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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/07/33/2022

Decision[1] of the Eighty-Eighth (88th) Committee Responsible for Initial Determinations Regarding the Proposed Merger involving AG Synergy Holdings 1 RSC Ltd and Abu Auf Holding Netherlands B.V.

ECONOMIC SECTOR: Agriculture and Retail

18 November 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 12 August 2022, the COMESA Competition Commission ("**Commission**") received notification of a merger involving AG Synergy Holdings 1 RSC Ltd ("**AG Synergy**") as the acquiring undertaking and Abu Auf Holding Netherlands B.V ("**Abu Auf**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (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.

The Parties

AG Synergy (the acquiring undertaking)

4. AG Synergy is a private company of limited liability incorporated in the Abu Dhabi Global Market. AG Synergy is wholly owned and controlled by Agthia Group PJSC ("**Agthia**"), an Abu Dhabi based food and beverage company established in the UAE in 2004 and listed on the Abu Dhabi Securities Exchange. The Agthia Group consists of a world-class portfolio of integrated businesses and brands. Agthia provides high quality, trusted, and essential food and beverage products for customers and consumers across the United Arab Emirates, Gulf Cooperation Council, Turkey and the wider Middle East.

5. Agthia is ultimately controlled by Abu Dhabi Developmental Holding Company PJSC ("**ADQ**"). ADQ was established in Abu Dhabi in 2018 and is one of the region's largest holding companies with direct and indirect investments in several key sectors across Abu Dhabi's economy, including food and agriculture, aviation, financial services, healthcare, industries, logistics, media, real estate, tourism and hospitality, transport and utilities.

6. In the Common Market, the acquiring group is active in Burundi, the Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, and Zambia.

Abu Auf (the target undertaking)

7. Abu Auf is a private company with limited liability, incorporated and validly existing under the laws of the Netherlands. The target undertaking is a special purpose vehicle that owns 99.998% of A.U.F. Egypt S.A.E and a majority shareholding stake in the share capital of Modern International Confectionery Company S.A.E ("**MICC**"), a pretzels toll manufacturer established and existing under the laws of the Arab Republic of Egypt. Abu Auf operates in the manufacturing, distribution, and operation of and retail stores and kiosks of specialty products and healthy snacks, including but not limited to, coffee, nuts, dates, dried fruits, kitchen essentials, spices, herbs, pulses, cereals and oils in Egypt and the United Arab Emirates.

Jurisdiction of the Commission

8. 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:

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.

9. The undertakings concerned have operations in two or more Member States. The parties' combined annual 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 derive more than two-thirds of their respective COMESA-wide turnover 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

10. The notified transaction involves AG Synergy acquiring directly a stake amounting to 60% in the share capital of the target undertaking by virtue of a Share Purchase Agreement entered into by and between AG Synergy and all the Sellers dated 14 July 2022. Each of the Sellers will retain a 10% stake in the target undertaking.

Competition Assessment

Relevant Product Markets

11. The parties to the proposed transaction are both involved in the manufacturing and distribution of various food products. The acquiring undertaking and its portfolio companies (including Agthia) are active in the Common Market only in relation to manufacturing and supply of a limited number of food products (specifically tomato paste, dried palm dates, frozen vegetables chili paste, and meat and poultry products).

12. The target undertaking operates in the manufacturing, supply, and retail sale of specialty products and healthy snacks, including but not limited to, coffee, nuts, dried dates, dried fruits, kitchen essentials, spices, herbs, pulses, cereals, and oils in Egypt.

13. The transaction thus results in an overlap in the manufacturing and distribution of dried dates.

14. Dried dates can be distinguished from fresh dates; the latter are typically highly perishable which makes handling and transport difficult and expensive. The CID noted that the parties are only involved in the manufacture and supply of dried dates, as a result the Commission has focussed its assessment on the market for dried dates.

15. The manufacturing and supply of dried dates requires establishing dates factories, handling, storage, dates packaging and labelling technologies and techniques, branding and transport facilities. The manufacturing and supply of dates further demands fulfilling the mandatory food safety quality standards and certification requirements related to hygienic, pesticides residues, production composition, moisture content, sizing, colour and shape, packaging and labelling, storage, and transportation requirements.[2] It is a stage where the dates are supplied to different resale customers across the marketing value chains, namely: the supermarkets, small shops, local markets and bakeries.

16. The manufacture of dates is thus distinct from the farming operations. It has been submitted that neither the acquiring undertaking nor the target undertaking are active at farming stage, thus the CID has not further considered this market in its competitive assessment.

