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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/1/08/2022

Decision[1] of the Eighty-Third (83rd) Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Metier Private Equity International and Catalyst Fund I L.L.C. and Catalyst Fund II LP

ECONOMIC SECTOR: Fast Moving Consumer Goods and Non-alcoholic beverages

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Introduction and Relevant Background

1. On 14th February 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding Metier Private Equity International ("**Metier**") as the acquiring undertaking and Catalyst Fund I L.L.C. ("**Fund I**") and Catalyst Fund II LP ("**Fund II**") as the target undertakings, 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

Metier (the acquiring undertaking)

4. Metier is a private equity firm, incorporated under the laws of Mauritius. Metier is controlled by Metier Investment and Advisory Services (Pty) Ltd ("**Metier Advisory**") and operates as a private equity fund manager for Metier Advisory[2]. Metier has underlying investments in various jurisdictions, primarily in South Africa but also in certain COMESA Member States being: Kenya, Uganda, eSwatini, Lesotho and Mauritius. Metier Advisory, Metier and the firms controlled by Metier Advisory are referred to as the "**Acquiring Group**".

5. The Acquiring Group has investments in firms in the Common Market which are active in the following sectors: Fast Moving Consumer Goods (FMCG), Clothing and Footwear, Healthcare, Insurance, Energy and Telecommunications. Further, the Acquiring Group, through Kenafric Industries Ltd ("Kenafric"), is engaged in the supply of ready to drink non-carbonated non-alcoholic beverages; and non-alcoholic beverage concentrate in Burundi, DRC, Kenya, Malawi, Rwanda, Uganda and Zambia. Kenafric supplies ready to drink juices under the brand of "Jus Squeezy". However, Kenafric has discontinued its Jus Squeezy range. Kenafric Industries Ltd also supplies non-alcoholic not ready to drink powdered juice concentrates under the brands of "Jus 4-Ever" and "Jus 4U" and "Fudgville" powdered drinking chocolate products in Kenya. The CID noted the parties' submission that Fudgville powdered drinking chocolate product has also been discontinued by Kenafric Industries Ltd and that the Jus 4-Ever products are not supplied in Kenya. As at December 2020, the Acquiring Group had operations in

[2] Confidential information claimed by merging parties

the following Member States: Burundi, Democratic Republic of Congo, Eswatini, Kenya, Malawi, Mauritius, Rwanda, Sudan, Uganda and Zambia.

Fund I and Fund II (the target undertakings)

6. Fund I is a private equity firm registered under the laws of Mauritius. Fund II is also a private equity firm registered under the laws of Mauritius. The Funds are presently managed under the Catalyst banner, which hold investments in firms operating in the Common Market and elsewhere.

7. In the Common Market, the Funds have operations in, *inter alia*, the following sectors: printing, IT services, packaging, FMCG, chemicals, agrochemicals, fertilizers, plant equipment, banking and insurance. The Funds are active in the following Member States: Burundi, DRC, Ethiopia, Kenya, Malawi, Mauritius, Rwanda, Uganda, Zambia and Zimbabwe.

8. Fund I is engaged in the supply of ready to drink non-alcoholic beverages through Yes Brand Food and Beverages in Ethiopia and in the supply of tea and coffee in Kenya and Mauritius. Fund I, through Yes Brands, also supplies bottled water in Ethiopia.

9. The parties further submitted that Chai Bora Ltd ("Chai Bora"), an entity under Fund I, supplies ground and instant coffee under the brand of Cafebora, different flavours of herbal tea and tea under the brand of Chaibora. The parties further submitted that Chai Bora also supplies non-alcoholic not ready to drink instant coffee and tea in Kenya and Mauritius.

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 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.

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 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 Metier replacing Catalyst Manager I L.L.C. ("**Manager I**") and Catalyst Manager II Ltd ("**Manager II**") as the managers of Fund I and Fund II, respectively. Metier will also, through the creation of a new entity, replace Catalyst GP II Ltd as the general partner to Fund II. The transaction will allow Metier to exert a controlling interest over the activities of the Funds by allowing it the power to make strategic business decisions for Fund I and Fund II such as determining the Funds' investment strategy.

Competitive Assessment

Relevant Markets

Relevant Product Market

13. The Acquiring Group has investments in a wide range of sectors in the Common Market, namely FMCG, Clothing and Footwear, Healthcare, Insurance, Energy and Telecommunications. With respect to the target undertakings, Fund I has investments in the Common Market in the following sectors: FMCG, plant equipment and printing while Fund II has investments in the Common Market in banking and insurance, printing and FMCG.

14. The CID noted that there is an overlap between the Acquiring Group and Fund I in relation to FMCG, more specifically in the supply of non-carbonated non-alcoholic beverages. The CID further noted an overlap between Acquiring Group and Fund II in relation to FMCG, more specifically in relation to the supply of baked confectionary goods.

