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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/02/09/2022

**Decision¹ of the Eighty-Third (83rd) Committee Responsible
for Initial Determinations Regarding the Proposed Merger
involving Puccini Bidco B.V. and ekaterra B.V.**

ECONOMIC SECTOR: Agriculture

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 2 March 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Puccini Bidco B.V. ("**Puccini Bidco**") as the acquiring undertaking and ekaterra B.V. ("**ekaterra**") 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

Puccini Bidco (the acquiring undertaking)

4. Puccini Bidco is a newly incorporated special purpose vehicle registered in the Netherlands. Puccini Bidco has no activities in the Common Market. It has been established for purposes of the proposed transaction and is ultimately indirectly controlled by CVC Capital Partners SICAV-FIS S.A. ("**CVC**").
5. CVC is a member of the "**CVC Network**". The CVC Network consists of CVC and its subsidiaries, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries, which are privately-owned entities whose activities include providing investment advice to, and/or managing investments on behalf of certain investment funds and platforms ("**CVC Funds**").
6. The CVC Funds hold interests in a number of companies in various industries primarily in Europe, the United States of America and the Asian Pacific regions. The parties submitted the CVC Funds' portfolio companies that have a presence in the Common Market and/or generate turnover in the Common Market as per Table 1 below.

Table 1 – Activities of CVC Network in the Common Market

Industry	Member State
Provider of business sustainability ratings	Burundi, DRC, Egypt, Ethiopia, Kenya, Libya, Madagascar, Mauritius, Rwanda, Tunisia, Zambia, Zimbabwe
Provider of web hosting software solutions	Burundi, DRC, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Zambia, Zimbabwe

Industry	Member State
E-commerce platform for flight tickets	DRC, Egypt, Ethiopia, Kenya, Libya, Tunisia, Zambia, Zimbabwe
Pharmaceuticals	DRC, Djibouti, Egypt, Kenya, Libya, Madagascar, Mauritius, Rwanda, Tunisia
Insurance	DRC, Egypt, Kenya, Libya, Madagascar, Mauritius, Seychelles, Sudan, Zambia, Zimbabwe
Provider of clinical protein electrophoresis equipment and reagents	DRC, Djibouti, Egypt, Kenya, Libya, Madagascar, Mauritius, Rwanda, Seychelles, Tunisia, Zimbabwe
Supply of process and packaging technology	DRC, Egypt, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Sudan, Tunisia, Zambia, Zimbabwe
Online retail trading platform	Djibouti, Egypt, Eswatini, Kenya, Madagascar, Malawi, Mauritius
Manufacturer of high-performance luxury watches	Egypt, Mauritius
Production of caprolactam, acrylonitrile and certain by-products, composite resins, and provision of site services	Egypt, Tunisia
IT services provider	Egypt
Manufacturer for the pharmaceutical industry	Egypt, Kenya, Tunisia
Insurance	Egypt, Ethiopia, Kenya, Libya, Mauritius, Rwanda, Tunisia, Zimbabwe
Advisory and educational management firm	Egypt
Pharmaceutical specialties and medical devices	Egypt
Gas exploration and production company	Egypt, Libya
Provider of OEM-licensed parts	Egypt, Ethiopia
Supplier of beauty and personal care products	Egypt, Kenya, Mauritius
Manufacturer of intraocular lenses and associated pharmaceuticals	Egypt, Libya, Sudan
Specialized clothing retailer	Egypt, Kenya, Libya, Mauritius, Tunisia
Software as a Service (SaaS) provider	Egypt
Food production conglomerate brand	Egypt
Olive oil processing company	Kenya
Provides business and compliance services	Kenya, Mauritius
Biscuits and confectionery business	Libya, Mauritius
Management consulting and tech advisory firm	Tunisia

ekaterra (the target undertaking)

7. ekaterra is a global tea business incorporated in terms of the laws of the Netherlands. ekaterra is controlled by Unilever International Holdings B.V. (“Unilever”), a company incorporated in terms of the laws of the Netherlands.
8. ekaterra carries out a tea business, consisting of the cultivation, processing, and supply of leaf tea and the researching and developing, manufacturing, producing, packaging, packing, marketing, distributing, and selling of tea products worldwide, excluding India, Nepal and Indonesia and excluding Unilever’s interests in the Pepsi Lipton joint ventures in relation to ready-to-drink tea.
9. The Target Undertaking is currently active (i.e., generates turnover from sales to third parties) in four (4) Member States namely; Djibouti, Egypt, Kenya, and Zambia. The Target Undertaking also operates tea estates in Rwanda, however it does not have sales to third parties in Rwanda.
10. Table 2 below lists the subsidiaries of the Target Undertaking that are active in the production and supply of tea products in the Common Market.

