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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/04/13/2021

Decision¹ of the Seventy-Sixth (76th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition by Agthia Group PJSC of 75.02% share capital of Ismailia Agricultural and Industrial Investment (Furat) S.A.E

ECONOMIC SECTOR: Meat Processing

28th June 2021

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 4th May 2021, the Commission received a notification for approval of a merger involving Agthia Group PJSC (“**Agthia**”) and Ismailia Agricultural and Industrial Investment (Furat) S.A.E (“**Ismailia**”), 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

Agthia (the acquiring firm)

4. Agthia is an Abu Dhabi based food and beverage company established in the United Arab Emirates (UAE) in 2004. Agthia is listed on the Abu Dhabi Securities Exchange since 2005. Agthia is ultimately controlled by Abu Dhabi Developmental Holding Company PJSC (“**ADQ**”). Established in Abu Dhabi in 2018, ADQ is one of the region’s largest holding companies with direct and indirect investments in several key sectors across Abu Dhabi’s economy, including food and agriculture, aviation, financial services, healthcare, industries, logistics, media, real estate, tourism and hospitality, transport, and utilities.
5. The acquiring group is active in the following Member States: Egypt, Kenya, Libya, Madagascar, Mauritius, Seychelles, Sudan, and Tunisia. It was submitted that ADQ’s controlled portfolio companies, including Agthia, are active in the Common Market only in relation to limited food and industrial products, as listed in Table 1 below:

Table 1 – List of Products Supplied by the Acquiring Group in the Common Market

Product/Service	Member State
Steel and Aluminium Products	Egypt, Kenya, Madagascar, Seychelles, Tunisia
Palm Dates	Egypt, Mauritius
Tomato Paste	Egypt, Libya, Kenya
Fruit Concentrate	Egypt, Libya
Frozen Vegetables	Egypt, Libya
Chilli Paste	Egypt, Libya
Building materials (cement, concrete)	Sudan

6. Agthia, specifically, provides the following products in the Common Market:
 - i. Kenya: tomato paste.
 - ii. Libya: fruit concentrate, frozen vegetables, chili paste, and tomato paste.
 - iii. Egypt: fruit concentrate, frozen vegetables, chili paste, and tomato paste.
7. Outside COMESA, Agthia is also active in other human and animal food products, including (flour, animal feed, bottled water, flavored water, juices, yogurt, frozen vegetables, frozen baked products chili paste, fruit concentrate and frozen vegetables). The vast majority of Agthia's sales are in the UAE.

Ismailia (the target firm)

8. Ismailia is a joint stock company organized and existing under the laws of Egypt with a commercial registration number 35702 and with its registered address at Plot number 31 El Salam Agricultural Cooperative Association – Manayef, Ismailia. It is active in poultry slaughtering and processing, as well as the supply of various poultry and meat products. In the Common Market, Ismailia is active in Egypt only.

Jurisdiction of the Commission

9. 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.*
10. The merging parties have operations in more than two COMESA Member States. The parties' combined asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset of more than USD 10 million in the Common Market. In addition, the merging parties do not hold more than two-thirds of their respective COMESA-wide asset 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

11. In terms of the notified transaction, the parties submitted that the acquirer intends to acquire indirectly a stake amounting to 75.02% in Ismailia (the "Proposed Transaction"), by virtue of a Share Purchase Agreement entered into by and between Agthia and the Sellers dated 7 April 2021.

Relevant Markets

Relevant Product Market

12. Agthia and ADQ's portfolio companies are active in the Common Market in relation to distribution of tomato paste, palm dates, fruit concentrate, frozen vegetables and chili paste, and supply of industrial products. The parties have submitted that neither Agthia nor the other ADQ portfolio companies are active in the processing or supply of poultry and meat products in the Common Market, which is the area of activity of the target. Moreover, ADQ (including its portfolio companies) do not supply Ismailia nor purchase from it. For purposes of the competitive assessment of the current transaction, the CID has focused on the activities of the target group in the supply of processed meat, to assess whether any anti-competitive harm could arise from the transaction.

Slaughtering of Poultry

13. The target is active in the slaughtering of poultry. With regard to the slaughtering of live animals, the CID considered that the killing lines in a slaughterhouse differ for different species (poultry, cattle, pigs) and cannot be changed within a reasonable time span and without incurring significant costs. It is expected that it would take up both time and cost for a farmer to switch production from the breeding of one species of animal to another (raising cattle instead of pigs, for example). Therefore, supply-side substitutability between different species at the slaughtering level is not likely. In this regard, the CID considered that a distinct market for slaughter of poultry exist.

Supply of Processed meat

14. The target is also active in the supply of processed poultry and beef to retailers. The supply of processed meat comprises meat from mammals or birds combined with external ingredients such as salt or spices and which can be raw, dried, smoked and cooked². The various processed meat products can be segmented by type of species (pork, beef, poultry). From a demand side, the CID considered that most consumers would not be willing to substitute poultry processed products with beef or pork processed products, in response to a 5-10% permanent price increase in the price of processed pork, due to the distinct attributes such as flavour, taste, nutritional value, tenderness, cost, ease of use, as well as religious beliefs.



² European Commission decision of 22/09/2010 in Case No. COMP/M.5933 - MARFRIG/ KEYSTONE, paragraph 7. See also Case COMP/M.5705 - Marfrig Alimentos/Seara, paragraph 13.

