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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/03/11/2021

**Decision¹ of the Seventy-Eighth (78th) Committee Responsible for
Initial Determination Regarding the Proposed Merger Involving
Ultra Welfare Ltd and Amoun Pharmaceutical Company S.A.E**

ECONOMIC SECTOR: Pharmaceutical

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 5th May 2021, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Ultra Welfare Limited (“**Ultra Welfare**”) and Amoun Pharmaceutical Co. S.A.E (“**Amoun**”), 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

Ultra Welfare (the Acquiring undertaking)

4. Ultra Welfare is registered in accordance with the laws of Abu Dhabi Global Market. Ultra Welfare is a special purpose vehicle established for the purposes of the transaction. It is not engaged in any activities in the Common Market and does not supply any products and/or services directly in any Member States. Further, Ultra Welfare has never generated turnover in or from, nor does it hold assets in, any COMESA Member State.
5. Ultra Welfare is ultimately owned and controlled by Abu Dhabi Developmental Holding Company PJSC (“**ADQ**”), incorporated as a sovereign fund in the Abu Dhabi Global Market. ADQ is directly wholly owned and controlled by the Government of Abu Dhabi. Established in Abu Dhabi in 2018, ADQ is one of the largest holding companies in Middle East 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.
6. In the Common Market, ADQ produces and sells the following products: steel products, tomato paste, palm dates, fruit concentrate, frozen vegetables, chili paste and building materials in the following Member States: Egypt, Kenya, Libya, Madagascar, Mauritius, Seychelles, Sudan and Tunisia. Thus, ADQ's controlled portfolio companies are active only in relation to food and industrial products.
7. Table 1 below lists the activities of the ADQ along with the company/trading name in the Common Market.

Table 1 – Activities of the ADQ in the Common Market

Member State	ADQ controlled portfolio company(s) and description of activities
Egypt	Emirates steel: Emirates Steel was established in 1995 in Abu Dhabi Industrial area. The production facility is located at Musaffah, Abu Dhabi to manufacture MS Steel Billets for Rebar rolling mills. The

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	<p>company commenced production of steel billets in 1998 with a capacity of 24,000 TPA.</p> <p>Agthia: Agthia Group (“Agthia”) is a regional food and beverage company based in Abu Dhabi (UAE) and listed on the Abu Dhabi Securities Exchange since 2005. Agthia owns 11 factories and 18 warehouses, and manufactures products in the UAE, Saudi Arabia, Oman, Kuwait, Egypt and Turkey with a total workforce of about 4,000 employees. Agthia’s activities are divided into a consumer business part and an agri-business part.</p> <p>Al Foah: Al Foah Company is a subsidiary of SENAAT and was established in 2005 by Abu Dhabi government to take responsibility of number of dates production and process assets, including an organic Dates farm in Al Ain, two Dates processing factories in Al Saad and Al Marfa and number of Dates receiving centers across the UAE. Al Foah’s headquarters office is located, in Al Ain. Al Foah’s products portfolio consists of wide range high quality whole Dates (UAE grown), value added Dates (stuffed and chocolate coated) and Dates based products (Date syrup, Date paste, Date halwa).</p>
Kenya	Emirates steel: description of activities provided above.
Libya	Agthia: description of activities provided above.
Madagascar	Emirates Steel: description of activities provided above.
Mauritius	Al Foah: description of activities provided above.
Seychelles	Emirates Steel: description of activities provided above.
Sudan	Arkan: Established in 2005, Arkan is a Construction & Building Materials Company with a diverse range of products servicing the various players in the construction industry.
Tunisia	Emirates Steel: description of activities provided above.

Amoun (the target undertaking)

8. Amoun is a joint stock company duly incorporated and existing under the laws of Egypt. Amoun conducts its commercial operations through Egypt and currently operates a large, modern plant in El-Obour City, a suburb near Cairo. Amoun’s main business includes the development, manufacturing, marketing, distribution, and export of a wide range of human pharmaceutical and animal health products. Amoun does not hold any patent for any pharmaceutical products that it produces.
9. The pharmaceutical products for human consumption produced by Amoun are either:
 - a. generic products, which are no longer patent protected; or
 - b. pharmaceutical products produced under license from other pharmaceutical companies.

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10. Amoun's product offering for human includes analgesics; anti-histamines; anti-infectives; anti-inflammatory enzymes; cardiovascular drugs; centrally acting drugs; drugs for anaesthesia, oral cavity, respiratory system, and urinary disorders; endocrine drugs; gastrointestinal drugs; topical preparations; as well as vitamins, minerals and drugs for anaemia in the following Member States: Djibouti, Egypt, and Uganda. It was submitted that Amoun's pharmaceutical products for human consumption cannot be administered to animals.
11. The animal pharmaceutical products produced by Amoun are only generic pharmaceutical products. Amoun's product offering for animals include antibiotics and anthelmintic drug. Anthelmintic drug is used to kill helminths which are worm-like parasites in animals. The antibiotics are used to treat uterine infections in cattle and enteric infections in calves and lambs, to treat respiratory and enteric infections and gastrointestinal infections.

