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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/06/28/2022

Decision[1] of the Eighty-Sixth (86th) Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Joint Control of Olam Agri Holdings Pte. Limited by SALIC International Investment Company

ECONOMIC SECTOR: Agriculture

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 21 July 2022, the COMESA Competition Commission ("**Commission**") received notification of a merger involving SALIC International Investment Company ("**SIIC**") as the acquiring undertaking and Olam Agri Holdings Pte. Limited ("**Olam Agri**") 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

SIIC (the acquiring undertaking)

4. The acquiring undertaking, SIIC, is a company incorporated under the laws of the Kingdom of Saudi Arabia and is a subsidiary of Saudi Agricultural and Livestock Investment Company ("**SALIC**"). SIIC has been established to hold SALIC's international investments. SALIC was established in 2009 as a Saudi joint-stock company owned by the Public Investment Fund. SALIC is an investment company investing both inside and outside the Kingdom of Saudi Arabia to achieve a food security strategy by providing food products and stabilizing their prices. Globally, SALIC invests in various companies specialised in the fields of agriculture and the trading of grains, rice and meat in various countries. SALIC's agri-business is focused on farming and origination as well as importing commodities into the Kingdom of Saudi Arabia. SALIC exerts control (either joint or sole) over the following entities:

   - G3, a Canadian company which is active in the origination of grains (rye, wheat, oat, barley), oilseeds (canola, soybean, flax) and oilseed intermediates (soybean meal). G3's business model is based on relationships with farmers across Canada, from which it purchases different grains and oilseeds. The grains and oilseeds purchased are then transported to different elevators owned across Canada by G3 and ultimately to grain terminal facilities in ports in Eastern or Western Canada, where they are then sold to global wholesale traders. The sale to traders occurs mostly free-on-board.

   - Continental Farmers Group ("**CFG**"), a Ukrainian farming company headquartered in Ternopil which is active in the farming of grains (wheat, barley, rye, maize, alfalfa), oilseeds (winter OSR, oilseed rape, sunflower, soybean), grain intermediates (maize silage), and fresh produce (potatoes). CFG generates sales by selling to originators and global wholesale traders ex-works elevators or carriage-paid-to at the port, i.e. CFG's service is limited to delivering the product to the port.

   - Merredin Farms, an Australian farming company headquartered in Merredin which is active in the farming of grains (wheat, barley) and the breeding of sheep for wool production; as well as the wholesale trading of wheat (purchased from originators and resold to SALIC); and

   - National Grain Company, a Saudi Arabian company which will operate a grain handling terminal which is under construction in the commercial Port of Yanbu.

5. SALIC is not active in the Common Market. SALIC is a subsidiary of the Public Investment Fund of Saudi Arabia ("**PIF**"), a sovereign wealth fund with direct and

indirect investments in a number of sectors. PIF holds interests in a number of entities which have activities in the Common Market.

Olam Agri (the target undertaking)

6. Olam Agri has been incorporated in accordance with the laws of Singapore and is a merchant and processor of agricultural goods, with activities spanning the entire value chain: farming, origination, processing, storing, transporting and merchandising. In the Common Market, Olam Agri is principally active in the wholesale trading of wheat in Egypt and Tunisia; and the wholesale trade of edible oils in Kenya, Madagascar, Malawi, Zambia and Zimbabwe.

Jurisdiction of the Commission

7. 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.

8. The undertakings concerned have operations in two or more Member States. The parties' combined annual 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 derive more than two-thirds of their respective COMESA-wide turnover 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

9. The notified transaction involves SALIC acquiring an indirect stake of approximately 35.43% in Olam Agri from Olam Holdings, which will result into joint control with Olam Group. The acquisition will be carried out by SIIC.

Competition Assessment

Relevant Product Markets

10. As stated, in the Common Market, Olam Agri is involved in the origination of sesame; wholesale trading of rice, wheat, corn, fibre, edible oil, timber, sesame, rubber and the processing of wheat. The acquiring group does not have any activities in the agri-commodity sector in the Common Market. However, the CID noted that through its portfolio companies, SALIC is active as a farmer of oilseeds (sunflower seed, rapeseed and soybean oilseeds) in Ukraine, and as a farmer of grains (wheat, barley, rye, maize and alfalfa) in Australia and Ukraine. Further, one of SALIC's portfolio companies acts as an originator of oilseed products in Canada. As discussed below, the trading of crops occurs at a global level. The CID thus noted that there was a potential overlap between the activities of SALIC as a farmer and originator and Olam Agri as a wholesale trader.

<u>Origination and Marketing of agriproducts</u>

11. The agricultural commodities supply chain comprises of various stages. The value chain starts with farming of the agriproducts. Farmers cultivate the crop from seedling until the latter matures and produces the agriproduct. The next stage in the value chain is origination. Origination refers to the market for purchasing crops such as harvested grains and oilseeds directly from farmers and the purchasers include agricultural traders, distributors, millers or crushers.

