COMESA Competition Commission
COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/04/19/2024

Decision[1] of the 109th Meeting of the Committee Responsible for Initial Determinations regarding the Proposed Acquisition by Diversified Liquid Packaging Group Proprietary Limited of Nampak Zambia Limited, and Nampak Malawi Limited and the Proposed Acquisition by Liquid Cartons Proprietary Limited of a 0.01% Shareholding in Nampak Zambia Limited

ECONOMIC SECTOR: Packaging

22 August 2024

COMESA COMPETITION COMMISSION * 22 AUG 2024

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 30 May 2024, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Diversified Liquid Packaging Group Proprietary Limited ("**DLP**" or the "**acquirer**"), Nampak Zambia Limited ("**Nampak Zambia**") and Nampak Malawi Limited ("**Nampak Malawi**") (together the "**target undertakings**"), pursuant to Article 24(1) 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.

COMESA COMPETITION COMMISSION
22 AUG 2024

The Parties

DLP (the Acquirer)

4. The parties submitted that DLP is a private company incorporated in accordance with the laws of the Republic of South Africa. Liquid Cartons Proprietary Limited ("**LC**"), a wholly owned subsidiary of DLP, is a private company incorporated under the laws of the Republic of South Africa.

5. DLP is a special-purpose vehicle whose principal purpose will be to hold the shares in Nampak Malawi, Nampak Zambia and LC. It is an investment holding company indirectly controlled by D Capital Fund 1 Proprietary Limited ("**D-Cap**") and RMB Corvest 2 Proprietary Limited ("**RMB Corvest**"). D-Cap is a South African, black-owned investment firm[2]. RMB Corvest is a private equity company offering on-balance sheet equity and debt funding packages for medium to large leveraged buy-outs and buy-ins[3], management buy-outs and buy-ins[4], broad based black economic empowerment transactions[5] and growth capital solutions[6]. RMB Corvest is an affiliate of FirstRand Bank Limited ("**FirstRand**", collectively referred to as the "**acquiring group**"). FirstRand, through First National Bank Zambia Limited and First National Bank of Eswatini, operates in the banking and financial services market.

6. Within the Common Market, the acquiring group is present in Eswatini and Zambia.

Nampak Zambia and Nampak Malawi (the target undertakings)

7. The parties submitted that Nampak Zambia, one of the primary target firms, is a company incorporated under the laws of Zambia. Nampak Zambia is involved in the business of manufacture and supply of a diversified range of packaging products. Nampak Zambia's portfolio includes paper packaging products, plastic

---

[2] The shareholders of DCap are (i) Dlondlobala Capital Proprietary Limited ("**Dlondlobala**"), a private company incorporated in accordance with the laws of the Republic of South Africa; and, Corvest 200 Proprietary Limited, which is ultimately controlled by FirstRand.

[3] On-balance sheet items refer to all items that normally appears on the regular balance sheet of the company. A leveraged buyout (LBO) is the acquisition of one company by another using a significant amount of borrowed money to meet the cost of acquisition. The borrowed money can be in the form of bonds or loans. The assets of the company being acquired are often used as collateral for the loans along with the assets of the acquiring company (*Source: https://www.investopedia.com/terms/m/mbo.asp*). RMB Corvest provides leveraged buyouts for the acquisition of companies using their own funds to meet the cost of acquisition.

[4] A management buyout (MBO) is a transaction where a company's management team purchases the assets and operations of the business they manage. MBOs generally occur to take companies private in an effort to streamline operations and improve profitability. A management buy-in (MBI) occurs when an outside manager or management team purchases a controlling ownership stake in a company and replaces its existing management team (*Source: https://www.investopedia.com/terms/m/mbi.asp*).

[5] RMB Corvest offers Black Economic Empowerment (BEE) solutions to clients wishing to become BEE compliant and/or grow their businesses in return for part-ownership by black entrepreneurs.

[6] RMB Corvest provides investment in relatively mature companies that are looking for capital to expand, restructure operations, enter new markets or finance a significant acquisition without a change of control of the business.

packaging products and steel drums. Nampak Zambia has two manufacturing operations, one situated at Plot 8212, Mungwi Road, Heavy Industrial Area, Lusaka, and the other at Plot 415 A/O Kavu Road, Bwana Mkubwa Industrial Area, Ndola, Copperbelt, Zambia.

