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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/01/03/2022

**Decision¹ of the Eighty-Third (83rd) Committee Responsible
for Initial Determinations Regarding the Regarding the
Proposed Merger involving Hammurabi B.V. and GlobalCorp
for Financial Services S.A.E.**

ECONOMIC SECTOR: Banking and Financial Services

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 4 February 2022, the COMESA Competition Commission (the “**Commission**”) received a notification involving Hammurabi B.V. (“**Hammurabi**”) as the acquiring undertaking and GlobalCorp for Financial Services S.A.E. (“**GlobalCorp**”) 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

Hammurabi (the Acquiring Undertaking)

4. Hammurabi, the acquiring undertaking, is a special purpose vehicle established under the laws of Netherlands. It is owned by a consortium of investors consisting of Amethis Fund II SCA SICAR (“**Amethis Fund II**”), SPE AIF I LP (“**SPE**”) and the European Bank for Reconstruction and Development (“**EBRD**”).
5. Amethis Fund II is a company incorporated in accordance with the laws of Mauritius. It forms part of the Amethis group which is an investment fund manager dedicated to the African continent. The group’s investments in the Common Market are listed in Table 1 below:

Table 1 – Amethis Group Investments in the Common Market

Entity	Member State	Sector
Kenafric Industries Limited	Kenya	Manufacture of sugar confectionery
Ramco Plexus Ltd	Kenya	Printing & Packaging
Ciel Finance - BNI (Bank)	Madagascar	Banking
Ciel Finance - IPRO	Mauritius	Asset management
Ciel Finance - Bank One	Mauritius	Banking
Ciel Finance - Mitco	Mauritius	Fiduciary services
Rogers Hospitality	Mauritius	Hospitality & Leisure
Naivas	Kenya	Retail
Avacare	Kenya, Malawi, Mauritius, DRC, Zambia and Zimbabwe	Wholesale of pharmaceutical goods
Disway	Tunisia	IT equipment distribution
WB Africa*	Tunisia	Advertising

6. SPE is a private equity fund managed by SPE Capital which focuses on North Africa (especially Egypt, Morocco and Tunisia) in the health and education sectors. In the Common Market, SPE has investments in Future Pharmaceutical Industries ("FPI") which is active in Egypt and the International School of Carthage S.A.R.L ("ISC") which is active in Tunisia.
7. EBRD was established in 1991 and is a multilateral development bank using investments as a tool to help build market economies. Its operations span a range of industries, including agribusiness, infrastructure, and transport. EBRD does not have any shareholding in any company in the financial sector in the Common Market. It is further noted that EBRD is prevented by Article 12.2 of the Agreement Establishing the Bank from seeking to obtain a controlling interest and from assuming direct responsibility for managing any enterprise, which states that EBRD "shall not seek to obtain by such an investment a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment" except in cases of actual or threatened default or insolvency. Accordingly, EBRD does not have a controlling interest in Hammurabi and will therefore not acquire indirect control in GlobalCorp.

GlobalCorp (the Target Undertaking)

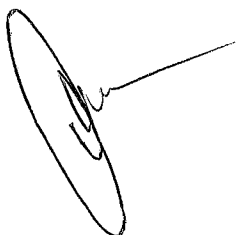
8. GlobalCorp for Financial Services S.A.E., the target undertaking, was founded in 2015 by Hatem Samir as an Egyptian non-banking financial institution ("NBFI") offering lease and factoring services to corporates and SMEs. In the Common Market, the target is active in Egypt only.

Jurisdiction of the Commission

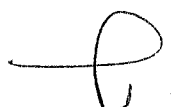
9. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

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*



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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 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.

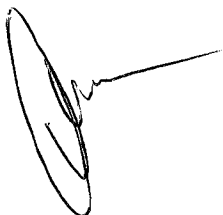
Details of the Merger

11. The notified transaction involves the acquisition by Hammurabi of the majority of the issued shares in GlobalCorp.
12. The parties submitted that the investment by Hammurabi will allow GlobalCorp to expand into new business in order to create a full-fledged business-to-business and business-to-consumer non-banking financial institution enabling clients to meet both their short-term and long-term liquidity needs. It was submitted that Egyptian leasing and factoring sectors are promising as they are still in the budding stage and show strong growth trajectories; and the regulatory environment is very favourable to the development of non-banking financial institutions to support financial inclusion in the country.
13. The parties further submitted that EBRD makes equity investments in companies in line with its mandate, which are, amongst others, to promote the establishment, improvement and expansion of productive, competitive and private sector activity. In line with its purposes, EBRD's proposed investment for a stake in Hammurabi would enable the latter to access financing to fund its expansion plans and EBRD would gain a valuable asset in its equity portfolio.