12. When the agriproducts have been originated from the farmers, the products are then stored and handled in silos, elevators and/or port terminals. The agriproducts are then either transported to processing or refining facilities (e.g., crushing or milling facilities to turn soybeans into soybean oil; wheat into wheat flour; sugar into refined sugar; etc.) or are transported directly in their unprocessed form for trade and distribution.

13. The agriproducts are then sold to a number of export markets, including food manufacturing companies, animal feed manufacturing companies, and non-food manufacturing companies (e.g., biofuels or industrial products). These manufacturers then sell the final product to food/feed retailers and other outlets for consumption. Direct sales can also occur between non-adjacent parts of the chain (e.g., direct sales by farmers/cooperatives to processors or direct sales by processors to end users).

14. In its previous decision, the CID considered that the origination stage could constitute a distinct market separate from the downstream wholesale markets as they involve different players and therefore different supply and purchase

conditions[2]. The farmers sell to intermediaries who may further process the grains or seeds before marketing them. The intermediaries typically have larger financial, storage and transportation facilities than their customers at the downstream marketing chain and are typically more sophisticated as they also engage in paper trade of such crops[3]. For purposes of this transaction, and consistent with the CID's decisional practice, the CID identified separate markets for origination and for wholesale trading.

15. The CID further noted the existence of submarkets by type of agri-products, as discussed below.

Grains vs Oil Seeds

16. Grains are different from other crops such as oil seeds, cocoa and coffee on account of their physical characteristics and this can influence the different manner in which the crops are farmed, stored, transported and marketed. Specific climatic conditions are required for the farming of wheat and rice as compared to other agriproducts such as tea or vegetables for instance. In terms of the marketing, green coffee beans tend to be sensitive to foreign odours and moisture hence they are usually shipped in woven bags made from natural fibre which allows free circulation of air. This is likely to have cost implications to distributors of coffee beans since they have to ensure the coffee beans are stored in a controlled environment which does not compromise the quality of the coffee beans[4]. On the other hand, grain marketing generally does not require complicated transportation and storage systems. The key requirement for grain is to ensure that it is dried to the right moisture content.

17. The CID therefore considered that the origination and distribution of grains and oilseeds constitute distinct markets.

18. In line with previous decisional practice, the CID considered that it was not necessary to further segment the market according to the various types of grain which may exist, given that from a supply perspective, grain farmers and grain marketers can easily switch to the distribution of different grains since there are no special skills or know-how required to grow or deal with particular grain products. As noted, the merging parties themselves originate and distribute a wide variety of grains which include wheat, corn, rice, barley and rye. It is observed that global players similarly offer various grain options rather than specialising in one type of grain which would point to supply side substitutability. The grains supply of

[2] Decision of the Eighty-Fifth Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by Viterra USA Investment, LLC of Gavilon Agriculture Investment, Inc

[3] The European Commission has similarly traditionally identified distinct markets for origination and for marketing whereby marketing comprises of the sale by wholesalers to third parties. See for instance, European Commission Case No COMP/M.6740 - Baywa/Cefetra, dated 19 December 2012, paragraph 9.

[4] Decision of the Seventy-Fifth Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Apuleaf II Limited and Louis Dreyfus Company B.V. Case File No. CCC/MER/01/02/2021

competitors to the parties, namely ADM Germany GMBH[5], for instance, extend to beans and pulses (including dark red kidney, light red kidney, chickpea, navy bean, black bean, pinto bean, red lentil, green lentil, fava bean, yellow pea and small red bean), edible seeds (chia, flax, hemp, pumpkin and sunflower) and peanuts. Another competitor and global player, Cargill[6] distributes grains which include wheat, corn, barley and sorghum. Therefore, within the origination and trading markets, the CID is of the view that players would be able to easily switch to start sourcing and supplying other types of grains without significant costs or risks in response to a small but significant price increase.

19. Similarly, in line with previous decisional practice, the CID is of the view that there exists one broad product market for oilseeds, encompassing all oils produced from the various seeds[7]. Oil seeds are derived from the following crops: sesame, canola, palm oil, soybeans, rapeseed and sunflower. Oil seeds are grown for their high oil content. Oilseeds are crushed to produce oil and when the oil has been extracted, the seeds are used for animal feed. While each oil seed produces oil with a distinct colour and flavour, ultimately all types of oil are processed and refined to reach the same functionality for downstream use and further processing. For the purposes of this transaction, the market can be left open as any narrower market definition would not alter the outcome of the competitive assessment.

