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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/07/21/2021

Decision[1] of the Eighth (80th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Imperial Logistics Limited and Lift Logistics Holdco

ECONOMIC SECTOR: Transport and Logistics, Fast Moving Consumer Goods

6th December 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Introduction and Relevant Background

1. On 20th August 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a proposed merger involving Imperial Logistics Limited ("**Imperial**"), through its wholly owned subsidiary Imperial Capital Limited ("**Imperial Capital**" or the "**acquiring undertaking**") of all the issued shares of Lift Logistics Holdco ("**J&J Group**"), 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 CID is responsible for making determinations on cases before the Commission. The decision of the CID is set out below.

The Parties

Imperial Capital ("the acquiring undertaking")

4. The acquiring undertaking, Imperial Capital, is a company incorporated in the Republic of South Africa as a wholly owned subsidiary of Imperial, a company listed on the JSE Limited. Imperial Capital is the holding company of Imperial African region's businesses, with businesses ranging from transportation, distribution, and logistics services. Imperial and its subsidiaries are active in two distinct sectors namely:

   a. Market access

5. This entails route-to-market solutions which provide Imperial's clients with a means of reaching their customers through comprehensive channel strategies that integrate sourcing, sales, distribution, and marketing. Imperial operates as a wholesale distributor of fast moving consumer goods (FMCGs) and pharmaceutical products in various countries. Further, the products distributed under its market access businesses are predominantly ambient FMCGs to wholesale and retail customers located in Eswatini, Malawi and Zambia; and to an insignificant extent temperature- controlled FMCGs in Zambia.

   b. Logistics services

6. Imperial's logistics operations entail managing the movement of goods on behalf of its clients between specific locations, combining different transportation modes and types. Further, to reduce their time-to-market, improve customer service and mitigate risk, Imperial integrates its logistics functions into its client's end-to-end supply chain. It also performs the function of lead logistics provider, managing multiple supply chain functions for its clients. Further, it offers logistics activities across Africa which include road freight, contract logistics and lead logistics provider.

7. Further to the above, the majority of Imperial's activities in various COMESA Member States are focused on the wholesaling of FMCGs and healthcare goods to a variety of retailers and pharmaceutical outlets.

8. It was submitted that Imperial operates in the Common Market through the entities presented in table 1 below:

Table 1: Operations of Imperial in the Common Market

Member State	Name of Subsidiary	Nature of Activities
Eswatini	CIC Swaziland[2]	Liquor distribution company which is currently inactive
	OTI Swaziland	Wholesale distributor of liquor and tobacco products
	Tristar (a wholly owned subsidiary of OTI Swaziland)	Wholesale distributor of FMCG goods
Kenya	Imperial Managed Solutions East Africa Limited	Operates warehousing, distribution, logistics and stock purchasing operation
	International Healthcare Distributors (EA) Ltd	operates bonded and clearance facilities
	Surgipharm Ltd	Importer and wholesaler of pharmaceutical, surgical, diagnostic, and medical products
Malawi	Warpack (Pty) Ltd	wholesaler of FMCG and pharmaceutical products
Mauritius	ACP Holdings Limited and Eco Health Limited.	None trading entity
Zambia	Horizon Distributors	wholesaler of FMCG and pharmaceutical products
Zimbabwe	Colbro Masvingo Pvt Ltd	Transporter which also engages in cross-border transportation between Johannesburg and Zimbabwe, as well as transporting chrome from Zimbabwe for the export market on a very limited ad-hoc basis

[2] The parties submitted that CIC Swaziland is a liquor distribution company that is currently dormant. It was further submitted that Imperial holds assets in Mauritius through its subsidiaries ACP Holdings Limited and Eco Health Limited.

9. Imperial's wholesale operations in Eswatini, Kenya, Malawi, and Zambia make use of its own fleet of small vehicles as well as vehicles of third party logistics companies.

10. It was submitted that Imperial through its South African based division, Managed Services SA Cross Border, engages in cross-border transportation of FMCG products from South Africa to various other African jurisdictions, including into Eswatini, Kenya, Malawi, Zambia and Zimbabwe. Managed Services SA does not itself have customers in the Common Market but provides a purely logistical function to South African FMCG manufacturers. It relies exclusively on third party logistical companies which have vehicles that meet the stringent specifications for carrying food related products for the physical transportation of FMCG products into the various COMESA Member States.

