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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/10/31/2023

Decision[1] of the 105th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Vivendi S.E. and Lagardère S.A.

ECONOMIC SECTOR: Publishing and Distribution of Books

COMESA COMPETITION COMMISSION
10 MAR 2024

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[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 26 October 2023, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Vivendi S.E. ("**Vivendi**") and Lagardère S.A. ("**Lagardère**"), pursuant to Article 23(6) of 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

Vivendi

4. Vivendi is a company incorporated under the laws of France. Vivendi is a publicly traded *Societas Europaea* based in Paris, France and is a media conglomerate that operates a global content (entertainment), media and communications business.

5. As an integrated content, media and communications group, Vivendi operates businesses throughout the media value chain (from talent discovery to the creation, production and distribution of content), and operating through a variety of trading entities. Broadly stated, Vivendi is active in various media sectors and industries throughout the world, including:

   a) production and distribution of audio-visual content (through the Canal+ Group);

   b) advertising and communication (through the Havas Group);

   c) video games (through Gameloft);

   d) aggregation and distribution of video content (through Dailymotion);

   e) printed media (through Prisma Media);

   f) live entertainment and ticketing (through Vivendi Village); and

   g) internet service in Africa (through Group Vivendi Africa).

6. In the Common Market, Vivendi is primarily active through Canal+ Group, whose activities concern the production and distribution of audio-visual content. The activities of Canal+ Group mainly include the development of pay-TV activities through its subsidiary Canal+ International.

7. Vivendi is also active to a limited extent in other media sectors within the Common Market. Vivendi is active in the Common Market via Gameloft, Dailymotion and Group Vivendi Africa and, prior to its disposal, via Editis. Vivendi has been active in the sale of books to bookstores and specialised stores in the Common Market via Editis. At the date of filing, Vivendi was active in the Common Market in Burundi, Comoros, DRC, Djibouti, Egypt, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Tunisia and Uganda.

Lagardère

8. Lagardère is a publicly traded French stock corporation (société anonyme) based in Paris, France, and is active in the entertainment, communications and media sectors in various countries around the world.

9. Lagardère is an international conglomerate operating across two main business areas: (i) book and electronic publishing and (ii) travel retail (including store retail in airports and railway stations).

10. Lagardère Publishing is a federation / collective of a variety of individual publishing companies united by a shared vision, but each of which have a large degree of editorial independence. Lagardère Publishing's operations encompass both book and electronic publishing, which, in addition to creating thousands of original publications each year, includes operations aimed at innovating in respect of digital and mobile reading formats to allow for broader circulation of publications. These publications fall within, broadly stated, the following categories and brands: (i) literature (Grasset, Fayard, Calmann-Lévy, JC Lattès, Le Livre De Poche, Stock); (ii) illustrated / children's books (Marabout, les éditions Albert René, Pika, Bibliothèque rose/verte, Hazan, Rageot, Le Routard); (iii) education (Hachette Éducation, Hatier, Didier, Foucher, Larousse, Istra); (iv) reference books (Larousse); and (v) foreign language (Little Brown Book Group, Orion Publishing Group, Octopus, Hodder & Stoughton, Bruño, Salvat, Anaya).

11. Lagardère Publishing's activities also extend to adjacent businesses, such as the publishing and distribution of mobile games and board games.

12. Outside of Lagardère Publishing and Lagardère Retail, Lagardère is, to a much lesser extent, also active in the following:

    a) printed media/ press and radio activities (through Lagardère News), and involving media brands such as Paris Match, Le Journal du Dimanche, Europe 1, Europe 2, RFM and the "ELLE" brand licence; and

    b) the operation, production and/or management of entertainment venues and live events (through Lagardère Live Entertainment).

13. In the Common Market, Lagardère is only active via Lagardère Publishing and its activities are more limited in scope and primarily concern the sale of books to bookshops (via direct sales). At the date of filing, Lagardère was only active in the sale of books to bookshops in all Member States except Eritrea, Eswatini, Somalia and Zimbabwe.

