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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/05/17/2021

Decision[1] of the Seventy-Eighth (78th) Committee Responsible forInitial Determination Regarding the Proposed Merger Involving Danish Sustainable Development Goals Investment Fund K/S and Global Tea and Commodities Ltd

ECONOMIC SECTOR: Agriculture

3rd September 2021

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[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 7th July 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger from Anjarwalla & Khanna LLP on behalf of their clients Danish Sustainable Development Goals Investment Fund K/S ("**SDG**") as the acquiring undertaking and Global Tea and Commodities Ltd ("**Global Tea**") as the Target Undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations (the "**Regulations**").

2. 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 Determinations, referred to as the CID, is established pursuant to Article 13(4) of the Regulations. The decision of the CID is set out below.

The Parties

SDG (the Acquiring undertaking)

4. The acquiring undertaking, SDG, is a limited liability partnership incorporated under the laws of Denmark with registered office is at Fredericiagade 27, 1310 Copenhagen, Denmark.

5. SDG is managed by Investment Fund for Developing Countries ("**IFU**"). IFU is a self-governing fund with limited liability established under the Danish Act on International Development Cooperation having its registered place of business at Fredericiagade 27, 1310 Copenhagen, Denmark.

6. SDG has various investments in the Common Market. SDG and IFU have investment stakes in several entities which operate in the Common Market. Table 1 below lists the activities of the investee companies of the Acquiring Group in the Common Market during Financial Year 2020.

Table 1 – Activities of the Acquiring Group Trading Entities Operating in the Common Market

Name of Entity	Member State	Description of sector of operation in the Common Market
Al Quaseir Hotel Company	Egypt	Hospitality
Kjaer and Kjaer A/S	Uganda	Automotive
Motorcare Uganda Ltd	Uganda	Automotive
aBi Finance Limited	Uganda	Financial Services
Elgon Roan Developments Ltd	Kenya	Hospitality

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Enara Bahrain SPY	Egypt	Energy
IBF Uganda Ltd	Uganda	Construction
Africa Coffee Roasters (EPZ) Limited	Kenya	Agriculture (Coffee roasting and packaging)
Minya Portland Cement	Egypt	Construction
Aller Aqua Egypt	Egypt	Agriculture (fish feed)
Rabai Power Plant	Kenya	Energy
Humania North Africa	Egypt	Healthcare
Lake Turkana	Kenya	Energy
Kenya Property Hold. ApS	Kenya	Real Estate
Africa Education Holdings	Uganda and Zambia	Education
Radisson Emerald	Ethiopia	Hospitality
Hospital Holdings Inv	Kenya and Uganda	Healthcare

Global Tea (The Target undertaking)

7. Global Tea, the target undertaking, is a company limited by shares which is incorporated and registered in England under registration number 2654245 with registered office at 1 Duchess Street, London W1W 6AN.

8. Global Tea is involved in the packing, selling, trading and/or distribution of tea, coffee and/or macadamia principally in East and Southern Africa but also marketing and selling such products globally and operating coffee and macadamia plantations.

9. Table 2 below lists the activities of the target in the Common Market:

Table 2 – Activities of the Target Trading Entities Operating in the Common Market

Member State	Name of Trading Entity	Description of the products and services
Kenya	Global Tea and Commodities (Kenya) Ltd	Tea Broking
	Gold Crown Foods (EPZ) Limited	Blending and packing of Tea for export
	Gold Crown Beverages (Kenya) Ltd	Packed Tea
Malawi	Sable Farming Company Ltd	Macadamia and Coffee
	Global Tea & Commodities (Malawi) Ltd	Macadamia and Coffee
	Tea Brokers Central Africa Limited	Tea Broking
Sudan	Barsha Enterprises	Packed Tea

Jurisdiction of the Commission

10. Article 24(1) of the Regulations requires "notifiable mergers" to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

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Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM$ 50 million; and

b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COM$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

11. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide turnover within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

12. The parties submitted that the acquisition by SDG will be undertaken through a special purpose vehicle known as BHL. The parties submitted that at completion of the proposed transaction, BHL will, ultimately, be owned by three investors: (i) SDG, who will own 48.5%, (ii) Société de Promotion et Participation pour la Coopération Economique (Proparco) - a société anonyme registered in France and (iii) SIAD Tea Holdings LLP - a limited liability partnership established in England and Wales which recently incorporated BHL.