17. On the other hand, the market for retail sales of dates includes those selling through local marketplaces, vegetable stores, and supermarkets to end customers/consumers which is characterised by small transaction values and is volume driven. Customers at the manufacturing and wholesale supply of dates market are characterised by their higher value of transactions and therefore the market is mainly transaction value driven. From supply side, the CID noted that retail sale shops typically sell other dried fruits in addition to dried dates. However, for purposes of this transaction, the CID noted it was not necessary to conclude whether the market should include all dried fruits.

18. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as the manufacturing and wholesale supply of dried dates, and the retail sale of dried dates.

Relevant Geographic Market

19. The CID considered that the geographic scope for the manufacture and wholesale supply of dried dates is likely to be wider in scope as there is limited restriction on trade or transport of dried dates products across borders and dried dates can be sourced from overseas manufacturers and suppliers. For instance, it was observed

[2] https://www.cbi.eu/market-information/processed-fruit-vegetables-edible-nuts/dates-0/market-entry, accessed on 4th September 2022.

that dried dates products are imported into Malawi from Egypt, Tunisia, South Africa, UAE and Pakistan.

20. The ease of trade between countries is also supported by the activities of the merging parties who are able to export their products into the Common Market and beyond. Further, the CID noted that transport over long distances from manufacturing plants would not constrain the competitiveness of dried dates. For the foregoing reasons, the relevant geographic market for the manufacturing and wholesale supply of dried dates is construed as global.

21. In relation to the retail market, the CID considers that the geographic scope is likely to be national. From a demand side, end customers are unlikely to consider foreign retailers as effective competitors to national retail channels - the volume of consumption demands may not justify the freight costs involved in sourcing dried dates from overseas, and related import procedures. For purposes of this transaction, the CID considered that the relevant geographic scope for the retail sales of dried dates is Egypt, being the country where the parties were competing pre-merger.

Market Shares and Concentration

22. Whilst the CID could not establish the market shares of the merging parties in the global market for manufacture and wholesale supply of dried dates, the CID noted that Egypt is the largest producer of dates in the world with around 17% of global production. The CID further noted that, in 2020, Tunisia was the largest exporter of dates worldwide, with exports amounting to a value of about 311 million U.S. dollars, followed by Iran with exports worth about 296.5 million U.S. dollars, indicating the likely presence of strong global players. This suggests that the merged entity would face competition from a wide net of competitors, including local brands in the Common Market.

23. The CID further noted that in the Common Market, the market share of each of the acquiring undertaking and the target undertaking in the market for manufacturing and wholesale supply of dried dates would be below 1%[3]. The parties further submitted that at national level, the acquirer's market share would not normally exceed 1% of the market for manufacturing and supply of dried dates in Egypt. The parties estimated the target's market share at around 4-6% in the broader market for manufacturing and supply of dried dates and fruits, in Egypt[4]. The dates market in Egypt is characterized by many players including large multinational and local players like PepsiCo, Kellogg's, Al Tahan Golden Dates, Al Rifai, Lebanese Roastery, Al Mouwafak, Salah El Din, Haj Arafa. It was further noted from the

[3] Information claimed as confidential by the merging parties.
[4] Information claimed as confidential by the merging parties.

parties' submission that the dates market in the Egypt is highly fragmented with 60 – 70% unbranded loose dates.

24. Thus, even in the narrower geographic markets, the transaction is not capable of leading to a significant market share accretion.

25. The parties submitted that the target has a minor market share in the retail market, given the large number of retail stores and supermarkets selling dried dates in Egypt. While the transaction will not give rise to any market share accretion in the retail market, the CID considered further whether any vertical effects may arise as a result of the transaction, as the acquiring undertaking is active in the manufacturing and wholesale supply of dried dates while the target is also active at retail level.

26. The CID considered that in view of the insignificant market share of the acquiring undertaking in Egypt and given the nature of the products, any foreclosure strategy is unlikely to be successful as retailers have access to a wide range of upstream suppliers. Accordingly, the merged entity would not have the ability to engage in input foreclosure. The insignificant market share of the target at retail level would further not sustain the argument and theory of harm of foreclosure. For foreclosure to be sustained, one of the parties should be dominant in either the upstream or downstream market, which is not the case in the transaction under consideration.

27. Likewise, the CID noted that a customer foreclosure strategy would not be a concern in Egypt where the target's market share in the retail market is insignificant and as such, it would not represent an important source of demand for the acquirer's competitors.

Third-Party Views

28. Submissions were received from the national competition authorities of Egypt, Kenya, Mauritius, Seychelles and Zambia which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

29. 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.

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

Dated this 18th day of November 2022

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Lloyds Vincent Nkhoma

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Commissioner Islam Tagelsir Ahmed Alhasan