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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/06/18/2021

Decision[1] of the Seventy-Ninth (79th) Committee Responsible for Initial Determination the Proposed Merger Involving HFP Investments Limited and Ascendant Learning Limited

ECONOMIC SECTOR: Education

5th November 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 9th July 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed merger involving HFP Investments Limited ("**HFPIL or the "Acquiring Undertaking**") and Ascendant Learning Limited ("**Ascendant Learning**" 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 initial determinations on cases before the Commission. The decision of the CID is set out below.

The Parties

HFPIL (the Acquiring undertaking)

4. The acquiring undertaking, HFPIL, was formerly known as Fairfax Africa Holdings Investments Limited. HFPIL is a company incorporated and registered in Mauritius as a wholly owned subsidiary of Helios Fairfax Partners Corporation ("**HFP**") (formerly known as Fairfax Africa Holdings Corporation). HFP is a listed investment holding company which invests in public and private equity securities and debt instruments in Africa, African or other businesses. Its investment objective is to achieve long term capital appreciation, while preserving capital, by investing in public and private equity securities and debt instruments in Africa and African businesses[2].

5. HFP has its principal place of business at 95 Wellington Street West, Suite 800, Toronto, Ontario, Canada M5J 2N7. It is controlled by Fairfax Financial Holdings Limited ("**FFH**"), a Canadian investment holding company which is listed on the Toronto Stock Exchange which, through its subsidiaries, is engaged in property and casualty insurance and reinsurance and the associated investment management.

6. The Acquiring Group has a wide range of portfolio companies whose activities in the Common Market include fast-moving consumer goods (confectionary, snacks and beverages), financial services (insurance), consumer retail (clothing and apparel) and renewable energy generation.

7. The parties submitted that HFP mainly invests directly or through two of its wholly owned subsidiaries, HFP South Africa Investments Proprietary Limited (a South African subsidiary formally known as Fairfax Africa Investments Proprietary Limited) or HFPIL[3].

[2] HFP Annual Report 2020
[3] Paragraph 6.2 of Exhibit B

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8. Table 1 below lists the companies in which HFP holds indirect equity interests and controls, and which generate turnover into or from, or have assets in the Common Market.

Table 1 – Activities of the Acquiring Group Trading Entities Operating in the Common Market[4]

Name of Entity	Member State	Sector of operations[5]
Atlas Mara Limited	Rwanda, Zambia and Zimbabwe	Financial Services
Joseph Investment Holdings	Mauritius	Investment Holding and holding company of AFGRI Group Holdings Proprietary Limited[6]
Consolidated Infrastructure Group Limited	DRC, Eswatini, Ethiopia, Kenya, Malawi, Mauritius, Seychelles, Uganda, Zambia	Engineering Infrastructure
AFGRI Group Holdings Proprietary Limited	Mauritius, Rwanda, Uganda, Zambia and Zimbabwe	Agriculture
Philafrica Foods Proprietary Limited	Mauritius, Rwanda, Uganda, Zambia and Zimbabwe	Food Processing
Consolidated Power Projects DRC Sprl[7]	DRC	Energy and energy related solutions including coal and renewable energy
Consolidated Power Swaziland (Pty) Ltd	Eswatini	Design and construction of high voltage electrical infrastructure substations, overhead power lines and wind farms and maintenance service in the high voltage area and project management skills[8]
CMI Kenya Ltd	Kenya	Risk management and monitoring services to financial institutions, insurers, commodity traders and farmers
Consolidated Power Projects Group Africa Ltd	Mauritius	Investment holding company[9]
AFGRI Agri Services Mauritius Ltd	Mauritius	Investment holding company

[4] Information submitted in Form 12
[5] Information gathered from HFP Annual Report 2020
[6] Reuters, "Fund makes R2.6bn bid for Afgri" www.iol.co.za/business-report/companies/fund-makes-r26bn-bid-for-afgri-1583870 accessed 3rd August 2021
[7] Currently under business rescue
[8] Currently under business rescue
[9] Currently under business rescue