13. The parties submitted that BHL will subscribe for a minority shareholding of approximately 13% of the common shares outstanding in Global Tea as well as certain preferential shares upon completion of the transaction and in addition, SDG will enjoy certain board appointment rights and minority protections in the form of board and shareholder reserved matters which will entitle it to exercise indirect control over Global Tea.

Relevant Markets

Relevant Product Market

14. The acquiring group has investments in a number of firms in the Common Market as listed in Table 1 of this report. The companies in which the acquirer has investments operate in a range of sectors which are: agriculture, hospitality, automotive, energy, financial services, construction, healthcare and real estate. Of relevance to this transaction are the

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operations of one of the investee companies of the Acquirer, namely African Coffee Roasters Ltd, which operates in the coffee market. African Coffee Roasters Ltd has operations in Kenya.

15. Global Tea, the target, is involved in the business of:

    a) packing, selling, trading and/or distribution of tea principally in East and Southern Africa but also marketing and selling such products elsewhere in the world; and

    b) operating coffee and macadamia plantations principally in East and Southern Africa.

16. The target operates in the coffee sector through Sable Farming Company Ltd in Malawi. The parties submitted that none of the acquirer's investee companies are involved in tea sourcing, broking or packing.

17. African Coffee Roasters Ltd operates as a roasting and grinding business; it acquires green coffee beans from a number of farmers and via auctions and it then roasts and grinds the coffee and package it for its customers. It is located in the Export Processing Zone (EPZ) in Athi River, Kenya and its products are mainly for the export market. Notwithstanding, it also sells a limited amount of its products on the Kenyan market (less than 5% of its turnover) to local companies (supermarket chains and coffee shops), and the remaining is exported to countries outside of the Common Market. African Coffee Roasters Ltd is not involved in the cultivation of coffee.

18. Sable Farming Company Ltd, on the other hand, is involved in the business of raw material manufacturing in Malawi and its sales are through specialist agents rather than direct to end users[2]. Sable Farming Company Ltd owns coffee plantations in Malawi.

19. The CID notes that the acquiring group is involved at the middle and downstream end of the coffee supply chain in the roasting and packaging of coffee beans for sale to end users whereas the target is involved at the upstream level of the supply chain producing raw materials for coffee production.

20. Paragraph 8.4 of the COMESA Merger Assessment Guidelines states that, "[t]he Commission will determine the relevant market on a case-by-case basis". For purposes of the competitive assessment of the current transaction, the CID has focused on the coffee market, which is where both the acquiring group and the target operate, as this is the market where any competitive impact of the merger is likely to be felt.

21. While the target is involved in the production of unroasted coffee beans, the acquiring group is involved in the roasting and packing of coffee. In particular, it processes whole beans, to manufacture ground and capsule coffee. These two levels of the coffee supply chain entail different activities which require different equipment and entail risks; for

[2] Paragraph 7.2 of the Exhibit B filed on behalf of the target

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instance, coffee plantation requires access to fertile land, and the cultivation is affected by weather conditions. In this regard, the CID will assess each activity as a market of its own.

Upstream Market for Cultivation and Supply of raw coffee beans

22. Coffee beans can be differentiated based on their quality and origin. The International Coffee Organisation has divided coffee production into four groups on the basis of the predominant type of coffee produced by each country[3]. The four coffee groups are: Colombian mild arabicas, Other mild arabicas, Brazilian and other natural arabicas, and Robustas. The difference between each coffee group lies in the flavour and characteristics of the actual coffee bean[4]. Each group varies therefore in quality and flavour. Arabica coffee is said to have less caffeine than Robusta and is usually considered superior in taste[5]. Arabica coffee tends to have a smoother, sweeter taste, with flavour notes of chocolate and sugar[6]. On the other hand, Robusta coffee is said to have a stronger, harsher and more bitter taste, with grainy or rubbery overtones[7].