20. On the basis of the foregoing assessment, the CID considered that the relevant product markets are:
    - **the origination of grains;**
    - **the origination of oilseeds;**
    - **the marketing of grains; and**
    - **the marketing of oilseeds.**

Relevant Geographic Market

21. In line with previous decisional practice, the relevant geographic markets for the origination and marketing of grains and oilseeds are likely to be at least COMESA-wide. In view of the implementation of a Common Market where trade in wholly originating products will not be subjected to trade taxes, the Common Market can be seen as presenting a homogenous environment whose conditions affecting competition are unique. The CID further noted the absence of significant barriers to entry in the relevant markets. Suppliers are likely to face competition from imports originating within the Common Market and beyond and the parties are themselves international players. While the importation of grain and oilseeds in most Member States may be subject to Government regulations such as licensing

[5] https://www.adm.com/en-us/products-services/
[6] https://www.cargill.com/agriculture
[7] Case No IV/M.1376 - Cargill / Continental Grain dated 3rd February 1999, paragraph 14

and compliance with sanitary and phytosanitary standards, these requirements are likely to be attainable and not prohibitive to prevent trade from taking place.

22. The CID noted that the major players in the relevant markets operate at global level, and there are imports coming from players outside the Common Market. It is common knowledge for example that Ukraine, Russia and India, among other countries, are major suppliers of grain and oilseed. Therefore, the CID was of the view that it is not impracticable for global companies involved in origination and marketing of grain and oil seed to access such products from outside the Common Market. The CID noted that the target originates, processes and trades grains from major producing areas which include Europe (Germany, Latvia, Lithuania, Poland, Romania and Switzerland), the United States, South America (Argentina, Brazil and Peru), Australia, and areas around the Black Sea (Ukraine and Russia), and supplies grains in Egypt and Tunisia. Likewise, the crude seed oil traded by Olam Agri which is destined for Africa (South Africa, Kenya, Madagascar, Mozambique, Malawi, Zambia and Zimbabwe) is originated from several countries across the world. For the foregoing reasons, the relevant geographic markets are construed as **global**.

23. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID has identified the following relevant markets:

- **the global origination of grains;**
- **the global origination of oilseeds;**
- **the global marketing of grains and**
- **the global marketing of oilseeds.**

Market Shares and Concentration

24. The parties have submitted that the market shares of the parties are minimal. In ***Viterra/Gavillon***[8], the CID gathered the following market share information estimates for the respective global origination of grains and oilseeds per Table 1 below.

Table 1 – Market Shares for the global origination of grains and oilseeds

Relevant Market	Entity	Approximate Market Shares (%)
Origination of grains	Cargill	5 - 15
	ADM	0 - 10
	Bunge	0 - 10

[8] See the non-confidential CID decision regarding the Proposed Acquisition of Control by Viterra USA Investment, LLC of Gavilon Agriculture Investment, Inc, CCC/MER/02/18/2022.

	Louis Dreyfus	0 - 10
	Viterra	0 - 10
	Gavilon	0 - 10
Origination of Oilseeds	Bunge	10 - 20
	Cargill	0 - 10
	ADM	0 - 10
	COFCO	0 - 10
	Viterra	0 - 10
	Gavilon	0 - 10

25. Despite not being in possession of the exact respective market shares of SALIC and Olam Agri in the markets for origination of grains and oilseeds, the CID noted that the markets, being global, are highly fragmented and are characterised by the presence of strong players such as Agricor, Bunge, Cargill and ADM Germany GMBH who will continue to impose competitive pressures on the parties' post-merger.

26. The CID further noted at even at national level, the market for the marketing of grains is fragmented, which overrules any potential competition concerns likely to arise from the transaction within the Common Market.

27. The CID assessed whether the transaction is likely to create vertical concerns where the merged entity might be incentivised to either foreclose Olam Agri's competitors' access to SALIC's grains and oilseeds; or foreclose SALIC's competitors' access to a significant buyer of grains and oilseeds.

28. The CID noted prior to the transaction, there were no buy-sell relationships between the merging parties in the Common Market. SALIC therefore did not represent a critical supplier to the target pre-merger. This suggested that if SALIC were to supply exclusively to Olam Agri, SALIC will lose on the revenue from its existing customers and this may not be economically viable to SALIC considering that Olam Agri is not a major player in the wholesale trading of grains. Further, the CID noted the presence of numerous alternative strong buyers such as Cargill, ADM Bayer AG, Bunge, Louis Dreyfus and Viterra which would offer farmers access to an adequate customer base, such that customer foreclosure is also not a credible theory of harm in this case. Similarly, the market of originators and marketers comprise of many global players such as Cargill, ADM Bayer AG, Dow, Burrus Seed, which give farmers adequate access to customers.

29. The CID was therefore of the view that any strategy of foreclosure by the merging entity would not be successful nor sustainable.

Third-Party Views

30. Submissions were received from the national competition authorities of Rwanda, Egypt, Kenya, Mauritius, Eswatini, Madagascar and Malawi which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

31. 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.

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

Dated this 27th day of September 2022

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Lloyds Vincent Nkhoma

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Commissioner Islam Tagelsir Ahmed Alhasan