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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/11/48/2022

Decision[1] of the Ninetieth (90th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control of MHL International Holdings Ltd by Phatisa Fund Managers 2 Limited

ECONOMIC SECTOR: Printing and Packaging

COMESA COMPETITION COMMISSION
19 DEC 2022

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[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 23 November 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed acquisition of control of MHL International Holdings Ltd by Phatisa Fund Managers 2 Limited, 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 decision of the CID is set out below.

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The Parties

Phatisa Fund Managers 2 Limited (the acquiring firm)

4. The Acquiring Firm, a company incorporated in accordance with the laws of Mauritius, is a collective investment scheme (**CIS**) manager of, *inter alia,* Phatisa Food Fund 2 LLC, which is owned by Phatisa Group Limited and is controlled by an executive committee. The Acquiring Firm and all entities that are managed by or under its control are together referred to as the "**Acquiring Group**".

5. The Acquiring Group is dedicated to investing in the under-capitalised food value chain in Africa. It invests across the food sub-sectors, namely agricultural inputs, poultry, meat production and integrated agriculture, food processing, food manufacturing, food services and food distribution.

6. The Acquiring Firm submitted that within the Acquiring Group, the following entities operate in the Common Market:

Table 1: Acquiring Group controlled entities in COMESA

Member State	Name of Entity	Activities
Malawi	Farming and Engineering Services Limited	An integrated provider of a wide range of services and products to the agricultural and commercial sector.
Mauritius	Agri Trekta Limited	Holds investments in Farming and Engineering Limited in Malawi and FES Zambia- an integrated provider of a wide range of services and products to the agricultural and commercial sector of Malawi and Zambia. These include the provision of contract farming and agricultural equipment.
	Packaging Solutions Africa Limited	Holds investment in Rolfes Holding Limited in South Africa. The Rolfes Group provides a wide range of market leading products to customers through dedicated teams of industry specialists in agriculture, food ingredients, chemicals and leather, color and water divisions
	Beast Incorporated	Holds investment in Deltamune (Proprietary) Limited in South Africa, A biotechnology company focused on developing and manufacturing autogenous and registered vaccines for production animals, primarily for the poultry segment
Zambia	FES Zambia Limited	Farming equipment distributor and provider of engineering services

7. It was further submitted that Packaging Solutions Africa Limited through its portfolio company Rolfes Group, domiciled in South Africa, generates turnover through exports sales in the following Member States: Egypt, Eswatini, Kenya, Madagascar, Malawi, Uganda, Zambia and Zimbabwe.

MHL International Holdings Ltd (the target firm)

8. The target firm is a holding company incorporated under the laws of the Republic of Mauritius. The Target Firm and all entities controlled by it are together referred to as the **Target Group**.

9. The Target Group provides printing and packaging solutions whose main products are flexible packaging and self-adhesive labels.

10. The target firm submitted that it controls the following entities in the Common Market:

Table 2: Entities controlled by the Target Firm in the Common Market

Member State	Name of Entity
Kenya	Manipal International Printing Press Limited (Manipal Kenya)
Uganda	Manipal Press Limited (Uganda)
Zambia	Manipal International Press Limited

11. The Target Group further submitted that, through Manipal International Printing Press Limited (**Manipal Kenya**), it makes sales in Democratic Republic of Congo ("**DRC**"), Ethiopia, Kenya, Malawi, Uganda, Zambia and Zimbabwe.

Jurisdiction of the Commission

12. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which 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.

13. 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 each of at least two of the parties hold an 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

14. Pursuant to a share subscription and purchase agreement dated 4 November 2022, the Acquiring Firm intends to acquire up to 30.55% of the share capital (with certain controlling rights) in the Target Firm. The transaction is part of the Target Firm's long - term expansion strategy as it will enable the Target Firm to benefit from the investment of the Acquiring Firm, which is expected to enhance its ability to provide printing and packaging services to a wider section of the population in Africa.

Competitive Assessment

Relevant Markets

Relevant Product Market

15. The Acquiring Group is active within the Common Market as a private equity fund which invests in the under-capitalised food value chain. It invests across the food sub-sectors, namely agricultural inputs, poultry, meat production and integrated agriculture, food processing, food manufacturing, food services and food distribution. Its portfolio companies within the Common Market are active in contract farming; provision of farm equipment and engineering services; manufacture of vaccines for production animals and poultry; and industrial specialists in agriculture, food ingredient, chemicals and leather, and water divisions.

16. The target is active in the printing and packaging sector and its main products are flexible packaging and self-adhesive label in Kenya which are also sold to other Member States, namely DRC, Ethiopia, Kenya, Malawi, Uganda, Zambia and Zimbabwe.

17. According to the activities for the parties, it does not appear that they provide similar products or services within the Common Market. Therefore, the approach to defining the relevant product market is not based on the parties overlapping product/services. Further, the products and services of the merging parties do not appear to be vertically related neither does it appear that there are conglomerate relationships between the parties.

