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Common Market for Eastern and Southern Africa

Case File No. CCC/ MER/08/39/2022

Decision[1] of the Ninetieth (90th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Creation of a Full Function Joint Venture involving Abu Dhabi National Oil Company, Abu Dhabi Developmental Holding Company PJSC and Reliance Industries Limited

ECONOMIC SECTOR: Petro-chemicals

COMESA COMPETITION COMMISSION
19 DEC 2022

19 December 2022

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 6 October 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed Creation of a Full Function Joint Venture (the "**JV**") involving Abu Dhabi National Oil Company ("**ADNOC**"), Abu Dhabi Developmental Holding Company PJSC ("**ADQ**"), and Reliance Industries Limited ("**Reliance**"), 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. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

COMESA COMPETITION COMMISSION * 19 DEC 2022

The Parties

ADQ

4. ADQ is wholly owned by the Government of the Emirate of Abu Dhabi. ADQ's portfolio spans key sectors, including energy and utilities, food and agriculture, healthcare and pharma, and mobility and logistics.

5. ADQ is active in the Common Market through various portfolio companies in the following COMESA Member States: Burundi, Democratic Republic of Congo, Djibouti, Egypt, eSwatini, Ethiopia, Kenya, Libya, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda and Zambia.

ADNOC

6. ADNOC is an energy and petrochemicals group which operates across the entire hydrocarbon value chain through a network of fully integrated businesses. ADNOC is principally active in the exploration, production, storage, refining, and distribution of oil and gas, as well as in the development of petrochemical products.

7. ADNOC does not control any firms that are incorporated in the Common Market. However, two of ADNOC's controlled joint ventures, namely Fertiglobe plc (trading as "**Fertiglobe**") and Borouge Pte Ltd (trading as "**Borouge**") have the following subsidiaries incorporated in Egypt as follows:

<u>*Fertiglobe*</u>

a. National Company for Operation Maintenance and Engineering Services LLC

b. Egyptian Fertilizers Company S.A.E.

c. Orascom Construction Industries S.A.E.

d. Egypt Basic Industries Corporation S.A.E.

<u>*Borouge*</u>

a. Borouge Egypt LLC

Reliance

8. Reliance is a public company incorporated in India and listed on the National Stock Exchange of India and BSE Limited in India. Reliance is active in a number of sectors, including oil to chemicals (O2C) (including petrochemicals refining & marketing and petrochemicals), hydrocarbon exploration and production, retail, media and entertainment, digital services and new energy.

9. Reliance is active in the DRC, Djibouti, Egypt, Kenya, Libya, Madagascar, Mauritius and Tunisia.

The JV

10. The JV is a greenfield investment and its plant will be constructed and located in the TA'ZIZ chemicals zone at Ruwais, Abu Dhabi, UAE. The JV currently has no activities and it is only expected to start supplying its products in the second half of 2025.

11. The JV will be principally active in the production and sale of caustic soda, ethylene dichloride ("EDC") and polyvinyl chloride ("PVC") in Abu Dhabi, UAE for export and distribution. The JV products were further described as follows:

- **Caustic soda**: Caustic soda is produced from salt, water and electricity. Caustic soda has a wide range of applications in the chemical industry, pulp and paper industry, in water treatment, in the production of aluminium, in oil refining as well as in soaps, detergents and textiles.

- **EDC**: EDC is produced from ethylene and chlorine and is an intermediate product to produce of PVC. Around 96% of EDC production is used to produce vinyl chloride monomer, which is used almost entirely (97%) in the production of PVC.

- **PVC**: PVC is one of the most widely used polymers in the world. Due to its versatile nature, PVC is used extensively across a broad range of industrial, technical and everyday applications including widespread use in building, transport, packaging, electrical/electronic and healthcare applications; and

- Small quantities of nitrogen, hydrogen and natural gas may also be used in the production of EDC and PVC.

Jurisdiction of the Commission

12. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

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 USD 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 USD 10 million,

COMESA COMPETITION COMMISSION
19 DEC 2022

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.

13. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and each of at least two of the parties hold an asset value 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 asset value 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

14. The transaction concerns the formation of a full-function, greenfield joint venture between ADNOC, ADQ (both through their interests in Abu Dhabi Chemicals Derivatives Company RSC Ltd ("TA'ZIZ")), Reliance (through Reliance Strategic Business Ventures Ltd ("RSBVL")) and Shaheen Chem Holdings Investments LLC ("Shaheen"). Pursuant to the notified transaction, ADNOC and ADQ (by virtue of their control over TA'ZIZ) and Reliance (by virtue of its control over RSBVL) will acquire ultimate joint control over the joint venture and Shaheen will acquire a non-controlling minority stake in the joint venture.

15. The parties have submitted that the joint venture will be principally active in the production of caustic soda, EDC and PVC for export and distribution. The joint venture's production plant will be constructed and located in the TA'ZIZ chemicals zone at Ruwais, Abu Dhabi, UAE. The completion of construction of the joint venture plant is anticipated in 2025, and the joint venture is expected to start supplying the joint venture products in the second half of 2025.

Competition Assessment

Relevant Markets

Relevant Product Market

16. The CID noted that the transaction relates of the formation of a greenfield joint venture which will be active in the production of caustic soda, EDC and PVC. The production is expected to take place in UAE, however the JV products will be exported to, and distributed in, the Common Market. It is further noted that the JV is currently not operational and will only become operational in 2025.

17. The CID observed that the JV parties, being Reliance, ADQ and ADNOC are active in the production and distribution of products linked to the JV products. To this end, the CID noted the parties' submissions that:

COMESA COMPETITION COMMISSION
19 DEC 2022

a. Reliance supplies natural gas which can be used in the production of ethylene dichloride and polyvinyl chloride. It also supplies ethylene, which is an input for the production of ethylene dichloride.

b. ADQ supplies natural gas, nitrogen and hydrogen, which can be used in the production of ethylene dichloride and polyvinyl chloride. It is also active in the production of PVC pipes but exclusively in the Middle East. and

c. ADNOC produces natural gas, nitrogen and hydrogen which can be used in the production of ethylene dichloride and polyvinyl chloride. ADNOC also supplies ethylene which is an input to produce ethylene dichloride.

18. From the above, the CID considered that there is a vertical overlap in the activities of the JV on one hand and the parties on the other. For instance, the parties to the JV either produce or supply natural gas, nitrogen and hydrogen which are inputs into the manufacture of ethylene dichloride and polyvinyl chloride, products that the JV will produce. Further, there is likely horizontal overlap between the expected production of PVC by the JV and production of PVC by one of the JV companies, ADQ.

19. In view of the products of the parties and the JV, the CID limited its relevant market consideration on the JV products, particularly to the production and distribution of caustic soda, EDC and PVC. This approach was adopted given that any competition concerns from the transaction were likely to emanate from the horizontal or vertical relation that the activities of the parties have or will have with the JV products.

Production and distribution of caustic soda, ethylene dichloride and polyvinyl chloride

20. Caustic Soda (or Sodium Hydroxide) is a highly versatile product which is produced through a process called electrolysis whereby an electrical current is channelled through brine (i.e., salt dissolved in water). Caustic soda is essential in a variety of applications such as the manufacturing of petroleum products, soap, and detergents, alumina, pulp and paper, chemical products, as well as pharmaceuticals[2]. It is also useful for various household purposes such as drainpipe cleaning, unblocking drains, and removing built up grease from ovens[3]. Caustic soda is also used in the manufacture of a variety of medicines and pharmaceutical products such as aspirin, anti-coagulants and cholesterol-reducing medications[4]. In the energy sector, caustic soda is used in fuel cells production which are ultimately used for electricity production. Caustic soda is also used in water treatment facility to control water acidity and to remove heavy metal from water.

