



COMESA Competition Commission

Kang'ombe House

P.O. Box 30742

Lilongwe 3, Malawi

Tel: +265 1 772 466

Email- compcom@comesa.int



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/04/24/2022

Decision¹ of the Eighty-Fifth (85th) Committee Responsible for Initial Determinations Regarding the Proposed Joint Acquisition by Pharma-Q Holdings Proprietary Limited and Imperial Logistics Limited of Ascendis Pharma Proprietary Limited, Alliance Pharma Proprietary Limited, Pharmachem Pharmaceuticals Proprietary Limited and Medicine Developers International Proprietary Limited

ECONOMIC SECTOR: Pharmaceutical

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A handwritten signature in black ink, featuring a large, bold, stylized 'B' or 'P' followed by several loops and a horizontal stroke.

A handwritten signature in black ink, consisting of a simple, elegant horizontal stroke followed by a small loop.

2 August 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 11 May 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Pharma-Q Holdings Proprietary Limited ("**Pharma-Q Holdings**") and Imperial Logistics Limited ("**Imperial**") (as the acquiring firms) and Ascendis Pharma Proprietary Limited ("**Ascendis Pharma**"), Alliance Pharma Proprietary Limited ("**Alliance Pharma**"), Pharmachem Pharmaceuticals Proprietary Limited ("**Pharmachem Pharmaceuticals**") and Medicine Developers International Proprietary Limited ("**Medicine Developers International**") (as the target firms), pursuant to Article 24(1) of 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

Pharma-Q Holdings (acquiring undertaking)

4. Pharma-Q Holdings has its registered address at 50 Commando Road, Industria West, 2093, Johannesburg. Pharma-Q Holdings is a pharmaceutical intellectual property and brand owner and manufacturer of various pharmaceutical products in South Africa which include over-the-counter and ethical products.
5. Pharma-Q Holdings controls Pharma-Q Proprietary Limited ("**Pharma-Q**"), which is the operating entity within the Group. Pharma-Q is a pharmaceutical intellectual property and brand owner and manufacturer of liquids (such as oral syrups, suspensions, oral gargles and sprays); creams (such as topical and vaginal creams); ointments (such as topical ointments, topical and vaginal gels, and haemodialysis products); and sterile products (such as ampoules, dental cartridges and eye drops). In the Common Market, Pharma-Q's activities are limited to the sale of two products, namely Pharma-Q Bupivacaine spin&dextrose and Pharma-Q Dopamine 200mg/5ml which are sold through an agent in Eswatini and Zimbabwe.
6. The shareholders of Pharma-Q Holdings, control firms which have operations in the Common Market. These include:
 - a) Amka Group which is involved in the manufacture of personal care products including perfumes, cosmetics and other toiletry preparations in the Fast-Moving Consumer Goods market in South Africa which it supplies into many Member States either directly or through wholesalers based in South Africa. The Amka Group specifically supplies products within the bath care, body care, skin treatment and ethnic hair product categories.
 - b) Nativa Proprietary Limited which is a pharmaceutical marketing and sales company that operates in the alternative health and natural healthcare markets.
 - c) Viva Healthcare FZ LLC and Micro Labs Limited which also operate in the pharmaceutical sector. Micro Labs Limited is an Indian based pharmaceutical company with certain manufacturing plants globally and with interests in East Africa. Micro Labs Limited is engaged in the manufacturing and marketing of pharmaceutical products and active pharmaceutical Ingredients². Viva Healthcare FZ LLC is involved in the marketing, sales and distribution of healthcare products in the Middle East. Viva Healthcare FZ LLC specialises in

² www.microlabsltd.com/about-us/corporate-profile accessed 1 August 2022

working with pharmaceutical manufacturers to assist in the sales and distribution of their products³.