11. Imperial also exports FMCGs and healthcare products purchased from suppliers in South Africa which are used to stock its wholesale operations in each of the respective COMESA Member States. These are goods which Imperial would have purchased from South African suppliers in order to distribute into retail businesses operating in various other African jurisdictions including in Eswatini, Kenya, Malawi, and Zambia. As part of its operations, Imperial is also responsible for the merchandising of goods onto the retail shelves, running instore marketing promotions, as well as invoicing of customers and debt collection of payments from retail customers.

J&J Group ("the target undertaking")

12. The target undertaking, J&J Group, is a company incorporated in Mauritius. It provides integrated, end-to-end cross-border transportation services ranging from transport to port agency services, storage, as well as in-transit warehousing services. Its activities are primarily focused on international transportation between Mozambique, Zimbabwe, Zambia, Malawi, South Africa and the Democratic Republic of Congo (“**DRC**”). The J&J Group transports goods across countries along the North/South Corridor between the Durban port in South Africa and Zambia and the DRC, as well as along the Beira Corridor between Beira port in Mozambique, Zimbabwe, Zambia, Malawi and DRC.

13. It was submitted that the J&J Group operates in the transportation and warehousing services which enable it to offer cross-border transportation offerings between DRC, Malawi, Zambia and Zimbabwe, and the ports of Durban (South Africa) and Beira (Mozambique).

14. [redacted]

i. [redacted]

ii. [redacted]

[redacted]

iii. [redacted]

15. It was submitted that the activities of the J&J Group mainly relate to cross-border transportation of goods for mining, fertiliser, and agricultural companies using large fleet of freightliners which load 30 tonnes or more, flatbed trailers, superlink, drop side and high side trailers and acid tankers which are suitable for carrying large 20-foot, 40-foot equivalent shipping containers, breakbulk, loos bulk cargo or liquid acid.

Jurisdiction of the Commission

16. 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 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.*

17. 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

18. The notified transaction concerns the proposed acquisition by Imperial through its wholly owned subsidiary, Imperial Capital, of all issued shares of J&J Group.

Competition Analysis and Relevant Observations

Consideration of the Relevant Markets

Relevant product Market

19. The CID noted that the acquiring undertaking is mainly active in the Common Market as a wholesale distributor of fast-moving consumer goods (FMCG) and healthcare products to a variety of retailers and pharmaceutical outlets using its own fleet of small vehicles or third party vehicles. It also offers logistics activities across Africa which include road freight, contract logistics and lead logistics provider (specifically, it offers cross-border transportation services in relation to the transportation of chrome from Zimbabwe). The CID also noted that the target undertaking is active within the Common Market in the provision of cross-border transportation of goods for mining, fertiliser and agricultural companies which are offered in Malawi, Zambia and Zimbabwe.

20. The CID focused its assessment of the relevant market in the cross-border transportation services, given that the acquirer and the target have a horizontal overlap in the provision of cross-border transportation services in Zimbabwe. The CID also noted that the transaction may present elements of a vertical merger since the merged entity is likely to be vertically integrated given the possible linkage between distribution of FMCG and pharmaceutical products and the provision of cross-border transportation services.

Provision of transportation services

21. The CID noted that a distinction can be drawn between the different forms of transportation services based on the nature of the service provided and whether the services are limited to local domestic distribution or cross-border transportation. It was noted that other competition authorities such as the European Commission have drawn a distinction between contract logistics services and freight forwarding services. Contract logistics services has been defined as "the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements."[3] Further, emphasis has been made that "...the focal point of contract logistics is the management of the flow of goods for customers either across the total supply chain or an element of it."[4]

22. The CID noted that contract logistics services as described above is akin to Imperial's services related to the wholesale distribution of retail pharmaceutical and FMCGs products given that it

[3] See Decision of the European Commission M.6570, UPS/TNT Express, para 31

[4] See Case COMP/M.6059 – Norbert Dentressangle/Laxey Logistics, paragraph 9

provides in-house logistics services in the course of delivering goods for its wholesale operations in the Common Market particularly in Eswatini, Malawi, Zambia and Kenya[5].

