



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



**Common Market for
Eastern and Southern Africa**

Staff Paper No. 2017/09/13/02/RR

Decision¹ of the Thirty Fourth Committee Responsible for Initial Determination on the Application for Authorisation of the Acquisition of ETG Input Holdings Limited by Government Employees Pension Fund of South Africa

ECONOMIC SECTOR: Agriculture

T.P.L

19th September 2017

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 20th April 2017, the COMESA Competition Commission (hereinafter referred to as the “Commission”) received an application for authorisation of a merger involving ETG Input Holdings Limited (hereinafter referred to as “ETG”) as the target undertaking and the Government Employees Pension Fund of South Africa (hereinafter referred to as “GEPF”) as the acquirer.
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the “Regulations”). Pursuant to Article 26 of the Regulations, the Commission is required to assess 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.
3. The Committee Responsible for Initial Determination (hereinafter referred to as “the CID”) established that the parties operate in more than one COMESA Member State. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

GEPF

4. The GEPF is a fund established in terms of the Government Employees Pension Law of South Africa duly represented herein by the Public Investment Corporation SOC Limited (“PIC”), a South African state-owned company. The assets of the GEPF are invested in various asset classes including equities, fixed interest instruments, money market instruments, unlisted investments (private equity and developmental investments) and properties, including office, retail, industrial and residential property. The GEPF has a 13.9% shareholding in Omnia Holdings Limited and a 14.1% shareholding in Sasol Limited. This shareholding renders them the largest shareholders in the aforementioned companies.

ETG

5. ETG is a company incorporated and registered in Dubai. In the Common Market, ETG is involved in the import and distribution of agricultural fertilisers and agrochemicals products. ETG is a wholly-owned subsidiary of ETC Group (Mauritius) Limited, a company incorporated and registered in the Republic of Mauritius.

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Nature of the transaction

6. The transaction involves the acquisition of 49% issued shares in ETF by the GEPPF. The remaining issued shares will be retained by ETC Group (Mauritius) Limited.

Competition Analysis

7. The CID defined the relevant markets as follows:
 - (i) Global markets for the supply of N-, P-, and K- fertilizers;
 - (ii) National markets for the downstream distribution of N-, P-, and K- fertilizers;
 - (iii) National markets for the downstream distribution of agro-chemicals; and
 - (iv) National markets for the downstream distribution of seeds.
8. The CID observed that the markets are highly contested and import competition is rife as numerous global players are active in the Common Market.
9. The CID however established that the GEPPF is the largest shareholder in two companies, namely Omnia Holdings Limited and Sasol Limited which compete with ETG in the fertiliser markets. The CID raised concerns that the merger, through this common shareholding, could facilitate the sharing of sensitive non-public information among the three companies.

Determination

10. The CID considered the parties' undertakings to address the foregoing concerns that:
 - a) **the Public Investment Corporation SOC Limited complies with the undertaking provided to the Commission that the Public Investment Corporation SOC Limited subscribes to the principles of Chinese Walls in respect of all current and future investments in listed and unlisted portfolios; and**
 - b) **the Public Investment Corporation SOC Limited will submit, on each anniversary of the decision of the Commission, for the next three years, an affidavit from a duly authorised compliance officer to confirm the Public Investment Corporation SOC Limited's adherence to the aforementioned undertaking.**
11. The CID noted that the undertaking seeks to maintain competition at the level existing pre-merger, while permitting the realisation of relevant merger benefits.
12. The CID therefore approved the merger on condition that the parties adhere to the above undertakings submitted to the Commission.

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13. The CID concluded that should the parties and their competitors engage in any form of anti-competitive coordination post-merger, the Commission would apply Part 3 of the Regulations to address the concerns and restore competition in the relevant markets.
14. This decision is adopted in accordance with Article 26 of the Regulations.

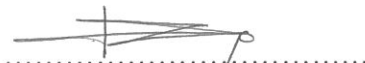
Dated this 19th day of September 2017.



Commissioner Thabisile Langa (Chairperson)



Commissioner Patrick Okilangole
(Member)



Commissioner Chilufya Sampa
(Member)