15. The CID further noted that the Acquiring group through Kenafric supplies cooking spices and the target through Fund 1 supplies condiments. The CID considered whether there is a potential overlap from the activities of the parties in relation to the supply of cooking spices and condiments. However, it was observed that the nature of the products and intended use were different. The cooking spices supplied by Kenafric were dry powdered flavour enhancers under the brand of OYO whereas the target supplies sauces under the brand of Dabaga which are of

a different consistency and texture and have different intended uses than the spices of Kenafric. The CID therefore ruled out any potential overlap.

Non-carbonated Non-alcoholic ready to drink beverages

16. The CID noted that in ***SABMiller/Sabco Merger***[3] it was recognised that beverages can be categorised in two groups namely: alcoholic and non-alcoholic beverages. In the subject transaction, the CID identified the market for non-alcoholic beverages as distinct from the market for alcoholic beverages on the premise that the utility derived from consuming a non-alcoholic beverage is different from that derived from consuming an alcoholic beverage. The CID also considered the high unlikelihood or improbability of consumers switching to consumption of an alcoholic beverage on account of a 5 – 10% increase in the price of a non-alcoholic beverage. The CID took a similar approach which had been taken in previous cases that the non-alcoholic beverages' market as a unique market from the alcoholic beverages.

17. Therefore, the CID considered that the beverages market can be broadly segmented into alcoholic beverages and non-alcoholic beverages. The alcoholic beverage category includes an array of alcoholic beverages with differing levels of alcoholic content which are consumed according to taste and preferences and an intended purpose. The alcoholic drinks category comprises of beer, liquor and spirits such as whisky, rum, gin and vodka. The consumption of alcoholic drinks is regulated and only adults are allowed to consume alcoholic drinks. The CID noted that the parties are not involved in the supply of alcoholic beverages, and therefore did not further consider this market in its competitive assessment.

18. The non-alcoholic beverages segment comprises of all the ready to drink products with no alcoholic content. The products in the non-alcoholic beverages segments are traditionally further divided into carbonated and non-carbonated drinks. Carbonated soft drinks are fizzy drinks which are rich in sugar or have a sugary taste. Carbonated soft drinks are consumed with fast foods and on occasions, for instance, when a customer is taking a meal in a restaurant. Carbonated soft-drinks and non-carbonated soft drinks have been found to be in separate markets[4]. Given that the parties supply non-alcoholic drinks, the focus of the product market was on the non-alcoholic drink segment.

19. The CID considered that non-carbonated non-alcoholic ready to drink products are non-fizzy or still beverages which comprises of a wide range of products, namely non-carbonated soft drinks, fruit juice, non-carbonated energy drinks, water, cold dairy products, iced tea, iced coffee and hot beverages such as tea and coffee.

[3] Case File No. CCC/MER/03/03/2015
[4] Decision of the Sixteenth Meeting of the Committee of Initial Determination Regarding the Proposed Merger between Coca-Cola Beverages Africa Limited and the Coca-Cola Sabco Proprietary Limited

Each of the drink within the non-carbonated ready to drink product has its own characteristics, price and intended use. On the demand-side, customers demand each of the product depending on the personal taste and preference and for a specific reason. A customer wishing to quench his thirst on a hot and summer day may choose water to do so while another customer may be indifferent among all the non-carbonated non-alcoholic ready to drink products. Similarly, the most common beverage in this segment for breakfast will be mostly the hot beverages. Thus, the pattern of consumption of the product is what differentiates it from the other drinks in the same category. Fruit juices, water and dairy products are consumed because they are perceived by the customer to be healthy and nourishing which can aid a healthy lifestyle. Within each category, there can be several sub-categorisations. For instance, juice can be freshly pressed juice, juice in tetra packs, made from natural fruits or fruit concentrates.

20. The CID observed that the Acquiring Group supplies flavoured juice blends under the brand of "Jus Squeezy" whereas Fund I supplies bottled still water. Further, Kenafric no longer supplies flavoured juice blends under the brand of Jus Squeezy. The CID therefore considered that any overlap in the supply of non-carbonated non-alcoholic drinks was not likely. The CID therefore focused on the supply of still water supplied by Fund I in its market definition.

21. The CID considered that bottled water can be defined as water that is sealed in food grade bottles and intended for human consumption. The broad market for bottled water can be further segmented into sparkling water or still water. Sparkling water is carbonated water which has a fizz from the added carbon dioxide gas while still water has no carbon dioxide added to it. Sparkling and still water differ in terms of price and taste which make them different from a demand-side perspective. On the supply side, the CID noted that not all branded bottled water are sold as sparkling. It is usually the branded water sold by the authorised bottlers of international companies such as The Coca Cola Company or Pepsi Cola Company which sell bottled water as both still and carbonated. On the supply-side therefore, there also seems to be a distinction between still water and sparkling water. The CID therefore opined that the supply of still (or non-carbonated) bottled water is a product market on its own on both demand and supply side.

22. The CID therefore considered that the supply of non-carbonated bottled water as a separate market.

Non-alcoholic Not Ready to Drink products

23. The CID noted that the Acquiring group supplies juice concentrates, powdered chocolate concentrate products under the Fudgville brand while Fund II, through Chaibora supplies tea, instant coffee and instant tea. The CID took note of the submission that Kenafric has discontinued Fudgville drinking chocolate product.

24. The nature of these products, which require an additional step and facility for their preparation, makes them distinct from the non-carbonated non-alcoholic ready to drink products. Juice concentrates have to be mixed with cold water, still or sparkling, to produce the end product. Similarly, other ingredients such as sugar and milk are required to be added to obtain the final tea and water to be added to instant coffee and tea products to obtain the final drink. On the demand side therefore, non-alcoholic not ready to drink products are likely to constitute a distinct market from the non-alcoholic ready to drink products. It is also likely to expect that supply-side substitution to produce the concentrate may require different ingredients, machinery, skills and expertise.

25. The CID therefore considered the supply of non-alcoholic not ready to drink products as a separate market. The CID further opined that no further segmentation to juice, tea and coffee is required in view of the fact that the transaction is not likely to raise any potential competition concerns.

26. In view of the foregoing, the CID considered the relevant product markets to be the market for the:

    a. **supply of bottled water; and**

    b. **supply of non-alcoholic not ready to drink products.**

Relevant Geographic Market

27. The parties submitted that the relevant geographic markets, in line with the approach adopted by the CID in ***Coca-Cola/ Swaziland Beverages Limited***[5] are national. However, the CID considered that in the latter decision, the transaction concerned the acquisition of the bottling business of Swaziland Beverages Limited and the licenses of bottlers tend to be territorial. The proposed transaction concerns the supply of non-carbonated non-alcoholic beverages and non-alcoholic not ready to drink products whose geographic scope is likely to be global.

28. The CID noted that bottled water and non-alcoholic not ready to drink products are available in the Common Market from both local and international suppliers. Global brands for bottled water such as Perrier, Evian, Dasani, and Nestle are imported into the Common Market from markets such as South Africa. Similarly, global brands of non-alcoholic not ready to drink products such as Nescafe and Starbucks are also imported into the Common Market by authorised distributors. This may suggest that import barriers are low or insignificant making importation easy. The CID also noted that the distribution channels or consumption patterns in Member States may make the national market distinct. Bottled water from international

[5] Decision of the Fifty-Fourth Committee Responsible for Initial Determination Regarding the Proposed Merger between The Coca-Cola Company and Swaziland Beverages Ltd.

brands are higher in prices as compared to local brands and so are the brands of non-alcoholic not ready to drink products.

29. The CID also considered that the income levels and consumption patterns direct the choice of purchase, and the price differences can make the local brands and international brands distinct, whereby the higher the level of income of consumers, the more the level of substitutability between local and international brands increases. In Mauritius for instance, despite the presence of international brands for bottled water and non-alcoholic not ready to drink products, such products are not consumed by the majority of the population. The distribution pattern was also disrupted during the COVID-19 pandemic which made the availability of such products scarce. This may therefore suggest that international brands may be seen as distinct from local brands. This notwithstanding, the CID opined that no further analysis and segmentation of the market was required as the transaction raised no competition concerns.

30. For the purposes of assessing the proposed transaction only, and without prejudice to future cases, the CID identified the relevant markets as follows:

    a. **the global supply of bottled water; and**

    b. **the global supply of non-alcoholic not ready to drink products.**

Market Shares and Concentration

31. The parties submitted that information as to market size in the particular COMESA Member States are not readily available, hence the parties largely relied on the views of the firms they control in the market to provide their best estimate of market shares. Further, the parties submitted that there are more than 67 water bottling companies located in Ethiopia alone.

32. The CID noted that in Ethiopia, the suppliers of bottled water include Forest Bottled water, Top water, Fiker water, Eden water and Moha soft drinks. The parties submitted that the market shares for Yes branded bottled water in Ethiopia is less than 5%. The CID noted that the latter market shares are low and considering that the relevant market is global, concluded that the market shares for Yes branded bottled water is likely to be lower.

33. The CID noted that the following competitors supply powdered juice concentrate in Kenya: Patco Industries, Gonas Best Ltd and Amrut International; and the following competing brands/suppliers of instant coffee and tea products in Kenya: Kericho, Ketepa, Kenya Tea Development Agency, Dormans and Africafe. In relation to the non-alcoholic not ready to drink products, the parties submitted that the estimated market shares of Kenafric Industries Ltd in the supply of powdered juice concentrate is between 25% and 40% in Kenya while that of the target in the supply of instant tea and coffee products is negligible.

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34. While the CID noted the high market shares of the acquiring group, the CID considered that the market share accretion from the transaction is likely to be insignificant in view of the low market shares of the target. The CID opined that the merged entity will still face strong competition from the other players operating in the market.

Consideration of Third-Party Views

35. Submissions were received from the national competition authorities of Kenya, Mauritius, Malawi and Zambia which did not identify any competition or public interest concern likely to arise from the transaction.

Determination

36. 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.

37. 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

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**