8. The parties submitted that Nampak Malawi, the other primary target firm, is a company incorporated under the laws of Malawi. Nampak Malawi is engaged in the manufacture and supply of paper liquid packaging products including conical liquid cartons. Nampak Malawi operates from its own premises in Blantyre where both its offices and manufacturing facility are situated.

9. Additionally, an affiliate of the target undertakings, the liquid cartons business of Nampak Products Limited in South Africa ("**Liquid Cartons South Africa**") supplies liquid paper products to its customers in Eswatini.

10. Within the Common Market, the target undertakings and their affiliate are active in Eswatini, Malawi, Zambia, Zimbabwe.

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 undertakings concerned held an asset value of more than the threshold of USD 50 million in the Common Market and they each held an asset value of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The Commission was thus satisfied that the transaction

constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

13. DLP will acquire 99.99% of the shares in Nampak Zambia held by Nampak South Africa Holdings Limited ("**NSAH**"). Additionally, LC will acquire the remaining 0.01% of shares in Nampak Zambia held by Nampak International Limited ("**NI**") and will also acquire certain shareholder claims from NI.

14. Further, DLP will acquire 100% of the shares in Nampak Malawi held by Transmar, while LC will acquire certain shareholder claims in relation to Nampak Zambia from NI.

15. The parties provided the following rationales for the proposed transaction:

    a) [redacted].

    b) [redacted]

16. The parties submitted that the proposed transaction will not result in any increase in market shares or change existing market structure in any relevant market in COMESA since there is no horizontal and/or vertical overlap in the activities of the merging parties.

17. Based on these reasons, the parties submitted that the proposed transaction will not substantially prevent or lessen competition in any market within the Common Market. The parties further confirmed that there will not be any retrenchments arising from the proposed transaction.

18. For completeness, the parties submitted that as part of an overall transaction, LC has also concluded an agreement to acquire a packaging manufacturing business in South Africa from Nampak Products Limited, which is controlled by Nampak Limited. Nampak Limited also controls Nampak Zambia and Nampak Malawi. That business comprises the manufacture and supply of liquid paper products (specifically "pure-pak" cartons and conical cartons). The "pure-pak" cartons are manufactured and supplied in South Africa and Eswatini and Burkina Faso

whereas conical cartons manufactured in South Africa are exported to Botswana (in addition to being sold in South Africa).

19. According to the parties, other than Eswatini, these products are not exported to any part of COMESA and have no bearing on the merger analysis. The parties further submitted that this also does not raise any issue relevant to the assessment of this transaction because in terms of the overall transactions, Nampak group is selling its packaging businesses in South Africa, Zambia and Malawi through indivisible transactions to the same grouping of purchasers. Accordingly, the South African, Zambian and Malawian packaging businesses (including exports by the South African business into Botswana, Eswatini and Burkina Faso) are owned by the Nampak group pre-merger and will be owned by the FirstRand Group and Dlondlobala Group post-merger. The parties submitted that no new actual or potential competition issue arises because there is no consolidation of any packaging businesses in various African territories as a result of the Proposed Transaction. The businesses are already under single common control.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

20. Paragraph 7 of the 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**"*.

21. The parties have submitted that the Dlondlobala Group does not have any business interests or assets of any nature whatsoever in COMESA and FirstRand Group's activities in COMESA fall within the banking and financial services sector and it is not involved in manufacturing and other similar industrial activities in COMESA. In particular, it is not involved in manufacturing, selling and supplying of packaging products at all.

22. The target undertakings are both active in the manufacture and supply of packaging products.

23. In view of the absence of horizontal and vertical overlaps, since the proposed transaction is not likely to affect the markets in which the acquiring group operates, the assessment has focused on the products provided by the target undertakings.

Manufacturing and supply of packaging products

24. Packaging, as defined by the European Environment Agency[7], encompasses the materials and processes used to safeguard products during distribution, storage, sale, and consumption. It involves designing and manufacturing containers or wrappers that ensure product safety, facilitate handling, and appeal to consumers.

25. Packaging is broadly categorized into two main types: flexible and rigid.[8] Flexible packaging is the creation of lightweight solutions sealed with heat or pressure to such a scale where it does not allow anything in or out.[9] Flexible packaging includes the manufacture, supply, and conversion of plastic and cellulose films, aluminum foils, and papers into packaging reels used primarily for retail food packaging, labeling, and select non-food applications.[10] Flexible packaging excludes shrink and stretch films used for secondary packaging, pallet wrap, carrier bags, supermarket self-service, and counter bags, silage bags, refuse sacks, and heavy-duty industrial sacks.

26. Flexible packaging, being less durable and more cost-effective, is ideal for less fragile items and offers advantages in production and transportation costs due to its lightweight and versatile nature, making it suitable for products prioritizing convenience and sustainability.

27. By contrast, rigid packaging employs sturdy materials such as tin cans, cardboard, plastic boxes, and glass containers. Rigid packaging is characterized by its durability and ability to withstand bending, curving, snapping, or breaking[11]. Rigid packaging materials are typically larger and heavier compared to flexible packaging materials[12]. It provides superior protection, making it better suited for fragile or heavy items, though it tends to be more expensive due to the use of heavier materials and higher shipping costs[13].

28. In ***MHL/Phatisa (2022)***[14], the CID considered the manufacture and sale of flexible packaging as a distinct product market since it allows for more economical and customizable options for packaging and is considered a high-efficiency and cost-effective mode of packaging. In view of the above, it can be concluded that the

---

[7] https://www.eea.europa.eu/help/glossary/eea-glossary/packaging, accessed on 9 July 2024.
[8] https://logos-pack.com/flexible-packaging-vs-rigid-packaging/, accessed on 9 July 2024.
[9] *Ibid.*
[10] European Commission Case No COMP/M.3049 - ALCAN / FLEXPACK, decision dated 24 February 2003, paragraph 8. Accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m3049_en.pdf
[11] https://uspackagingandwrapping.com/blog/the-difference-between-rigid-and-flexible-packaging.html, accessed on 9 July 2024.
[12] https://logos-pack.com/flexible-packaging-vs-rigid-packaging/, accessed on 9 July 2024.
[13] https://www.linkedin.com/pulse/flexible-packaging-vs-rigid-dynagraph-jpnmf/, accessed on 10 July 2024.
[14] See the decision of the Ninetieth (90th) CID in MHL International Holdings Ltd/ Phatisa Fund Managers 2 Limited, para 19, dated 19 December 2022. Accessed at: https://comesacompetition.org/3121/

manufacturing and supply of flexible and rigid packaging products belong to separate market segments.

29. The CID further observed that distinct markets can be identified within both the flexible and rigid packaging market segments on the basis of end- application.

30. The parties submitted that the relevant market can be segmented into packaging products for the dry food and beverage industry (such as paper packaging products, High-Density Polyethylene ("**HDPE**") bottles, HDPE and Low-Density Polyethylene ("**LDPE**") closures, Polyethylene Terephthalate ("**PET**") bottles and steel drums), and packaging products for the industrial sector, such as mining (e.g., steel drums). The parties submitted that this was in line with the approach of the Competition Tribunal of South Africa in ***Nampak/Burcap Plastics (2007)***[15] which found that there appear to be at least two broad segments that competition authorities can sensibly work with for purposes of analysing the merger, namely:

    a) containers for the food industry; and
    b) containers for industrial products.

31. The Competition Tribunal found that, while many manufacturers are capable of producing a range of containers, for technical reasons not all produce the complete range; and it appears that most manufacturers specialise in a particular range and further specialise in making either plastic or metal containers[16].

32. The parties submitted that Nampak Zambia's paper packaging products include liquid paper cartons used in the sorghum beer industry and self-opening bags utilized in the sugar, maize, and flour industries. Liquid packaging products consist of conical liquid cartons, primarily used for packaging sorghum beer. The cone shape allows traditional sorghum beer to continue fermenting until consumed. Nampak Zambia supplies its liquid paper carton products to customers in the sorghum beer industry. The CID observed that Nampak Zambia serves both the food and beverage market (namely beer, carbonated soft drinks, non-carbonated juice, dairy) [17] as well as industrial markets through the production of cold rolled steel (CRS) drum with customers including oil marketing companies and cobalt producers[18].