18. The CID, therefore, focussed its assessment on the products supplied by the target firm, namely the manufacture and sale of flexible packaging and self-adhesive label, in the absence of evident horizontal and vertical overlaps.

Manufacture and sale of flexible packaging

19. Flexible packaging comprises packaging products that use non-rigid materials such as foil, plastic or paper to create pouches, bags or other pliable product containers[2].

[2] https://www.starlabel.com/blog/flexible-packaging/

Flexible packaging materials allow for more economical and customizable options for packaging and is considered as a high efficiency and cost-effective mode of packaging. The European Commission ("**EC**") has considered the market for flexible packaging as involving the extrusion, conversion and printing of plastic and cellulose films, aluminium foils and papers, which are used separately or in combination to produce primary and secondary packaging products for a wide variety of end-use sectors.[3] For instance, flexible packaging is particularly useful in industries that require versatile packaging, such as the food and beverage, personal care, and pharmaceutical industries[4]. Therefore, the market for flexible packaging may be further segmented according to industrial application.

20. In ***Amcor/Alcan***[5]***,*** the EC acknowledged that the market for flexible packaging can be segmented based on end-use applications as follows: food; medical; pharmaceuticals; household products and other non-food. Further, it was considered that sub-segments existed within each segment. For example, within the food segment, narrower sub-segments existed in respect of various categories of food, namely dairy, beverages; confectionary; fresh; dried; frozen; and pet food.

21. However, the CID did not further segment the market given that the assessment of any likely competition concerns is not likely to change under any narrower markets.

22. In view light of the above and given that the target undertaking manufactures and sales flexible packaging, the CID considered the **manufacture and sale of flexible packaging as a relevant market.**

Manufacture and sale of self-adhesive labels

23. It is recalled that the other product which the target produces is self-adhesive labels which is a distinct product from flexible packaging. Self-adhesive labels (or pressure sensitive adhesive labels) seek to render identity to a product or brand[6]. They are an important tool to help market products off the shelves. Self-adhesive labels eliminate the need for separate gluing process and can be applied automatically using a label applicator. Self-adhesive labels are not likely to be substitutable with flexible package given the different purposes that each serve.

24. In light of the above, the CID identified as the **manufacture and sale of self-adhesive labels as a separate market.**

Relevant Geographic Market

25. It is noted that the target undertaking manufactures flexible packaging and self-adhesive products from Kenya and exports to DRC, Ethiopia, Kenya, Malawi, Uganda, Zambia

[3] See Cases COMP/M.5906 – One Equity Partners/Constantia; COMP/M.5599 – Amcor/Alcan; and COMP/M.3049 - Alcan/Flexpack
[4] https://www.starlabel.com/blog/flexible-packaging/
[5] See Case COMP/M. 5599 – Amcor/Alcan, para 11 – page 3
[6] https://unickfix-a-form.com/self-adhesive-labels/

and Zimbabwe. Thus, the relevant geographical market for the identified product markets is likely to be beyond national given that the products are demanded across several countries within the Common Market. Flexible packaging and self-adhesive labels are also easily available via imports given that their transport costs relative to their value is low.

26. In view of the above, the CID considered that the geographical scope of flexible packaging and self-adhesive labels was at least COMESA-wide.

27. For purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the following relevant markets:

    a) The manufacture and sale of flexible packaging in the Common Market; and

    b) The manufacture and sale of self-adhesive labels in the Common Market.

Market Shares and Concentration

28. The CID noted that the market shares for the target undertaking and its competitors were as follows:

Table 3: The target and its competitors estimated market shares in Kenya

Competitor	**Estimated market share**
Flexible Packaging	
Texplast	[12-15]%
Bobmil	[12-15]%
Platinum Packaging	[11-13]%
Polyflex	[11-13]%
Statpack	[10-13]%
Target Firm	*[6- 8]%*
Competitor	**Estimated market share**
Self-adhesive Labels	
Skanem	[40-50]%
Color Labels	[10-15]%
Label Converters	[10-15]%
Target Firm	*[8-12]%*
Platinum Packaging	[5-15]%

29. The CID noted the absence of any market share information for the rest of the Member States where the target has operations.

30. The CID considered that the proposed transaction was not likely to result in an accretion of market shares given that the market structure of the relevant markets will not change. The CID noted that with regards to Kenya, the relevant markets are fragmented and comprise several players who are likely to continue giving competitive pressure to the merged entity, post-merger.

31. The CID also considered that the relevant markets are open to import competition as confirmed from the parties' submission that the target undertaking sells its products across the Member States.

Consideration of Public Interests

32. The proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are relatively small within the Common Market. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers who will still have access to alternative suppliers.

Consideration of Third-Party Views

33. Submissions were received from the national competition authorities of Egypt, Eswatini, Kenya and Mauritius which confirmed that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

34. 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. The CID, therefore, approved this transaction.

35. This decision is adopted in accordance with Article 26 of the Regulations.

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan