



Case File No. CCC/MER/07/25/2025

Decision¹ of the 126th Meeting of the Committee Responsible for Initial Determinations Regarding the Contravention of Article 24(1) of the COMESA Competition Regulations 2004 in relation to the Proposed Acquisition of Delta Holdings B.V by PEF Pharaoh Limited

ECONOMIC SECTOR: Manufacturing



15 April 2026

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

The Committee Responsible for Initial Determinations (“**CID**”) established pursuant to Article 13(4) of the COMESA Competition Regulations of 2004 (the “**Regulations**”):

Desirous of the overruling objective of strengthening and achieving convergence of COMESA Member States’ economies through the attainment of full market integration as enshrined in the Treaty Establishing the Common Market for Eastern and Southern Africa (the “**Treaty**”);

Cognisant of Article 55 of the Treaty;

Having regard to 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;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

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.

Determines as follows:

Introduction and Relevant Background

1. On 31 July 2025, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving the Proposed Acquisition of Control of Delta Holdings B.V. by PEF Pharaoh Limited, pursuant to Article 24(1) of the Regulations.
2. The CID observed that the merger filing was made beyond the 30 days’ statutory timeline prescribed by Article 24(1) of the Regulations.
3. The CID therefore noted that the parties were potentially in contravention of Article 24(1) of the Regulations.



4. The CID noted that on 12 November 2025, the Commission issued a Statement of Concerns (“SoC”) to the parties detailing its assessment of their non-compliance with Article 24(1) of the Regulations. In the SoC, the Commission outlined its proposed recommendations to the CID and invited the parties to provide their views thereon, prior to the Commission presenting the matter to the CID for determination.
5. The CID further noted that on 9 December 2025, the parties, through their legal representatives, Baker McKenzie, submitted their response to the SoC which the Commission assessed and issued a revised SoC to the parties on 9 March 2026. The revised SoC informed the parties of its recommendations to the CID.

The Parties

PEF Pharaoh (the “Acquiring Firm”)

6. PEF Pharaoh is a company incorporated under the laws of Mauritius. PEF Pharaoh was established in 2025 and does not have any operations yet. PEF Pharaoh is the direct acquirer in this transaction. In the Common Market, the Acquiring Group operates in Burundi, Comoros, the Democratic Republic of Congo (“DRC”), Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Delta Holdings (the “Target Firm”)

7. The Target Firm is a company incorporated under the laws of the Netherlands and is a specialty chemicals manufacturer in Egypt. Delta Holdings’ fully owned subsidiary, namely DS Specialty Chemicals, is active in the market for control additives. Delta Holdings and DS Specialty Chemicals are together referred as the Target Group. In the Common Market, the Target Group operates in Egypt, Kenya, Libya, Rwanda, Sudan, Tunisia and Uganda.

Legal framework

8. Article 24(1) of the Regulations provides that, *“A party to a notifiable merger shall notify the Commission in writing of the proposed merger as soon as it is practicable but in no event later than 30 days of the parties’ decision to merge”*.
9. Article 24 (2) of the Regulations provides that, *“Any notifiable merger carried out in contravention of this part shall have no legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger shall be legally enforceable in the Common Market”*.
10. Further, Article 24(4) of the Regulations provides that, *“The Commission in addition to sanctions under paragraph 1 may impose a penalty if the parties to a merger fail to give notice of the merger as required by paragraph 1”*.



11. Article 24(3) of the Regulations provides that, “Notification in terms of paragraph 1 shall be made in such form and manner as may be prescribed and shall be accompanied by the prescribed fee and such information and particulars as may be prescribed or as the Commission may reasonably require”.
12. Article 24(5) of the Regulations further states that “A penalty imposed in terms of paragraph 4 may not exceed ten per centum of either or both of the merging parties’ annual turnover in the Common Market as reflected in the accounts of any party concerned for the preceding financial year”.
13. Article 24(6) of the Regulations provides that, “When determining an appropriate penalty, the Commission shall consider the following factors:
 - (a) The nature, duration, gravity and extent of the contravention;
 - (b) Any loss or damage suffered as a result of the contravention;
 - (c) The behaviour of the parties concerned;
 - (d) The market circumstances in which the contravention took place;
 - (e) The level of benefits derived from the contravention;
 - (f) The degree to which the parties have co-operated with the Commission; and
 - (g) Whether the parties have previously been found in contravention of competition Regulations in the region.”
14. The Commission’s Guidelines for Determination of Administrative Fines and Penalties (“**Guidelines on Fines and Penalties**”) provide a step-by-step process of calculating fines and penalties for contraventions under the Regulations. Section 5, paragraph 1 of the Guidelines on Fines and Penalties provides that:

“The Commission will use the following two-step methodology when setting the fine to be imposed on undertakings found to be in breach of the Regulations:

 - a. First, the Commission will set a base amount for each undertaking or association of undertakings.
 - b. Second, the Commission may adjust the base amount upwards or downwards considering aggravating and mitigating factors on a case-by-case basis.”
15. Section 5, paragraph 5 of Guidelines on Fines and Penalties provides that, “...in determining the turnover of an undertaking, the Commission will take into account the undertaking’s latest available audited figures...”.
16. Section 5, paragraph 7 of the Guidelines on Fines and Penalties provides that, “...the base amount of the fine denotes the starting point against which the mitigating and aggravating factors will be adjusted. The base amount will be a proportion of the



turnover depending on the nature, the degree of gravity and the duration of the infringement". Further, *"the assessment of gravity will be determined on a case-by-case basis for all types of infringements, taking account of all the relevant circumstances of the case"*.

17. Section 5, Paragraph 12(f) of the Guidelines on Fines and Penalties provides that the general base proportion of turnover to be applied shall be as follows:

"...Mergers implemented in contravention of the Regulations, a base from 2% to 4% of turnover...".

18. Section 5, Paragraph 12(h) of the Guidelines on Fines and Penalties provides that the general base proportion of turnover to be applied shall be as follows:

"... other infringements, a base from 0.5% to 1% of turnover."

19. The Guidelines on Fines and Penalties also provide that the base amount may be adjusted depending on aggravating or mitigating factors. For mitigating factors, the Commission is required to consider the following factors:

- a. *Cooperation – whether the undertaking(s) concerned has cooperated with the Commission during the investigation by among others, through admission of liability, disclosure of more evidence, and working within the given timelines, the base amount may be decreased by up to 50%;*
- b. *First offender- whether the undertakings(s) are first-time offenders and have not been the subject of previous enforcement action on similar conduct under the Regulations, the Commission at its own discretion may decrease the base amount by up to 30%;*
- c. *Termination of the infringement- where the undertaking(s) concerned provide evidence that infringement was terminated as soon as the Commission commenced investigations or intervened, the base amount may be decreased by up to 5% on account of this factor. In this case, the infringement was regularised when the parties notified the transaction to the Commission.*

Decision to Merge

20. The CID noted that the Share Purchase Agreement ("**SPA**") relating to the transaction is dated 22 May 2025.
21. The CID noted that Paragraph 5.1 of the COMESA Merger Assessment Guidelines provides that "the Commission considers that a decision to merge must either be (i) a joint decision taken by the merging parties and so comprise the conclusion of a definitive, legally binding agreement to carry out the merger (which may or may not be subject to conditions precedent) ...". The CID noted that the definitive, legally binding agreement to carry out the merger was signified by the Share Purchase



Agreement. The Commission submitted that the decision to merge was the date recorded in the Share Purchase Agreement which was 22 May 2025.

22. The CID further noted that pursuant to Article 24(1) of the Regulations and Rule 3 of the COMESA Competition Rules (the “Rules”), the 30th day from the parties’ decision to merge was 21 June 2025. However, 21 June 2025 being a Saturday, was regarded as a day when the office of the Registrar is closed, by virtue of Rule 3(2) of the Rules², the filing ought to have been made to the Commission by latest, Monday 23 June 2025.
23. The CID observed that the parties however submitted the merger filing to the Commission via email dated 25 June 2025, at 09.10 p.m. Malawi Time.
24. The CID observed that Rule 67 of the Rules provides that the filing of any documents should be effected by lodging it with the office of the Registrar at a time when the office is open for business. Rule 66 of the Rules prescribes the business hours of the Registrar from 09:00 -12:00 hours and 15:00 - 16:00 hours. The Commission further informed the CID that the merger filing having been made at 09.10 p.m. on 25 June 2025, was deemed to have been made to the Commission on 26 June 2025.