Jurisdiction of the Commission

14. 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.*

15. The undertakings concerned have operations in two or more Member States. The merging parties derive combined turnover and hold assets in excess of the threshold of USD 50 million in the Common Market. However, one of the parties did not derive turnover or hold an asset value of at least USD 10 million in the Common Market in the financial year preceding the merger.

16. The transaction, therefore, does not amount to a notifiable transaction within the meaning of the Regulations.

17. Article 23(6) of the Regulations provides that "*the Commission may require parties to a non-notifiable merger to notify the Commission of that merger if it appears to the Commission that the merger is likely to substantially prevent or lessen competition or is likely to be contrary to public interest*". Noting the magnitude of the parties' operations in the Common Market in the year following the 'decision to merge', as well as the existence of a horizontal overlap between the activities of the merging parties in the Common Market at the time of filing, the parties were requested to notify the merger pursuant to Article 23(6) of the Regulations.

Details of the Merger

18. The notified transaction concerns the acquisition by Vivendi of sole control over Lagardère by way of a mandatory public offer.

19. The transaction arises following a separate, prior acquisition by Vivendi of an additional shareholding of 17.49% in Lagardère, from Amber Capital LLP which was completed on 16 December 2021. Following the completion of the Amber Capital Shareholding Acquisition, and as at 16 December 2021, Vivendi held a non-controlling minority stake of 45.13% of the entire issued share capital in Lagardère (corresponding to approximately 37.10% of the theoretical voting rights in respect of Lagardère).

20. As a result of Vivendi's shareholding in Lagardère exceeding the 30% share capital and voting rights thresholds, French corporate law required that Vivendi file a proposal for a mandatory public tender offer for the remainder of the shares in Lagardère.

21. Vivendi announced in a press statement dated 16 December 2021 its intention to file a public tender offer in February 2022 for all Lagardère shares at the same price per share paid to Amber Capital. On 21 February 2022, Vivendi filed a draft public tender offer with the French Financial Markets Authority (the "**Public Offer**"). Pursuant to the terms of the Public Offer, Lagardère's shareholders are entitled to tender their shares (to the subsidiary offer) to Vivendi until 15 December 2023. As of 11 December 2023, the exercise period of the rights to sell Lagardère shares was extended to expire on 15 June 2025.

22. The parties submitted that the above notwithstanding, Vivendi undertook to not exercise the voting rights attached to all of the Lagardère shares acquired on or after 16 December 2021 (from the 'Amber Capital Shareholding Acquisition' and shares tendered in its mandatory public tender offer), until the requisite approvals for the acquisition by Vivendi of the control of Lagardère (and related divestitures) were received from the various competition authorities. Accordingly, until the transaction (and related divestitures) received the requisite competition law clearances, Vivendi's interest in Lagardère amounted to only 22.87% of the voting rights.

23. Upon completion (implementation) of the transaction, Vivendi would hold in excess of 50%[2] of the issued share capital and voting rights in respect of Lagardère and, therefore, Vivendi will enjoy sole control over Lagardère.

24. The parties submitted that on a global scale, there is a broad overlap in the activities of Vivendi and Lagardère in terms of the products / services they provide, as well as some of the geographic regions in which they are provided. The parties

[2] The parties submitted that the precise percentage of share capital (and voting rights) that will be held by Vivendi in respect of Lagardère at completion of the transaction will not be known until the closing date of the Public Offer (i.e., 15 December 2023). As of 11 December 2023, the exercise period of the rights to sell Lagardère shares was extended to expire on 15 June 2025.

further submitted that in the Common Market, however, given that Lagardère is only active in the sale of books, any possible overlap relates to books. In this regard, given that the European Commission's approval of the transaction is contingent upon, *inter alia*, the upfront sale by Vivendi of 100% of the share capital of Editis, the parties stated that any potential overlap and resultant market share accretion in the Common Market has been negated by this divestiture (i.e., Vivendi will never have control over Editis and Lagardère at the same time). The parties submitted that, at the time of implementation of the transaction, the activities of the merging parties will not overlap in the Common Market.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

25. 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**"*.

