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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/03/06/2021

Decision¹ of the Seventy-Sixth (76th) Committee Responsible for Initial Determination Regarding the Proposed Joint Acquisition by Funds Managed by Bain Capital Investors and Cinven Capital Management (VII) General Partner Limited through Herens HoldCo AG, of Lonza's Specialty Ingredients Business, including its relevant subsidiaries

ECONOMIC SECTOR: Chemicals

27th June 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 19th March 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed acquisition of joint control by funds managed by Bain Capital Investors, L.L.C. ("**Bain Capital**") and funds managed by Cinven Capital Management (VII) General Partner Limited ("**Cinven Capital Management (VII)**") through Herens HoldCo AG ("**Herens HoldCo**"), of Lonza's Specialty Ingredient's Business, including its relevant subsidiaries ("**LSI**") 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

Herens HoldCo

4. The direct acquiring undertaking, Herens HoldCo, is a special purpose entity established for purposes of the transaction, and as such, does not control (directly or indirectly) any firms in the Common Market. It is indirectly and jointly controlled by funds managed by Bain Capital and Cinven Capital Management (VII).
5. Bain Capital is a company incorporated under the laws of the state of Delaware, United States of America, with its business address at 200 Clarendon Street, Boston, Massachusetts 02116, USA. Bain Capital is a global private equity investment firm that invests, through its family of funds, in companies across a number of industries, including information technology, healthcare, retail and consumer products, and communication, financial and industrial/manufacturing. It was submitted that within the Common Market Bain Capital is active in Egypt, Kenya, Libya, Mauritius, Rwanda, Tunisia, and Uganda.
6. Cinven Capital Management (VII) is a company incorporated under the laws of Guernsey, with its business address at Level 4, Mill Court, La Charroterie, St Peter Port, GY1 1EJ, Guernsey. Cinven Capital Management (VII) forms part of the Cinven group, a European private equity business engaged in the provision of investment management and investment advisory services to a number of investment funds. The companies in the Cinven funds' portfolio of investments are active in a wide range of sub-sectors, with a particular focus on business services, consumer, financial services, healthcare, industrial and technology, media and telecommunications. It was submitted that within COMESA, Cinven Capital Management (VII) is active in Burundi, Comoros, Djibouti, Egypt, Eritrea,

Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

LSI

7. LSI, is Lonza Group’s Specialty Ingredients Business, including its relevant subsidiaries. It is the chemical business segment of the Lonza Group, a public company incorporated under the laws of Switzerland, with its principal business address at Muenchenstreinerstrasse 38, CH-4002 Basel, Switzerland. It is headquartered in Basel, Switzerland and is active globally.
8. LSI has two specialty ingredients businesses, namely microbial control solutions and specialty chemical services which comprise:
 - a) **The Microbial Control Solutions business unit:** that entails the provision of microbial control solutions and chemical technologies for the protection of homes, schools, food processing and healthcare sites, workplaces and other institutional environments from bacteria, viruses, mould and other potential pathogens as well as personal care products (applied externally to the skin or hair) and ingredients for wood protection, oil and gas, plastics, metals, and paints and coatings applications. The Specialty Ingredients’ Microbial Control Solutions are customer-focused, innovative smart solutions for well-being and a healthy environment that includes main product segments of wood protection, material protection, paint & coatings, professional hygiene, home & personal care, and crop protection; and
 - b) **The Specialty Chemical Services business unit:** that entails the provision of composite materials, performance intermediates & chemicals, and custom development & manufacturing services, for the agrochemical, food and feed ingredients, personal care and cosmetics, non-cGMP intermediates, electronics, transportation and aerospace applications and industries.
9. It was submitted that LSI, through firms forming part of it and located outside of the Common Market, derive turnover through exports into the Democratic Republic of Congo, Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Tunisia, Uganda and Zimbabwe. LSI’s product offerings in the Common Market are the same as its global product offerings and it has no manufacturing capability within the Common Market. The list of LSI portfolio companies and their activities in the Common Market were submitted as follows:

Table 1: List firms forming part of the LSI and description of products/services supplied to COMESA Member States

Member State	Name of firms	Products/ services
Democratic Republic of Congo	Arch Wood Protection Proprietary limited	Distribution and sales of wood protection products

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Egypt	Lonza Service AG	Distribution and sales of chemical products
	Arch UK Biocides Ltd	Distribution and sales of biocides
	Lonza Sales AG	Distribution and sales of chemical products
Eswatini	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
Ethiopia	Arch Wood Protection proprietary limited	Distribution and sales of wood protection products
Kenya	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
	Lonza Service AG	Distribution and sales of chemical products
	Arch UK Biocides Ltd	Distribution and sales of biocides
	Lonza Sales AG	Distribution and sales of chemical products
Madagascar	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
Malawi	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
Mauritius	Arch Personal Care Products Ltd	Distribution and sales of chemical products for personal care end users
Tunisia	Lonza Service AG	Distribution and sales of chemical products
	Arch UK Biocides Ltd	Distribution and sales of wood protection products
	Lonza Sales AG	Distribution and sales of chemical products
Uganda	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
Zimbabwe	Arch Wood Protection Proprietary Limited	Distribution and sales of wood protection products
	Lonza NZ Limited	Distribution and sales of chemical products