Competitive Assessment

Relevant Markets

14. It is recalled that the acquiring Consortium has investments in various sectors in the Common Market. In Egypt, they are present through SPE's investments in Future Pharmaceutical Industries ("FPI"). The target's activities, on the other hand are provided only in Egypt and involve leasing and factoring. The Commission considered that the Proposed Transaction is not capable of having any material impact on the Consortium's activities in the Common Market, in view of the absence of overlap with the target undertaking's operations. This was further confirmed by the Member States' submissions. The CID thus focussed on the target's activities for purposes of this competitive assessment.



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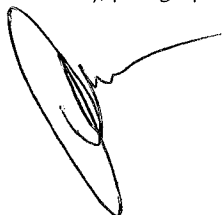


Leasing Services

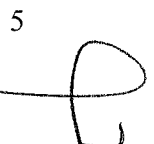
15. Leases are contracts in which the owner of an asset allows another party to use the asset in exchange for money or other assets. There exists a variety of financial products and services that can finance asset use, including loans, or other forms of credit on differing terms provided by banks, other financial companies or the financial arms of the manufacturers of the assets (in particular in the vehicle industry). Nonetheless, for purposes of reporting, these different instruments have different treatment under International Accounting Standards and thus have different implications for the balance sheet of an undertaking, which may affect their preference for a particular type of financial solution. The CID thus considers that leasing services constitute a separate market from other types of financial products.
16. Under the International Accounting Standards, leases are classified as operating and financing (capital lease) leases². Traditionally, different relevant markets have been identified according to type of lease, by virtue of the significant differences in ownership status of the good and the risks associated with the leasing³.
17. Under an operating lease, the risks of ownership are retained by the lessor. Ownership is not transferred to the lessee at the end of the lease term and the life of the lease is not a significant duration of the useful economic life of the asset. The costs of other related services (such as maintenance and repair services), which form an integrated part of the operating leasing services, are included in the (monthly) lease payments.
18. By contrast, financial leasing primarily functions as a loan by the lessor to enable the lessee to purchase a given asset. The risks associated with the investment are usually borne by the lessee while the legal and commercial ownership is left with the financing lessor. After the lease, the lessee usually has the option to acquire ownership of the asset for the consideration of the residual value.
19. It can therefore be seen that financial leases and operating leases considerably differ in terms of the duration of the lease, the objective/ purpose of the lease, and the legal and commercial ownership under the lease.
20. From a demand perspective, these different underlying business attributes are significant enough to target different categories of customers. It is worth noting that in *I Squared Capital Advisors/PEMA*, the market investigations revealed that multiple customers viewed these leases as different products having regard to the differences in the property rights transferred after the lease (i.e., ownership

² <https://www.iasplus.com/en/standards/ias/ias17>.

³ See for instance the European Commission decisions in Case M.9501 – I Squared Capital Advisors/PEMA (18.10.2019), paragraphs 11 to 20; Case COMP/M.5217 - GEFA / PEMA (06.08.2008), paragraphs 7 to 11.



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or not), and in aspects of accounting law and risk⁴. Further, the market investigation also found that from a supply perspective, the majority of competitors indicated that they do not provide both types of leasing services, and that it can be costly for a provider of operating leasing services to start providing financial leasing services as it requires shifting from “ensuring the rental asset to compliance with procedural and regulatory requirements” and, in this context, “system adjustments for processes”⁵. Given that the target offers both types of leases⁶, the CID concluded for the purposes of the transaction at hand that **operating leasing and financial leasing constitute separate product markets**.

Factoring Services

21. Factoring entails the purchase of receivables from businesses and in turn providing them with liquidity. It involves a business client contracting to assign some or all of the invoices made to its own customers to a factoring company and in return, the factoring company provides one or more of the following: (i) a prepayment or advance on the value of the invoices; (ii) invoice collection and sales ledger management services; and (iii) credit insurance protecting the client against a customer’s inability to pay an invoice within a period of time. Services comprising a package of all the above can be referred to as “full factoring”⁷.
22. Different types of factoring can be observed, such as:
 - i. recourse - the client must buy back any invoices that the factoring company is unable to collect payment on. The client is ultimately responsible for any non-payment;
 - ii. non-recourse - the factoring company assumes most of the risk of non-payment by the client’s customers and has no recourse to the client in case of non-payment⁸; and
 - iii. reverse factoring - the factoring company offers to provide liquidity to its client’s suppliers against receivables issued by the client.
23. The level of risks assumed by the factoring company differs across these three segments and shifting to a different type of factoring may require new agreements with third parties, adjustments to internal regulations and procedures, training, testing, etc, which may entail some time and risks. Nonetheless, the CID noted that the target, as well as other competitors such as

⁴ *Ibid*, paragraph 19.

