ is a holding company with direct and indirect investments in several sectors. DAWAA'A forms part of the ADQ group which comprises of a number of diverse companies. ADQ controls the following companies in the pharmaceutical sector (which is the sector in which the target is active):

   a) Amoun Pharmaceutical Co. S.A.E ("**Amoun**"), an Egyptian pharmaceutical player involved in the development, manufacturing, marketing, and distribution of a range of human pharmaceutical and animal health products; and

   b) Pharmax Pharmaceutical ("**Pharmax**"), a UAE-based pharmaceutical company that manufactures and markets branded generic medication.

6. ADQ and its subsidiaries are collectively referred to as the "**Acquiring Group**".

***Pharma Strategy (the Target Undertaking)***

7. The parties have submitted that the target undertaking is a private company incorporated in accordance with the laws of Switzerland, with its principal business address at Baarerstrasse 14, 6300, Zug, Switzerland.

8. Pharma Strategy is the holding company of Acino International AG, a company duly incorporated in accordance with the laws of Switzerland, with its principal business address at Thurgauersstrasse 36/38, 8050 Zürich, Switzerland.

9. Pharma Strategy and its subsidiaries are collectively referred to as the "**Acino Group**". The Acino Group is active in the marketing of pharmaceutical products. The Acino Group was active in the following Member States in 2020: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, eSwatini, Kenya, Madagascar, Mauritius, Rwanda, Sudan, Tunisia and Uganda.

## Jurisdiction of the Commission

10. 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.*

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 they each hold 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 DAWAA'A acquiring 100% of the issued share capital of Pharma Strategy and hence, acquiring sole control over Pharma Strategy.

## Competitive Assessment

### Relevant Markets

***Relevant Product Market***

13. Both parties are active in the pharmaceutical sector in the Common Market. Amoun is involved in the development, manufacturing, marketing, and distribution of a range of human pharmaceutical and animal health products. The target group is active in the manufacture and sale of human pharmaceutical products only. The activities of Amoun on the other hand, relate to the development, manufacturing, marketing, distribution, and export of a wide range of generic pharmaceutical products or pharmaceutical products under license intended for human consumption and animal consumption.

14. Based on the previous decisions of the Committee of Initial Determinations[2], pharmaceutical products can be broadly categorised into pharmaceutical products for human consumption and animal consumption where each category of the pharmaceutical product cannot be administered to the other category of users; i.e., medication intended for human consumption cannot be administered on animals and vice-versa. Given this lack of substitutability between human and animal pharmaceutical products, the CID's assessment focussed only on pharmaceutical products for human consumption.

15. The human pharmaceutical product offering of Amoun relates to analgesics, anti-histamines, anti-infectives, anti-inflammatory enzymes, cardiovascular drugs, centrally acting drugs, drugs for anaesthesia, oral cavity, respiratory system, and urinary disorders, endocrine drugs, gastrointestinal drugs, topical preparations, as well as vitamins, minerals, and drugs for anaemia.

16. The target group supplies prescription medication in specialised areas such as multiple sclerosis, iron deficiency anaemia, dermatology, and spasticity, urology, cardiology, and women's health. They also supply corporate, independent, and state hospitals with a range of life saving parenteral anti-infective agents,

[2] Decision of the Seventy-Fourth (74th) Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of 98.7277931% of the issued share capital of Adwia Company S.A.E. by Zanzibar Pharma Limited. Case File No. CCC/MER/08/18/2020; and Decision of the Seventy-Eight (78th) Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving Ultra Welfare Ltd and Amoun Pharmaceutical Company S.A.E. Case File No. CCC/MER/03/11/2021

specifically in medical and surgical intensive care units, theatres, and hospital wards.

17. The parties have submitted that there are limited horizontal overlaps between the activities of the merging parties in the Common Market. It has been submitted that the parties' activities overlap in the 4th level of the Anatomical Therapeutic Chemical ("**ATC**")[3] Classification of the World Health Organisation. The CID concurs with the parties' assessment and notes that it has been the practice of the European Commission, for instance in ***Novartis/Alcon***[4], to generally use the ATC level as the starting point for investigating and defining relevant product markets in competition cases. In view of the foregoing, the CID has focussed on the products of overlaps, namely oral fluoroquinolones, other multivitamins with minerals, oral broad-spectrum penicillins and SSRI antidepressants.

