



COMESA Competition Commission
Kang'ombe House, 5th Floor-West Wing
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesa.int



Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/05/16/2021

Decision¹ of the Seventy-Eighth (78th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of Indirect Sole Control by EQT Fund Management S.à r.l. of Cerba Healthcare SAS

ECONOMIC SECTOR: Health

3rd September 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

R.M.L E.P

Introduction and Relevant Background

1. On 20th July 2021, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a proposed merger involving EQT Fund Management S.à r.l., (“**EFMS**” or the Acquiring Firm), and Cerba Healthcare SAS (“**Cerba**” or the Target Firm), 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. The Committee Responsible for Initial Determinations, referred to as the CID, is established pursuant to Article 13(4) of the Regulations. The decision of the CID is set out below.

The Parties

EFMS

4. The parties have submitted that the acquiring firm, EFMS, is a *société à responsabilité limitée* incorporated under the laws of the Grand Duchy of Luxembourg, with its business address at 26A, Boulevard Royal, L-2449, Grand Duchy of Luxembourg. EFMS has been appointed as the alternative investment fund manager of EQT IX, a part of the EQT group of private equity funds ultimately owned by EQT AB, which is headquartered in Sweden. EFMS has exclusive responsibility for the management of EQT IX. The EQT funds’ portfolio companies are active in a variety of industries and sectors, including in the pharmaceutical sector, in elderly care and veterinary services.
5. In the Common Market, in the financial year 2020, EQT (through its controlled portfolio companies) had operations (i.e., generated revenue) in the following Member States: Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Cerba

6. The parties submitted that target undertaking, Cerba, is a company incorporated under the laws of France, with its business address at 11-13 rue, René Jacques, 92130, Issy-les-Moulineaux, France. Cerba is indirectly controlled by Constantin Investissement 1 SAS (“**Constantin Investissement 1**”) a French *société par actions simplifiée* incorporated under the laws of France, with its business address at 11-13 rue René Jacques, 92130 Issy-les-Moulineaux, France. Constantin Investissement 1 is the top holding company of the Cerba group, comprising the following entities: Constantin Investissement 1, Constantin Investissement 2 SAS, Constantin Investissement 3 SAS, and Cerba Healthcare SAS. Constantin Investment 1, together with its controlled affiliates, including Cerba, are referred to as the Cerba Group.
7. Cerba is a global and diversified laboratory services company operating within clinical pathology in France and internationally. It is currently active in 40 countries across 5 continents. Cerba’s business

B.M.L E.R

activities are segmented into three main business lines: (i) specialty testing; (ii) routine testing and; (iii) clinical trial. It also offers veterinary biology and well-being services. Cerba has a diversified customer base which includes public and private hospitals, walk-in patients, physicians, pharmaceutical and biotech companies. In the financial year 2020, Cerba had operations in the following Member States: Burundi, Djibouti, Egypt, Eswatini, Kenya, Libya, Madagascar, Mauritius, Rwanda, Sudan, Tunisia, Uganda and Zimbabwe.

Jurisdiction of the Commission

8. 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.*
9. 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

10. The notified transaction concerns the proposed acquisition of indirect sole control EFMS, acting as fund manager for and on behalf of the investment fund EQT IX, through Chrome Bidco SAS (**Chrome Bidco**), of all the securities issued by Constantin Investissement 1 SAS, the top holding company of Cerba (the **Proposed Transaction**).
11. Chrome Bidco, a company incorporated under the laws of France and wholly-owned by EQT, is an investment vehicle exclusively set up for acquiring control over Cerba. The transaction will take place pursuant to a Put Option Agreement and Share Transfer Agreement and consists of a purchase of shares.
12. As a result of the Proposed Transaction, EFMS, through Chrome Bidco, will acquire indirect sole control of Cerba within the meaning of Article 23(1)(a) of the Regulations.

