COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesa.int

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/09/28/2021

Decision[1] of the Eighty First (81st) Committee Responsible for Initial Determinations Regarding the Regarding the Proposed Merger involving Mkutano Limited and Elgon Road Developments Limited

ECONOMIC SECTOR: Hospitality

20th February 2022

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 26th October 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger between Actis Hospitality Mauritius Limited ("**Actis**") and Jamison Valley Holdings Limited ("**Jamison**") as the acquiring undertakings and Elgon Road Developments Limited ("**Elgon Road**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the "**Regulations**"). The merger concerns the acquisition by Actis and Jamison of Elgon Road which will be undertaken through a special purpose vehicle known as Mkutano Limited ("**Mkutano**").

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

Actis, Jamison, and Mkutano (the "Acquiring undertakings")

Actis

4. Actis is a special purpose vehicle controlled by Actis Africa Real Estate Fund 3. Actis Africa Real Estate Fund 3 is a private equity fund comprised of Actis Africa Real Estate 3 LP and Actis Africa Real Estate 3A LP registered in the United Kingdom.

5. In the Common Market, the Actis group operates in the broader real estate development market and is active in the following Member States: Egypt, Kenya, Mauritius, Rwanda, Tunisia and Uganda.

Jamison

6. Jamison is a private limited company incorporated under the laws of the British Virgin Islands. Jamison does not operate nor control any entities within the Common Market. Jamison's activities entail investment into real estate, including but not limited to hotels in Europe and North America.

Mkutano

7. Mkutano is incorporated as a global business company under the laws of Mauritius as a special purpose vehicle formed for the purposes of the proposed transaction. Mkutano has been incorporated by Msafiri Limited ("**Msafiri**"). Msafiri is a special purpose vehicle also incorporated under the laws of Mauritius by Actis. Before completion of the transaction, Jamison will subscribe for shares in Msafiri.

Elgon Road (the "Target Undertaking")

8. Elgon Road is a private company limited by shares which has been incorporated in the Republic of Kenya. It operates the Radisson Blu Hotel, Upper Hill in Nairobi. Elgon Road offers 271 rooms and suites and has 14 meeting rooms which can accommodate a maximum of 700 persons[2]. Further, the "*property is temporarily closed until further notice*"[3].

Jurisdiction of the Commission

9. 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.*

10. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value 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 asset value 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

11. The parties submitted that the proposed transaction entails the indirect acquisition by Actis and Jamison of the entire issued share capital of Elgon Road. The acquisition by Actis and Jamison will be undertaken through a special purpose vehicle known as Mkutano.

[2] www.radissonhotels.com/en-us/hotels/radisson-blu-nairobi-upper-hill accessed 10th November 2021
[3] Ibid n. 2

Competitive Assessment

Relevant Market

Relevant Product Market

12. The CID noted that Actis, one of the acquiring undertakings, has investments in several firms which operate in a range of sectors which are: healthcare, automotive, renewable energy, residential and commercial real estate investment. Jamison on the other hand does not operate nor control any entities within the Common Market.

13. The CID at its 80th meeting, approved a proposed merger involving Ukarimu Limited and Fairview Hotel Limited ("the **Ukarimu - Fairview transaction**") which involved Actis and Jamison as the indirect acquirers of Fairview Hotel Limited through Ukarimu Limited. In the Ukarimu - Fairview transaction, the CID defined the relevant market as the market for the provision of short stay accommodation.

14. Premised on the Ukarimu - Fairview Transaction, the CID observed that the current transaction raises a horizontal overlap given the activities of the parties in the hotel industry. Fairview Hotel Limited comprises a 127-room hotel, the Town Lodge Hotel, an 84-room hotel, and the City Lodge at Two Rivers, a 171-room hotel, all located in Nairobi, Kenya. Following the acquisition of Fairview Hotel Limited ("**Fairview**") by Ukarimu Limited (i.e., indirectly by Actis and Jamison), Actis/Jamison will be active in the provision of hotel accommodation similar to what is provided by Fairview in Nairobi, Kenya.