*J1G1 – oral fluoroquinolones*

18. Fluoroquinolones are a class of antibiotics which are used to treat a wide range of infections, for example respiratory tract infections; ear, nose, and throat infections; biliary tract infections; ocular infections; skin and soft tissue infections; bone and joint infections; oral, dental, or maxillary infections; urinary tract infections, kidney infections; and genital infections including gonorrhoea, adnexitis, and peritonitis[5].

19. Fluoroquinolones can be administered into the patient orally, intravenous or topically. The oral administration of fluoroquinolones, where prescribed, instead of intravenously administered antibiotics may provide significant advantages to the patient in terms of reduced hospitalization or home health care costs. Oral fluoroquinolones are prescribed mostly for out-patient treatment or for patients that are not severely ill or require lower doses of therapy for longer periods of time. Injectable fluoroquinolones, on the other hand, known as J1G2, cannot be self-administered by the patient and are used only in hospitals and clinics for critically ill patients where a high bio-availability and quick onset of action is required. Cream fluoroquinolones, also known as topical fluoroquinolones, are used to treat common pathogens and is applied to a particular place on or in the body where the bacterial resistance appears limited. J1G1 oral fluoroquinolones are not therefore substitutable with other types of fluoroquinolones as the route of

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[3] The parties define the ATC as the pharmaceutical class which is based on the drug's mode of action and composition

[4] Case No COMP/M.5778 – Novartis/Alcon. The transaction concerned both ophthalmic pharmaceutical products (pharmaceuticals used in the treatment of diseases of the eye) and other eye care products that do not qualify as pharmaceuticals (consumer vision products). The European Commission defined a number of product submarkets within ophthalmic pharmaceuticals based on ATC levels, including ophthalmological anti-infective products classified in ATC3 class S1A, Ophthalmic non steroidal anti-inflammatories (ATC3 class S1R), Ophthalmological anti-inflammatory/anti-infective combinations (ATC3 class S1C) and Miotics and anti-glaucoma (ATC3 class S1E).

[5] www.rxlist.com/how_do_fluoroquinolones_work/drug-class.htm accessed 22nd February 2022

administration and form of treatment is different and is determined by the degree of the infection and the patient's reactivity.

*A11A4 – Other multivitamins with minerals*

20. Multivitamins with minerals are a combination of many different vitamins and minerals that are usually found in food and other natural sources and are consumed as dietary supplements. Multivitamins and minerals are used as an aid to provide substances that may not be available in meals. Multivitamins and minerals are also used to treat vitamin or mineral deficiencies caused by illness, pregnancy, poor nutrition, digestive disorders or to boost the health and immune system of the consumer. Multivitamins and minerals are usually sold over the counter.

21. The CID noted that the broad market for multivitamins and minerals could be segmented by type of multivitamins, type of minerals, or multivitamins combined with specific minerals. From a demand side, it is likely that there exists some degree of competitive pressure among these various products. Further, on the supply-side, the CID notes that suppliers (for instance Natures Aid, Centrum, HealthAid pharmaceutical companies) do supply a wide gamut of the different products with the potential sub-markets. For purposes of this assessment, the CID therefore considered the relevant market as the broad market for multivitamins and minerals.

*J1C1 – Penicillins*

22. Penicillins are also antibiotics which are used to treat bacterial infections. Penicillins are prescribed for skin infections, dental infections, ear infections, nose, throat or lungs infections or urinary tract infections. Penicillin can be broad spectrum or narrow spectrum. Broad spectrum penicillin act on both gram positive and gram negative bacteria and a wider range of bacteria causing illnesses. Narrow spectrum penicillin in contrast act on specific group of bacteria only. It is noted that the parties supply oral broad spectrum penicillin.

23. The CID noted that while penicillins are used in treatment of similar conditions to oral fluoroquinolones, they cannot be used as a substitute to oral fluoroquinolones, as the latter are known for their increased effectiveness in relation to respiratory tract diseases and lesser side effects on the patient's liver. The parties submitted that broad-spectrum penicillin is weaker than fluoroquinolones and fluoroquinolones are contraindicated for children up to 16 years of age, compared to broad-spectrum penicillin. Hence, the usage of antibiotics, including oral fluoroquinolones and broad-spectrum penicillin broadly depends on indication, pharmacokinetics and particular spectrum, and substitutability between the various types of antibiotics is limited.