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AFGRI Investment Services Mauritius Ltd	Mauritius	Investment holding company
AFGRI Mauritius Investment Ltd	Mauritius	Investment holding company
African Petroleum Storage Solutions Ltd	Mauritius	Trading, import, storage, distribution and wholesale of petroleum.
DADTCO Africa Mauritius Ltd	Mauritius	Investment holding company
Philarica Foods Mauritius Ltd	Mauritius	Investment holding company
CMI Rwanda Ltd	Rwanda	Risk management and monitoring services to financial institutions, insurers, commodity traders and farmers
Consolidated Power Projects (Uganda) (Pty) Ltd	Uganda	Design, construction, installation and commissioning of high voltage switchyards, substations, overhead power lines, windfarms and protection and automation schemes
AFGRI Fumigation Ltd	Uganda	Dormant
AFGRI Gulu Uganda Ltd	Uganda	Commodity procurement and marketing
AFGRI Uganda Ltd	Uganda	Commodity procurement and marketing
CMI Uganda Ltd	Uganda	Risk management and monitoring services to financial institutions, insurers, commodity traders and farmers
Consolidated Power Projects (Zambia) Ltd	Zambia	Energy and energy related solutions including coal and renewable energy and electric power generation, transmission and distribution
African Banking Corporation Zambia Ltd	Zambia	Finance and credit intermediation
ABBA Agri Services Zambia Ltd	Zambia	Agricultural services entity assisting in unlocking the potential of small-scale farmers

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		to fully explore their ability to ensure efficient land usage
AFGRI Corporation Ltd	Zambia	Retail sales and servicing of mechanised agricultural equipment, commodity procurement and marketing
AFGRI Leasing Services Ltd	Zambia	Financial services provider
CMI Zambia Ltd	Zambia	risk management and monitoring services to financial institutions, insurers, commodity traders and farmers
BancABC Zimbabwe Ltd	Zimbabwe	commercial and financial services including personal, business and corporate banking as well as asset management, stockbroking and treasury services
AFGRI Operations Zimbabwe Ltd	Zimbabwe	Commodity procurement and marketing
AFGRI Zimbabwe Equipment (Pvt) Ltd	Zimbabwe	Retail sales and servicing of mechanised agricultural equipment
CMI Zimbabwe Ltd	Zimbabwe	Risk management and monitoring services to financial institutions, insurers, commodity traders and farmers
Hyper Agrochemicals (Pty) Ltd	Zimbabwe	Dormant

Ascendant Learning (The Target undertaking)

9. Ascendant Learning is a private company incorporated and registered in Mauritius with its principal business address at 1st Floor, Building B, Nautica Commercial Centre, Royal Road, Black River. It is an investment holding company for the Nova Pioneer Group ("**Nova Pioneer**"). Nova Pioneer is a Pan-African independent school network offering pre-school to secondary education for students from ages 3 to 19. Nova Pioneer was started in 2013, with its first school opening in South Africa in 2015. Since then, Nova Pioneer has expanded across South Africa and launched its first campus in Kenya in 2016.

10. The parties submitted that Ascendant Learning does not have a direct physical presence in the Common Market but directly controls the following subsidiaries in Kenya:

    a) Nova Pioneer Kenya Ltd (wholly owned);

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b) Nova Academies Kenya Property Ltd (wholly owned);

c) Nova Academies Tatu City Property Ltd (wholly owned);

d) Nova Pioneer Tatu City Primary School Property Ltd (wholly owned); and

e) Nova Pioneer Athi River Property Ltd (owns 75% shareholding).

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 COM$ 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 COM$ 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 merging parties have operations in more than two COMESA Member States. Their 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

13. The parties submitted that the transaction concerns the acquisition of sole control in Ascendant Learning by HFPIL.

Competition Assessment

Relevant Markets

Relevant Product Market

14. The acquiring group's portfolio of activities include fast-moving consumer goods (confectionary, snacks and beverages), financial services (insurance), consumer retail (clothing and apparel) and renewable energy generation. The acquiring group does not hold any other interests in companies involved in education which is the area of activity of the target undertaking. For purposes of the competitive assessment of transaction, the Commission focused on the activities of the target group in the Common Market, as these are the markets

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where any competitive impact of the merger is likely to be felt. This approach is consistent with Section 8 of the COMESA Merger Assessment Guidelines. The foregoing notwithstanding, this does not prejudice the Commission's future approach as it may depart from such a conclusion on a case-by-case basis. In the current case, such a liberal approach has been adopted for it is not immediately conceivable that anti-competitive concerns may arise under any alternative market definition.