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 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 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

14. The notified transaction involves Ultra Welfare acquiring 99.873% of the share capital of the Amoun.

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Relevant Markets

Relevant Product Market

15. The acquiring group operates across various lines of businesses including food and agriculture, aviation, financial services, healthcare, industries, logistics, media, real estate, tourism and hospitality, transport and utilities. However, the acquiring group's activities in the Common Market comprise of producing and selling steel products, tomato paste, palm dates, fruit concentrate, frozen vegetables, chili paste and building materials in Egypt, Kenya, Libya, Madagascar, Mauritius, Seychelles, Sudan and Tunisia.
16. The target, Amoun, on the other hand, is a pharmaceutical company whose main business includes the development, manufacturing, marketing, distribution, and export of a wide range of generic pharmaceutical products for human consumption and such products under license and generic animal health products. The product offering of the target includes: analgesics; antihistamines; anti-infectives; anti-inflammatory enzymes; cardiovascular drugs; centrally acting drugs; drugs for anaesthesia, oral cavity, respiratory system, and urinary disorders; endocrine drugs; gastrointestinal drugs; topical preparations; as well as vitamins, minerals and drugs for anaemia in Djibouti, Egypt, and Uganda.
17. For purposes of the competitive assessment of the current transaction, the CID focused on the activities of the target undertaking in the Common Market, as these are the markets where any competition impact is likely to arise.

Development, manufacturing, marketing, distribution, and export of pharmaceutical products

18. The activities of the target in the Common Market relate specifically to the development, manufacturing, marketing, distribution, and export of a wide range of generic pharmaceutical products or pharmaceutical products under license intended for human consumption and animal consumption. Generics are in general less expensive, bioequivalent versions of originator drugs² and generic versions of originator medicines are specifically designed to compete with those medicines and normally represent the closest substitute to them³.
19. The portfolio of the pharmaceutical products for human produced by the target comprises of approximately 121 products which can be classified into the following therapeutic areas: analgesics; antihistamines; anti-infectives; anti-inflammatory enzymes; cardiovascular drugs; centrally acting drugs; drugs for anaesthesia, oral cavity, respiratory system, and urinary disorders; endocrine drugs; gastrointestinal drugs; topical preparations; as well as vitamins, minerals and drugs for anaemia. These products are used for the following: analgesic for the relief of pain; antihistamines for the relief of allergy symptoms; anti-infectives for prevention or treatment of infections while endocrine drugs for treatment of

² Case M.7379 – Mylan/ Abbott Epd-Dm

³ Case No COMP/M.5253 - Sanofi-Aventis/Zentiva

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malfunctioning endocrine paths, i.e. conditions which involve either the over or under production of a particular hormones.

20. From a demand perspective, the products of the target can firstly be broadly categorised into pharmaceutical products for human consumption and animal consumption where each category of the pharmaceutical product cannot be administered to the other category of users. For example, medication intended for human consumption cannot be administered on animals and vice-versa. A similar conclusion was reached in *Adwia/Zanzibar*⁴ where two separate markets in relation to generics for animal use and generics for human use were identified as follows:
 - a. Global provision of generics for animal use; and
 - b. Global provision of generics for human use, by type of therapeutic area (...).
21. In addition, each broad category of pharmaceutical products can be further classified according to the therapeutic areas and its therapeutic use. For instance, pharmaceutical products for human can be segmented according to its molecular composition, prescription pharmaceuticals and over-the-counter pharmaceuticals, originator pharmaceuticals and generic pharmaceuticals, route of administration, pharmaceutical form and dosage. These classifications may comprise distinct markets that may not be substitutable. For instance, originator and generic pharmaceuticals despite being bioequivalent can be differentiated based on their respective prices. Originator pharmaceuticals tend to be highly priced when compared to generics and this may act as a limiting factor to the likelihood of substitution. The consumption of originator pharmaceutical products or generic products may depend therefore on the income level of the country and it is reasonable to expect that in developing countries, generic pharmaceutical products will be consumed more and the regulatory framework may also favour generic products. Medical indications, side effects, legal framework, distribution and marketing tend to differ⁵ for pharmaceutical products and this is material in determining whether the pharmaceutical product can be sold over the counter or requires a prescription. Pharmaceutical products sold over the counter require no intervention by a doctor and its marketing usually include advertisements to the general public. The choice of pharmaceutical products which are sold over the counter is exclusively that of the consumer⁶.
22. From a supply side perspective, substitutability may be limited across the different classifications and sub-classifications in view of the nature of the products themselves. This is principally because the development of pharmaceutical products requires significant research into its molecular composition and testing as to its suitability for consumption. In order to manufacture, market and distribute a pharmaceutical product not

⁴ Decision of the Seventy-Fourth (74th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of 98.7277931% of the issued share capital of Adwia Company S.A.E. by Zanzibar Pharma Limited. Case File No. CCC/MER/08/18/2020

⁵ Case No COMP/M.7379 - Mylan/ Abbott Epd-Dm

⁶ *Ibid*

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within its current range of products, a pharmaceutical company has to undertake research and testing processes. In the same vein, the form of the pharmaceutical product also requires research, albeit to a lesser extent, for instance the composition of an orally dissolving tablets, effervescent form, syrup, tablet may be different. Supply-side substitutability may however exist in regard to the dosing of a particular pharmaceutical product where it can be reasonable to assume that suppliers can easily switch to manufacturing the same product of higher or lower dosage. In this respect, it is often noted that the same pharmaceutical product is sold in differing dosages by the pharmaceutical company.