23. The CID observed that contract logistics services can be distinguished from freight forwarding which entails "the organisation of transportation of items (including activities such as customs clearance, warehousing, ground services etc.) on behalf of customers according to their needs"[6]. Freight forwarding can be grouped into "…(i) domestic and international freight forwarding and (ii) freight forwarding by air, land and sea…"[7]. According to the parties' submission, freight forwarders are not involved in the customers' supply chain as is the case in contract logistics. Further, customers rarely enter long term contractual arrangements but procure services by placing orders on a case-by-case basis in line with annual contracts that a given freight forwarder is the customers' provider. Thus, the CID noted that the services of the target in the Common Market do not relate to contract logistics given that the target does not take ownership of the goods it transports, nor does it manage the stock levels at the products destination. It was noted that this distinction may particularly apply to Malawi and Zambia where both parties are active in transportation but providing different forms.

24. The CID noted that the parties' transportation services can be distinguished based on the type of vehicles used in providing the services. For instance, it was noted that while Imperial uses smaller vehicles of varying sizes, J&J Group uses large vehicles such as large freightliners with loading capacity of at least 30 tonnes, flatbed liners, super-link trailers and acid tankers which are more suited for long-haul cross-border transportation and for carrying large 20- or 40-foot equivalent shipping containers, breakbulk, loos bulk cargo or liquid acid.

25. The CID noted that the above discussion distinguishes the services provided by the acquirer, which are more inclined to in-house domestic transportation services against cross-border transportation services provided by the target. These services can be categorized into separate markets based on intended use. For instance, in-house domestic transportation tends to be more integrated into the customers' supply chain as opposed to cross-border transportation services meaning that a retailer of FMCGs wishing to replenish its stock is more likely to opt for contract logistics services in order to get a fully integrated service along its supply chain as opposed to merely having the goods transported across the border. Substitution is also unlikely based on the mode of vehicle used and the products in question. While under in-house domestic transportation the vehicles used are smaller in size to distribute FMCGs to retailers, cross-border transportation involves large vehicles of more than 30 tonnes which are suited to carry large volumes of products across countries. The choice of the vehicle under each category may also be related to

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[5] The parties submitted that Imperial, through its South African based company Managed Services SA Cross Border provides logistics services to South African FMCG companies and subcontract third parties for the physical transportation of the FMCGs since the third parties meet stringent specification for carrying food related products
[6] Case COMP/M.4045 DB / BAX Global, Case COMP/M.3971 Deutsche Post / Exel, Case COMP/M.3603 UPS / Melto, M.3496 TNT Forwarding Holding / Wilson Logistics, Case COMP/M.3155 Deutsche Post / Securicor, Case COMP/M.2908 Deutsche Post / DHL and Case COMP/M.1794 Deutsche Post / Air Express International
[7] Case COMP/M.4746 Deutsche Bahn / EWS, Case COMP/M.4045 DB / BAX Global, Case COMP/M.3971 Deutsche Post / Exel and Case COMP/M.1794 Deutsche Post / Air Express International.

cost efficiency. Thus, it may not be economical to use large trucks for long-haul transportation of goods and smaller vehicle for local domestic deliveries. Therefore, demand side substitution is not likely given the nature of vehicles used under each category of transportation which may not be interchanged.

26. Considering the above discussion and given that both parties are active in cross-border transportation service particularly in Zimbabwe, the CID concluded that the relevant product market is the provision of cross-border road transportation services. It should further be noted that the cross-border services provided relate to movement of goods such as minerals, fertilizers and agricultural commodities and not movement of people.

27. In light of the above discussion, the CID determined that the relevant market is that of cross-border road freight transportation.

Wholesale of FMCGs and pharmaceutical products

28. The CID noted that the acquirer is a wholesaler of FMCGs and pharmaceutical products. According to the United Nations Statistical Commission,[8] wholesale trade entails the resale of new and used goods to retailers, industrial, commercial, institutional, or professional users, or to other wholesalers. It involves acting as an agent or a broker in buying merchandise for, or selling merchandise to, such persons or companies. Wholesalers frequently physically assemble, sort and grade goods in large lots, break bulk, repack and redistribute in smaller lots. Wholesale trade is distinguished from retail trade on the grounds that the latter entails selling of goods to end users while for the former, the goods are sold to resellers.

29. The two can also be distinguished on account of the size of transactions involved. For instance, wholesalers often buy and sell in bulk quantities such that the wholesaler should be in a position to manage other logistical functions such as storage, finance, and transportation at a much higher volume and scale which require specialized skills and capabilities. Retailers on the other hand sell smaller quantities to end consumers with the storage and transportation requirements at a smaller scale.