15. The CID noted that the target undertaking, Elgon Road, operates the Radisson Blu Hotel, situated in Upper Hill in Nairobi, which hotel provides short term hotel accommodation. The CID observed that the Radisson Blu Hotel in Nairobi is rated as a 5-star hotel[4].

16. In view of the Ukarimu – Fairview transaction, the CID concluded that the current transaction is a horizontal merger, that is a merger between undertakings active in supplying competing products, typically at the same level of the supply chain and in the same geographic market.

17. Therefore, the competitive assessment of the current transaction focused on the activities of the parties which overlap in the Common Market, considering the Ukarimu – Fairview merger, as these are the market(s) where any competitive impact of the merger is likely to be felt.

18. The CID observed that paragraph 8.4 of the COMESA Merger Assessment Guidelines states that, "[t]he Commission will determine the relevant market on a case-by-case

[4] Information submitted by the CAK

basis". For purposes of the competitive assessment of the current transaction, the CID has focused on the hotel market, which is the market where the target operates.

Market for short term accommodation services

19. The market for hotel accommodation can be broadly segmented according to the price and standard of comfort provided which is indicated by the number of star grading[5]. Even though the star grading of hotels is widely adopted, it is not a universal measure. For the purposes of defining the relevant market, the approach adopted in this report is to consider the star grading as a proxy for broadly segmenting hotels given that a majority of countries use the measure to classify hotels.

20. Based on international hotel industry standards, the Smith Travel Research ("STR")[6], hotels can be classified into three main categories, namely (a) luxury and upper upscale; (b) upscale and upper midscale; (c) midscale and economy. These three categories can further be expanded, as per industry standards, into six segments namely (i) luxury; (ii) upper-upscale; (iii) upscale; (iv) upper-midscale; (v) midscale; and (vi) economy. Categories (iii) and (iv) correspond to a 3 to 4 stars hotel rating; categories (ii) to (iv) cover 4-star hotels, whereas categories (iii) to (vi) would cover 2-4 stars hotels[7].

21. Hotel star ratings can vary between one star to five stars, where one star is the lowest rating, and five stars is the highest rating. The hotel ratings are an internationally recognised symbol reflecting the standard of accommodation and the hotel facilities[8]. Star ratings are offered to different types of accommodation categories, namely hotels, motels, serviced apartments, guest houses and self-catering accommodation[9]. The core difference between the star rating lies in the price where the higher the price, the better is the standard of accommodation in terms of the comfort level offered *inter alia* in respect of the facilities offered in the room, including the bedding, room furniture, toiletry, décor, and washroom and hotel facilities offered *inter alia* in respect of the meals, additional facilities to enhance the comfort of the guest relating to recreational facilities including spa and gymnasium.

22. A one-star rating means that the hotel will offer only basic accommodation at a very cheap rate, which may not go beyond providing a bed to the guest. A two-star hotel also offers affordable accommodation with basic accommodation but with a comfort level slightly higher than a one-star hotel. A three-star hotel offers a decent comfort level at an affordable price. A four-star hotel offers upscale quality and extraordinary comfort[10]. A five-star hotel offers high-end and luxury comfort level to the guests in a

[5] This was the approach adopted by the European Commission in ***Bank of Scotland/ Barclays Bank/ Kew Green Hotels*** (Case No COMP/M.6058), and ***Jin Jiang/Radisson*** (Case M.9099). The European Commission further identified another possible segmentation according to ownership of hotels (i.e., independent owners compared to hotel chains).
[6] STR collects, analyses and reports on hotel industry data.
[7] Case No Comp/M.6738 - Goldman Sachs / Kkr / Qmh
[8] www.starratings.com.au/info/what-are-star-ratings accessed 7th October 2021
[9] *Ibid.*
[10] www.warehousehotel.com/manheim/blog/hotel-star-ratings-system accessed 8th October 2021

flawless infrastructure and décor with additional facilities such as fine dining and personalised services to the guest[11].

23. On the demand side, it is posited that the accommodation rate and the comfort level of hotel is material in determining the choice of the service provider, where each individual customer will choose a hotel accommodation based on his budget and the desired level of comfort, depending on the purpose of the stay. For instance, a business person's stay in a hotel will require a decent level of comfort at a reasonable price, such that customers requiring an accommodation for a business travel are more likely to opt for at least a 3-star accommodation. Business travellers requiring an accommodation for an overnight lay-over on the other hand are more likely to opt for a lower rated hotel, considering that the purpose of the accommodation is for a place to sleep. Customers looking for an accommodation for a recreational stay are likely to opt for high-end hotels, considering that the hotel facilities go beyond providing merely a place to sleep.

24. It is worth noting that the European Commission's (the "**EC**") market investigation in ***Jin Jiang/Radisson***[12] revealed that customers are familiar with the classification of hotels on the basis of star rating, and customers considered comfort level (i.e., luxury, upper upscale, upscale, upper midscale, midscale and economy) as either important or very important for the choice of a hotel in a given location.

25. On the supply-side, a hotel in its operations and marketing strategies usually has its target clientele in mind and any movement across the star rating may require significant investment on the part of the hotel owner in facilities provided. Thus, a three-star hotel which seeks to upgrade its star rating will require investment in its infrastructure which may include investment into additional land, the structure of the hotel, and other facilities to revamp it into a four-star and five-star hotel.

26. The above notwithstanding, it is often observed that on the demand side, there is some degree of competitive pressure exerted between hotels across different star ratings. It is not unreasonable to assume that a significant number of guests may consider shifting to a 4-star hotel in response to a five to ten percent increase in the price of a similar room at a 5-star hotel. In ***Accor/Blackstone/Colony/Vivendi***, the EC noted that "*even if significant price differences exist between the 'bottom' and the 'top' of the chain of stars (a 1-star hotel will rarely compete with a 4-stars hotel), a distinction relying on stars might be too rigid and does not reflect the actual substitutability between hotels, especially within hotel chains. Several sub-markets might be rather identified like 1- and 2-star hotel, 2- and 3-star hotel, 3- and 4-stars hotel, or 1,2,3 stars hotels and 2,3,4 stars hotels...*"[13].

27. In view of the possible sub-markets, the CID considered that while demand substitution is probable amongst the star gradings, such substitution is likely to strictly

---

[11] *Ibid*

[12] Case M.9099 - Jin Jiang/Radisson

[13] See COMP/M. 1596 - Accor/Blackstone/Colony/Vivendi, paragraphs 24 and 25.

occur within two main sub-markets namely: 1, 2 to 3-star grading on the one hand and 4 to 5-star grading on the other. This is the case since within the lower star grading (i.e., 1,2 and 3 star), customers are likely to be very sensitive to price changes, making demand substitution more likely. This argument can be supported by the fact that accommodation provided within this lower category is generally low-end accommodation with minor price variations. On the other hand, within the higher star grading (i.e., 4 to 5 star), the price for accommodation is expensive and clients attracted to such service are premium customers. As the financial status of premium customers increase, they are likely to be insensitive to small but significant increase in the price for hotel accommodation thus limiting substitution with the higher star grading.

28. In view of the foregoing and having regard to the Ukarimu – Fairview transaction, the following relevant product markets were identified:

    a) 1-star, 2-star and 3-star short term accommodation; and

    b) 4-star and 5-star short term accommodation.

    Relevant Geographic Market

29. The nature of short-term accommodation and the immobility of physical properties suggest that the geographic markets would be constrained to particular regions within national borders at best. On the demand-side, a customer chooses the location of his hotel based on the required place to stay. A customer visiting Kenya and looking for short-term accommodation will choose a hotel in Kenya itself, irrespective of movements in the price of short-term accommodation outside Kenya.