*N6A4 – SSRI antidepressants*

24. The molecules used in antidepressants can be categorised according to their therapeutic indications, namely, herbal antidepressants, mood stabilizers, SSRI antidepressants, SNRI antidepressants and other antidepressants.

25. Selective serotonin reuptake inhibitors ("**SSRIs**") are anti-depressants which are prescribed for patients diagnosed with clinical depression and it acts by enhancing the function of nerve cells in the brain that regulate emotion. SSRI increases the levels of serotonin within the brain. Serotonin is a neurotransmitter referred to as the "feel good hormone" which carries messages between brain cells and contributes to well-being, good mood, appetite, as well as helping to regulate the body's sleep-wake cycle and internal clock. SSRIs are by far the largest and most important group of the latest generation of antidepressants. The other type of antidepressants within this generation are serotonin-norepinephrine reuptake inhibitors ("**SNRIs**") which act upon the levels of two neurotransmitters - serotonin and norepinephrine.

26. Having regard to the products supplied by the parties, the CID focussed its assessment on the market for SSRIs anti-depressants.

27. On the basis of the foregoing assessment, the CID considers that the relevant product markets are:
    a. **the supply of oral fluoroquinolones**
    b. **the supply of multivitamins and minerals**
    c. **the supply of oral broad-spectrum penicillins and**
    d. **the supply of SSRI anti-depressants.**

***Relevant Geographic Market***

28. In previous decisional practice[6], the CID has considered that the geographic market for pharmaceutical products was likely to be wider than national. The CID considered that while licensing and importation restrictions differ per Member State, wholesale or retail distributors are not generally constrained in their ability to source products from a number of overseas jurisdictions, including outside the Common Market. It is noted for instance that in Eswatini, pharmaceuticals are imported from countries such as China, India, Lesotho, South Africa, Switzerland and the United States of America, amongst others.

29. With respect to the market for the supply of oral fluoroquinolones, the CID notes that there are many alternatives to the parties' products in Uganda, such as Levoflox–Denk, Ilflox, Levobact, Glovo, Avleox, Moksefen, Micromox, Moxiflox,

[6] Decision of the Seventy-Eight (78th) Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving Ultra Welfare Ltd and Amoun Pharmaceutical Company S.A.E. Case File No. CCC/MER/03/11/2021

and Oflox7. Levoflox–Denk is produced by Denk Pharma GmbH & Co. KG in Germany while Ilflox, Levobact, Moxiflox are respectively manufactured by Lupin Ltd, Micro Labs Ltd and Cipla Ltd which are Indian pharmaceutical companies.

30. In the same vein, the CID notes that the multivitamins market within the Common Market has products from international suppliers. For instance, multivitamins sold under the brand name of Wellwoman produced by Vitabiotics, an UK pharmaceutical company is sold in Eswatini. The CID further notes that penicillin marketed by Fresenius Kabi, a South African company, is also supplied in Mauritius. The CID notes that SSRI is also sold under the brand name of Prozac in Mauritius. Prozac is marketed by Eli Lilly, which is an American pharmaceutical company.

31. The CID therefore concluded that the geographic reach for the above identified product markets is broader than the Common Market given the presence of pharmaceutical products by global suppliers which signifies the presence of competition from the global market.

32. Premised on the foregoing discussions, and for purposes of this transaction, the relevant geographic markets are construed as **global**.

**Market Shares and Concentration**

33. The parties submitted that its market share in Uganda is *[5-10]%*. The parties estimate the oral fluoroquinolones market in Uganda to be around *[USD 300,000 – 500,000]* and the acquiring group estimates its sales of the latter product to be of *[USD 20,000 – 30,000]*. The acquiring group's market shares is therefore approximately *[5-10]%*. The target's turnover for oral fluoroquinolones in Uganda was [*USD 1,000 – 3,000]* The target group estimates its market share to be *[less than 1%]* in Uganda.