30. In view of the above, the CID considered that wholesale and retail trading can be categorized as separate markets given the different customers intended under each category and that the intended goal under each category is not the same. The CID also considered that the two categories can be distinguished based on the pricing strategies i.e., a wholesaler's pricing strategy allows a retailer to resell products to end consumers while a retailer's pricing targets the final consumer or user of the product. The products sold by a wholesaler are in bulk and hence cheaper per unit while the prices for retailers are likely to be slightly higher per unit given that the retailer puts a mark-up on the price as it sells to a final consumer.

31. From a demand perspective, a customer who wishes to buy a product for final use is more likely to approach a retailer and buy the product in smaller quantities required as opposed to a

[8] https://unstats.un.org/UNSD/distributive_trade/IRDTSWebsite/IRDTS_2008/Chapter_1.pdf, accessed on 21st November 2021 at 14:00hrs

approaching a wholesaler whose terms are likely to require the customer to buy in larger quantities. From a supply perspective, substitution between the two may be possible but limited. For instance, a retailer shifting to wholesaling may not be immediate as it would require investing time and money in setting up the appropriate distribution, storage, and transportation system to support the wholesale trading. Given this distinction between wholesale and retail trading, the focus of the relevant market will be restricted to wholesaling of FMCGs and pharmaceutical products which the acquirer provides.

32. The CID observed that FMCGs are products which are highly demanded, sold quickly, and often affordable. They are considered as fast-moving since they have a short shelf life due to their high consumer demand or due to their high perishability. The CID considered that FMCGs can be categorized into temperature controlled FMCG and ambient FMCG. Temperature controlled FMCGs are perishable and may include products such as meat, fish, dairy products, baked goods, vegetables, frozen poultry, cheese, frozen seafood, and buttercream. These require refrigerated transportation and storage systems and specialized handling to ensure that they maintain their quality or freshness which can be lost relatively quickly if not handled or transported properly or if unsold for long periods of time. To the contrary, ambient FMCG refers to goods which can survive long periods of time on the store or home shelves without spoiling. Such goods can stay at room or ambient temperature for a useful long shelf life and can be kept in the store and do not need refrigeration. These may include foods such as fruits, biscuits, cereals, canned foods, pasta, ready-to-eat meals, etc.

33. In view of the above discussion, the CID noted that the FMCG market can be narrowed to temperature controlled FMCG and ambient FMCG. However, the CID considered that a further segmentation of the market was not necessary given that no concerns were unlikely under narrower markets. The CID's theory of harm related to this market was the potential vertical concerns whose assessment would not change under narrower markets.

34. The CID noted that in addition to the wholesale of FMCGs, the acquirer is also a wholesaler of pharmaceutical products. Pharmaceutical products are health products whose use is different from FMCGs such that these may be categorized into separate markets based on the intended use. While pharmaceutical products are generally intended to support health and wellness of people, FMCGs comprise products that support people's daily livelihood such as food items, toiletries, detergents etc. The two products are also generally different given they physical characteristics and may also be priced differently.

35. Considering the above and given that the acquirer is a wholesaler of FMCGs and pharmaceutical products, the CID concluded that any likely vertical foreclosure concerns which may arise from the transaction would relate to these two sectors. Therefore, the CID considered the relevant product market as the wholesale of FMCGs and pharmaceutical products.

36. In view of the foregoing, the CID determined that the relevant product market is the market for wholesale of FMCG and pharmaceutical products.

Relevant Geographic Market

37. With respect to cross-border road freight transportation services, the CID noted that the services offered entail movement of goods across countries and not within a given territory of a single country. Competition related to the provision of cross-border transportation services is likely to depend on the route where the service is provided since different routes present heterogenous conditions that can affect competition differently. For instance, the distance, road condition, customs documentation requirements or applicable road fee charges may differ on different routes, and this may affect the competitiveness of players in the transportation sector. To this end, it is recalled that the target offers its services between DRC, Zambia, Zimbabwe, Malawi and the ports of Durban (South Africa); and Beira (Mozambique) i.e., the North/South Corridor and Beira Corridor. Further, the acquirer provides cross-border transportation between South Africa (Johannesburg) and Zimbabwe.

