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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/07/22/2021

Decision¹ of the Eightieth (80th) Committee Responsible for Initial Determination Regarding the Proposed merger involving Imperial Logistics Limited and Deep Catch Holdings Namibia Proprietary Limited

ECONOMIC SECTOR: Fast Moving Consumer Goods

5th December 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

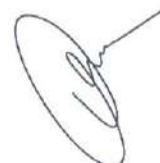
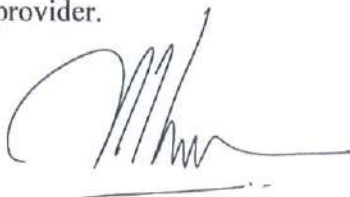
Introduction and Relevant Background

1. On 27th August 2021, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a proposed merger regarding the acquisition by Imperial Logistics Limited (“**Imperial**”), through its wholly owned subsidiary Imperial Capital Limited (“**Imperial Capital**” or the “**Acquiring Undertaking**”) of all the issued share capital of and Deep Catch Holdings Namibia Proprietary Limited (“**Deep Catch**” or the “**Target Undertaking**”), pursuant to Article 24(1) of the COMESA Competition Regulations (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 CID is responsible for making determinations on cases before the Commission. The decision of the CID is set out below.

The Parties

Imperial Capital (the “Acquiring Undertaking”)

4. The acquiring undertaking, Imperial Capital, is a company incorporated in the Republic of South Africa. It is a wholly owned subsidiary of Imperial, a company listed on the JSE Limited. Imperial Capital is the holding company of Imperial African region's businesses, with businesses ranging from transportation, distribution, and logistics services. Imperial and its subsidiaries are active in two distinct sectors namely:
 - a. **Market access**
5. This entails route-to-market solutions which provide Imperial’s clients with a means of reaching their customers through comprehensive channel strategies that integrate sourcing, sales, distribution, and marketing. Imperial operates as a wholesale distributor of fast moving consumer goods (FMCGs) and pharmaceutical products in various countries. Further, the products distributed under its market access businesses are predominantly ambient FMCGs to wholesale and retail customers located in Eswatini, Malawi and Zambia; and to an insignificant extent temperature- controlled FMCGs in Zambia.
 - b. **Logistics services**
6. Imperial’s logistics operations entail managing the movement of goods on behalf of its clients between specific locations, combining different transportation modes and types. Further, to reduce their time-to-market, improve customer service and mitigate risk, Imperial integrates its logistics functions into its client’s end-to-end supply chain. It also performs the function of lead logistics provider, managing multiple supply chain functions for its clients. Further, it offers logistics activities across Africa which including road freight, contract logistics and lead logistics provider.

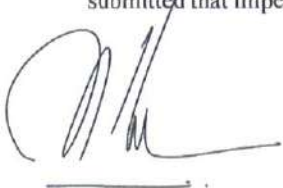


7. Further to the above, the majority of Imperial's activities in various COMESA Member States are focused on the wholesaling of FMCGs and healthcare goods to a variety of retailers and pharmaceutical outlets.
8. It was submitted that Imperial operates in the Common Market through the entities presented in table 1 below:

Table 1: Operations of Imperial in the Common Market

Member State	Name of Subsidiary	Nature of Activities
Eswatini	CIC Swaziland ²	Liquor distribution company which is currently inactive
	OTI Swaziland	Wholesale distributor of liquor and tobacco products
	Tristar (a wholly owned subsidiary of OTI Swaziland)	Wholesale distributor of FMCG goods
Kenya	Imperial Managed Solutions East Africa Limited	Operates warehousing, distribution, logistics and stock purchasing operation
	International Healthcare Distributors (EA) Ltd	operates bonded and clearance facilities
	Surgipharm Ltd	Importer and wholesaler of pharmaceutical, surgical, diagnostic, and medical products
Malawi	Warpack (Pty) Ltd	wholesaler of FMCG and pharmaceutical products
Mauritius	ACP Holdings Limited and Eco Health Limited.	None trading entity
Zambia	Horizon Distributors	wholesaler of FMCG and pharmaceutical products
Zimbabwe	Colbro Masvingo Pvt Ltd	Transporter which also engages in cross-border transportation between Johannesburg and Zimbabwe, as well as transporting chrome from Zimbabwe for the export market on a very limited ad-hoc basis

² The parties submitted that CIC Swaziland is a liquor distribution company that is currently dormant. It was further submitted that Imperial holds assets in Mauritius through its subsidiaries ACP Holdings Limited and Eco Health Limited.





9. Imperial's wholesale operations in Eswatini, Kenya, Malawi, and Zambia make use of its own fleet of small vehicles as well as vehicles of third party logistics companies.
10. It was submitted that Imperial through its South African based division, Managed Services SA Cross Border, engages in cross-border transportation of FMCG products from South Africa to various other African jurisdictions, including into Eswatini, Kenya, Malawi, Zambia and Zimbabwe. Managed Services SA does not itself have customers in the Common Market but provides a purely logistical function to South African FMCG manufacturers. It relies exclusively on third party logistical companies which have vehicles that meet the stringent specifications for carrying food related products for the physical transportation of FMCG products into the various COMESA Member States.
11. Imperial also exports FMCGs and healthcare products purchased from suppliers in South Africa which are used to stock its wholesale operations in each of the respective COMESA Member States. These are goods which Imperial would have purchased from South African suppliers in order to distribute into retail businesses operating in various other African jurisdictions including in eSwatini, Kenya, Malawi, and Zambia. As part of its operations, Imperial is also responsible for the merchandising of goods onto the retail shelves, running instore marketing promotions, as well as invoicing of customers and debt collection of payments from retail customers.

Deep Catch (the "Target Undertaking")

12. The target undertaking, Deep Catch, is a company headquartered in Namibia which specialises in import (into Namibia) and export (from Namibia), wholesale, distribution, and supply of perishable products in the Southern Africa Development Community region.
13. Within the Common Market, Deep Catch primarily operates in the temperature-controlled fast moving consumer goods (FMCGs) Market in the Democratic Republic of Congo ("**DRC**"), Malawi, and Zambia. Further, Deep Catch operates to an insignificant extent in the Ambient FMCGs market in DRC, Zambia, and Zimbabwe.
14. It was submitted that Deep Catch operates within the Common Market through the entities presented in table 2 below:

Member State	Nature of Activities
DRC	Deep Catch Trading Proprietary Limited in Windhoek and Walvis Bay in Namibia exports Namibian fish and other perishable food products for wholesale distribution in the DRC.
Malawi	SPF Export sources and exports perishable food products for wholesale distribution in Malawi. Deep Catch exports products to local Malawian distributors exclusively within the temperature-controlled FMCG Market.
Zambia	Deep Catch operates within the temperature-controlled FMCGs market and the ambient FMCG Market. Seapride Foods Zambia Limited ("Seapride Zambia"), operating from premises in Lusaka,

	supplies the trading and distribution divisions' perishable food products, including a range of imported frozen and chilled food products, and limited ambient food products mainly to HORECA customers in Zambia.
Zimbabwe	Seapride Foods Zimbabwe ("Seapride Zimbabwe"), operating from premises in Harare, distributes the trading and distribution divisions' perishable food products (temperature-controlled FMCG), including a range of imported frozen and chilled food products and limited ambient food products mainly to customers in the HORECA industry in Zimbabwe. Deep Catch operates predominantly in the Temperature-controlled FMCG Market with some limited activity within the Ambient FMCG market.

Jurisdiction of the Commission

15. 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.*
16. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide turnover within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

17. The notified transaction concerns the proposed acquisition by Imperial, through its wholly owned subsidiary Imperial Capital, of all issued shares of Deep Catch which will result in Deep Catch being directly and wholly owned and controlled by Imperial Capital and indirectly controlled by Imperial.





Competitive Assessment

Relevant Market

Relevant product market

18. The CID noted that the only products/services in which Imperial and Deep Catch overlap within the Common Market are the transportation and supply of temperature controlled FMCG and ambient FMCG to wholesale and retail customers in Zambia.