23. Table 4 below lists the country producers of coffee per quality group.

Table 4 – Producers of Coffee per quality group[8]

Quality Group	**Producer Country**
Colombian mild arabicas	Colombia, Kenya, United Republic of Tanzania
Other mild arabicas	Bolivia, Burundi, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Malawi, Mexico, Nicaragua, Panama, Papua New Guinea, Peru, Rwanda, Venezuela, Zambia, Zimbabwe
Brazilian and other natural arabicas	Brazil, Ethiopia, Paraguay
Robustas	Angola, Benin, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Indonesia, Liberia, Madagascar, Nigeria, Philippines, Sierra Leone, Sri Lanka, Thailand, Togo, Trinidad and Tobago, Uganda, Viet Nam

[3] International Trade Centre, "World coffee trade-Coffee producing countries by ICO quality group" www.intracen.org/coffee-guide/world-coffee-trade/coffee-producing-countries-by-ICO-quality-group/ accessed 28th July 2021

[4] Perk Coffee, "The Bean Identity" https://perkcoffee.co/sg/arabica-beans-vs-robusta-beans-whats-difference/ accessed 28th July 2021

[5] *Ibid* n. 11

[6] *Ibid* n. 11

[7] *Ibid* n. 11

[8] *Ibid*, n. 10

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24. The European Commission's market investigation in ***Ecom Agroindustrial Corporation/Armajaro Trading***[9] pointed at separate product markets for Arabica and Robusta coffee beans where the differences lied in terms of physical characteristics (taste, yield) and prices per bag[10]. This distinction was upheld in ***Intercontinental Exchange / NYSE Euronext*** where the European Commission identified distinct markets for Arabica and Robusta derivative contracts because they have two different types of coffee as physical underlying, i.e. Robusta and Arabica[11].

25. The CID considered that the above reasoning would also apply to the case at hand. It is noted that the target only offers Arabica coffee beans in Malawi. It is reported that "the cultivars and varieties of coffee currently grown in Malawi are of the arabica species"[12]. Arabica coffee is one of a number of high value crops which historically has been grown in Malawi[13]. In view of the foregoing, the relevant product market is construed as the cultivation and supply of Arabica coffee beans.

26. The CID noted that in ***Ecom Agroindustrial Corporation/Armajaro Trading***[14], the European Commission's market survey found that Arabica coffee beans from East Africa (mainly Kenya and Tanzania) have different characteristics compared to other origins, for instance in terms of perceived quality. In particular, respondents indicated that beans from Kenya are superior in taste, have higher quality and higher prices compared to beans from other East Africa origins (e.g., Tanzania and Uganda). The CID likewise considers that there may be indications that coffee beans grown in Malawi, where the target operates, may constitute a distinct product market from coffee beans originating from other Member States, as the geographic and typographic conditions of the country would affect the harvest and hence the taste and price of the final product.

27. The above notwithstanding, the CID noted that the price of Malawi-grown arabica coffee beans is likely to be influenced by the price of Arabica coffee beans grown in other countries. The customers of raw coffee beans are the roasting facilities whose demand in turn depends on the preferences of end-customers. In the event of a 5-10% increase in the price of Malawi-grown coffee, it is not improbable that a significant number of customers would shift to Arabica coffee from other origins; and thus, coasting roasting facilities are similarly likely shift their purchase to Arabica coffee beans originating from countries other than Malawi. While there may be some customers who are indifferent to the price increase in view of the distinctiveness of the Malawi-grown Africa coffee beans, such a niche market is likely to be a small one.

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[9] Case M.7120 — Ecom Agroindustrial Corporation/Armajaro Trading
[10] Paragraph 45 ibid n. 16
[11] Case No COMP/M.6873 – INTERCONTINENTAL EXCHANGE / NYSE EURONEXT, paragraph 41.
[12] Handbook For Sustainable Coffee Production in Malawi, www.scotland-malawipartnership.org/assets/documents/member/Handbook-For-Sustainable-Coffee-Production-In-Malawi.pdf accessed 29th July 2021
[13] Ibid n. 19
[14] Case M.7120 — Ecom Agroindustrial Corporation/Armajaro Trading

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28. In view of the foregoing, the CID considers that the relevant market in which the target operates is the **supply of Arabica coffee beans.**