Table 2 – Subsidiaries of the Target Undertaking in the Common Market

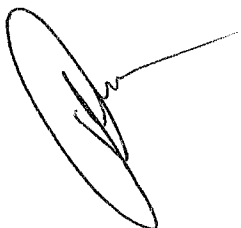
Member State	Name of Entity
Egypt	ekaterra Tea Egypt LLC
	Unilever Tea MSO Egypt LLC
Kenya	Brooke Bond Mombasa Limited
	Limuru Tea Plc
	Mabroukie Tea & Coffee Estates Limited
	Ngoina Tea Estate Limited
	ekaterra Tea Kenya Plc ²
	Unilever Tea MSO Kenya Limited
Rwanda	ekaterra Tea Rwanda Limited

11. ekaterra trades in Djibouti and Zambia through its distributors, namely SDC Berbera FZCO (SDC Group) and L & A Logistics Limited, respectively.

Jurisdiction of the Commission

12. 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

² Unilever Tea Kenya Plc also has a minority interest in Kenya Tea Packers Limited, having its principal business address at Brooke Center KETEPA Head Office 413, Kericho, Kenya.



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.*
13. 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

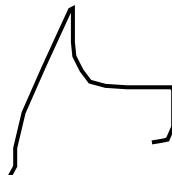
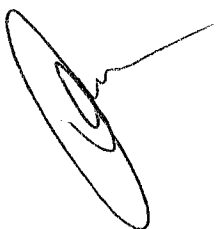
14. The notified transaction involves the acquisition of sole control by Puccini Bidco over ekaterra. On completion of the proposed transaction, CVC will indirectly have sole control over the Target Undertaking through the Acquiring Undertaking.

Competitive Assessment

Relevant Markets

15. The proposed transaction primary concerns the manufacturing and sale of tea products. Tea falls under the general classification of non-alcoholic beverages. Within this market, it is generally agreed that a distinction exists between carbonated soft drinks (“CSDs”) and non-carbonated soft drinks (“NCSDs”)³. Patterns of consumption of various types of drinks seem to reflect the different reasons for which consumers might choose a specific drink. These range from the mere functional/physiological need to quench thirst, to reasons related to nourishment. Thus, milk and juices might fulfil a nourishment need. Fruit juices

³ Decision of the 54th CID Regarding the Proposed Merger between the Coca-Cola Company and Swaziland Beverages Limited issued on 10 February 2019, paragraph 7.



or mineral waters are predominantly associated with natural drinks (additive-free and sugar-free drinks), and demand for them is largely driven by considerations of a healthy lifestyle. "NCSDs are soft drinks without carbon dioxide and sparkling taste and they include fruit punch, fruit drinks, ice tea, coffee with sugar, and sport drinks... and do not undergo the carbonation process and do not have any sparkling flavour".⁴ On the other hand, the main generic physical properties of CSDs, as typically perceived by consumers, are sweetness, sugary taste and effervescent composition. To a certain extent, CSDs have an image of being artificial and do not seem to have any association with a positive effect on health.

16. Within the NCSDs market, the CID has previously found that separate markets can be identified for certain beverages, such as juice⁵ and water⁶, by virtue of price differences and consumption habits. Whilst the CID has not previously made a determination with respect to teas, the CID considered that the same reasoning would apply for this particular beverage. "Tea is valued for its taste, aroma, health benefits, and form part of some cultural practices... tea consumption was associated with beneficial effects on human health. Most of the health-promoting effects of tea are attributed to its polyphenolic compounds and their antioxidant activity"⁷. Further, certain teas are considered as mild stimulants, since they contain caffeine⁸, though in much lower quantities than coffee for instance.
17. The CID noted that other competition authorities have identified tea as a distinct market, for instance in **Libstar Operations (Pty) and Khoisan Tea Import and Export**⁹, the Competition Tribunal of South African ("CTSA") identified distinct markets for the manufacture and supply of tea products.
18. The CID noted that the merging parties agreed with a segregation of the product categories under non-alcoholic beverages. In particular, the parties submitted that with regard to supply-side considerations, tea is produced in a completely different manner from other products such as milk, coffee, and juices and no supply-side substitution is possible. Moreover, even from a demand side

⁴ Abdelazim SAA, Masoud MRM, Youssif MRG (2017) 'Micronutrients for natural carbonated and noncarbonated soft drink'. Accessed at <https://medcraveonline.com/JNHFE/micronutrients-for-natural-carbonated-and-noncarbonated-soft-drink.html#:~:text=Non%2Dcarbonated%20soft%20drinks%20are,not%20have%20any%20sparkling%20flavour> on 21 March 2022.

⁵ Decision of the 70th CID Regarding the Proposed Merger between PepsiCo Inc. and Pioneer Food Group Limited, issued on 10 March 2020, paragraph 9.

⁶ Decision of the 16th CID Regarding the Proposed Merger between the Coca-Cola Company and Coca-Cola Beverages Africa Proprietary Limited issued on 29 July 2015, paragraph 8.

⁷ 'Agnieszka Kosińska, Wilfried Andlauer (2014) 'Antioxidant Capacity of Tea', accessed at <https://www.sciencedirect.com/topics/food-science/tea-beverage> on 12 May 2022.

⁸ <https://eatta.co.ke/member-resources/about-tea> accessed on 17 April 2022.

⁹ Competition Tribunal of South Africa, Case No: LM080Jun17, paragraph 15.

perspective, consumer preferences would not be substitutable due to the distinct flavour and taste of tea.