B.M.C.L E.R

Relevant Market

13. Paragraph 7 of the Commission's Guidelines on Market Definition states that a "*relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use*". Thus, one principal question to be answered before defining the relevant product market is the question of which products are regarded as substitutable from the consumer's viewpoint with regard to their price, product characteristics and intended use.
14. EQT funds' portfolio companies are active in a variety of industries and sectors globally, including in the pharmaceutical sector, in elderly care and veterinary services. In the Common Market, the group is active in the provision of media and communications, supply of software and applications, specialty chemical supplies, visa processing and automation services, pharmaceutical productions and supplies, pharmaceuticals, food and beverages etc. Cerba is a global and diversified laboratory services company active in the clinical pathology market through an international network of medical analysis laboratories whose activity consists of providing medical biology examination services. In the Common Market, Cerba is active in the provision of biomedical laboratory analysis services, specifically the routine and specialty medical laboratory testing services.
Provision of clinical laboratory services
15. Clinical laboratory services are tests provided by medical labs which helps in diagnosis and treatment of patients. They are medical tests performed using a wide range of laboratory equipment to attain information about the health of a patient.
16. The US Federal Trade Commission has described "clinical laboratory testing services" as "*the full range of products and services provided by a clinical laboratory, including, but not limited to, the drawing, collection, and transportation of specimens over a coordinated courier route system; stat, routine, and esoteric clinical testing; the computerized tracking of specimens for testing, recordkeeping, and billing functions; and the electronic communication of test results and other necessary data to customers*".²
17. Clinical laboratory tests are performed on samples taken from the human body, such as blood, body fluid, body tissues, urine or stool samples used to diagnose their particular medical condition and determine the likely course of treatment. Some examples of these tests include liver and renal function tests, full blood count, lipids profile, molecular testing etc. Laboratory tests can detect diseases or other conditions and can be used to monitor a person's overall health to help cure, treat, or prevent diseases. Further, it may also be used in precision medicine to identify patients who are likely to benefit from specific treatments or therapies.
18. The CID noted that clinical laboratory tests can be classified as routine testing and specialty testing. Routine tests are tests that are performed on most analysers and can be performed by personnel with basic technical knowledge. There is usually a high volume of demand for general tests. There is a

² <https://www.ftc.gov/sites/default/files/documents/cases/2003/04/questdo.pdf> page 3 paragraph F, accessed on 1st August 2021.

B.M.L E.P

short turnaround time, the time from receipt of the specimen in the laboratory to the time the result is reported to the customer. The common routine tests include cholesterol level tests, HIV tests, pregnancy tests, and substance abuse tests. Specialty testing are more complex and require greater laboratory expertise. They are tests that require special equipment facilities to perform, as well as personnel with more specialized technical skills and knowledge about the testing procedures. There is usually a lower volume of demand for specialised tests. Specialty testing, which is often more costly, may include genetics, immunology, endocrinology, and other segments.

19. From a demand perspective, the CID considered that patients would not be able to substitute one test for the other in response to a small but significant non transitory increase in the price (SSNIP) for one type of test relative to the other as the required test is prescribed by doctors and for specific purposes. From a supply perspective, the investment capital and technical skills required for specialty tests are high, which may make it more difficult for providers of routine tests to swiftly switch to specialty testing.
20. The CID noted that while there may be indications of the existence of submarkets distinguishing private labs from public labs, the CID determined that such technical delineation was not necessary for purposes of this transaction as the merger is unlikely to raise significant competition concerns under any alternative or narrower market definition.
21. On the basis of the foregoing assessment, the CID defined the relevant product markets as:
 - a. **The provision of routine laboratory test services, and**
 - b. **The provision of specialty laboratory test services.**
22. The CID considered that the geographic market for routine testing is likely to be national in scope as such results are generally required over a shorter timeframe compared to specialty test, such that overseas providers would not constitute an effective substitute. Customers, be it the patients or health providers, are likely to seek such services from laboratories around their vicinity as it would imply lower transportation costs, and shorter turnaround time period.
23. The CID considered that specialty testing market could be broader than national. The CID noted that with advances in technology, several Member States offer specialty testing services which are available to customers from other countries in the Common Market. It is not uncommon that customers in the Common market would consider suppliers from other Member States or elsewhere in Africa for provision of specialty laboratory test services. The CID considered that while there are other countries outside the continent who have traditionally been considered as popular destinations for such services, the current COVID-19 pandemic and the associated travel restrictions would significantly affect the effectiveness of overseas laboratories which are located farther. The CID thus considered that the relevant geographic market should be constrained to Africa.
24. The CID thus identified the relevant markets as:
 - a. **The provision of routine laboratory test services on national basis in Eswatini, Kenya, Rwanda, Uganda and Zimbabwe and**
 - b. **The provision of specialty laboratory test services in Africa.**

B.M.L E.R

Competitive Assessment

25. The CID noted that the target undertaking is a leading player in Eswatini, Kenya, Uganda and Zimbabwe. While the merged entity will remain the market leader post-merger, it is noted that the transaction itself will not result in any increase in market share, and therefore will not contribute to any change in market concentration.
26. In the market for provision of specialty test services, the CID noted that at continental level, the target will face competition from local players as well as large well-established international suppliers. Despite the market being concentrated pre- and post-merger and the merged entity being the market leader, the proposed transaction is not likely to raise concerns on account of the creation or strengthening of a position of dominance.

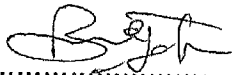
Third Party Views

27. Stakeholders from Burundi, Malawi, Mauritius, and Seychelles submitted that the transaction was unlikely to raise competition concerns as a result of the relatively low market shares of the merging parties in the relevant markets within the Common Market.

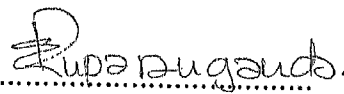
Determination

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

Dated this 3rd day of September 2021



.....
Commissioner Brian M. Lingela (Chairperson)



.....
Commissioner Ellen Rugaranganda