Downstream market for roasting and packing of Coffee

29. The acquiring group on the other hand is involved in the production of shelf-ready coffee through the roasting and packing of roasted coffee. Its products are categorised as whole bean coffees, ground coffees and capsules coffees[15]:

    a) Whole beans coffee are roasted beans sold to consumers who prefer to grind them freshly at home or use them in fully automated bean-to-cup machines.

    b) Ground coffee is pre-roasted and pre-ground coffee which is sold to end customers in packaging differing in terms of size and material (where the packaging can be in plastic bags, glass containers or aluminium cans). "Roast & Ground coffee comprises a wide variety of coffee flavours, aromas and intensities depending on the specific blend of the coffee varieties and origins, and the length of the roasting process. Roast & Ground coffee can be used in a range of appliances which often produce multiple cups of coffee at a time" or it can be made into a drink manually by the end user.

    c) A coffee capsule on the other hand is one individually packed coffee to be inserted into a coffee serving machine to produce a single a cup of coffee.

30. The consumption of a specific type of coffee product depends on the preference of, and convenience for, the customer. For instance, customers wishing to consume whole bean coffee and capsule coffee would require an additional equipment, namely a coffee grinder or a coffee making machine for the preparation of the beverage. Even if traditionally, roasted and ground coffee has easily available and most common, the demand for capsule coffee has been rising in recent years with the easy availability of coffee making machines. Notwithstanding, it is often observed that whole coffee beans, ground coffee and capsule coffee are all commonly available which leads to a reasonable assumption that the demand for all three products may be similar. While the CID acknowledges that the pricing of capsule may be higher than the other two formats, the CID believes that no further segmentation of the coffee market is required on the basis of its form as the precise definition of the market will not affect the conclusion of this assessment. This conclusion is further supported by the fact that most brands of coffee are available in all three forms, including that of the acquiring group.

31. The acquiring group sells its products to end consumers. Consumers of coffee can be categorised into two different segments, namely in-home consumers and out-of-home which will include sale of coffee to hotels, restaurants, coffee shops. The two customer segments can be differentiated on the basis of volumes of sales and packaging of products offered.

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[15] African Coffee Roasters (EPZ) Limited Reports and Financial Statements for 31 December 2020

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32. In view of the foregoing, the CID has identified a single market for the **manufacture and sale of coffee products to end consumers.**

Relevant Geographic Market

33. The CID considered that the supply of the Arabica coffee beans is likely to occur on a global scale as there is generally no restriction on trade of coffee beans across borders.

34. Similarly, the market for the manufacture and sale of coffee products to end consumers is global in scope, given the ease of transporting coffee beans and the global flows of trade. This conclusion is supported by the activities of the acquiring group itself which posits African Coffee Roasters Ltd as "coffee roasting facility in Kenya, so that coffee producers from East Africa could have the option to directly trade with an international coffee roaster within their reach and directly influence global consumer choices"[16].

Conclusion of Relevant Market Definition

35. For the purpose of assessing the Proposed Transaction only, and without prejudice to future cases, the CID has identified the relevant markets as:

    a) the global supply of Arabica coffee beans; and

    b) the global market for the manufacture and sale of coffee products.

Competitive Assessment

36. The global coffee beans market size was valued at USD 27.0 billion and is expected to expand at a compound annual growth rate of 6.7% from 2019 to 2025[17]. Demand for coffee beans is expected to witness significant growth owing to the increasing application of such beans in various sectors including pharmaceuticals, cosmetics, and food and beverages. Arabica was the largest segment, accounting for 61.2% share of global revenue in 2018[18]. An increase in the penetration of cafes in developing countries, coupled with a surge in the use of arabica beans in chocolates, nuts, and caramels, is expected to have a positive impact on the market growth[19].

37. The global market is said to be highly competitive with major players such as Kicking Horse Whole Beans; Death Wish Coffee; The Coffee Beans Co.; La Colombe Torrefaction, INC.; Coffee Beans International, Inc.; illy caff S.p.A.; Luigi Lavazza S.P.A.; La Colombe Torrefaction, INC.; Hawaiian Isles Kona Coffee Company, Ltd.; and Peets Coffee & Tea, Inc[20].