Notifiability of the Transaction under the Regulations

25. The CID observed that the undertakings concerned derive a combined turnover of more than the threshold of USD 50 million in the Common Market and they each derive turnover of more than USD 10 million in the Common Market. In addition, the parties did not each derive more than two-thirds of their turnover in one and the same Member State.
26. The CID was satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

SoC Issued to the Parties

27. The CID noted that the Commission issued a SoC to the parties in which it presented its assessment of their compliance with Article 24(1) of the Regulations. In the SoC, guided by the Commission’s decisional practice and applying the Guidelines on Fines and Settlement, the Commission also presented the proposed penalty and recommendation to the CID on the matter.
28. The CID noted that in their response to the SoC, the parties recognised that the merger notification was submitted approximately 45 hours after the 30-day deadline prescribed by Article 24(1) of the Regulations and, accepted that a breach of Article

² Rule 3(2) of the Rules provides that “where the time prescribed by or allowed under these Rules for doing an act or taking a proceeding expires on a Saturday or Sunday or on a day on which the office of the Registrar is closed, the act may be done or the proceeding may be taken on the first day following that is not a Saturday, Sunday or day on which that office is closed”.



24(1) occurred. The parties meaningfully engaged the Commission by arguing for the imposition of a symbolic fine relying on the Commission's Guidelines on Fines and Administrative Penalties and made a settlement offer to the Commission.

The Commission's Position on the parties' response to the SoC

29. Consistent with the Commission's precedent established in the *Helios Towers/Madagascar Towers/Malawi Towers*³, *Sabic/ETG*⁴, *BRED/BFV-SG*⁵ and *Robert Bosch/ Residential and Light Commercial Heating, Ventilation, and Air Conditioning Business of Johnson Controls International plc*⁶ mergers, the CID considered that in the current case PEF Pharoah should be fined for failure to notify the transaction within the prescribed timeline of 30 days under Article 24(1) of the Regulations.
30. The CID recalled that in determining an appropriate penalty, pursuant to Article 24(6) of the Regulations, it is guided by the following factors:
- (a) The nature, duration, gravity and extent of the contravention;
 - (b) Any loss or damage suffered as a result of the contravention;
 - (c) The behaviour of the parties concerned;
 - (d) The market circumstances in which the contravention took place;
 - (e) The level of benefits derived from the contravention;
 - (f) The degree to which the parties have co-operated with the Commission; and
 - (g) Whether the parties have previously been found in contravention of competition Regulations in the region.
31. The CID also recalled that it is further guided by Guidelines on Fines and Penalties which provide a step-by-step process of calculating fines and penalties for contraventions under the Regulations.
32. Notwithstanding, an amount of 10% provided for as the maximum penalty that can be imposed for a breach under Article 24(1) of the Regulations, the CID noted that Article 24(6) of the Regulations and the Guidelines on Fines and Penalties have

³ CID Decision regarding the Proposed Acquisition of Helios Towers Ltd of shares in Madagascar Towers S.A. and Malawi Towers Limited, <https://comesacompetition.org/wp-content/uploads/2021/05/2021.09.03-Decision.20.2.2021-Fines-for-Non-Compliance-of-Article-24.pdf>

⁴ CID Decision regarding Contravention of Article 24(1) of the COMESA Competition Regulations by SABIC Agri-Nutrients Company and ETG Inputs Holdco Limited, <https://comesacompetition.org/wp-content/uploads/2023/05/Decision-Case-No-CCC-MER-08-38a-2022-compressed.pdf>

⁵ CID Decision Regarding Breach of Article 24(1) of the COMESA Competition Regulations in relation to the Proposed Acquisition by BRED Banque Populaire of Sole Control of BFV – Societe Générale Madagascar

⁶ CID Decision Regarding the Non-Compliance with Article 24(1) of the Regulation in the Proposed Acquisition of control by Robert Bosch GMBH of the Residential and Light Commercial Heating, Ventilation, and Air Conditioning Business of Johnson Controls International plc



provided for mitigating and aggravating factors that ought to be considered in setting a fine to ensure proportionality is preserved.

