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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/06/17/2023

Decision¹ of the One-Hundred and First (101st) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by B Commodities ME (FZE) of James Finlay (Kenya) Limited

ECONOMIC SECTOR: Agriculture



5 November 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 2 May 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving B Commodities ME (FZE) (the “**Acquirer**”) and James Finlay (Kenya) Limited (the “**Target**”), pursuant to Article 24(1) of the Regulations. In terms of the proposed transaction, the Acquirer will acquire 85% of the issued share capital of the Target.
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

The Acquirer

4. The Acquirer was incorporated in 2016, in accordance with the laws of the United Arab Emirates, and it is indirectly owned by Browns Investments PLC (**Browns**), whose ultimate shareholder is LOLC Holdings PLC group. B Commodities and all entities under its common control are together referred to as the **Acquiring Group**.
5. The Acquiring Group's activities in the Common Market are limited to the micro financial services sector, the hotel/hospitality sector, and gold mining and production. Within the Common Market, the Acquiring Group is active in Egypt, Kenya, Malawi, Mauritius, Zambia, and Zimbabwe.
6. Browns, headquartered in Colombo, is one of the largest tea producing companies in Sri Lanka consisting of 49 individual estates that stretch across an area of over 30,000 hectares and employs over 10,000 individuals². Browns manages its 49 plantations through Maturata Plantations Limited, Udapussellawa Plantations PLC and Hapugastenne Plantations PLC, with total a production of approximately 12 million kilograms of made tea annually³, supplying to the global market⁴.

The Target

7. The Target is a company incorporated on 1 September 1925 in accordance with the laws of the United Kingdom under registration number SC013800.
8. At the time of notification, the Target did not control any undertakings in the Common Market. Prior to the completion of the proposed transaction, James Finlay Limited (the Seller) agreed to procure that the Target will acquire the entire issued share capital of James Finlay Kenya Forestry Ltd.
9. The Target conducts the following activities within the Common Market:

Table 1 – Activities of the Target in the Common Market

Name of Entity	Description of Activity	Member State
James Finlay (Kenya) Limited	Tea production (growing and production)	Kenya
	Specialty botanicals ⁵	Kenya
	Timber Growing and Timber sales ⁶	Kenya

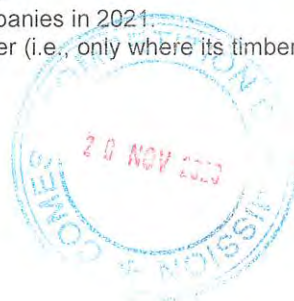
² [Finlays agrees sale of James Finlay Kenya to Browns Investments PLC | Finlays](#), accessed on 18 August 2023.

³ <http://bizenglish.adaderana.lk/browns-investments-officially-informs-cse-on-james-finlay-kenya-acquisition/>, accessed on 18 August 2023.

⁴ <https://brownstea.com/our-products/bulk-tea/>, accessed on 23 October 2023.

⁵ The Target submitted that it began to produce botanicals for sale to tea companies in 2021.

⁶ The Target submitted that it generates negligible sales from the sale of timber (i.e., only where its timber output is in excess of its own needs).



10. The Target is a producer and processor of tea for export, with activities spanning the entire value chain (origination, production, processing, refining, storing, transporting, researching, merchandising, customizing and distributing). The Target's majority of tea is produced for export, with only a limited amount being supplied to the Kenyan market. The Target exports tea products to the United Kingdom, Egypt, Pakistan, Russia and the USA and also sells tea through Kenyan auction sales (generally for ultimate export) and local sales.

Jurisdiction of the Commission

11. 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 USD 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 USD 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.*
12. The undertakings concerned have operations in two or more Member States. The merging parties hold a combined asset value in excess of the threshold of USD 50 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate 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

13. The Acquirer will acquire eighty-five percent (85%) of the issued share capital of the Target. The remaining 15% of the Target's issued share capital shall be transferred to the Kipsigis Highlands Multipurpose Co-operative Society Limited (or any other entity or entities, society, undertaking(s), and/or trust(s)) for the purpose of benefiting the populations local to the location of the property. This will be a minority equity interest only and no special rights will attach to these shares.



Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

14. The Acquiring Group is active in the provision of micro financial services, leisure (hotel) services, and the mining and production of gold in the Common Market. The Acquiring Group, through its subsidiaries in Sri Lanka, is also active in the manufacture and supply of tea.
15. The Target is active in the manufacturing and wholesale supplying of tea, botanicals, and timber sales. Accordingly, there is an overlap in the activities of the Acquiring Group and the Target in relation with the manufacturing and wholesale supply of tea.
16. Tea is a beverage made from the leaves of the *Camellia sinensis* plant. *“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.
17. The CID has previously held that *“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 perspective, consumer preferences would not be substitutable due to the distinct flavour and taste of tea”*⁸.
18. The CID has also previously identified potential narrow segments within the tea market according to types of teas such as black, green, speciality tea. The different types of teas differ significantly in flavour and are generally associated with different perceived health benefits (e.g., green tea is widely promoted in weight loss diets)⁹. Certain types of teas are also specifically made from plants which may be more prevalent or indigenous to certain countries (for example rooibos tea in South Africa or Ceylon tea in Sri Lanka) and may not be easily accessible or available at similar price range in other parts of the world.
19. It is noted that the Target is also a manufacturer and wholesale supplier of botanicals, which may be blended with black, green or white teas. It was submitted that the Target produces botanicals for sale to tea companies. Botanicals¹⁰ also known as fruit or herbal infusions, or tisanes, are dried herbs

⁷ Agnieszka Kosińska, Wilfried Andlauer (2014) 'Antioxidant Capacity of Tea', accessed at <https://www.sciencedirect.com/topics/food-science/tea-beverage> on 19 August 2023.