Imperial (acquiring undertaking)

7. Imperial has its registered address at Imperial Place, Jeppe Quondam, 79 Boeing Road East, Bedfordview, South Africa. Imperial and the various companies which form part of the Imperial group of companies are principally established transport and logistics providers in various African countries, and also providers of contract logistics and freight services in Europe and the United Kingdom. The industries served by Imperial are primarily the healthcare, consumer, automotive, chemical, and industrial sectors.
8. Imperial's business can broadly be categorised in terms of two overarching solutions, namely:
 - a) Market access services: The market access business operates mainly in Sub-Saharan Africa and provides route-to-market solutions, enabling clients to reach their respective customers and consumers through comprehensive channel strategies that integrate logistics sourcing, sales, distribution and marketing. As part of these functions, Imperial takes ownership of the principal's⁴ inventory as well as the responsibility for the full order-to-cash function. In this respect, Imperial essentially operates as a wholesale distributor of FMCG and pharmaceutical products.
 - b) Logistics services: Through its logistics operations, Imperial manages the movement of products on behalf of clients between specified locations (where the products are sourced to specified destinations), combining different transportation modes and types. In order to reduce its time-to-market, improve customer service and mitigate risk, Imperial integrates its logistics functions into its client's end-to-end supply chain. Imperial also performs the function of a lead logistics provider, managing multiple supply chain functions for its clients. Imperial also offers logistics activities across Africa, including road freight, contract logistics and lead logistics provider services. Outside of Africa, Imperial's activities include road freight, contract logistics, air and ocean freight, and lead logistics provider services.
9. The activities of Imperial in the Common Market relate to wholesale distribution and logistics services.
10. Imperial is ultimately controlled by DP World Limited ("**DP World**"), a multinational logistics company incorporated in the Dubai International Financial Centre, Dubai,

³ www.vivagroup.org.in/manufacture-distribution-arrangements accessed 1 August 2022

⁴ The parties have explained that a principal is a brand owner of a product portfolio. Principals can appoint distributors/agents to execute their commercial strategy and by means of an agreement, utilise the distributor's/agent's services, warehousing, distribution, sales, merchandising and carrying of the book provided

United Arab Emirates. DP World specialises in port terminal operations, maritime services, free trade zones and cargo handling and logistics services (i.e., discharging and loading of vessels and related activities).

Ascendis Pharma, Alliance Pharma, Pharmachem Pharmaceuticals Proprietary and Medicine Developers (the target undertakings)

11. Ascendis Pharma has its registered address at 31 Georgian Crescent East, Bryanston, Gauteng, 2191, South Africa. It is a pharmaceutical company with well-known brands primarily within the private and public sectors of the South African pharmaceutical industry. Ascendis Pharma is a marketer and distributor of prescription and Over The Counter ("OTC") medicines and sells its products in the COMESA member states through distributors who on sell the products to the end-customer. Ascendis Pharma classifies its portfolio of products as wellness products which are vitamin and mineral products, medical and pharma products⁵.
12. Pharmachem Pharmaceuticals is a dormant firm that holds no pharmaceutical licenses.
13. Alliance Pharma and Medicine Developers International hold pharmaceutical licenses and dossiers⁶ (which are mainly dormant) and have no commercial activities.

Jurisdiction of the Commission

14. 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 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*

⁵ <https://ascendishealth.com/business-units/wellness/> accessed 1 August 2022

⁶ A dossier is a collection of documents that contain the general information on products (including the ingredients, how the product is made, how it is administered, quality, clinical and non-clinical data); which is registered with the South African Health Products Regulatory Authority.

two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

15. 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 they each hold 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

16. The proposed transaction involves Pharma-Q Holdings and Imperial acquiring 51% and 49% of the shares, respectively, in Ascendis Pharma, Alliance Pharma, Medicine Developers International, and Pharmachem Pharmaceuticals from Ascendis Health SA Holdings.

Competition Assessment

Relevant Product Market

17. The CID noted that there is an overlap between the activities of the acquiring firms and the Target firms in the pharmaceutical sector. On the acquiring side, Pharma-Q's supplies Bupivacaine spin&dextrose and Dopamine through an appointed distributor; Nativa is a pharmaceutical marketing and sales company that operates in the alternative health and natural healthcare markets; while Imperial is a wholesale distributor of pharmaceutical products.
18. On the target side, Ascendis Pharma is involved in the manufacture, marketing and distribution of pharmaceutical products. Ascendis Pharma sells non-narcotic pain and fever pharmaceutical product under the brand name of Feverpain.
19. The transaction thus results in a horizontal overlap between Pharma-Q and Ascendis in relation to the manufacture of pharmaceutical products; and a vertical link between Imperial and Ascendis in relation to the distribution of pharmaceutical products.