33. The CID observed that there were no aggravating factors to be applied in the current case, and in line with the Guidelines on Fines and Penalties, the CID considered all the mitigating factors including the fact that there was no prejudice to the market for the contravention.
34. In particular, the CID considered the following factors in the current case:
 - a. **nature, duration, gravity and extent of the contravention:** the contravention was not for a long duration and it involved a delay in complying with the timeline for notification of the merger which had not resulted in any negative effect on the market structure, thus no impact on competition in the Common Market. The CID noted that the delay in the submission of the merger filing was not inordinate. The CID gave the parties the benefit of doubt that the delay may indeed have been inadvertent.
 - b. **degree to which the parties have co-operated with the Commission:** the CID noted that the parties voluntarily notified the transaction to the Commission and have cooperated with the Commission as seen from their submission of the merger filing; and
 - c. **Repeat offender:** the CID observed that the parties had no record of contravening the Regulations.
35. The CID noted that Section 6, Paragraph 3 of the Guidelines on Fines and Penalties further provides that, "*the Commission may, in certain cases, impose a symbolic fine. The justification for imposing such a fine should be given in its decision.*"
36. The CID observed that in the case at hand, the parties submitted a settlement offer of **USD5,000** in full and final settlement, given the absence of market harm and the parties' cooperation.
37. The CID observed that the parties collaborated with the Commission in the present matter, from notification up to the assessment of the infringement of Article 24(1) of the Regulations. The parties voluntarily notified the Commission of the transaction without the Commission having to expend resources to identify this transaction and assess its notifiability under the Regulations. Further, the parties did not adopt an adversarial stand to the Commission's assessment of the infringement of Article 24(1) of the Regulations and demonstrated their willingness to resolve the matter constructively with the Commission.
38. The CID noted the parties' settlement proposal and their express commitment to resolve the matter. Further, the CID noted that in the matter at hand, the 30 days'



timeline prescribed under Article 24(1) of the Regulations was missed by 3 days. Additionally, the CID observed from the Commission's engagement with the parties that their failure to notify was inadvertent. This notwithstanding, the CID faulted the parties for negligence as they ought to have known when compliance with Article 24(1) was due and therefore, a symbolic amount should be imposed.

39. The CID observed that the Guidelines do not prescribe a specific amount to be considered as a symbolic fine for a contravention under Part 4 of the Regulations. The amount of the symbolic fine is left to the discretion of the Commission which is to be determined on a case-by-case basis, considering the facts of the case and the mitigating and aggravating factors.
40. The CID observed that the settlement proposal from the parties enhances their collaboration with the Commission and reduces legal and administrative costs.
41. The CID was therefore of the view that the symbolic penalty amount proposed by the parties was low and may not have any deterrence effect. The CID observed that negligence in complying with the law should not be entertained. It also observed that the fact that cases of similar nature were recurring, the symbolic fines imposed by the CID in past cases may not have had a deterrent effect. For this reason, the CID was of the view that the fines *in casu* should be of an amount which will send a strong signal that the Commission remains relentless towards sanctioning such breaches.
42. The CID took note of the settlement reached by the parties and the Commission in which the parties agreed to pay a symbolic fine of **USD10,000** in full and final settlement of the violation.

Determination

43. The CID observed that based on facts and circumstances surrounding the case, it is evident that the parties collaborated with the Commission and there was no harm identified on the market as a result of the contravention. Further, the merging parties have not previously been found in breach of the Regulations.
44. Having established that the parties were in breach of Article 24(1), the nature of the breach, the parties' cooperation and other mitigating factors of the Regulations, the CID considered that a symbolic fine was warranted to deter the occurrence of similar breaches.
45. Given the precedent in the *Helios Towers/ Madagascar Towers/Malawi Towers, Sabic/ETG, BRED/BFG and Robert Bosch/ Residential and Light Commercial Heating, Ventilation, and Air Conditioning Business of Johnson Controls International plc*, the CID was agreeable that PEF Pharoah Ltd be liable to pay a symbolic amount of **USD10,000** for the breach of Article 24(1) of the Regulations.



46. PEF Pharaoh Ltd shall pay the fine within thirty (30) calendar days of the CID Decision.
47. Failure to comply with this decision shall be construed as a breach of the Regulations and sanctions enshrined therein shall apply.
48. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 15th day of April 2026

Commissioner Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma Commissioner Luyamba Kizito Mpamba