19. The CID therefore considered that the manufacture and supply of tea products constitutes a distinct market. The CID noted that the decision by the CTSA further distinguished between different types of teas, in particular green teas, and roibos teas. The CID likewise considered that the different types of teas, for instance, green tea, black tea, fruit/herbal tea, differ significantly in flavour (e.g., green tea vs black tea), and are generally associated with different perceived health benefits (e.g., green tea is widely promoted in weight loss diets)¹⁰. Certain types of teas are also specifically made from plants which may be more prevalent or indigenous to certain countries (for example roibos tea in South Africa) and may not be easily accessible or available at similar price range in other parts of the world.
20. In view of the foregoing, the CID considered the relevant market to be the market for manufacture and supply of tea, with potential further segmented according to types of teas namely green tea, black tea and specialty teas.

Relevant Geographic Market

21. The CID considered that the manufacture and supply of tea is likely to be at least continental in scale as there is generally no restriction on trade or transport of tea products across borders and the international brands are sourced from overseas manufacturing plants. This is evidenced by the activities of the merging parties who are able to export their products into the Common Market.
22. The CID noted that most international brands have production facilities within Africa from which their products to the Member States are exported. The CID considered that brands from producers outside the continent such as Tetley (UK), Dilmah (Sri Lanka) were not as widely available in the Common Market, and therefore may be not effective substitutes to brands with established regional presence. It is also noted that Vivartia (which belong to the Acquiring Group) Life Tsai's ready to drink teas are not traded in the Common Market. For purposes of this transaction, the relevant geographic market was limited to Africa.

Market Shares and Concentration

23. The parties submitted estimated market shares¹¹ for the Target Undertaking and its competitors in the national markets for Kenya and Egypt as per Table 3 below.

¹⁰ <https://www.healthline.com/nutrition/green-tea-vs-black-tea>, accessed on 18 April 2022.

¹¹ The Parties have calculated market shares on the basis of retail shares (based on total values purchased by end consumers) as they consider that this approach provides the best available proxy for wholesale shares, which is the actual level at which the Target Undertaking is active. The Commission concurred with this approach as the market position of the producers is directly linked to the popularity and market share of the tea brands and products at retail level.

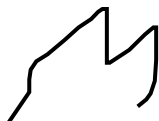
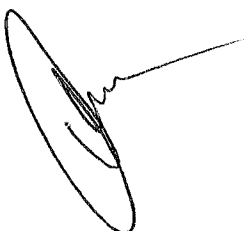


Table 3: Market shares For Manufacture and Sale of Tea in Kenya and Egypt

National Market	Market Player	Estimated Market Shares
Kenya	Kenya Tea Development Agency	[50-60]
	Karirana Estates Ltd	[20-30]
	ekaterra	[5 – 10]
	Sasini Tea & Coffe Ltd	[0 – 5]
	Gold Crown Beverages (k) Ltd	[0 – 5]
	Melvin Marsh International Ltd	[0 – 5]
Egypt	El Fath	[50-60]
	ekaterra	[20-30]
	Al Anani	[0 – 5]
	AMS	[0 – 5]
	Al Asari	[0 – 5]
	Al Jawhara	[0 – 5]

24. As indicated in Table 3 above, ekaterra has a relatively insignificant market share of about [5 – 10]% in Kenya. Kenya Tea Development Agency, which regroups smallholder tea farmers, has a market share of approximately [50-60]%, followed by Karirana Estates Ltd. In Egypt, ekaterra is the second largest player, with an estimated market share of [20-30]%. The parties further submitted that ekaterra's turnover in each of Djibouti and Zambia is limited, comprising less than [0-5]% of the Target Undertaking's total turnover in the Common Market.
25. The CID observed that the relevant market was construed as Africa-wide, and ekaterra would face competition from a wider net of competitors, including local brands. In any event, the transaction is not capable of leading to any market share accretion in the relevant market, given that the acquirer was not active in the relevant market, pre-merger.

Consideration of Third-Party Views

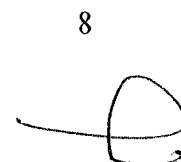
26. Submissions were received from Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Mauritius, Seychelles, Zambia, and Zimbabwe which did not raise any concerns as a result of the transaction given that the parties do not operate as competitors pre-merger.

Determination

27. 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.

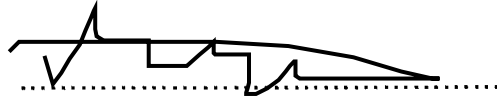



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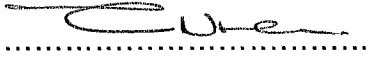


28. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

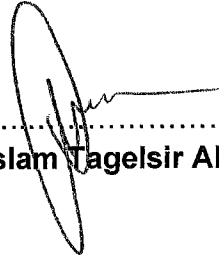
Dated this 31st day of May 2022



Commissioner Mahmoud Momtaz (Chairperson)



Commissioner Vincent Nkhoma



Commissioner Islam Tagelsir Ahmed Alhasan