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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/09/32/2019

Decision¹ of the Sixty-Eighth (68th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving the Acquisition of Shares in GAP Chemicals Proprietary Limited by Zaad Holdings Limited

ECONOMIC SECTOR: Agro-Chemicals

23rd December 2019

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 20th September, 2019 the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a proposed merger involving the acquisition of shares in GAP Chemicals Proprietary Limited ("**GAP**") by Zaad Holdings Limited ("**Zaad**").
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 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 (the "**CID**") established that the parties operate in more than one COMESA Member State and they meet the required prescribed merger notification thresholds. 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

Zaad (the Acquirer)

4. It was submitted that, Zaad is a public company incorporated in accordance with the laws of South Africa. It is directly controlled by Zeder Investments Limited which is listed on the South African securities exchange. Zeder also controls other firms incorporated in South Africa such as Zeder Financial Services Limited, Capespan Group Limited and The Logistics Group Proprietary Limited (all together referred to as the "acquiring group"). The acquiring group operates in COMESA as an agri-business and produces and distributes agricultural seeds and agro-chemicals. It has operations in Burundi, Democratic Republic of Congo, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Malawi, Mauritius, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

GAP (the Target Undertaking)

5. It was submitted that GAP indirectly via Farm-AG International Proprietary Limited ("**Farm-Ag**"), wholly owns ATS Agrochemicals Limited (ATS Zambia) which is incorporated in Zambia. The target group via Farm-Ag and its subsidiary ATS Zambia are importers and retailers of agrochemicals in COMESA Member States. The target group sells herbicides, insecticides, adjuvants and plant growth regulators within the Common Market. The target group has operations in Democratic Republic of Congo, Eswatini, Malawi, Mauritius, Zambia and Zimbabwe.

Nature of the Transaction

6. The parties submitted that Zaad currently owns a non-controlling interest in the issued shares of GAP. In terms of the proposed transaction, Zaad intends to acquire the remaining issued shares in GAP, either in terms of the right it has acquired to call upon original shareholders to sell the remaining shares in GAP to Zaad (Call Option) and/or



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in terms of the Original Shareholder's right to put the remaining shares in GAP to Zaad ("Put Option").

Competition Analysis

7. The CID defined the relevant the markets as follows:
 - a) The market for the supply of herbicides in COMESA;
 - b) The market for the supply of insecticides in COMESA;
 - c) The market for the supply of fungicides in COMESA;
 - d) The market for the supply of adjuvants in COMESA; and
 - e) The market for the supply of plant growth inhibitors in COMESA.
8. The CID observed that there would be an insignificant consolidation of market shares, which is unlikely to raise competition concerns. Further, competition concerns are unlikely since the relevant markets are fragmented and characterised by the presence of global competitors.

Determination


9. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID approved the transaction without conditions.
10. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 23rd December 2019



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Commissioner Brian M. Lingela (Chairperson)



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Commissioner Islam Tagelsir Ahmed Alhasan