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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/18/2020

Decision¹ of the Seventy-Fourth (74th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of 98.7277931% of the issued share capital of Adwia Company S.A.E. by Zanzibar Pharma Limited.

ECONOMIC SECTOR: Pharmaceuticals

26th February 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

T.P.D

Information and Relevant Background

1. On 27th November 2020, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger involving Adwia Company S.A.E. (“**Adwia**”) and Zanzibar Pharma Limited (“**Zanzibar**”).
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

Zanzibar

4. It was submitted that Zanzibar is a joint venture that is jointly owned by three co-investors: Development Partners International (“DPI”); CDC Group PLC (“CDC”); and the European Bank for Reconstruction and Development (“EBRD”). Zanzibar Pharma Limited is a newly incorporated entity and does not conduct any activities in the COMESA Common Market.
5. It was submitted that DPI is a London-based private equity fund advisory business which invests in established companies that operate in high-growth industries throughout Africa. DPI was active in the following Member States in 2019: the Democratic Republic of Congo, Egypt, Mauritius, Seychelles, Tunisia, Uganda, Zambia, and Zimbabwe.
6. It was submitted that CDC is the United Kingdom government’s development finance institution incorporated in England and Wales. Some of the sectors it invests in are manufacturing, agribusiness, infrastructure, financial institutions, construction, health and education. CDC was active in the following Member States in 2019: the Democratic Republic of Congo, Kenya, Malawi, Mauritius, Rwanda, Uganda, Zambia, and Zimbabwe.
7. It was submitted that EBRD is an international financial institution owned by 69 countries (including Egypt and Tunisia), as well as the European Union and the European Investment Bank. EBRD finances private and public sector projects through, among other things, direct lending, equity investments and trade finance. It also offers advisory services. EBRD was active in the following Member States in 2019: Egypt and Tunisia.

Adwia (the Target)

8. It was submitted that Adwia, the target undertaking, is a pharmaceuticals company active in the manufacturing of generics for both human and animal use. The target’s products were sold in the following Member States in 2019: Burundi, the Democratic Republic of Congo, Egypt, Eritrea, Kenya, Libya, Sudan, and Uganda. Republic of Congo, Egypt, Eritrea,



Kenya, Libya, Sudan, and Uganda. It has a direct presence in Egypt where it both manufactures and distributes its products. In all other Member States, Adwia acts through distributors.

Nature of the Transaction

9. The parties submitted that the notified transaction involves the acquisition of approximately 98.7277931% of the issued share capital of Adwia by Zanzibar through its special purpose vehicle ZNZ Pharma 1 Limited.

Competition Analysis

10. The CID defined the relevant markets as follows:
 - a. Global provision of generics for animal use; and
 - b. Global provision of generics for human use, by type of therapeutic area (erectile dysfunction, central nervous system, musculoskeletal and antibiotic/antiviral products).
11. The CID observed that the transaction would not result in a change in market structure in any relevant market due to the absence of horizontal overlaps between the activities of the acquiring group and the target pre-merger. The Commission further considered that the minority interests held by EBRD in MS Pharma were unlikely to create incentives for the merging parties to engage in anticompetitive coordinated conduct.

Determination

12. The CID determined that the merger was 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 was unlikely to negatively affect trade between Member States. The CID concluded that the transaction was not incompatible with the COMESA Treaty objective of single market integration. The CID therefore approved the transaction.
13. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 26th of February 2021



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Commissioner Thembelihle Precious Dube née Dlamini (Chairperson)



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Commissioner Islam Tagelsir Ahmed Alhasan



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Commissioner Francis Lebon