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**Common Market for Eastern  
and Southern Africa**

**CASE FILE No. CCC/MER/1223/2013**

**Decision<sup>1</sup> of the Committee of Initial Determination  
Regarding the Merger between CFR Inversiones SPA  
and Adcock Ingram Holdings Limited**

**ECONOMIC SECTOR: Pharmaceutical**

**March 2014**

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<sup>1</sup> 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

## **Information and Relevant Background**

1. On 23<sup>rd</sup> December 2013, the Commission received a notification for approval of a merger from Chisanga and Tomoka on behalf of their clients CFR Inversiones SPA (“CFR”) and Adcock Ingram Holdings Limited (“Adcock”). The transaction involves the acquisition of 100% of the issued shares of Adcock.
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (‘the Regulations’). The Commission’s concern is primarily whether the proposed 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 as provided for under Article 26 of the Regulations.
3. The Committee of Initial Determination (the CID) observed that the target firm (Adcock) operates in two or more COMESA Member States. This, therefore, means that the regional dimension requirements under Articles 23(3) and 23(5) are satisfied and ultimately asserts jurisdiction of the Commission to assess the transaction.

### **The Parties**

#### **CFR Inversiones SPA (“CFR”)**

4. CFR is a Chile-based company primarily engaged in the pharmaceutical industry. The Company specializes in the development, production and commercialization of specialty-brand generic drugs. The Company organizes its businesses into three business areas: Specialty Pharma, which specializes in chronic, semi-chronic and acute medications for sale in pharmacies under doctors' prescription; Complex Therapeutics, which specializes in drugs for the treatment of complex illnesses, focused on state institutions, hospitals, private clinics and complex treatment centers, and Health & Wellness, which is focused on over-the-counter products, nutrition, food supplements and homeopathic products. The Company's medicines cover women's health, neurology, psychiatry, general medicine, gastroenterology, orthopedics, pediatrics, cardiology, dermatology and generic products divisions, among others.

#### **Adcock Ingram Holdings Limited (“Adcock”)**

5. Adcock is a healthcare business, headquartered in South Africa. Adcock has two principal divisions, a pharmaceuticals division and a hospital products and services division. Adcock’s pharmaceutical division, which operates mainly through Adcock Ingram Healthcare (Pty) Ltd, manufactures and sells a range of branded and generic prescription and over the counter products in a broad range of therapeutic classes such as analgesics, allergy, cardiovascular, central nervous system, dermatology, ear/nose/eye, feminine health, gastrointestinal, vitamin, mineral and energy/nutritional supplements, as well as a selective range of personal care products.
6. Adcock’s hospital products and service division operates through Adcock Ingram Critical Care (Proprietary) Limited, a wholly owned subsidiary of Adcock. It manufactures and sells a wide range of life saving and life enhancing products used in hospitals, clinics,

blood transfusion centres, kidney dialysis units, laboratories and by patients at home. Such products include intravenous fluids, infusion pumps, hospital pharmaceuticals, wound care products, renal care products and disposables.

## **Competition Analysis**

7. The CID noted that the relevant product market is the pharmaceutical products and related services market. The CID observed that while the products supplied by the parties could be delineated in specific categories according to their therapeutic uses, they are substitutable by products offered by other firms operating in the same industry and hence the definition of the market as the pharmaceutical products and related services market. The CID has observed that CFR has no operations in the Common Market before the merger and hence the merger shall not alter the market structure. The transaction is not likely to substantially prevent or lessen competition and it will not be contrary to public interest.
8. The proposed merger promotes competition and would result in the efficient operation of the markets. This will result in enhanced consumer welfare in the Common Market as it has been observed that the technology from CFR would lead to the introduction of more products on the market. In view of this, the merger facilitates the fulfilment of Article 2 of the Regulations. Specifically, the analysis of the facts of the case have shown that there are no substantive competition concerns that arise in the relevant market, on account of the proposed transaction in the Common Market, given the fact that the proposed transaction is not likely to result in substantial lessening of competition, nor endanger the continuity of the supply of the products, due to the continued existence of competitive constraints that will remain in the relevant market to ensure that rivalry continues to discipline the commercial behaviour of the merged entity. The merged entity does not possess any market dominance and consequently no threat of abuse of dominance is anticipated, post merger. Further, the transaction is not likely to lead to the frustration of the single market agenda. This is because the transaction does not eliminate competition in the Common Market and it does not create barriers to trade. The transaction does not frustrate the possibility of firms in one Member State from establishing branches or subsidiaries in another Member State.

## **Determination**

9. For the above reasons, the CID has decided not to oppose the notified transaction and to declare it compatible with the Common Market and with the objectives of Article 3 of the Treaty Establishing the Common Market. This decision is adopted in application of Article 26 of the COMESA Competition Regulations.