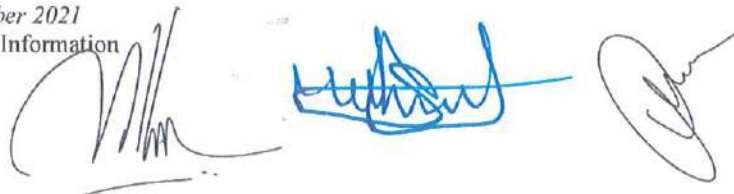
Distribution of FMCG

19. Fast moving consumer goods (FMCGs) entail products which generally involve relatively low financial outlays which are bought frequently and are generally non-durable.³ Buyers will spend relatively little time searching for information and evaluating between different product offerings⁴. Further, FMCGs are highly demanded, sold quickly, and often affordable. They are considered as fast-moving since they have a short shelf life due to either their high consumer demand or due to their being highly perishable.
20. FMCGs can be categorised into two types namely, temperature controlled FMCGs and ambient FMCGs. Temperature controlled FMCGs are perishable and may include products such as meat, fish, dairy products, baked goods, vegetables, frozen poultry, cheese, frozen seafood, and buttercream. Similarly, it was noted from the parties' submission⁵ that temperature-controlled FMCGs Market refers to the market in which perishable products – particularly food, where quality degrades with time since they maintain chemical reactions, which rate can mostly be mitigated with lower temperatures at which they are marketed, distributed, and sold.
21. They tend to lose their quality or freshness relatively quickly if not handled or transported properly or if unsold for long periods of time. To the contrary, ambient FMCGs refers to goods which can survive long periods of time on store or home shelves without spoiling. Such goods can stay at room or ambient temperature for a useful long shelf life and can be kept in the store and do not need refrigeration. Likewise, the parties submitted that ambient FMCGs Market refers to the market in which shelf-stable products that can safely be stored at room temperature, are marketed, distributed, and sold. These goods includes foods that can be safely stored at room or ambient temperature for a usually long shelf life such as fruits, biscuits, cereals, canned foods, pasta, ready-to-eat meals, etc.
22. On this basis, within the FMCGs segment, a distinction can be made between temperate controlled FMCGs and ambient FMCGs on the basis of the length of shelf life and perishability. These two can therefore be categorised into two separate markets. From a demand side, customers are likely to make a distinction between the two products on the basis of the intended

³<http://www.mim.ac.mw/books/Selling%20and%20Sales%20Management%208th%20Edition.pdf>, pages 33-34, accessed on 19th September 2021

⁴ Ibid page 34, accessed on 25th October 2021

⁵ Exhibit A - Transaction and Market Information



use. Example, consumer use cheese freshly and need to consume by storing in refrigerators to maintain its quality compared to other ambient products such as cereals and canned foods that consumers use by storing them at room temperature.

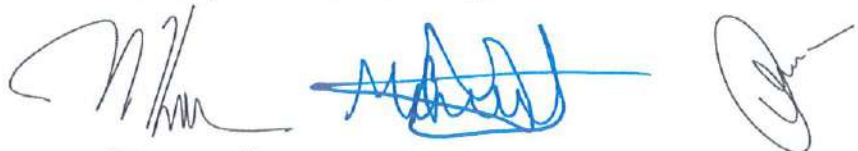
23. From a supply perspective and given the extent of their perishability, temperature controlled FMCGs demand special handling both in terms of storage and transportation along the supply chains as opposed to ambient FMCGs. The distinction can further be made in terms of how the products are transported and supplied across the downstream value chain markets. The distribution of temperate controlled FMCGs is by means of temperature-controlled supply chain contrary to transportation for the ambient FMCGs Market which may not require special temperature-controlled means of transportation and storage. Thus, from a supply perspective the two categories can be distinguished given that the means of transportation and storage requirements for the two are different and this may limit substitution. This argument was similarly advanced before the South Africa Competition Tribunal in the merger transaction involving Imperial Holdings Ltd and TFD Network Africa (Pty) Ltd. The parties in this merger argued that since each of the temperature controlled FMCG and the ambient FMCG submarkets require different warehousing and transportation trucks, the provision of logistical services under the two categories are not substitutable⁶.
24. The temperature-controlled FMCGs transportation required trucks that are usually designed with an advanced refrigerator and other cooling systems and they always help for keeping goods safe and cool throughout the transportation process to their end consumers. Similarly, the parties reported that the distribution within the Temperature-controlled FMCGs market is distinct from the distribution within the Ambient FMCGs market as the warehousing, trucks, and equipment used for these products must meet special requirements such as being temperature-controlled.
25. Accordingly, the perishable FMCGs require tailored multi-temperature zone vehicles with dedicated compartments or insulated loading devices, to keep them from deterioration during transportation. The transportation service required for temperature-controlled FMCGs and those for ambient goods are not substitutable, as each needs a different kind of vehicles for each of these sub-goods. Further substitution can be limited by the costs required to modify a vehicle used to transport ambient FMCGs to transport temperate controlled FMCGs. For instance, it may be costly for parties to change their vehicles by installing cooling technologies in order to transport temperate controlled FMCGs in response of a 5 – 10% increase in the cost of transporting temperature controlled FMCGs. This change may require re-engineering the design and mode of the vehicles from one to the other for the reason that the sizes of the vehicles are different. From this illustration, it is clear that the transportation for the temperature controlled FMCGs and the ambient FMCGs are unique and hence not substitutable.