⁸ Decision of the 83rd CID Regarding the Proposed Mergers between Puccini Bidco B.V. and ekaterra B.V., dated on 31 May 2022, para 18.

⁹ *Ibid*, para 19.

¹⁰ <https://www.finlays.net/product-solution/botanicals/>.



or fruits that are rich in nutrients, minerals, and antioxidants, that can help to alleviate feelings of stress, support the immune system as well as improve brain function and digestion.

20. For purposes of this transaction, the relevant markets are defined as the manufacture and wholesale supply of tea (with further segmentation according to types of teas) and the manufacture and wholesale supply of botanicals.

Relevant Geographic Market

21. The geographic market for the manufacturing and wholesale supply of tea is likely to be wider than national. The major manufacturers typically produce for both local and export markets. For instance, Browns, based in Sri Lanka, exports its tea products to customers in China, Dubai, Germany, India, Iran, Iraq, Japan, Kuwait, Russia, Switzerland, Syria, Turkey, the United Kingdom, and United States¹¹. Likewise, the Target exports its tea products to the United Kingdom, Egypt, Pakistan, Russia and the USA and also sells tea through Kenyan auction sales (generally for ultimate export) and local sales. Kenyan Tea Development Agency (“**KTDA**”), a private company owned by about 600,000 smallholder tea farmers, exports its tea products to global markets such as Sudan (4%), Egypt (19%), Yemen (3%), the UAE (7%), Afghanistan (2%), Pakistan (36%), Kazakhstan (2%), Russia (3%), and United Kingdom (9%)¹².
22. In *Puccini/ekaterra*¹³, the CID noted that the manufacture and supply of tea could extend to Africa 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. The CID, however, noted that most international brands have production facilities within Africa from which their products to the Member States are exported. It was also noted 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. In the present transaction, the Acquiring Group’s tea brands are not present in the Common Market.
23. The Target is a global botanical extract supplier¹⁴. It is further noted that the Target supplies botanicals to customers in the UK, Germany from Kenya, suggesting that the relevant market for the manufacturing and wholesale supply of botanicals is likely to be wider than national.
24. For purposes of this transaction and noting that the transaction will not raise competition concerns under any alternatively relevant market, the relevant

¹¹ <https://brownstea.com/our-products/bulk-tea/>, accessed on 20 August 2023.

¹² <https://ktdateas.com/our-markets/>, accessed on 20 August 2023.

¹³ Decision of the 83rd CID Regarding the Proposed Mergers between Puccini Bidco B.V. and ekaterra B.V, dated on 31 May 2022, paras 21-22.

¹⁴ <https://www.finlays.net/products-solutions/botanical-extracts/>.



geographic markets for the manufacturing and wholesale supply of tea and botanicals can be construed as at least national in scope, and possibly extend to the African continent.

Market Shares and Concentration

25. The estimated market shares for the Target and its competitors in the manufacturing and supply of tea in the Kenyan national market were submitted as per Table 2 below.

Table 2: Market share information of the Target and its competitors in Kenya¹⁵

Market Player	Estimated Market Shares	
	Pre-merger	Post-merger
Kenya Tea Development Agencies (KTDA)	[40 – 50]%	[40 – 50]%
Ekaterra	[4 – 8]%	[4 – 8]%
Eastern Produce Kenya Limited	[2 – 5]%	[2 – 5]%
James Finlay (Kenya) Limited	[2 – 5]%	[2 – 5]%
Williamson Tea Kenya Limited	[1 – 3]%	[1 – 3]%
Sasini Limited	[1 – 2]%	[1 – 2]%

26. The Target has a relatively insignificant market share in Kenya compared to KTDA and Ekaterra. KTDA which regroups smallholder tea farmers, has a market share of [40-50]%, followed by Ekaterra with [4-8]% market share. It is further noted that Kenya is the leading exporter of black teas in the world accounting for about 22% of global exports¹⁶.
27. The transaction is not capable of leading to any market share accretion in the relevant market, given that the Target and the Acquiring Group offer their products in different geographic locations. Thus, there would be no change in the existing market structure in Africa post-merger due to the fact that the Acquiring Group's tea products are not supplied in Africa and that the merged entity would continue to face competition from the existing competitors, including local brands such as Ketepa Pride, Kericho Gold, Safari, and others.
28. In relation to the botanicals market, key players operating in Africa include Botanica Natural Products, AfriNaturals, Lipoid Kosmetik AG, Prinova Group LLC, Zuplex, Carrubba INC, Afriplex, Botanical Extracts EPZ Ltd., Dohler. The Target only began to produce botanicals for sale to tea companies in 2021, as such its activities in this market are very limited. The parties submitted that the Target has less than 5% market share in the botanicals market in Kenya¹⁷. Thus, the existing market structure is not likely to be changed following the proposed transaction given the insignificant market share of the Target and the presence

¹⁵ Information claimed as confidential by the parties.

¹⁶ <https://kdateas.com/our-markets/>, accessed on 20 August 2023.

¹⁷ Information claimed as confidential by the parties.



of many competitors, coupled with absence of overlap between the merging parties.

Consideration of Third-Party Views

29. The CID considered submissions from the national competition authorities of Egypt, Kenya, Malawi, Mauritius, and Zimbabwe, which confirmed that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's findings, as discussed above.

Determination

30. Based on the circumstances of the case and having regard to the foregoing assessment, 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. The CID, therefore, approved this transaction.
31. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5th day of November 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