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	Arch Personal Care Products Limited	Distribution and sales of chemical products for personal care end users
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10. It was also submitted that LSI is only physically present in one COMESA Member State, Mauritius, through Arch Asia Holdings Limited, a company incorporated under the laws of Mauritius, with its business address at 5th Floor, Ebene Esplanade, 24 Cybercity, Ebene, Mauritius.

Jurisdiction of the Commission

11. 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.*
12. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover 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 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

13. The notified transaction involves the acquisition of control of Lonza's Specialty Ingredient's business, including its relevant subsidiaries from Lonza Group AG by Herens HoldCo AG, a newly established firm which is indirectly and jointly controlled by funds managed by Bain Capital Investors, L.L.C. (Bain Capital) and funds managed by Cinven Capital Management (VII) General Partner Limited.

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Relevant Markets

Relevant Product Market

14. The acquiring group, through funds managed by Bain Capital is active across a number of industries, including information technology, healthcare, retail and consumer products, and communication, financial and industrial/manufacturing. The acquiring group, through funds managed by Cinven, is also active in the provision of business services, consumer, financial services, healthcare, industrial and technology, media and telecommunications.
15. The target undertaking, LSI, is active in the provision of microbial control solutions for professional hygiene and personal care products and a broad range of industrial applications such as wood protection, oil and gas, plastics, metals, and paints and coatings applications. The target also develops and manufactures specialty chemical services and composites to support the electronics, aerospace, food and agro-chemical industries.
16. The acquiring group is not active in the provision of microbial control solutions or the manufacture of specialty chemical services in which the target undertaking is active. For purposes of the competitive assessment of the current transaction, the CID has focused on the activities of the target undertaking in the Common Market, as these are the markets where any competitive impact of the merger is likely to be felt.

Provision of microbial control solutions

17. Microbial control solutions entail the provision of a range of biocidal applications called biocides which consist of a large variety of chemicals that are used in a range of applications to kill or control the growth of organisms that might have a negative effect on processes, products, machinery, and end-users. The European Regulation 528/2012 has defined biocidal products as follows:
 - a. *Any substance or mixture, in the form in which it is supplied to the user, consisting of, containing or generating one or more active substances, with the intention of destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on, any harmful organism by any means other than mere physical or mechanical action; and*
 - b. *Any substance or mixture, generated from substances or mixtures which do not themselves fall under the first indent, to be used with the intention of destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on, any harmful organism by any means other than mere physical or mechanical action.*
18. The biocides products supplied by LSI are intended for different purposes as follows²:
 - a. *Hygiene products* - used for disinfecting and sanitizing surfaces in industrial and institutional settings such as schools, food-processing plants, restaurants, grocery stores, hospitals, operating theaters and health clinics. These products help prevent

² <https://microbialmanagement.lonza.com/> accessed on 12th June 2021 at 15:30hrs

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the spread of infection and are available in a range of formats, including concentrates and ready-to-use liquids, wipes, and solids.

- b. *Wood protection products* – used to deliver technologies that enhance the performance and increase the longevity of wood, through protecting wood from mold, insects, fungal decay and fire. They extend the service life of lumber, ensuring it can be used as a high-performance material. They are heavy-duty industrial offerings used to protect wood in the harshest environments, including utility, railway, marine and agricultural applications;
 - c. *Home and personal care* – used to serve the global beauty and wellbeing markets. The target produces anti-dandruff ingredients complemented by further functional ingredients such as high-quality Vitamin B3 for cosmetic applications and specialty plant-based emulsifiers.
 - d. *Material protection* – used across a range of industries including metal working fluids, powdered metal, polymers and textiles, and oil and gas. They protect fluid systems from harmful bacteria and fungi, lengthening the use of a fluid system therefore providing sustainable solutions, that reduces system costs and waste. The metal lubricants are used to reduce the likelihood of wasted materials and increasing manufacturing efficiency. They are also additives used for applications such as carpet backing, bath mats, shower curtains, wallboards, plastic fencing, roof tiles etc.
 - e. *Paints & coatings products* – used to provide wet state preservation for waterborne architectural paint and other formulations in the building and construction market space. Further, they protect marine vessels from marine anti-fouling and offer best in class technology for paint dry film protection against defacement from algae and fungi.
 - f. *Crop protection* – used in both conventional and organic farming to keep crops healthy and abundant by protecting them against pests, weeds, diseases and other organisms
19. From a demand perspective, biocides can be segmented into narrow markets on account of the different intended uses of the products and substitution amongst the products is likely to be limited. For example, biocides meant for wood application are not likely to be applied in and substituted for biocides meant for hygiene products or paints and coating products. Further, the chemical composition of wood products biocides would not be sufficient to offer the preservation that paints & coatings biocides are meant to offer. Neither can biocides meant for crop protection be useful in the protection of wood surfaces. Similarly, biocidal products meant for home & personal care solutions are not likely to be used in and substituted for biocides meant for crop protection products. In addition to the products application, a distinction amongst the products can also be made based on the chemical composition³.