26. As noted above, from their respective activities, both Editis and Lagardère are active in the wholesale of books in the Common Market. Lagardère is active mainly in the sale of books to bookshops through direct sales in the Member States in which it operates. Editis also sells its books to bookstores and specialised stores in the Common Market. Neither Editis nor Lagardère have a dedicated outlet in the Common Market through which they sell their books.

Sales of books to bookshops

27. Publishing and distribution of books are distinct activities which can carried on by separate enterprises. A publisher can sell its books to end customers through a number of channels. A vertically integrated publisher sells the books through its own bookstores directly to end customers. Publishers which are not vertically integrated may sell their books through an authorised distributor in a territory which may in turn either sell the books through its own stores if vertically integrated or sell the books to retailers. Non-vertically integrated publishers may also choose to sell their books directly to independent bookstores.

28. In view of the foregoing, there is an overlap in relation to the sales of books to bookstores in the Common Market. It is noted that bookstores can offer their services physically or through online platforms. Amongst online platforms, a distinction can be made amongst global digital platforms such as Amazon which

reduces the restrictions on international shipping and local digital platforms run by local suppliers. Digital marketplaces are also available in the Common Market, for example, books can be purchased online on the Jumia platform[3], a local digital platform in Kenya. Further physical bookstores in the Common Market also have online presence, as seen for instance in Mauritius (Editions le Printemps and Bookstore), Egypt (AUC Bookstores) and Zambia (Bookworld). Online and physical sales of books can offer some competitive pressure on each other, typically where delivery fees are minimal such that online and in-store prices are comparable. It is noted that the merging parties are not involved in the online sales of books in the Common Market. Further, in view of the limited overlap between the activities of the merging parties, an in-depth assessment of the preferences of customers within the Common Market has not been conducted. For the purposes of this assessment, no further segmentation of the market was required between online and physical bookstores.

29. The CID further considered whether the market should be segmented in terms of the category of books. Editis sells books in the following categories in the Common Market: (i) literature; (ii) children's books and (iii) education. The parties submitted that the publications of the target fall within the following broad categories: (i) literature; (ii) illustrated/children's books; (iii) education; (iv) reference books and (v) foreign language (not in French language)[4].

30. Each category is likely to constitute a market on its own. On the demand side, it is noted that a customer requiring for instance a schoolbook is not likely to, in an event of a 5-10% increase in the price of that book, substitute the purchase with a book in another category such as literature. The intended use of an educational book is to fulfil the purpose of studies where books are usually prescribed by the school and the student does not have any choice but to buy the prescribed book.

31. Each category of book can be further sub-divided into genres and types. Books within the education category are typically made for one particular subject and syllabus only such as Mathematics, French, Biology etc and is therefore irrelevant for another subject. Additionally, books within the education category are made for one particular level of education, ranging from primary to tertiary education. Literature books can be sub-divided according to themes, such as classic, feminism, contemporary, existentialism and fiction. Fiction can be further sub-divided into different genres such as romance, science fiction, crime, drama and fantasy. Children's books can be sub-divided into comics or illustrated and picture books.

[3] www.jumia.co.ke/education-learning-books/ accessed 27 November 2023

[4] Paragraph 4.10.3 of Exhibit B of the merger filing.

32. For the purposes of this transaction, the sale of books to bookstores can be segmented according to the different categories, and the assessment has focussed on the areas of overlap, namely literature, education and, children's books.

33. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets are considered as the:
   a) the sales of literature books to bookshops;
   b) the sales of educational books to bookshops; and
   c) the sales of children's books to bookshops.

Relevant Geographic Market

34. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising:

> ***"...the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas"***[5].

35. With the exception of books within the education category, most of the books in all the categories are generally sourced from international publishers as publishers do not publish book for a specific country. However, local publishers may not be as effective as international publishers in reaching international markets, having regard to reputation and brand recognition issues. Some brands may not be well-known, limiting their targeted market as national or possibly regional. Further, it may also be that some of these may not have the capacity to supply beyond national markets.