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[2] https://www.globenewswire.com/en/news-release/2022/10/10/2530683/0/en/Global-Caustic-Soda-Market-Size-to-Reach-59-36-Billion-by-2028-Competitive-Landscape-Challenges-Opportunities-for-Caustic-Soda-Industry-by-Vantage-Market-Research.html , accessed on 18 November 2022

[3] https://www.sydneysolvents.com.au/caustic-soda

[4] https://www.chemicalsafetyfacts.org/chemicals/sodium-hydroxide/

21. EDC is a colourless, heavy, oily toxic liquid which has chloroformlike odor[5]. It is primarily used in the production of vinyl chloride monomer which is used in the polymerization manufacture of polyvinyl chloride (PVC). PVC is commonly used in pipes, fittings, profiles, tubes, windows, doors, sidings, wire cables, film, sheet, and flooring[6]. Further, PVC is converted into end products through a variety of processes such as extrusion, continuous coating, blow moulding and injection.

22. The CID noted that caustic soda, EDC and PVC possess different characterises and end uses hence they are not likely to be substitutable. For instance, it is not probable that a person faced with blockage in drainpipes to opt for using EDC as a solution but rather caustic soda. Further, caustic soda cannot serve the purpose for which PVC is meant such as being used as a packaging material, for window frames or in wire cables.

23. Therefore, in light of the above, the CID considered that the JV products, namely caustic soda, EDC and PVC comprise separate product markets.

24. Given that the JV is only expected to export and distribute its products in the Common Market and will not engage in manufacturing, the relevant product markets are determined as:

   a) The supply of caustic soda.

   b) The supply of EDC; and

   c) The supply of polyvinyl chloride (PVC).

Relevant Geographic Market

25. It is noted that once operational, the JV will export and distribute the JV products into the Common Market from its manufacturing base in UAE and will not have manufacturing operations in COMESA. The CID considered that the geographic scope of the relevant markets is likely to be broader than the Common Market given the possibility of imports into the Common Market, as will be the case in the current transaction.

26. With regards to PVC, its physical characteristics makes it cheaper to transport. The transportation costs for PVC are not a significant barrier since it is a solid, stable, non-toxic commodity product which can be shipped in sacks or tankers and is readily and safely transportable over considerable distances[7].

27. With regards to caustic soda, it is noted that its production process mainly involves water and salt which may suggest that it should be a common available product across the Common Market. The CID considered that the geographic scope of caustic soda was at least COMESA-wide given that it is not likely to face significant entry barriers into and

[5] https://www.collinsdictionary.com/dictionary/english/ethylene-dichloride
[6] https://www.bpf.co.uk/plastipedia/polymers/PVC.aspx accessed on 20 November 2022
[7] See Case No COMP/M.6218 - INEOS/TESSENDERLO GROUP S-PVC ASSETS

across COMESA. Thus, customer may easily substitute between purchasing caustic soda from the Common Market and the global market. Therefore, the geographic market for caustic soda was considered as global.

28. The geographic scope of EDC, a key raw material into the production of PVC, was similarly considered as global since it is likely to face insignificant costs to transport across various markets.

29. In view of the foregoing, the CID considered that for the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the following are the relevant markets:

    a) **The global supply of caustic soda.**

    b) **The global supply of ethylene dichloride; and**

    c) **The global supply of polyvinyl chloride (PVC).**

Market Shares and Concentration

30. The CID noted that the JV is currently not operational as such the formation of the JV does not currently result in any change in the market.

31. The CID observed that while the formation of the JV will result in future horizontal product overlaps in the supply of PVC including vertical integration in the other relevant markets, competition concerns were not likely to arise in the Common Market since the JV products will be intended for the Common Market while the PVC products by Reliance and ADQ are intended for markets outside the Common Market. For instance, while ADQ is active in the manufacture of PVC, these products are exclusively for the middle east. Further, while the JV will be supplied with ethylene, natural gas and nitrogen from ADNOC, this vertical arrangement will not affect the Common Market since the manufacturing process of the JV will be in the middle east.

32. The CID's assessment established that the barriers to entry in the relevant markets are insignificant given the nature of the products which are easy to transport, which is evidenced by the large number of players in the relevant markets with fragmented market shares.

Consideration of Public Interests

33. The proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are relatively small within the Common Market. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers who will still have access to alternative suppliers.

Consideration of Third-Party Views

34. Submissions were received from the national competition authorities of Egypt, Eswatini, Ethiopia, Mauritius, Rwanda, Seychelles and Zambia which confirmed that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

35. 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. The CID, therefore, approved this transaction.

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

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**