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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/01/02/2021

Decision[1] of the Seventy-Fifth (75th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Apuleaf II Limited and Louis Dreyfus Company B.V.

ECONOMIC SECTOR: Agriculture

16th April 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 19th January 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed merger involving Apuleaf II Limited ("**Apuleaf II"**) and Louis Dreyfus Company B.V. ("**LDC**"**)**, pursuant to Article 24(1) of the COMESA Competition Regulations, 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 (hereinafter referred to as the "CID"). The Commission submitted its assessment report to the CID on 6th April 2021. The decision of the CID is set out below.

The Parties

Apuleaf II (the acquiring firm)

4. The acquiring firm, Apuleaf II, is a special purpose entity established for purposes of the transaction. It is ultimately wholly owned and controlled by Abu Dhabi Development 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 which include food and agriculture, aviation, financial services, healthcare, industries, logistics, media, real estate, tourism and hospitality, transport and utilities.

5. The acquiring group is active in the following COMESA[2] Member States: Egypt, Kenya, Libya, Mauritius, Seychelles, Somalia and Tunisia.

LDC (the target firm)

6. LDC is a company incorporated under the laws of The Netherlands. It is a merchant and processor of agricultural goods, with activities spanning the entire value chain (production, origination, processing, storing, transporting and merchandising). Its parent company is Louis Dreyfus Commodities and Energy Holdings N.V. which is incorporated in The Netherlands.

7. LDC is active in the following COMESA Member States: Burundi, Djibouti, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda and Zambia.

[2] In this decision, COMESA is used synonymously with the term Common Market.

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 merging parties have operations in more than two Member States. The parties' combined turnover value in the Common Market exceeds the threshold of USD 50 million and they each hold 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 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.

Nature of the Transaction

10. In terms of the notified transaction, ADQ intends to acquire joint control of LDC through Apuleaf II. On completion of the transaction, ADQ will exercise indirect joint control of LDC with Louis Dreyfus Commodities and Energy Holdings N.V.

Relevant Markets

Relevant Product Market

11. The acquiring group is active in the provision of a number of services which include manufacturing of steel rebars, food and beverage manufacturing, agro-commodity trading, repair services in the oil and gas sector and production of dates.

12. The target is a global merchant and processor of agricultural commodities which is active in oil seeds, grains, cotton, sugar, coffee beans, orange juices and provision of freight services. Within agro-commodity trading, both parties are active in the trading of grains in Egypt.

13. The CID noted that agricultural commodities (agro-commodities) constitute staple crops and livestock produced or raised on farms and plantations[3]. They mostly serve as a source of food but may also serve as industrial components, such as cotton and lumber. The agro-commodity market entails the trading in primary agricultural products. Within the agro-commodity trading, several narrower markets may exist given the various types of agro-commodities involved i.e., livestock products on the one hand and crop products such as cocoa, coffee, and grains on the other. A distinction can therefore be made between the trading of livestock and trading of crop products which should belong to separate markets on the basis of the varying requirements for trading in the two products. For example, the transportation, distribution and other requirements for trading in livestock and crop products are different on the basis of their physical characteristics. Transportation of livestock may require specialised transportation system depending on the type of livestock. On the other hand, trading of crop products will require the use of different type of transportation means which are not likely to be as specialized. On this account, the trading of livestock products and the trading of crop products can be considered to belong to separate markets.

14. The CID observed that it is possible to determine narrower markets within the crop segment depending on the marketing, distribution and storage requirements for the product in question including the uses of the crops. The CID observed that grain trading entails the local and international trade in cereals and other food grains such as wheat, maize and rice. It refers to the paper trade of grains, oilseeds and intermediate oilseed products between traders[4]. Cereals and other food grains are different from other crops such as cocoa and coffee on account of their physical characteristics and this can influence the different manner in which the crops are traded. For instance, green coffee beans tend to be sensitive to foreign odours and sensitive to moisture hence they are usually shipped in woven bags made from natural fibre which allows free circulation of air. This is likely to have cost implications to traders in coffee beans since they have to ensure the coffee beans are stored in a controlled environment which does not compromise the quality of the coffee beans. On the other hand, grain trading generally does not require complicated transportation and storage systems. The key requirement to trade in grain is to ensure that it is dried to the right moisture content.

15. The CID observed that grain trading is a narrow market which is not substitutable with the trading of other agro-commodities. The CID also observed that narrower markets may exist with grain trading due to various types of grain which may be involved. However, it was noted that from a supply perspective, grain traders can easily switch to the trading of different grains since there are no special skills or know-how required to deal with particular grain products.