33. Nampak Malawi products include conipak liquid cartons, corrugated cartons (such as tobacco cases), corrugated boxes (such as chicken boxes and archive boxes), paper sacks (such as tea sacks for exporting tea), satchels and grease proof

[15] Case No:71/LM/Oct06 in the matter between Nampak Products Limited and Burcap Plastics (Pty) Ltd, decided on 26 March 2007.
[16] *Ibid*, paragraph 22.
[17] https://www.nampak.com/products/plastics/zambia , accessed on 30 July 2024.
[18] https://www.nampak.com/Products/Metals/Zambia, accessed on 30 July 2024.

paper. The parties submitted that Nampak Malawi purchases conical flat cartons from Nampak Zambia whereby it undertakes the final manufacture of these cartons by flame sealing such. Nampak Malawi then supplies these products to Chibuku Products Limited, a manufacturer and distributor of traditional beer in Malawi. Nampak Malawi does not supply such products outside of Malawi. The CID observed that Nampak Malawi serves the following markets: alcoholic beverage, tobacco, dairy, poultry, general food, toiletries and household, healthcare and pharmaceutical industry.[19]

34. The parties submitted that Nampak Zambia's plastic packaging products include HDPE bottles for the dairy industry; LDPE bottles for the dairy, honey, and sauce industries; and PET bottles for the honey and sauce industries. HDPE is a versatile plastic material used in a wide range of applications, including the production of bottles and containers. It is popular in packaging due to its durability, resistance to chemicals, and ability to withstand a wide range of temperatures. HDPE is a flexible, odorless, transparent, and 100% recyclable thermoplastic polymer. PET bottles, made from polyethylene terephthalate, are clear, durable, and recyclable plastic containers commonly used to package beverages such as soft drinks, water, juice, and beer.

35. The CID observed that the European Commission has previously considered segmenting the potential market for the supply of "flexible packaging" according to end-use application[20], namely: (i) food, (ii) medical supplies, (iii) pharmaceuticals, (iv) household products, and (v) other non-food. Within these potential five separate product market segments based on end-use application, the European Commission further considered a possible narrower segmentation in respect of various categorisations of food packaging by type of food. In addition, within flexible packaging for pharmaceuticals, the European Commission has considered a possible sub-division between blister packaging and laminated sachets.

36. In view of the foregoing, the CID considered that a segmentation of the packaging market for (i) food and beverages products and (ii) industrial products would be appropriate, having regard to the markets served by the targets. The CID noted that any alternative narrower market definition will not alter the competition assessment as there is no overlap in the activities of the merging parties pre-merger.

[19] https://www.nampak.com/Products/Paper/Malawi, accessed on 30 July 2024.

[20] [20] See M/20/024 – BUNZL/ABCOKOVEX, Para 15, decision Dated 30 September 2020; and M/23/052 – NPP Packaging/Wraptite, para16, decision dated15 November 2023; available online at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/08/M-20-024-public-determination.pdf, and https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/10/M.23.052-Public-Determination.pdf, accessed on 9 July 2024.

37. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets were construed as the manufacture and supply of:

a) **packaging products for food and beverage products, and**

b) **packaging products for industrial products.**

Relevant Geographic Market

38. Paragraph 8 of the Market Definition defines the relevant geographic market as follows:

"The relevant geographic market comprises 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".

39. The parties submitted that Nampak Zambia manufactures its packaging products in Zambia and supplies them to customers in Zambia, Malawi (via Nampak Malawi), and Zimbabwe. The CID noted that East African Packaging Industries Ltd produces various types of packaging products in Kenya and exports them to customers in Uganda, Tanzania, Burundi, and Rwanda.[21] This indicates that the geographic scope for the manufacturing and supply of packaging products is likely to be broader than the national market, potentially extending to the Common Market. This was also supported by the submissions of the Competition and Tariff Commission of Zimbabwe, which confirmed that Nampak Zambia derived revenue from Zimbabwe through exporting its liquid paper cartons used in the sorghum beer industry. Likewise, the Competition and Consumer Protection Commission of Zambia highlighted the presence of import competition in the relevant markets for the various packaging products in Zambia, noting that customers are able to import products similar to those supplied by Nampak Zambia.