23. Having regard to the lack of horizontal overlap and vertical relationship with the activities of the acquirer pre-merger, and the absence of likely conglomerate effects, the CID considered that for purposes of this transaction, broad markets for pharmaceutical products by therapeutic area for human consumption and pharmaceutical products for animals can be identified. The CID further noted that any narrower market definition was not necessary given that the competitive assessment would not be altered.
24. In view of the foregoing, the CID concluded that the relevant product markets can be construed as follows:
 - (i) generic pharmaceutical products by therapeutic area for human consumption; and
 - (ii) generic pharmaceutical products for animals.

Relevant Geographic Market

25. The CID considers that the geographic market for the above-identified markets is likely to be wider than national. While there may exist licensing and importation restrictions per country which may restrict individual importer's ability to import pharmaceutical products, it is considered that from the supply side, pharmaceutical products can be sourced from suppliers located in any part of the world, even beyond the Common Market. The CID noted that the products of major pharmaceutical companies are available in the Common Market. For instance, in Mauritius the pharmaceutical products of Johnson & Johnson, Roche, Pfizer, Bayer, Novartis, AbbVie, Novo Nordisk, Takeda Pty Ltd, Pfizer, Bayer, GlaxoSmithKline, Amgen, B. Ingelheim and Merck & Co are available⁷. In the same vein, we note that an array of pharmaceutical products including those produced by Aspen are available in Malawi and Kenya.
26. The CID therefore noted that the geographic market is broader than the Common Market given the presence of pharmaceutical products by global suppliers which signifies the presence of competition from the global market. The CID also noted that the operations of

⁷ Market Study Report on the Pharmaceutical Sector in Mauritius conducted by the Competition Commission (Mauritius) <https://competitioncommission.mu/wp-content/uploads/2021/06/MS004-FullReport-080621.pdf> accessed 21 July 2021

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the target consist of manufacturing the pharmaceutical products in Egypt and export of the same to other Member States of the Common Market.

27. In view of the foregoing, the CID construed the relevant geographic market as global.
28. Thus, for purposes of assessing this transaction, and without prejudice to future cases, the CID identified the relevant markets as follows:
 - i) global supply of generic pharmaceutical products by therapeutic area for human consumption; and
 - ii) the global supply of generic pharmaceutical products for animals.

Competitive Assessment

29. The parties submitted that the market share of Amoun for the total pharmaceutical market in Egypt is 6.54%, based on IMS 2020. The parties further submitted that Amoun exports small quantities of its products to Djibouti and Uganda where such exportation is made based on purchase orders issued by a local importer in each of the relevant Member States and addressed directly to Amoun. The parties highlighted that Amoun does not have a territorial presence in Djibouti and Uganda. It was submitted that the Target Undertaking's market share in the pharmaceutical sector in Djibouti and Uganda does not exceed 1%.
30. The CID noted that the target is the market leader in the pharmaceutical sector in Egypt. However, the CID noted that the proposed transaction would not result in horizontal overlap or conglomerate effects, as such the market structure and market shares are not expected to be materially affected post-merger. The CID also noted that in Egypt, there are at least 10 big firms in the pharmaceutical sector and that the market shares of Amoun have been decreasing over the years⁸. The CID further noted the presence of renowned international pharmaceutical companies operating in Egypt, namely Novartis and GlaxoSmithKline and Eva, which can present competitive constraints to the merged entity.
31. The CID also considered that the transaction is not capable of leading to any market share accretion in any narrower markets which may be identified for generic pharmaceutical products for human consumption or for animals nor in any potential sub-markets, in view of the absence of overlap between the activities of the merging parties pre-merger.

Third-Party Views

32. Submissions were received from the Competition Authority of Kenya, the Competition Commission (Mauritius), the Egyptian Competition Authority, the Conseil de la Concurrence de Madagascar and the Seychelles Fair Trading Commission. The third party submissions were consistent with the CID's conclusion that the transaction was unlikely to raise competition concerns in the relevant markets within the Common Market.

⁸ Submissions made by Eva Pharma to the Egyptian Competition Authority

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Determination

- 33. 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.
- 34. 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



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Commissioner Brian M. Lingela (Chairperson)



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Commissioner Ellen Ruparanganda