36. The above notwithstanding, most suppliers of books are of international repute who supply international markets. In view of this, the CID concluded that the market is most likely to be global. The CID observed that under any alternative market definition, the transaction will not result in substantial lessening or prevention of competition in the Common Market, given the limited overlap between the parties' products and the presence of a number of other sellers (as discussed below). As a result, the CID observed that the geographic scope of the market for sale of literature and children's books to bookstores was wider than national and could extend to a global market.

[5] Paragraph 8

37. With regard to education books, however, the CID noted that curriculum and syllabus to be taught in public schools are designed by public authorities. In Mauritius, for instance, the Ministry of Education designs curriculum for primary levels and lower secondary levels[6]. A school can choose its own syllabus for the lower secondary levels. For upper secondary levels, the syllabus is designed by the examining body. In Kenya, the curriculum for public schooling is designed by the Kenya Institute of Curriculum Development[7]. Private schools are however free to follow the curriculum and syllabus of any examining body. When the syllabus is set by each Member State, the prescribed authors are likely to be local. The publishing of the educational books is therefore likely to be done locally, such that bookstores will source these books within the Member State only. Some Member States do not have any publishing houses. For instance, Burundi does not have a publishing house and textbooks for sale in Burundi are imported from Uganda[8]. MK Publishers Ltd publishes school textbooks for sales in Uganda, Kenya, Rwanda, Burundi, Ethiopia[9]. Member States may prescribe books from international publishers to the extent that the particular books fit the curriculum of the Member State.

38. The CID considered that from a supply perspective, publishers of education books are more likely to supply their own Member State and neighbouring jurisdictions with similar curriculum. As a result, the geographic scope of the market for sale of educational books is at least national and could extend to the Common Market.

39. The above notwithstanding, the CID concluded that the relevant market definition can be left open as any alternative market definition may not alter the conclusion of the analysis of the transaction.

Market Shares and Concentration

40. The parties submitted that the market share of the target in the sale of books in the Common Market is negligible, that is less than 5%. According to the parties, established global players in the publishing industry (including but not limited to Penguin Random House, Simon & Schuster, HarperCollins and MacMillan, as well as the likes of Amazon and other online platforms) will continue to place significant competitive constraint on the merged entity post-merger both globally and in the Common Market, in addition to a wide range of local/regional players in the industry.

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6 https://education.govmu.org/Pages/Education%20Sectors/Primary/National-Curriculum-Framework.aspx and https://education.govmu.org/Pages/Education%20Sectors/Secondary%20Education/Secondary-School-Curriculum.aspx accessed 28 November 2023

7 https://kicd.ac.ke/ accessed 28 November 2023

8 https://projects.rvo.nl/projects/nl-kvk-27378529-psip10bi22#:~:text=Applicant%20MK%20Publishers%20Ltd%20is,the%20neighbouring%20countries%20as%20well. accessed 8 February 2024

9 https://twitter.com/mkpublishersltd?lang=en accessed 8 February 2024

41. The CID observed from the parties' submissions that the market share of the target is minimal, which is supported by the submissions made by the Member States. The CID observed that in the affected Member States, there exist other significant players.

42. Further, at the time of notification, there existed a horizontal overlap between the activities of the merging parties in the relevant markets. In the Common Market, Editis is the entity through which Vivendi was selling books in the market. On 14 November 2023, as part of the conditional approval of the merger by the European Commission, Vivendi sold Editis to Czech Media Invest, a holding company that focuses on the acquisition and management of media assets in the Central and Western European region. With the divestiture, which is also applicable to the Common Market, any risk of competitive harm on the market as result of the transaction is eliminated or at least significantly reduced.

43. In view of the foregoing divestiture, the transaction will not result in any market share accretion in the relevant markets in the Common Market as the divestiture will lead to the pre-merger situation with Editis remaining an independent player on the market.

Consideration of Third-Party Views

44. In arriving at its determination, the CID also considered submissions from the national competition authorities of Kenya, Malawi, Mauritius, DRC, Zambia and Egypt which did not raise any concerns in relation to the transaction.

Determination

45. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

46. The CID, therefore, approved the transaction.

47. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 10th day of March 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**