40. In ***MHL/Phatisa* (2022)**[22], the CID determined that the relevant geographical market for the manufacture and sale of flexible packaging products was at least COMESA-wide. This conclusion was based on the demand for these products across several countries within the Common Market and the low transport costs relative to their value, which facilitates easy availability through imports.

---

[21] https://directory.africa-business.com/business/56c51a1042/East-African-Packaging-Industries-Ltd-, accessed on 12 July 2024.

[22] See decision of the Ninetieth (90th) CID in MHL International Holdings Ltd/ Phatisa Fund Managers 2 Limited, paragraph 19, dated 19 December 2022.

41. In view of the above and noting that the outcome of the assessment will not be affected by any alternative market definition, the relevant geographic market for the manufacturing and supply of packaging products was construed as COMESA-wide.

Conclusion of Relevant Market Definition

42. For purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant markets for the manufacture and supply of:

    a) **packaging products for food and beverage products in the Common Market; and**

    b) **packaging products for industrial products in the Common Market.**

Market Shares and Concentration

43. The parties provided their estimated market shares and their competitors in specific product lines in Malawi and Zambia as follows:

    a) According to Nampak Zambia's knowledge, they are the only manufacturers of conical liquid paper cartons for the sorghum beer industry in Zambia, Malawi, and Zimbabwe and that they are also the only suppliers of these products but imports of these and other substitutable products are feasible and could occur, including through direct imports by customers.

    b) Nampak Zambia holds a [60-70]% market share in Zambia for the manufacturing and supply of self-opening bags for the sugar industry, with the remaining [30-40]% held by its primary import competitor, Detpak South Africa.[23]

    c) Nampak Zambia holds a [20-30]% market share in Zambia for the manufacturing and supply of HDPE bottles[24] and HDPE/LDPE closure products[25], while Polypak Packaging (a company incorporated in South Africa) holds a [40-50]% market share through direct imports into Zambia.[26] Mulan

[23] Confidential information claimed by the merging parties.

[24] High-Density Polyethylene (HDPE) is a thermoplastic polymer made from petroleum; it is one of the most versatile plastic materials used in a wide variety of applications, including plastic bottles and supplements jars, milk jugs, shampoo bottles, bleach bottles, cutting boards, and piping. HDPE plastic bottles are reported to have good strength & chemical resistance (Source: https://www.lifestylepackaging.com/packaging/plastic-packaging/hdpe-bottles/).

[25] Closures are devices used for opening and closing containers. The term closure includes caps, lids, plugs, and covers. Each type of closure refers to the component found at the opening of a container used for sealing product inside. Closures are used in every industry to seal products ranging from food to chemicals (Source: https://www.paramountglobal.com/knowledge/packaging-closure-guide/). LDPE is a popular type of plastic known for its flexible and squeezable properties that make it perfect for dispensing liquids and more without breaking. More flexible than HDPE, LDPE is thus used for squeeze bottles and containers that require easy dispensing (Source: https://www.originltd.com/useful-resources/plastic-packaging/what-is-ldpe-plastic/).

[26] Confidential information claimed by the merging parties.

Products Investments Limited and Polymer Containers Limited (companies incorporated in Zambia) hold the remaining [0-10]10% and [0-10]% market shares, respectively.

d) With regard to the manufacturing and supply of HDPE crates, Nampak Zambia has a [80-90]% market share in Zambia, while Arkay Industries, a company incorporated in Zambia, holds the remaining [10-20]%.

e) For the manufacturing and sale of steel drums, Nampak Zambia holds a [80-90]% market share in Zambia, with the remaining [10-20]% held by various importers.[27]

f) According to Nampak Malawi's knowledge, they are the only manufacturers and suppliers of liquid paper cartons for the sorghum beer industry in Malawi; however, imports of these and other substitutable products are feasible and could occur, including through direct imports by customers. Nampak Malawi only supplies liquid paper cartons in Malawi to a single customer namely, Chibuku Products Limited within the sorghum beer industry.[28]

44. The CID noted that Nampak Ltd, the parent company of the target undertakings, was one of the top 10 packaging companies in the Middle East and Africa in 2021 by revenue.[29] The top 5 companies were Sappi Ltd, Nampak Ltd, Mpact Ltd, Hadera Paper Ltd, and Takween Advanced Industries Co.