15. Ascendant Learning, the target, is an investment holding company whose only investment is in Nova Pioneer which is a Pan-African independent school network offering pre-school through secondary education for students from ages 3 to 19 operating in the Common Market, in Kenya only. Ascendant Learning is therefore engaged in the provision of private schooling to pre-primary, primary and secondary students. The Nova Pioneer Group in Kenya comprises of the following Kenyan entities:

    a) Nova Pioneer Kenya Ltd which is responsible for its own schools' operations;

    b) Nova Academies Kenya Property Ltd, Nova Academies Tatu City Property Ltd, Nova Pioneer Tatu City Primary School Property Ltd and Nova Pioneer Athi River Property Ltd which are property companies primarily involved in the development of the properties for schools. The parties confirmed that Nova Academies Kenya Property Ltd, Nova Academies Tatu City Property Ltd, Nova Pioneer Tatu City Primary School Property Ltd and Nova Pioneer Athi River Property Ltd does not develop/offer properties to schools which are not part of the Nova Pioneer group.

16. The CID, in its competitive assessment of the transaction, focused on the provision of pre-primary, primary and secondary schooling to students. The CID noted that pre-primary schooling is education provided to children from the age of 3 years until the start of primary school. Pre-primary schooling is "characterized by interaction with peers and educators, through which children improve their use of language and social skills and start to develop logical and reasoning skills. Children are also introduced to alphabetical and mathematical concepts and are encouraged to explore their surrounding world and environment"[10]. Primary schooling is typically provided to students from the age of 5 to 11 years. Primary schooling provides "learning and educational activities typically designed to provide students with fundamental skills in reading, writing and mathematics (i.e., literacy and numeracy) and establish a solid foundation for learning and understanding core areas of knowledge and personal development, preparing for secondary education"[11].

17. The CID noted that secondary schooling is the second stage of formal education which is provided to students aged from 12 to 19 years. Generally, secondary schooling can be categorised into lower secondary schooling provided to students aged between 12 to 15 years

[10] UNESCO, International Bureau of Education, "Pre-primary education or preschool education" www.ibe.unesco.org/en/glossary-curriculum-terminology/p/primary-education accessed 3rd August 2021

[11] UNESCO, International Bureau of Education, "Primary education" www.ibe.unesco.org/en/glossary-curriculum-terminology/p/primary-education accessed 3rd August 2021

while upper secondary schooling is, in most cases, provided to students aged between 16 to 18 years. A student is taught several substantive subjects in lower secondary schooling which he will study in-depth in upper secondary schooling depending on his interest and future career objectives. Each level of schooling is typically characterised by an age bracket, where such age brackets are usually set by the Government or the Ministry responsible for education in the respective countries. Where such age limits have been so set, public schools, i.e., those schools which are funded by the Government will follow the applicable rules on age limit. However, such age limits do not strictly apply in private schools in which the cost of the schooling is borne by the student. Private schooling therefore cater for the schooling of students beyond the age brackets in public schools and mature students (adults) may also opt to follow any level of schooling from the primary to secondary levels.

18. The CID noted that government policy often determines the manner in which the education system of a country is structured and whether it is free or at a cost. For instance, it was noted that in Mauritius, schooling is compulsory until the age of 16 and primary and secondary education is provided freely in public schools which costs are funded through public expenditure. Pre-primary schooling in Mauritius is provided by private entities or at a subsidised rate in primary schools which are run by the Government. This notwithstanding, there are private enterprises offering private education from pre-primary to secondary in Mauritius. In Malawi, while pre-primary and secondary schooling is provided by private enterprises, primary schooling is offered freely by the Government and by private enterprises. The Kenyan national education system is structured on an 8-4-4 model with eight years of basic education, four years of secondary education, and a four-year undergraduate curriculum[12]. The Kenyan Government introduced free primary education in 2003 and free secondary education in 2008[13]. In Kenya, "formal schooling begins at the age of six, with compulsory and free basic education running through to the age of 14"[14].

19. Pre-primary education as stated is provided by private enterprises against the payment of a fee. The pre-primary schooling curriculum taught in the different schools is basically the same. The facilities provided by pre-primary schools in terms of playground space and extra-curricular learning activities differentiates pre-primary schools; where typically the better the facilities provided, the higher the fees.

