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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/3/9/2020

Decision[1] of the Seventy-First (71st) Committee Responsible for Initial Determination Regarding the Acquisition by KLL Group Proprietary Limited of the starch, glucose and animal feeds ingredients business of Tongaat Hulett Limited

ECONOMIC SECTOR: Agriculture

8th June 2020

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 7th April 2020, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving KLL Group Proprietary Limited ("**KLL**") as the acquiring firm and Tongaat Hulett Limited ("**THL**") as the seller of its starch, glucose and animal feeds ingredients business (the "**Target Business**").

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 prescribed 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

KLL (the Acquirer)

4. It was submitted that the primary acquiring firm is KLL which is ultimately controlled by Barloworld Limited. In the Common Market, the acquiring group supplies earthmoving equipment and power systems through a joint venture in the Democratic Republic of Congo and Zimbabwe; and through wholly owned subsidiaries in Eswatini, Malawi, and Zambia. It also provides car rental services in Eswatini and Zambia; fleet services (in Zambia); and logistics management and supply chain optimisation in Zambia.

The Target Business

5. It was submitted that the Target Business produces starch, glucose and related products, using maize as the raw material in South Africa. Starch and glucose products are exported by the Target Business to the following Member States: the Democratic Republic of Congo, Eswatini, Malawi, Mauritius, Zambia and Zimbabwe.

Nature of the Transaction

6. It was submitted that the proposed transaction being notified relates to the proposed acquisition by KLL of THL's starch, glucose and animal feeds ingredients business. It also includes two subsidiaries of THL, namely Tongaat Hulett Starch Proprietary Limited and Tongaat Hulett Starch (Australia) (Pty) Ltd (the "**Proposed Transaction**").

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Competition Analysis

7. The CID observed that there were no horizontal or vertical overlaps between the activities of the acquiring group (active in the supply of earthmoving equipment and power systems; provision of car rental services, fleet services; and logistics management and supply chain optimisation), and the activities of the target business (which is active in the manufacture and distribution of modified and unmodified starch; and powdered and liquid glucose from maize and export of starch and glucose) in the Common Market, or elsewhere. The CID thus focussed its assessment on the activities of the target undertaking, given that the markets of the acquiring group would not be affected by the Proposed Transaction.

Relevant Product Market

8. The CID considered that for purposes of the competitive assessment and without prejudice to the Commission's approach in future cases, the relevant product market can be taken as the market for supply of starch, as the competitive assessment would not be materially affected under any alternative market definition.

9. With regard to regard glucose syrups, these are used to provide sweetness in food applications-in particular confectionery and soft drinks. Glucose products are marketed with varying degrees of sweetness. The CID considered that glucose products are not substitutable with sugar, as the former has specific characteristics (viscosity, mouth feel, taste, and health considerations). On the basis of supply side substitutability and noting the lack of overlaps between the products offered by the merging parties, the supply of glucose syrups and blends can be considered to form one market.

Relevant Geographic Market

10. In terms of geographical market, the CID considered that the relevant market is wider than national, as suppliers are able to ship their products outside the territories where their manufacturing plants are located. For instance, the target business engages in cross-border trade from its South African manufacturing plants to a number of Member States, namely, DRC, eSwatini, Malawi, Mauritius, Zambia, and Zimbabwe. The CID has also considered that the farther the distance from the manufacturing plant, the higher the cost of transport and the potential degradation of the products. As such the competitive conditions may not be homogenous across all African markets, depending on their geographic distance from the manufacturing plants. Having regard to the activities of the target undertaking, the Commission considered that a sub-Saharan African market can be delineated for purposes of the competitive assessment.

11. The CID thus defined the relevant markets as follows:

    a) supply of starch in Sub-Saharan Africa; and
    b) supply of glucose syrups and blends in Sub-Saharan Africa.

12. The CID observed that the transaction would not change market concentration given the absence of horizontal and vertical overlaps in the activities of merging parties in the Common Market pre-merger.

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Determination

13. 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 therefore approved the transaction.

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

Dated this 8th day of June, 2020

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Commissioner Islam Tagelsir Ahmed Alhasan (Chairperson)

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Commissioner Brian M. Lingela

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