38. The CID observed that each of the routes presents a geographic market within which competition can be assessed. However, it was noted that the products involved in the cross-border road freight transportation include minerals, fertilizers, and agricultural products which are destined for the ports. Cross-border transporters wishing to transport these products are likely to be influenced by the demand partners along the various routes where the products are intended to be transported. For instance, as much as the target is generally focused on the Zimbabwe – South Africa route there can be a possibility of a shift to another route in anticipation of likely profits on a different route such as between Zimbabwe to Beira – Mozambique. This argument can be supported by the likely presence of supply side substitution in the sense that the cross-border transportation providers have the capacity to easily switch routes in response to demand since the vehicles used can easily be used on different routes without requiring any modifications. As to the existence of licensing, customs documentation, and road charges on different routes, these are not likely to be prohibitive and the costs incurred from them can easily be invoiced to the client ordering transportation services.

39. In view of the foregoing, the CID concluded that the relevant geographic market for cross boarder road freight transportation is broader that national and is likely to be the Common Market.

40. With respect to the market for the wholesale of FMCGs and pharmaceutical products, the CID noted that this market is likely to be national given that the competition landscape in a country is likely to be different and may present non-substitutable distribution channels. In terms of demand substitution, a wholesaler is likely to be influenced by the consumer preferences within a given country which will limit the market to national. Further, a retailer who stocks FMCGs and pharmaceutical is unlikely to approach a wholesaler located outside their national boundaries to source the products as doing so may be costly and may not occur timeously to ensure the retailer continues to meet demand by end-consumers. Similarly, from a supplier's perspective, a wholesaler registered in a single country is not likely to target retailers located beyond its national borders as this may be costly and may require the wholesaler to obtain business licenses, register

for taxes and even identify an appropriate place of business with adequate storage facilities to operate from. Such shifting of wholesale activity to another country is not likely to occur swiftly.

41. In view of the foregoing, the CID concluded that the relevant geographic market for the wholesale of FMCGs and pharmaceutical products is national and pertains to Eswatini, Kenya, Malawi, and Zambia where the acquirer is active.

Conclusion of Relevant Market Definition

42. Without prejudice to the CID's approach in future cases, for purposes of this transaction, the CID identified the following relevant markets:

    a) **The provision of cross-border road freight transportation in the Common Market; and**

    b) **The wholesale of FMCGs and pharmaceutical products in Eswatini, Kenya, Malawi and Zambia.**

Market Shares and Market Concentration

43. The CID noted that the market for cross-border road freight transportation is characterized by the presence of alternative providers of transportation services as presented in table 2 below.

Table 2: Cross-border transporters by number of trucks

Malawi	
Name of Transporter	**Number of Trucks**
AS investment	300
Greatlakes Logistics	50
Humphry's	100
Transtech	n/a
Loadmaster	n/a
Zambia	
Name of Transporter	**Number of Trucks**
GSM	> 1000
Sabot	>500
San he Zambia Ltd	> 400
Juba Transport	> 150
Freight & Passenger	>100
Zimbabwe	
Swift & Bulwark Transport	>800
Cargo Carriers International Hauliers	>500
Whelson Transport	>400
Cross Country Containers	>260
Billtrans Services	>405

44. The CID noted that the market structure in Malawi and Zambia is not likely to change given the absence of overlap in the activities of the parties. The CID further noted that competition concerns are not likely to arise given the presence of other transporters that will continue to compete with the merged entity.

45. The CID noted that in Zimbabwe, there is likely to be change in the market structure given that both parties have operations of cross-border transportation from the country. The CID noted that there is presence of several players offering cross-border transportation services with a sizeable number of trucks as shown in table 2 above.

46. The CID further noted that the following estimated market shares of the parties and their competitors in the road transportation/logistics services from Zimbabwe based on number of vehicles registered in Zimbabwe:

Table 3: Market shares for Key transport/logistics services providers from Zimbabwe (based on number of vehicles)

Name of Transporter	Market share
J&J Group	**5% - 10%**
Cargo Carriers International Hauliers Ltd	5% - 10%
Halwick Investments (Pvt) Ltd T/A Whelson Transport	5% - 10%
Halwick Investments (Pvt) T/A Whelson Transport	5% - 10%
Biltrans Services (Pvt) Ltd	0% - 5%
Cross Country Containers (Pvt) Ltd	0% - 5%
Delta Beverages Transport Services (Pvt) Ltd	0% - 5%
Bakers Inn Logistics (Pvt) Ltd	0% - 5%
Imperial	**0% - 5%**
Dharwizi Transport (Pvt) Ltd	0% - 5%
Bindura Haulage (Pvt) Ltd	0% - 5%
Others	45% - 50%

47. The CID noted that the pre-merger market share for J&J Group is *[5% - 10%]* while that of Imperial, the acquirer, is *[0% - 5%]*. The CID observed that the merged entity will hold a market share of *[10% - 15%*] resulting from a market share accretion of *[0% - 5%]*. Further, the market is fragmented and comprises several players. The CID noted that the market is competitive as there are several alternative providers of the cross-border transportation services. The CID further noted that the proposed merger is not likely to raise competition concerns since the parties will continue to face competition from other transporters, which will account for the remainder of the market share of *[85%-90%]*.

