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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/06/22/2024

**Decision¹ of the 109th Meeting of the Committee Responsible
for Initial Determinations regarding the Merger Involving
Oryx Finance and International Facilities Services Mauritius
Limited**

ECONOMIC SECTOR: Hospitality

22 August 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 10 July 2024, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the Merger Involving Oryx Finance (the “**acquiring firm**”) and International Facilities Services Mauritius Limited (“**IFS Mauritius**” or the “**target firm**”), 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.



The Parties

Oryx Finance (the acquiring firm)

4. The parties submitted that Oryx Finance is a special purpose vehicle incorporated specifically for the purposes of the proposed transaction and does not have any activities. Oryx Finance is jointly controlled by ES-KO Group Limited and Phatisa Fund Managers 2 Limited ("**PFM 2**"). ES-KO Group provides logistical solutions, camp services, camp construction and risk management services to clients in remote and challenging environments in Africa and certain parts of the world.
5. The parties submitted that the ES-KO Group controls several firms that operate in the following COMESA Member States: Djibouti, Kenya, Mauritius, Somalia and Uganda as presented in Table 1 below.

Table 1: Firms control by ES-KO Group in COMESA

Member State	Name of firm	Activity
Djibouti	EFS Ebrex FZCO	Distributor of chemicals and cleaning products
	EFS Ebrex Logistics SARL	a distributor of chemicals and cleaning products
	Djibouti Air Cargo Centre SARL	no longer operational but was previous involved in the transportation of air freight
Kenya	ES-KO Services Limited Kenya	dormant firm that has ceased to conduct any activities
Mauritius	ES-KO Logistics Support	conducts the employment related activities for the ES-KO Group in relation to employing staff for United Nations contracts
	ES-KO HR Support Services Limited	conducts the employment related activities for the ES-KO Group in relation to employing staff for United Nations contracts
	ES-KO Investment is a holding company	not yet operational and therefore does not conduct any business activities and/or derive any turnover in COMESA.
Somalia	EFS Ebrex Somalia Limited	Provides warehousing services at Mogadishu port
	ES-KO International SAM Somalia Ltd	Provides catering and restaurant services to the United Nations at Mogadishu airport



Uganda	ES-KO Services Limited	dormant firm that does not conduct any activities but holds assets in the form of cash
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6. The parties submitted that the firms controlled by ES'KO Group Limited do not compete with the Phatisa Group on the one hand and the Target Group on the other hand. ES-KO Group Limited and the firms controlled by it are referred to as the "**ES-KO Group**". PFM 2 is a collective investment scheme manager that manages private equity funds, namely Phatisa Food Fund 2 LLC, PFF 2 Parallel LLC and PFF 2 Co-Invest. PFM 2 and all firms controlled directly or indirectly by PFM 2 are collectively referred to as the "**Phatisa Group**". The Phatisa Group controls firms (portfolio companies) that operate in Kenya, Malawi and Zambia. The portfolio companies that are controlled by the Phatisa Group do not compete with the ES-KO Group on the one hand and the Target Group on the other.
7. The parties submitted that in the Common Market, Phatisa Group controls the firms presented in Table 2 below.

Table 2: Firms controlled by Phatisa Group in the Common Market

Member State	Name of firm	Activity
Kenya	Manipal International Printing Press Limited	Supplier of specialised printing services, self-adhesives and shrink sleeves
Malawi	Farming and Engineering Services Limited	Trades, lease and maintenance of mechanized agricultural equipment and provider of farming services
Zambia	FES Zambia Limited	Seller and distributor of farming equipment and spare parts

IFS Mauritius (the "target firm")

8. The parties submitted that IFS Mauritius, incorporated in Mauritius, is the ultimate holding company of the Target Group (comprising, IFS Mauritius and firms controlled directly or indirectly by IFS Mauritius). IFS Mauritius is responsible for the overall management, strategy and marketing of the Target Group. IFS Mauritius provides the systems and documents forming the intellectual property that IFS Mauritius provides to the Target Group as operational tools. IFS Mauritius also provides marketing/advertising, promotion, publicity, market research and other marketing programmes to the Target Group to assist with the implementation of the full-service contracts in-country.



9. The parties submitted that the Target Group trades in the following COMESA Member States: Democratic Republic of Congo ("**DRC**"), Zambia and Seychelles. The primary business activity of the Target Group in COMESA is the supply of facilities management services, which includes catering and canteen services, cleaning, laundry, basic maintenance, and remote camp management services to customers. The business activities entail the following:
- i. **Catering and canteen services**, include the delivery, preparation, and provision of food (generally three meals a day) to the relevant staff compliment of clients who have chosen to outsource this service on their premises;
 - ii. **Cleaning and housekeeping services**, includes cleaning and sanitation of working and common areas, surfaces and floors, routine emptying of trash bins and ensuring a clean working environment generally. It also includes servicing accommodation where clients have employees living on or near site
 - iii. **Laundry services**, includes a range of tasks related to the upkeep of the cleanliness of employees' attire and other work-related textiles
 - iv. **Maintenance services**, includes basic routine and reactive upkeep of the catering facilities, such as the cleaning of refrigerator vents, basic repairs to staff accommodation and surrounds
 - v. **Remote camp management**, encompassing the provision of facilities management services, similar to that of hotel services but for camp facilities housing employees working in remote areas such as near mines or oil and gas wells, where employees are residing on or near site.
10. The parties submitted that the Target Group controls the following firms in the Common Market:

Table 3: Firms controlled by the Target Group in COMESA

Member State	Name of firm	Activity
DRC	International Facilities Services DRC SARL	Facilities management services
Mauritius	International Facilities Services BOOM Limited	Dormant
Seychelles	Human Resources Africa Limited	undertakes payroll and employment related tasks on behalf of the Target Group in Africa
Zambia	International Facilities Services Zambia Limited	intermediate holding company that derives turnover solely through its shareholding in IFS Zambia Operations Limited
	IFS Zambia Operations Limited	conducts facilities management services



	IFS Zambia Trading Limited	dormant entity that does not conduct any business activities
Zimbabwe	International Facilities Services Zimbabwe (Private) Limited	Dormant

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 derived turnover of more than the threshold of USD 50 million in the Common Market and they each derived turnover 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. The parties submitted that the proposed transaction relates to the sale of 100% of the ordinary issued share capital of IFS Mauritius to Oryx Finance.



Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

14. 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"***.
15. The acquiring firm, Oryx Finance, is a special purpose vehicle with no operations in the Common Market but its joint controlling entities, namely ES-KO Group and Phatisa Group have operations. ES-KO Group provides logistical services/distribution of chemicals and cleaning products; employment related activities; and warehousing services. On the other hand, Phatisa Group provides specialised printing services; self-adhesives and shrink sleeves; trade, lease and maintenance of mechanised agricultural equipment; and provision of contract farming services. The Target Group provides facilities management services within the Common Market.
16. Based on the activities of the parties, the proposed transaction was unlikely to result in a horizontal or vertical overlap since the activities are neither similar nor related. Therefore, the assessment of the relevant market was limited to the activities provided by the Target Group since any competition effects are likely to manifest in this market.

Facilities management services

17. Facilities management services involve the integration of processes within an organisation which support and improve the effectiveness of the organisation's primary activities. The services may comprise catering and canteen services; cleaning and housekeeping services, laundry services, maintenance services, and remote camp management services. The respective services can be construed as distinct both from a demand and supply perspective.
18. From a demand perspective, an organisation that seeks to address catering related gaps is not likely to substitute its demand with cleaning and housekeeping services since the intention of these two services are different. The same applies to laundry, maintenance and remote camp management services which are not substitutable from a demand perspective. From a supply perspective, the requirements to provide the individual services are different. For instance, to provide cleaning and housekeeping services a supplier requires cleaning chemicals, tools and personnel with the relevant skills. These requirements would not apply where a provider seeks to provide maintenance services which may



require different tools and personnel with different skill sets. In *Tsebo Egypt/Compass Egypt*², the CID similarly identified catering services as a distinct service, having observed the absence of horizontal overlaps between the activities of the parties. In its consideration, the CID further observed that while catering services comprised a distinct market within facilities management services, the preference by corporate institutions is to engage a provider of suite of facilities management services as opposed to engaging different providers of the distinct services.

19. It was recalled that the current transaction neither raises horizontal nor vertical overlaps. Therefore, while the facility management services could comprise distinct markets, the relevant product market was construed as the provision of facilities management services, as any alternative market definition was not likely to alter the competition assessment.
20. In view of the foregoing, the CID construed the relevant product market as the **provision of facilities management services.**

Relevant Geographic Market

21. 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***"³.
22. The parties submitted that the Target Group provides facilities management services on a national basis in DRC and Zambia.
23. The CID considered that a provider of facilities management services should have a physical presence in the territory where the facility in question is located to provide such a service. It was likely to be costly for a client to demand the services of a provider located outside its territory as an alternative to locally available providers. The CID considered that the conditions of competition and substitution was likely to be limited to the national boundaries of a given country within which the client or the facility is located.

Conclusion of Relevant Market Definition

24. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant market as **provision of facilities management services in DRC and Zambia.**

² See Case No. CCC/MER/08/30/2018, Merger Involving Tsebo Egypt Investments (Mauritius) and Compass Egypt for Hotels and Food Services S.A.E.

³ Paragraph 8



Market Shares and Concentration

25. The parties submitted that the estimated market shares of the target group and their competitors in relation to the provision of facilities management services in DRC and Zambia as presented in the Table 4 below:

Table 4: Estimated Market Shares for the Supply of Facilities Management Services for the Target and its Competitors in DRC and Zambia ⁴

DRC	
Name	Market Share (%)
IFS DRC	[31 – 33]
ATS Tsebo Solutions	[16 – 18]
Bushcamp Remote Site Services	[10 – 12]
CSS/Catering International and Services	[7 – 9]
Yasam Catering	[7 – 9]
Golden Camp Solutions	[1 – 3]
Others	[22 – 24]
Zambia	
IFS Zambia Operations	[1 – 5]
ATS Tsebo Solutions	[1 – 5]
In-House Team	[1 – 5]
Others	[81 – 85]

26. The CID observed that the proposed transaction would not result in a change in market structure for the provision of facilities management services in DRC and Zambia due to the absence of horizontal overlaps in the parties' activities. It was also observed that the relevant market is fragmented and replete of alternative providers of facilities management services.

Consideration of Third-Party Views

27. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Kenya, Mauritius, and Seychelles which confirmed the absence of competition and public interest concerns.

Determination

28. 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.
29. The CID, therefore, approved the transaction.

⁴ Confidential information claimed by merging parties.



30. 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