Manufacture of Pharmaceutical Products

20. A pharmaceutical product is made up of one active ingredient which is used to treat particular conditions, such that its intended therapeutic use limits its therapeutic substitutability⁷. Pharma-Q's products supplied in the Common Market are Bupivacaine spin&dextrose which is used for spinal anaesthesia to cause numbness and prevention of pain for patients undergoing some medical procedures; and

⁷ Case M.8889 - Teva / PGT OTC Assets (29/06/2018), paragraph 26

Dopamine 200mg/5ml is used for the correction of poor perfusion, low cardiac output, impending renal failure and shock associated with myocardial infarction, trauma, endotoxic septicaemia, open heart surgery and heart failure.

21. On the other hand, the products sold by Ascendis Pharma are considered non-narcotic analgesics used to treat mild to moderate pain⁸; they fall under the range of medication used to treat conditions such as headaches, fever, cold and flu symptoms and other pain conditions⁹. The active ingredient is paracetamol and are used to treat mild to moderate pain and fever in children.
22. The products supplied by the merging parties fall under different classification in terms of their intended use. Further segmentation could be identified in terms of the manner in which they are sold (e.g. over the counter or on prescription) or administered (syrops, tablets or soluble effervescent or intravenous). However, given that there can be no logical substitution between Pharma-Q's and Ascendis Pharma's products, the CID has not further assessed these markets.

Distribution of Pharmaceutical Products

23. As noted above, a vertical link can arise as a result of the transaction in view of Imperial's distribution activities. Imperial operates as a wholesale distributor of pharmaceutical products. In Eswatini, Imperial distributes pain medication. Pharmaceutical products are sensitive to damage and require specific transportation logistics which provide cushion to the products. However, protective materials which are usually polystyrene is easily available. Additionally, the distribution of pharmaceutical products requires specific regulatory licences but the CID observed that once such licences are obtained, the distribution of pharmaceutical products is fairly the same for all pharmaceutical products, to the exception of temperature-sensitive pharmaceutical products. The CID noted that the parties' products do not require temperature-controlled vehicles, as such, for purposes of this assessment, the CID considered the broad market for wholesale distribution of pharmaceutical products.

Relevant Geographic Market

24. In relation to the distribution of pharmaceutical products, in view of security of supply and transportation costs, retailers are likely to procure their required products from distributors which are geographically closer, and more likely than not, within the national borders. For instance, in Mauritius, pharmacies stock products from local distributors and indeed, there are local distributors of renowned pharmaceutical companies registered in Member States.

⁸ Case M.8889 - Teva / PGT OTC Assets (29/06/2018), paragraph 48

⁹ Case No COMP/M.3544 - Bayer Healthcare / Roche (OTC Business) (19/11/2004), paragraph 21

25. For this reason, the CID considered that the geographic market for wholesale distribution is national. The CID has focussed its assessment on the national market in Eswatini, being the territory of overlaps where Pharma-Q, Imperial and Ascendis operate.

Market Shares and Concentration

26. The CID noted that there would be no change in market structure in view of the absence of overlap pre-merger, and further that the merged entity would continue to face competition from existing competitors such as Dezzo Trading, PRO Distributors, Adcock Ingram, and UPD.
27. The CID considered that entry into the relevant markets was not likely to be timely or sufficient to constrain the merging parties' behaviour post-merger. Nonetheless, the merger itself will not contribute to creating or heightening the barriers to entry in the relevant markets.
28. The transaction will not result in any market share accretion in the relevant market, and thus will not lead to unilateral effects or coordinated effects.
29. The CID assessed whether the transaction is likely to create vertical concerns where the merged entity might be incentivised to foreclose access of competing pharmaceutical manufacturers to Imperial's distribution's facilities. The CID noted that in Eswatini, Imperial has an insignificant market share in relation to the narrow market for pain medication. Further, the Eswatini Competition Commission submitted that the merged firm does not possess market power in Eswatini; as such any strategy of foreclosure by the merging entity would not be successful nor sustainable.

Third-Party Views

30. Submissions were received from the national competition authorities of Kenya, Malawi, Mauritius, Seychelles, and Zambia which confirmed the absence of competition concerns arising or likely to arise from the proposed transaction. This is consistent with the CID's assessment, as presented above.

Determination

31. 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.



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

Dated this 2nd day of August 2022



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Commissioner Brian Muletambo Lingela (Chairperson)



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Commissioner Lloyds Vincent Nkhoma



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Commissioner Islam Tagelsir Ahmed Alhasan