15. In addition, it is not evident that there would be swift supply-side substitutability between processed products from different meats. A supplier of chicken sausage cannot obtain its supplies for raw chicken from beef producers or pork producers as the upstream suppliers will not be able to quickly change their production facilities to switch between species.
16. The CID also assessed whether the markets for processed poultry and processed beef could be further divided into particular processed products such as sausages, chicken nuggets, smoked meat, marinated meat, etc. The CID considered that supply-side substitutability within a specific meat type is more likely to be present, as a supplier of processed poultry for instance should be able to adjust its production to supply sausage or coated/crumbed chicken products.
17. Accordingly, the relevant product markets for purposes of this transaction are construed as (i) slaughtering of poultry, (ii) supply of processed poultry to retailers, and (iii) supply of processed beef to retailers.

Relevant Geographic Market

18. The CID considered that the geographic market for the slaughtering of poultry is likely to be national in scope due to hygienic or veterinary regulations. Further, the farmers normally incur the transport cost from the farm to the slaughterhouse, which would limit the geographic scope of the market as the greater the distance, the higher the transport cost which affects the competitiveness of the poultry and meat products. While there are indications that the geographic market could be divided into governates, given that the target market shares will not be affected post-merger irrespective of the relevant market defined, the geographic market for slaughtering of poultry is taken as national.
19. The CID considered that the markets for processed poultry and meat products are likely to be at least national, as the products can be transported over some distances in refrigerated containers by road and no significant price arbitration is likely to be present across cities within the same national border. The assessment also considered whether a wider market could be established. It was noted that in some Member States, for instance, Malawi, one can find processed meat in supermarkets from producers in Zambia or South Africa. However, the Commission observed that Egypt, being the only COMESA Member State where the target is present, has a significant number of poultry and cattle farmers, and it was likely that imports constitute a smaller share of the market. Further, while other processed meat suppliers in Egypt can generally export to Member States in the Common Market, the target itself is not involved in export to the Common Market. Further, there may be consideration of consumer preferences for locally sourced products, particular in view of health concerns from disease outbreaks in foreign countries. For purposes of this transaction, the CID focused its assessment of supply of processed poultry and beef products at national level.

20. For purposes of this competitive assessment and without prejudice to the CID's approach in future cases, the relevant markets are defined as follows:
- slaughtering of poultry in Egypt,
 - the supply of processed poultry to retailers in Egypt, and,
 - the supply of processed beef to retailers in Egypt.

Competitive Assessment

21. The total number of poultry slaughterhouses in Egypt was reported to be 309 units in 2015³, out of which 117 are located in Lower Egypt, where Ismailia operates. The CID observed that in view of the national (and potentially narrower) character of the market, the target's market shares would not be affected post-merger as the acquiring group was not present in the relevant market pre-merger.
22. In relation to the supply of processed poultry and beef products, the available estimated market shares of the target and competitors are presented in Table 1 below:

Table 1 – Estimated Market Shares in the Relevant Markets for Processed Meat

Relevant Product	Company	Estimated Market Share
Processed Beef	Halwani Brothers	[8 – 10]%
	<i>Ismailia</i>	[2 – 4]%
	Cairo Poultry Processing Company	[1 – 2]%
	Oriental Spices	<1%
Processed Chicken	<i>Ismailia</i>	[5 – 7]%
	Cairo Poultry Processing Company	[5 – 7]%
	Halwani Brothers	[1 – 2]%
	Oriental Spices	<1%

23. The CID noted that the markets are characterised by the presence of competitors such as Cairo Poultry Processing Company, Faragalla Group⁴. The target's market share post-merger will not exceed 10% in the relevant markets. The CID's assessment revealed that the transaction would not result in a change in market structure as the acquirer was not active in the relevant markets pre-merger.
24. The CID considered that the main barriers to entry in the relevant markets would manifest in the form of capital investment to set up appropriate production facilities, obtaining regulatory approval, building brand image, and access to retailers. It is estimated that it would take approximately 2 to 3 years to setup a production facility compliant with local rules and regulations and another year for meaningful products' market entry. Having

³ Food and Agriculture Organization of the United Nations, 'Arab Republic of Egypt Broiler poultry industry: investment challenges and opportunities' (2017). Accessed at <http://www.medagri.org/docs/group/71/Egypt%20Poultry%20Sector%202017.pdf>, on 26th May 2021.

⁴ <https://faragalla.com/category/processed-meat/>, accessed on 26th May 2021.

regard to the nature of the products, and the size of the Egyptian markets, the CID considered that barriers to entry into the relevant markets would not be significant.

25. Notwithstanding the lack of horizontal overlap, the CID observed that from a commercial perspective, the portfolio of Agthia as a supplier of foods and beverages, will be enhanced by the products produced by the target firm. However, the processed meat products supplied by the targets are distinctively different from the other food and beverage products supplied by the acquirer and would face different competition pressures from the market. In this regard, the CID was satisfied that there would be no commercially motivated incentives for the acquirer to engage in anti-competitive tying or bundling strategies.

Third-Party Views

26. Submissions were received from the Competition Authority of Kenya, the Competition Commission (Mauritius), the Egyptian Competition Authority, the Fair Trading Commission (Seychelles) and the Conseil de la Concurrence de Madagascar. The third party submissions were consistent with the CID's conclusion that the transaction was unlikely to raise competition concerns in the relevant markets. In particular, stakeholders from Egypt did not raise objections to the transaction as it was submitted that the poultry industry is competitive.

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

Dated this 28th day of June 2021



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Commissioner Justice Charlotte Wezi Malonda (Chairperson)



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Commissioner Brian M. Lingela



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Commissioner Ellen Ruparuganda