⁶https://africanlii.org/humanrights?f%25255B0%25255D=sm_vid_Tags%3A%5B%2A%20TO%20%2A%5D&f%5B0%5D=sm_field_issuingcourt_select%3ACompetition%20Tribunal%20of%20South%20Africa&f%5B1%5D=bundle_name%3AJudgment&f%5B2%5D=hash%3A2keg2h&page=7, paragraph 9, accessed on 25th October 2021

26. In view of the above discussion, it can be concluded that the distribution of temperate controlled FMCGs and ambient FMCGs are distinct markets and there is no substitution between these two markets. It is concluded that from the demand side customers' purpose for demanding the two categories are different given the different nature of the products. From a supply side the means of distributing temperate controlled FMCG and ambient FMCG are different. It is unlikely that vehicles used for distributing temperature controlled FMCGs would be substitutable for vehicles for distributing ambient FMCGs.
27. Further narrow segments of the market can be identified based on whether the customer is a wholesaler or retailer. Wholesaler and retailers generally have difference pricing policies and their end customers are also difference. Retailers tend to target end consumers while wholesaler generally seller to retailers of large corporate customers who buy in bulk. To this end, it is considered the wholesalers and retailers below to distinction categories of customers.
28. On the basis of the foregoing assessment, and without prejudice to the Commission's approach in similar future cases, the relevant product markets are construed as follows:
- a) **the distribution of temperature controlled FMCGs to wholesale and retail customers; and**
 - b) **the distribution of ambient FMCGs to wholesale and retail customers.**

Relevant Geographic Market

29. The distribution of temperature-controlled FMCGs and ambient FMCGs are subjected to different technical and regulatory requirements of each Member State's jurisdictions. Individual countries present a unique environment within which the distribution of FMCGs occurs. For instance, distribution channels existing in a country may be unique and different from country to country. Further, demand patterns are also likely to differ amongst countries since consumer are expected to have different preferences which may influence how distributors of FMCGs operate.
30. Likewise, distribution FMCGs to customers requires a distributor to be registered and operate under trade licences and registered for taxes, among other requirements. This is likely to limit the geographic market to national since a 5-10% increase in prices of FMCGs is not likely to be effective in influencing distributors to shift their business to other countries and this may not happen immediately in the short term. Therefore, distribution of temperature controlled FMCGs and the ambient FMCGs is likely to be locally limited to the countries where parties operate⁷. Accordingly, the geographic market is likely to be national in scope.



⁷ In Zambia, Imperial operates through Horizon Distributors Limited. Likewise, Deep Catch operates in Zambia through Seapride Foods Zambia Limited

31. Given that the geographic and product overlap between the parties is Zambia, the relevant geographic market for the distribution of temperature controlled FMCGs, and ambient FMCGs is Zambia.

Conclusion of relevant market

32. The assessment has reached the conclusion that the relevant markets are the following:

- a) **the distribution of temperature controlled FMCG to wholesale and retail customers in Zambia;**
- b) **the distribution of ambient FMCG to wholesale and retail customers in Zambia.**

Consideration of Substantial Lessening of Competition or “Effect” Test

Market shares and concentration

33. The CID noted the parties’ estimated market shares and the market shares of their competitors’ market shares in the temperature controlled FMCG market in the retail industry as follows:

Table 3: Estimated market shares of the merging parties’ and their competitors in the temperature-controlled FMCG – retail industry in Zambia

No.	Company Name	Estimated market share	
		Pre-merger	Post-merger
1	ZamBeef / ZamChicks	60%	60%
2	Capital Fisheries	15%	15%
3	Innscor Distributors	5%	5%
4	Parmalat	5%	5%
5	Kefalos	5%	5%
6	<i>Deep Catch</i>	<1%	<1.1%
7	<i>Imperial</i>	<0.1%	
8	Brands Africa	1%	1%
9	Other	8%	8%

34. The CID observed that the market shares of the merging parties, in the temperate-controlled FMCG market at the retail level are insignificant pre-merger and post-merger when compared with the other players in that market. The CID noted that that market is comprised of significant players such as ZamBeef/ZamChicks, Capital Fisheries, Innscor Distributors, Parmalat and Kefalos. Further, the CID noted that post-merger market share of the merged entity in the temperate-controlled FMCG market will be less than 1.1%, thus it will remain insignificant.

35. With respect to the market for ambient FMCGs, the CID noted the following market estimated market shares of the parties and their competitors:

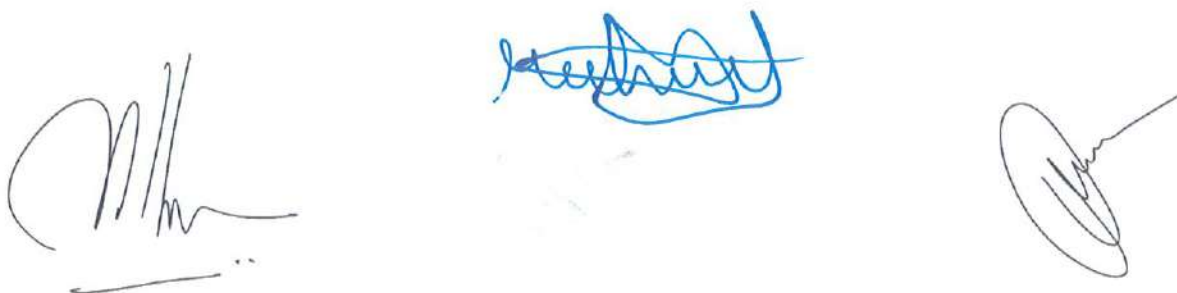
Table 4: Estimated market shares of the merging parties and their competitors in the supply ambient FMCG– retail industry in Zambia

No.	Company Name	Estimated market share	
		Pre-merger	Post-merger
1	Gourok Zambia Limited	20%	20%
2	Innsacor Distributors	20%	20%
3	Gatbro International Limited	20%	20%
4	Brands Africa	10%	10%
5	Nelt Zambia Limited	5%	5%
6	The merger entity (post-merger)	<4%	<4%
7	<i>Imperial</i>	<2.99%	<3.99%
8	<i>Deep Catch</i>	<1%	
9	Abdims Distributors	2%	2%
10	Others	19%	19%

36. The CID further observed according to table 4, the parties’ market share in the supply of ambient FMCG market in Zambia are insignificant (i.e., Imperial holds less than 2.99% while Deep Catch holds less than 1%). It was further observed that competitors such as Gourok Zambia Limited, Innsacor Distributors, Gatbro International Limited, and Brands Africa hold larger market shares this relevant market. The CID noted that post-merger, the merged entity’s market share is estimated to less than 3.99% thus its market shares will remain insignificant.
37. In light of the above, the CID concluded that the proposed transaction is not likely to raise any competition concerns given that the market share accretion in the relevant markets will be insignificant. It was further concluded that competition concerns are unlikely given that the relevant markets will remain competitive due to the presence of alternative suppliers.
38. The CID further noted that barriers to entry into the relevant markets are not prohibitive given the presence of a number of competitors of the parties. It was further noted that the relevant markets are characterized by countervailing power from the presence of competitors and customers of commercial significance.

Third Party Views

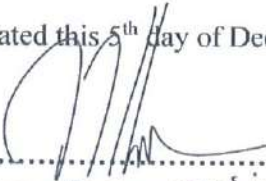
39. Submissions were received from the national competition authorities of Eswatini, Kenya, Malawi, Mauritius, Zambia, and Zimbabwe which submitted that the transaction was unlikely to raise competition concerns.



Determination

40. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
41. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5th day of December 2021


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Commissioner Deshumuk Kowlessur (Chairperson)


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Commissioner Mahmoud Momtaz


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Commissioner Islam Tagelsir Ahmed Alhasan