³ The European Commission considered that narrower markets can be construed under biocides on the basis of the active ingredient chemistry of the product and the products application in the Case No COMP/M.5424 – DOW/ROHM AND HAAS

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20. In view of the foregoing, the CID considered that narrower markets exist under biocidal products on the basis of the products' application and characteristics, namely the supply of biocides for hygiene, wood protection, home and personal care, material protection and paint & coating, and crop protection. It was further considered that these markets can further be segmented. For instance, it was considered that biocides for crop protection can be further segmented according to the type of crops on which they are meant to be used while biocides for home and personal hygiene can be segmented based on whether the products will be used directly on a person's body or generally within the environment of the home. However, it was determined that for the purpose of this transaction it is not necessary to segment the market any further given that the transaction would not raise any horizontal overlaps hence competition concerns are not likely to manifest under narrower markets.
21. In view of the foregoing, the CID construed the relevant product markets as the supply of biocidal products for:
- a. Hygiene;
 - b. Wood protection;
 - c. Home and personal care;
 - d. Material protection;
 - e. Paints & coatings; and
 - f. Crop protection.

Relevant Geographic Market

22. The CID considered that the market for the supply of biocide products is a global market and the products are present in the Common Market through imports. The CID noted that the target undertaking has no manufacturing capabilities within the Common Market, however it supplies its customers in several Member States through imports.
23. The conclusion of global market for biocide is consistent with the European Commission's decision practice which determined the market as worldwide given that manufacturers typically ship their products across the world from centralised production facilities given the low cost of transporting biocidal ingredients⁴.
24. The CID observed that the relevant market is likely to be global since competition in this market takes place at a global level. It was also observed that the global market presents conditions of competition which are homogenous and that the Common Market is open to competition from global supply of biocides as witnessed from the presence of the relevant products in the Common Market through imports.

⁴ Paragraph 210 Case No COMP/M.5424 – DOW/ ROHM AND HAAS

25. Thus, for the purpose of assessing the proposed transaction, and without prejudice to future cases, the CID identified the relevant markets as the global supply of biocide products for:
- a. Hygiene;
 - b. Wood protection;
 - c. Home and personal care;
 - d. Material protection;
 - e. Paints & coatings; and
 - f. Crop protection

Competitive Assessment

26. The CID noted that the proposed transaction will not result in a change in the market structure due to the absence of horizontal overlap in the activities of the parties in the Common Market. It was concluded that competition concerns are unlikely to emanate as a result of the proposed transaction neither is the transaction likely to raise foreclosure concerns.
27. The CID further observed that the relevant markets will remain competitive post-merger given that the global market for the supply of biocides is characterised by the presence of various prominent players who are likely to continue competitive with the merged entity as follows: Troy Corporation, Chemtreat, Inc., Neogen Corporation, Finoric LLC, Shanghai Zhongxin Yuxiang Chemicals Co. Ltd., Iro Group Inc., Hubei Jinghong Chemicals Co. Ltd., Wuxi Honor Shine Chemical Co. Ltd., Albemarle Corporation, Lubrizol, BASF SE, Solvay SA, and Lanxess AG⁵.
28. The CID noted that the proposed transaction would not result in the merged entity attaining a dominant given the absence of a change in the market structure. Thus, the proposed transaction is unlikely to raise competition concerns as a result of unilateral conduct by the merged entity.
29. In view of the foregoing, it was concluded that the transaction will not stifle trade between Member States.

Third-Party Views

30. Third-party submissions were received from national competition authorities of Zimbabwe, Eswatini, Mauritius and Ethiopia who generally observed that the acquiring

⁵ <https://www.grandviewresearch.com/industry-analysis/biocides-industry#:~:text=Some%20key%20players%20operating%20in,%2C%20Solvay%20SA%2C%20Lanxess%20AG%2C> accessed on 28th May 2021.

and target undertaking supplied different products and services in the Member States, and hence drew the conclusion that competition concerns were unlikely to arise post-merger. This was consistent with the CID's findings.

Determination

- 31. 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.
- 32. The CID therefore **approved** this transaction. This decision was adopted in accordance with Article 26 of the Regulations.

Dated this 27th day of June 2021



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Commissioner Justice Charlotte Wezi Malonda (Chairperson)



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Commissioner Brian M. Lingela



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Commissioner Ellen Ruparanganda