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[16] https://africancoffeeroasters.com/sustainability/ accessed 28th July 2021.
[17] https://www.grandviewresearch.com/industry-analysis/coffee-beans-market, accessed on 23rd August 2021.
[18] *Ibid.*
[19] *Ibid.*
[20] https://www.alliedmarketresearch.com/coffee-beans-market, accessed on 23rd August 2021.

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38. While the CID did not have the market share of the target at global level, it gathered from public sources that Global Tea is the largest coffee producer in Malawi[21]. Producers of coffee in Malawi can be categorised as estates and smallholders[22]. Smallholders are coffee planters having a maximum of 200 coffee trees and coffee growing by smallholders is through cooperatives[23]. It is estimated that there are currently between 3000 and 4000 Smallholder Coffee farmers (the count was approximately 3200 in 2019) organised into 6 Cooperatives: Misuku, Phoka, Viphya North, Nkhatabay Highlands, South East Mzimba Cooperatives in Northern Malawi and Ntchisi East Cooperative of Central region. There are presently 5 estates of coffee in Malawi, with Sable Farming Company Limited being the largest one.

39. The parties estimate the market shares of Sable Farming Company Limited in the coffee market in Malawi to be around 35%. The parties further submitted that to their knowledge, its competitors have no large operations and are mostly small growers. The following information has been submitted by the parties on market shares in Malawi per Table 3 below:

Table 3 – Coffee Market Share in Malawi 2020-21 (Estimates)

	Value (US$)	**Green Bean or GB Equivalent (kgs)**	**% Value Market Share in Malawi (Estimates)**
Green Bean Production	Export Value		
Sable Farming Company	1,459,905	514,740	35%
Mzuzu Co-operative	396,479	87,360	9%
Satemwa Coffee	20,244	6,210	0%
East African Plantations	96,788	34,520	2%
Sub Total Production	**1,973,416**	**642,830**	47%
Locally produced, packed	Retail Value		
Mzuzu Coffee	237,644	20,966	6%
Satemwa Coffee	209,244	22,152	5%
Chipunga,Makoka	7,538	840	0%
Sub Total Production	**454,426**	**43,958**	11%
Imports of retail Coffee			
Brands such as Nescafe, Jacobs Douwe Egbert at Green Bean Equivalent source value	**1,759,500**	1,530,000	42%
Sub Total	**1,759,500**	**1,530,000**	42%
Grand Total Malawi per year	**4,187,342**	**2,216,788**	100%

[21] International Finance Corporation, (2019) "IFC to Support 3000 Macadamia Nut Farmers in Malawi with Business Training" https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=18500 accessed 29th July 2021
[22] Malawi's Coffee Industry Profile, https://www.mzuzucoffee.org/news/malawis-coffee-industry-profile/ accessed 29th July 2021
[23] *Ibid*

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40. Despite the target having a market share of 35% in the market for the supply of Arabica Coffee beans in Malawi, it is noted that there are four other estates and numerous small players which regroup themselves through cooperatives. The other producers of coffee, including the Mzuzu Coffee Planters Cooperative Union and importers of coffee represent therefore 70% of the coffee market in Malawi and this is likely to act as a competitive constraint on the target. At global level, the market strength of the target is likely to be considerably lower in view of the presence of major international players as listed above.

41. In the market for the manufacture and sale of coffee products, the parties submitted that the acquirer's African Coffee Roasters Ltd has an estimated market share of less than 1% in Kenya. It is therefore reasonable to conclude that the market share of the acquirer is likely to be even lower at global level.

42. The transaction is not capable of leading to any market share accretion in the relevant markets given the absence of overlap between the activities of the merging parties in the defined geographic market pre-merger.

Third-Party Views

43. Submissions were received from the Competition Authority of Kenya, the Competition Commission (Mauritius) and the Egyptian Competition Authority who confirmed that the transaction was unlikely to raise competition concerns in the relevant markets within the Common Market.

Determination

44. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

45. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 3rd day of September 2021

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Commissioner Brian M. Lingela (Chairperson)

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Commissioner Ellen Ruparanganda