20. Primary and secondary education is provided by both the Government and private enterprises. Primary and secondary education can therefore be segmented into public and private schooling; where the core distinction lies in the fact that public schooling is offered freely by the Government and is funded by public tax whereas private schooling is paid for by the student. Public schools are situated in localities to serve students living in that neighbourhood. All public schools have the same curriculum which is often centrally determined by the Government. They

[12] World Education News and Review, "Education in Kenya" https://wenr.wes.org/2015/06/education-kenya accessed 3rd August 2021
[13] Ibid
[14] Ibid

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also offer the same standard of education to all students. Recruitment of teachers for public schools is usually done centrally by the Government.

21. In contrast, private primary and secondary education may choose to follow the State curriculum or choose their own curriculum. The private schools can be English medium or French medium. For instance, in Mauritius there are private schools which follow the curriculum set by the Ministry of Education while others follow the curriculum of other countries. One example is Hampton primary school which is an English-medium school in Mauritius following the curriculum set by the Ministry of Education. At the same time, there is Northfield International School which is also a private school offering education from pre-primary to secondary following National Curriculum of England and Wales for students from 5 to 8 years of age; Cambridge International General Certificate of Secondary Education for students aged 10 to 16 years and providing the International Baccalaureate Diploma Programme (IBDP) or the Cambridge International AS and A Level programme for the last two years of secondary studies[15]. Lycée Labourdonnais is a French medium private school for pre-primary, primary and secondary schooling which follows the French system of education.

22. In the same line, international schools are very prevalent in Kenya. For instance, Brookhouse International School offers schooling to students aged from 2 to 19 years old and has Adapted National Curriculum for England/ IGCSE/ A Level[16]. Similarly, Greensteds International School offers schooling for students aged 18 months to 18 years offering the National Curriculum for England/ IGCSE/ A Level[17]. In contrast, the International School of Kenya offers American curriculum/ American High School Diploma/ IB Diploma schooling to students aged 3 to 18 years old.

23. Private schools are in charge of their own recruitment of staff. The standard of education in private schools may differ depending on which curriculum they choose to follow. Private schooling is usually characterised by more facilities and extra-curricular focus which help students in their personality development. Student attending private schooling usually come from a wider distance as compared to distance covered by students who attend public schools where the quality of education provided is the determining factor for the choice made rather than the travelling distance.

24. Based on the above, the CID noted that the broad market of schooling can be segmented into public and private schooling. A student attending private schooling has already distinguished public and private schooling at the time of the decision making and this choice is usually made because private schooling is perceived as better and different in terms of the standard of amenities and quality of teaching, including the student to teacher ratio.

25. The CID observed that there are different categories of private schooling with varying prices. International private schools are usually considered as the premium schooling, commanding

[15] http://northfieldsinternational.school/curriculum-overview/ accessed 3rd August 2021
[16] www.goodschoolsguide.co.uk/international/kenya/nairobi/best-schools accessed 21st October 2021
[17] www.goodschoolsguide.co.uk/international/kenya/nairobi/best-schools accessed 21st October 2021

higher prices. The CID noted that in the event of a 5-10% increase in the price of a private school, it is more likely that the student will choose to attend another private school, such that substitution is likely to happen among private schools. The CID further observed that a student attending private school is not likely to shift to a public school in the event of a 5-10% increase in the price of a private school given that the student perceives the two as separate right from the outset. For this reason, the CID considered that there exists a separate market for **private schooling**.

26. On the demand side and in view of the age bracket of students, the CID considered that the market for private schooling can be further segmented into:

    a) **The market for pre-primary students;**

    b) **The market for private primary students; and**

    c) **The market for private secondary students**.

27. With respect to the supply side, the CID observed that the providers of private schooling offer all the three levels of schooling. Thus, it was noted that the competitors to the target are providers of private schooling. The CID noted that while on the demand side, the different segments of private schooling are not substitutable, on the supply-side however, the segments may be substitutable, albeit to a limited extent, where in the event of a 5-10% increase in the school fees of each segment, a provider may shift more resources to that particular category and attract more students.