34. The parties further submitted that the products they sell in Uganda (including their branded oral fluoroquinolones) are not complex and are largely manufactured by all prominent pharmaceutical players. The parties submitted that their main competitors in Uganda include: Labrox Uganda, Goodman International Ltd – Uganda, Gama Pharmaceuticals, Cipla Quality Chemical Industries Limited, Kampala Pharmaceutical Industries, Rene Industries Ltd, Beta Healthcare Uganda Ltd, Mavid Pharmaceuticals Limited. The market share information has been submitted as per Table 1 below in relation to the main competitors of the parties.

[7] Paragraph 6.3.2.4 of Exhibit B

*Table 1 – Market Shares of Competitors in Uganda*

| Competitor | Name of Product | Estimated Market Shares (%) |
|---|---|---|
| Labrox Uganda | CIPRO-DENK | *[15-20]* |
| Gama Pharmaceuticals | Cipro-Dar | *[10-15]* |
| Goodman International Ltd - Uganda | Ladinin | *[5-10]* |

35. In addition, the parties provided the following estimated market shares information on their top 5 competitors for the global supply of oral fluoroquinolones per Table 2 below for the year 2020.

*Table 2 – Market Shares of Competitors for the global supply of oral fluoroquinolones*

| Competitor | Estimated Market Shares (%) |
|---|---|
| Daiichi Sankyo | *[5-10]* |
| Bayer | *[5-10]* |
| Sonafi | *[0-5]* |
| Novartis | *[0-5]* |
| Teva | *[0-5]* |

36. The CID notes that the parties' combined market shares in Uganda are less than *[5-10]%*, which will make the merged entity the third largest player in the Ugandan market. Nonetheless, it is noted that the target's market shares in Uganda is insignificant, hence, the transaction will not result in significant market share accretion. In addition, the parties estimated their market shares globally for the supply of oral fluoroquinolones remains below *[0-5]%*, which suggest that at global level, the transaction will not lead to any material change in the market structure. Further, the global relevant geographic market definition renders potential concerns as a result of the merger in Uganda immaterial as other global players may have the capacity to extend their product offerings in Uganda in an event that the merged entity behaved in a manner that is appreciably in restraint of competition. This may be inferred from the capability of these global players to supply competing products in other Member States, some of them being in close proximity to Uganda.

37. The parties submitted that their market shares for the global supply of multivitamins and minerals, oral broad-spectrum penicillin and SSRI anti-depressants to be less than *[0-5]%* respectively. The parties have provided the following estimated market shares information on their top 5 competitors for each of these markets as per Tables 3, 4, and 5 below for the year 2020.

*Table 3 – Market Shares of Competitors for the global supply of multivitamins with minerals*

| Competitor | Estimated Market Shares (%) |
|---|---|
| GlaxoSmithKline | *[15-20]* |
| Bayer | *[5-10]* |
| Sonafi | *[5-10]* |
| Cimed | *[0-5]* |
| NC Farma | *[0-5]* |

*Table 4 – Market Shares of Competitors for the global supply of oral broad-spectrum penicillins*

| Competitor | Estimated Market Shares (%) |
|---|---|
| GlaxoSmithKline | *[15-20]* |
| Novartis | *[5-10]* |
| Teva | *[0-5]* |
| NC Farma | *[0-5]* |
| HIKMA | *[0-5]* |

*Table 5 – Market Shares of Competitors for the global supply of SSRIs*

| Competitor | Estimated Market Shares (%) |
|---|---|
| Viatris | *[5-10]* |
| Lundbeck | *[5-10]* |
| GlaxoSmithKline | *[0-5]* |
| Teva | *[0-5]* |
| Novartis | *[0-5]* |

38. In view of the foregoing, the CID notes that the respective markets are characterised by the presence of strong competitors including GlaxoSmithKline which have significantly higher market shares than the merging parties and the transaction is therefore not capable of affecting the market structure in the relevant markets.

## Consideration of Third-Party Views

39. Submissions were received from Egypt, Eswatini, Kenya, Madagascar, Mauritius, Seychelles and Zambia which did not raise any concerns in relation to the transaction.

## Determination

40. 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.

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

Dated this 3rd of May 2022

**Commissioner Mahmoud Momtaz (Chairperson)**

**Commissioner Vincent Nkhoma**

**Commissioner Islam Tagelsir Ahmed Alhasan**