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3 https://www.avatrade.com/cfd-trading/commodities/agriculture

4 See Case No IV/M.1376 -Cargill /Continental Grain, para 8

16. On the basis of the above, **the relevant product market was construed as the wholesale trading of grains**.

Relevant Geographic Market

17. The CID observed that the parties have a horizontal overlap in the wholesale trading of grain in Egypt. Further, the CID noted that local players in Egypt are likely to face competition from imports originating from the Common Market and beyond. The CID observed that importation of grain in most Member States may be subject to government regulations such as licensing and compliance with sanitary and phytosanitary standards (a mandatory requirement in agricultural trade).

18. However, the CID noted that these requirements are likely to be attainable and not prohibitive to prevent trade from taking place. Further, the COMESA region is implementing a Free Trade Area where trade in wholly originating products such as grains would not be subjected to trade taxes such that the Common Market can be seen as presenting a homogenous environment whose conditions affecting competition are unique.

19. On the basis of the above, **the relevant geographic market was construed as the wholesale trading of grain in COMESA**.

Competitive Assessment

20. The estimated ranges of the market shares for the acquirer and its competitors for the wholesale trading of grain in Egypt were submitted as follows:

Table 1: Estimated market shares for the acquirer and its competitors in Egypt

Name of Competitor	Type of Grain	Estimated Market Share
Ministry of Agriculture	Corn	85% - 95%
Army & Ministry of Agriculture	Wheat	85% - 95%
Al Dahra (through Al Dahra Egypt) **(Acquirer)**	n/a	0% - 10%
Al Rajhi company for Agriculture Investment	corn supply	0% - 10%

21. The estimated ranges of the market shares for the target and its competitors in Egypt for the wholesale trading of grain were submitted as follows:

Table 2: Estimated ranges of market shares for the target and its competitors in Egypt

Name of Competitor	Type of Grain	Estimated Market Share
ADM – Medsofts	Wheat	10% - 20%
	Corn	10% - 20%
Cargill	Wheat	1% - 10%
	Corn	10% - 20%
Bunge	Wheat	0% - 10%
	Corn	0% - 10%
Venus	Wheat	0% - 10%
	Corn	0% - 10%
Cairo 3A	Wheat	0% - 10%
	Corn	20% - 30%
LDC (**target**)	Wheat	0% - 9%
	Corn	0% - 9%

22. The CID noted that within the Common Market, the parties have a limited overlap in the wholesale trading of grain in Egypt which will lead to a market share accretion of less than 5%, post-merger. The CID also noted that the Egyptian market is characterised by larger players who will continue to compete with the parties post-merger.

23. With respect to the COMESA-wide market, the CID observed that despite the absence of COMESA-wide market shares, the parties' market shares for the region are likely to be diluted due to the numerous players trading at regional level. As a result, competition concerns are not likely to emanate at regional level since the market shares accretion in the wholesale trading of grain will be minor resulting from the limited overlap in Egypt, the only Member State where the parties' activities overlap within the Common Market.

24. The CID observed that the market for the wholesale trading of grain is characterised by barriers to entry in the form of regulatory and licensing requirements, adherence to sanitary and phyto-sanitory measure, storage and transportation costs, and non-tariff barriers to trade. However, the CID noted that the barriers to entry are not significant given the efforts under the COMESA Free Trade Area arrangement aimed at facilitating trade, such as the COMESA Mutual Recognition Framework for Conformity Assessment in maize and maize products that seeks to ensure recognition of standards among Member States. Other initiatives under COMESA include programmes for the elimination of non-tariff barriers to trade.

25. The CID also observed that a number of COMESA Member States are large importers of grain. For instance, it was noted that between 2014 and 2018 Egypt was amongst the top importers of grain in Africa valued at $4.1 billion followed by Algeria ($2.6 billion)

and Morocco ($1.4 billion)[5]. Other major import countries in COMESA included Tunisia, Sudan, Libya, Kenya, and Zimbabwe.

26. In light of the above, the CID noted that the transaction results in a minimal change in the market structure due to the limited overlap in the wholesale trading of grain in Egypt. The CID also noted that the market for the wholesale trading of grain is characterised by low barriers to entry. Therefore, the transaction is not likely to result in any creation or strengthening of market power given the minor accretion of market shares of less than 5%. It was therefore concluded that the transaction will not frustrate trade between Member States.

Third-Party Views

27. Submissions were received from the Egyptian Competition Authority, Conseil de la Concurrence de Madagascar, Competition and Fair Trading Commission (Malawi), Competition Commission (Mauritius), and Competition and Consumer Protection Commission (Zambia) who confirmed that the transaction was unlikely to raise competition concerns. The submissions were consistent with the Commission's assessment of the transaction.

Conclusion

28. 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.

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

Dated this 16th of April 2021

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Commissioner Brian M. Lingela (Chairperson)

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Commissioner Justice Charlotte Wezi Malonda **Commissioner Ellen Ruparanganda**

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5 https://www.globaltrademag.com/grain-consumption-in-africa-continues-rising/