⁵ *Ibid*, paragraph 18.

⁶ <https://globalcorp-fin.com/services/leasing-services/>.

⁷ Case M.7944 - CREDIT MUTUEL / GE CAPITAL'S FACTORING AND EQUIPMENT FINANCING BUSINESSES IN FRANCE AND GERMANY, paragraph 12.

⁸ <https://www.rtsinc.com/guides/difference-between-recourse-and-non-recourse-factoring#:~:text=Recourse%20factoring%20is%20the%20most,non%20payment%20by%20your%20customers.>

BM Lease⁹ and EFG Hermes¹⁰, supply all three types of factoring, so as to attract a wide range of clients.

24. Whilst there are indications that there may be segmentation within the factoring market, the clear lack of overlap between the parties' activities pre-merger means that the Proposed Transaction is not capable of affecting any candidate relevant market. Premised on the foregoing, and without prejudice to the CID's approach in the future, the CID concluded that the relevant market is broadly construed as the **provision of factoring services**.

Relevant Geographic Market

25. Competition for leasing services is likely to occur predominantly at national level, especially for smaller players, in view of national barriers such as tax and registration rules, insurance requirements, registration requirements, laws regarding the ownership of the asset. The CID also noted the findings of the European Commission's market investigation on evidence of cross-border leasing agreements for larger customers such as multinational corporations present in several countries and co-ordinating their activities with a limited number of international suppliers, but that the market remains very much national for the majority of the smaller customers¹¹.
26. The CID considered that cross-border leasing services may also be on the rise within the Common Market, given the emphasis put on regional and continental integration, companies are increasingly expanding their services beyond national borders. However, as evidenced by the operations of the target itself who only provide services at national level, it appears that competition remains predominantly national.
27. In relation to the factoring market, the CID considered that the relevant geographic market is likely to be national, having regard to challenges in revenue collection beyond national borders. The CID noted that the target only provides factoring services within Egypt.
28. Based on the foregoing, the CID concluded that the relevant geographic markets for leasing and factoring services is Egypt.

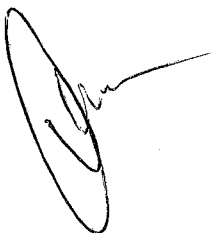
Market Shares and Concentration

29. According to the parties' submissions, the target had an estimated market share of 11.1% and 9.1% in the broad markets for leasing and factoring services, respectively. The market shares of the competitors are provided in Table 2 below:

⁹ <https://bm-lease.com/index.php/types-of-leasing/>.

¹⁰ <https://efghermes.com/en/non-banking-financial-services>.

¹¹ Case No COMP/M.2970 - GE / ABB STRUCTURED FINANCE, paragraph 19.



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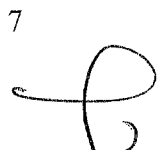


Table 2 – Estimated Market Shares of main players in Leasing and Factoring Markets in Egypt (as of YTD March 2022)

Market Players	Leasing Market	Factoring Market
Corplease	19.6%	-
EFG Hermes	12.4%	19.4%
GlobalCorp	11.1%	9.1%
AAIL	9.9%	-
CairoLease	5.2%	-
BM Lease	5.1%	-
Egypt Factors	-	16.7%
QNB Al Ahly	-	10.97%

30. Nonetheless, the CID noted that the market structure would remain unaltered given the fact that the acquirers did not operate in the relevant market pre-merger and further that their activities in Egypt are limited to the pharmaceutical sector.


Consideration of Third-Party Views


31. Submissions were received from Egypt, Kenya, and Mauritius which did not raise any concerns as a result of the transaction, given that the parties do not operate as competitors pre-merger.

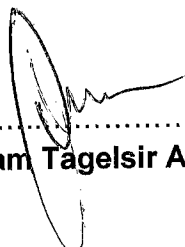
Determination

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

Dated this 31st day of May 2022


 Commissioner Mahmoud Momtaz (Chairperson)


 Commissioner Vincent Nkhoma


 Commissioner Islam Tagelsir Ahmed Alhasan