48. The CID further noted that, given the regional nature of the cross-border road freight transport services, it is expected that international transporters will be among the key providers of the services to and from Zimbabwe. The presence of international transporters is further expected to enhance competition as foreign transporters would be able to compete by providing similar

services. In this respect, the CID noted that international players such as Bollore Africa Logistics, DSV Panalpina, G&H Transport, DHL, Whelson GDC Transport, NorthStar Logistics, Value Logistics, SA Cross Border which are also present in Zimbabwe.

49. With respect to the market for wholesale of FMCGs and pharmaceutical products, the CID noted that the market structure is unlikely to change since it is only the target undertaking which is active in this market hence the transaction does not result in market share accretion. The CID also noted that the merged entity will face competition from other alternative distributors of FMCGs and pharmaceutical products.

50. The CID noted the vertical nature of the activities of the parties in respect of the wholesale of FMCG and pharmaceutical products market and cross-border road freight transportation. The CID considered whether the merged entity being present in both markets may lead to a restriction of entry of competitors in the wholesale market by leveraging its market power in the cross-border road freight transportation services.

51. The CID observed that vertical foreclosure may arise in Member States such as Eswatini, Kenya, Malawi and Zambia where the target is active in wholesale of FMCG and pharmaceutical products. It was observed that the merged entity may restrict provision of cross-border transportation services to only its entities under the Imperial Group involved in wholesaling.

52. However, the CID dismissed the possibility of vertical foreclosure based on the fact that the vehicles used by the target cannot be used for transporting FMCG and pharmaceutical products. The CID noted that the current fleet of vehicles by J&J Group is not suited for the transportation of FMCGs across the border or domestically. It was noted that J&J Group's fleet includes large fleet of freightliners which load 30 tonne or more, flatbed trailers, superlink trailers, drop side and high side trailers and acid tankers. These vehicles are not likely to be used by the merged entity and foreclose other potential transporters of FMCG and pharmaceutical products who may wish to supply the merged entity's wholesale business. Further, the CID noted the argument that J&J Group may employ a foreclosure strategy by procuring the right vehicles to transport FMCGs. However, such a strategy is unlikely to thrive and foreclose Imperial's competitors in the FMCG market from accessing transportation services given that there are several competing firms to which Imperial's competitors could switch.

53. The CID further observed that for vertical concerns to arise, it is necessary for the parties to be dominant in the relevant markets under consideration i.e., the merged entity should either be dominant in the market of wholesale of FMCG and pharmaceutical or cross-border road transportation. The CID noted that the merged entity will not hold a dominant position in the relevant markets due to its low market shares and due to the presence of competitors. The CID also observed that the submission from Eswatini, Malawi and Zambia also confirmed that the relevant markets are characterized by a presence of alternative providers making the markets competitive. In this respect, the CID concluded that it is not likely that the merged entity will hold dominant position to enable them to engage in market foreclosure strategies and therefore the proposed transaction will not raise vertical concerns in Eswatini, Kenya, Zambia and Malawi.

54. In light of the above, the CID concluded that the proposed transaction is not likely to raise any competition concerns given that the market share accretion is insignificant in the cross-border road freight transportation market, and that the market structure will change in the wholesale of FMCG and pharmaceutical products. Both markets exhibit a significant presence of competition, and the CID further observed that barriers to entry in the market are insignificant and unlikely to influence the merged entity to foreclose the market.

Third Party Views

55. Submissions were received from the national competition authorities of Eswatini, Kenya, Malawi, Mauritius, Zambia, and Zimbabwe.

56. The submissions from the Member States generally observed that the acquiring and target undertaking provide different products and services. Member States therefore drew the conclusion that the transaction would not lead into a horizontal overlap in their markets as such competition concerns were not likely to arise post-merger.

Determination

57. 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.

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

Dated this 6th day of December 2021

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Commissioner Deshmuk Kowlessur (Chairperson)

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Commissioner Mahmoud Momtaz

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Commissioner Islam Tagelsir Ahmed Alhasan