28. Paragraph 20 of the COMESA Guidelines on Market Definition of 2019 provides that "supply-side substitution may also be taken into account when defining markets in those situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and imminence". Paragraph 21 of the Guidelines on Market Definition further provides that "these situations typically arise when undertakings market a wide range of qualities or grades of one product; even if from a demand perspective the different qualities cannot be substitutable for any given use, if suppliers are able to manufacture and sell the different qualities, and production can be adjusted with negligible costs and in a short time-frame, the various qualities will be considered as a single product market". In this respect, the CID concluded that the facts of this assessment require that the product market be defined based on supply-side substitutability.

29. In view of the foregoing, the CID identified a single market for **the provision of private schooling for pre-primary, primary and secondary students**.

    Relevant Geographic Market

30. The CID considered that the provision of private schooling for pre-primary, primary and secondary students is likely to be limited for the students in one particular country. This is principally because the consumers are mostly minors and while they may travel for boarding within the country, there might be a reluctance, based on financial and age considerations, for

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the majority of the students to travel to a neighbouring country for the private schooling. Therefore, the CID considered that the relevant geographic market is likely to be national.

31. The above notwithstanding, the CID considered that there may be some infra-marginal students who may be willing to travel to another country for the private schooling but noted that this may not be considered as a critical number on which to extend the market beyond national level. Further, the conditions of competition for private schooling may also be different between countries in terms of the training requisites of teachers and the regulatory framework surrounding the provision of private schooling is likely to make a national market unique to a country. The training requisites of the teacher is usually set centrally by the Government. In Mauritius, for instance, a teacher for the pre-primary schooling should be qualified in early childhood education which is a formal course and qualification. Teachers for primary schooling require Teacher's Diploma Primary qualification and teachers for secondary education require an undergraduate degree in the relevant subject. In Malawi for instance, the minimum requirements for a teacher in a private language school include a bachelor's degree, native English proficiency and a Teaching English as a Foreign Language certificate[18] and prospective teachers looking to teach at an international school in Malawi should hold a bachelor's degree, a teaching license and at least two years of relevant, full-time teaching experience[19]. In Kenya, teachers in the primary level require a Primary Teacher Education Certificate from Kenya National Examinations Council [20] and teachers in secondary schools must be holders of a minimum of Diploma in Education Certificate.

32. In view of the above, the CID considered that the relevant geographic scope for the provision of private schooling for pre-primary, primary and secondary students is national and pertains only to Kenya where the target has operations.

Conclusion of Relevant Market Definition

33. For the purpose of assessing the Proposed Transaction only, and without prejudice to future cases, the CID identified the relevant market as the market for **provision of private schooling for pre-primary, primary and secondary students in Kenya**.

Market shares and Concentration

34. According to the Kenya Private Schools Association (KPSA), which is a duly registered umbrella body for private education institutions there are 10,400 registered private primary schools and about 1,600 registered private secondary schools in Kenya, which figures are however not exhaustive. The CID took note of the absence of publicly reliable market share information from independent sources and the fact that schools do not publish any revenue or other information which could be used by the parties to calculate estimated market shares of

[18] www.teachaway.com/teaching-malawi accessed 10th August 2021
[19] Ibid
[20] Kenya Teachers Service Commission, "Teacher Registration and Recruitment Requirements"

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the target nor of its competitors. The CID further noted from the parties' submission that the Nova Pioneer Group is unlikely to hold more than 5% of the market share in Kenya.

35. The foregoing notwithstanding, the CID considered that the Proposed Transaction is not capable of leading to any market share accretion in the relevant market in Kenya in view of the absence of a horizontal overlap between the activities of the merging parties.

36. The CID observed that the market structure is unlikely to change post-merger and therefore merger specific anti-competitive concerns are unlikely. The CID observed that even in the absence of data on market shares, it was clearly perceptible that the relevant market is characterised by a large number of players, making the market highly fragmented. Further, the barriers to entry in the relevant market are not prohibitive.

Third-Party Views

37. Submissions were received from the national competition authorities of Mauritius, Zambia, Eswatini, Ethiopia, Kenya and Seychelles which confirmed the Commission's assessment that the transaction was unlikely to raise any competition concerns in the relevant markets within the Common Market.

Determination

38. 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.

39. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5th day of November 2021

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Commissioner Ellen Ruparanganda (Chairperson)

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Commissioner Brian M. Lingela

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Commissioner Thembelihle Precious Dube nee Dlamini