30. As stated earlier, the target operates under the Radisson Blu brand and post-merger, it will continue operating under this brand. "Radisson Blu" is a brand name for hotels with its presence in a number of countries including the Common Market. The fact that the target will continue operating under the brand name, Radisson Blu, after the transaction, could potentially attract customers who give particular importance to the brand name and brand loyalty, which could ideally mean that the geographic location of the hotel may not be material in influencing a customer's hotel choice.

31. However, the CID believes that the specificities of the case at hand do not warrant a wider market definition beyond the location of the hotel. This is because a client's choice of a hotel is a means to achieving other goals. Additionally, it is noted that the target's location being near the airport, is likely to cater mainly for one category of customers, business travellers or transit passengers. Therefore, given such categories of customers, the geographic location is likely to be limited to Nairobi.

32. There is also a high possibility of narrower markets, especially in Kenya as there are significant distances between cities making substitution across cities limited.

33. On the supply-side, arguably, some providers may relocate their operations to other regions within a single Member State or to other Member States where demand conditions are more competitive. However, such a relocation would entail significant

cost and time and is therefore unlikely to be triggered by a small but significant increase in price.

34. In view of the foregoing and given that the target operates in Kenya only, and specifically in Nairobi, the CID considered the geographic scope of the relevant geographic market to be Nairobi.

35. The foregoing analysis does not however prejudice the CID's assessment of similar cases in the future.

Conclusion of Relevant Market Definition

36. For the purposes of assessing the proposed transaction only, the CID identified the relevant markets as the market for:

a) 1-star, 2-star and 3-star short term accommodation in Nairobi; and

b) 4-star and 5-star short term accommodation in Nairobi.

Market shares and Concentration

37. The parties estimated the market shares of Fairview in the broad market for hotels rooms available for short stay in Nairobi to be more than 7% and the market shares of Elgon Road were estimated to be more than 5%. The market shares estimates are however for the broad market of hotel rooms available for short stay in Nairobi.

38. The exact market shares are not available for the parties in each of the defined relevant market, that is, the market shares of the parties in the market for 1-star, 2-star and 3-star short term accommodation in Nairobi and in the market for 4-star and 5-star short term accommodation in Nairobi. In any case, this would not affect the conclusion of the case as market share accretion is not likely to be significant post-merger.

39. The parties submitted that the acquirers sought to diversify their investment in Nairobi, with the aim of reducing some of the risk in the hospitality sector, by acquiring hotels that cater for different segments of the market, i.e., corporate conferences (Elgon Road) vs. luxury safari and leisure business (Fairview). The parties further submitted that the level of competition between Elgon Road and Fairview is minimal given that these properties have always been positioned to target very different sub-markets, due to the type of property, where Elgon Road is a type of hotel focusing on business travelers while Fairview is more of a boutique classic Kenyan hotel focusing on high-end tourists. The parties further submitted that post the transaction, each of Elgon Road and Fairview will continue its pricing and marketing in accordance with the franchise brand selected for each hotel considering that the target markets are different.

40. The CID noted that Msafiri will still face stiff competition from the other players in the market who command the remaining 85% of market share.

Assessment of the Counterfactual – Elgon Road as a Failing Undertaking

41. The CID also considered whether the target is a failing undertaking in accordance with the Merger Assessment Guidelines.

42. The CID noted the information requested by the Commission during the investigation and the financial statements of the target.

43. The CID noted that the transaction raises no concerns as such an in-depth assessment of the failing firm defence is not necessary as the outcome of the merger assessment would not be altered.

Third-Party Views

44. Submissions were received from the national competition authorities of Kenya, Egypt and Mauritius which did not raise any concerns likely to arise as a result of the transaction.

Determination

45. 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.

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

Dated this 20th day of February 2022

.....

Commissioner Deshmuk Kowlessur (Chairperson)

.....

Commissioner Mahmoud Momtaz

.....

Commissioner Islam Tagelsir Ahmed Alhasan