45. The CID observed that Nampak Zambia's conical carton factory in Lusaka produces in excess of 350 million cartons a year and is designed to satisfy the growing demands of Zambia's sorghum beer industry which collectively brews more than 275 million litres of beer a year.[30] Nampak Ltd.'s annual report for the financial year ended 2023 further records that the company is only manufacturer of conical cartons in Zambia.[31] The CID thus considered that Nampak Zambia is likely to hold very high market shares in Zambia.

46. In relation to Nampak Malawi's market position, the CID observed that the company is considered as one of the biggest players in Malawi's packaging industry.[32] This was supported by the submissions received from the Competition and Fair Trading Commission of Malawi confirming that Nampak Malawi is a long-established player in the business and is deemed to hold a considerable share of the market of paper packaging in the country. It was noted, however, that

[27] Confidential information claimed by the merging parties.
[28] Confidential information claimed by the merging parties.
[29] https://www.globaldata.com/companies/top-companies-by-sector/packaging/middle-east-and-africa-companies-by-revenue/, accessed on 12 July 2024.
[30] https://www.nampak.com/Products/Paper/Zambia, accessed 31 July 2024.
[31] https://www.nampak.com/Content/Documents/About/integrated-report-2023.pdf
[32] 'Sorghum carton company triumphs in Malawi'. Accessed at https://www.foodformzansi.co.za/sorghum-carton-company-triumphs-in-malawi/, on 31 July 2024.

notwithstanding the parties' position that Nampak Malawi may be holding a 100% share in the supply of conical liquid paper cartons for the sorghum beer industry in Malawi, this is likely to be restrained by imports.

47. Notwithstanding the potentially high market shares of the target undertakings pre-merger, the CID noted that there will be no change in the existing market structure post-merger as there will not be market share accretion as a result of the transaction.

48. The parties submitted that one of the target undertakings, Nampak Zambia, has one CPS machine (which is a die-cutting, creasing, and printing machine used to print and die-cut conical sorghum beer cartons and two flame-sealing machines to seal the sorghum beer cartons); self-opening bag, die cutting and printing lines; injection moulding lines used to manufacture HDPE and LDPE closures and crates; PET blowing lines to manufacture PET bottles; blow-moulding lines; drumline used to manufacture steel drums. It also has generators, chillers, production and compressors, etc. As such, according to the parties, new entrants would require to have proper infrastructure in place, including generators, chillers, compressors, and other necessary equipment.

49. The parties further submitted, to the best of their knowledge, that the only new entrants in the last three years in Zambia were Mulan Products Investments Limited and Polypak Packaging (which is in the process of setting up operations) both of which operate in HDPE bottles and HDPE/LDPE closure businesses. There were no new entrants in Zambia for the other product lines sold by Nampak Zambia.

50. The parties submitted that in Malawi, there were no new entrants in the last three years for the manufacture and supply of liquid paper cartons. It was noted that there is only one customer for liquid paper cartons and any new entrant would have to engage with this customer directly.

51. The CID noted that new entrants in the market may be constrained by the required capital for acquiring the proper infrastructure. Nonetheless, considering the lack of overlap in the parties' activities pre-merger, the CID observed that the transaction would not heighten any existing barrier to entry.

52. As noted above, the proposed merger will not change the existing market structures for the relevant markets; as a result the CID was satisfied that the proposed merger will neither result in the strengthening of a dominant position for the parties that would allow them to engage in unilateral conduct in the market; nor will it facilitate nor create incentives for collusive behaviour among the competitors in the relevant markets. This was further supported by the submissions received from the National Competition Agencies.

Consideration of Third-Party Views

53. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Eswatini, Malawi, Zambia and Zimbabwe which confirmed the absence of competition and public interest concerns.

Determination

54. 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.

55. The CID, therefore, approved the transaction.

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

Dated this 22nd day of August 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma