



COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesacompetition.org



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/09/28/2023

**Decision¹ of the 103rd Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition of Indirect Joint Control of Awash Wine Share
Company by Ascent Capital Holdings Africa II Ltd and
Zoscales Fund I LP**

ECONOMIC SECTOR: Alcoholic Beverages



13 December 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

Desirous 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 26 September 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Ascent Capital Holdings Africa II Ltd (“**Ascent Capital**”), Zoscales Fund I LP (“**Zoscales Fund I**”) and Awash Wine Share Company (“**Awash**” or the “**target**”), 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.



- 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

Ascent Capital

- Ascent Capital is an investment holding company incorporated under the laws of Mauritius. Ascent Capital is controlled by Ascent Rift Valley Fund II (“ARVF II”), which is in turn managed by Ascent Capital Management Africa II Ltd (“Ascent II”). Ascent Capital, ARVF II, Ascent II and entities controlled by Ascent Capital, ARVF II and Ascent II are collectively referred to as the “Ascent Capital Group”. In the Common Market, the Ascent Capital Group is active in the Democratic Republic of Congo (“DRC”), Kenya, Mauritius, Uganda and Zambia.
- The Ascent Capital Group’s controlled portfolio companies engage in the following activities in the Common Market as listed in Table 1 below:

Table 1 – Activities of the Ascent Capital Group’s controlled portfolio companies in the Common Market

Member State	Name of Company	Activity
DRC	Premier Credit Congo Limited	Provides loans to individuals and small and medium sized enterprises
Kenya	ACME Containers Limited	Manufacture of plastic products
	Platinum Credit Limited	Provides loans to individuals and small and medium sized enterprises
	Premier Credit Limited	Provides loans to individuals and small and medium sized enterprises
	Momentum Credit Limited	Provides loans to individuals and small and medium sized enterprises
	Viva Insurance Brokers Limited	Provides insurance brokerage services
	Eezy Track Limited	Offers tracking, valuation, repossession, storage, maintenance and auctioneering



		solutions to the financial, leasing and insurance industries
	Diani Beach Hospital Limited	A general 100-bed hospital with no specific specialties or super-specialties. It is not a teaching hospital
	Valley Hospital Limited	Provision of healthcare services
Mauritius	Platcorp Holdings Limited	An investment holding company
Uganda	Platinum Credit Ltd	Provides loans to individuals and small and medium sized enterprises
	Premier Credit Ltd	Provides loans to individuals and small and medium sized enterprises
	TrackNav (SMC) Ltd	Offers tracking, valuation, repossession, storage, maintenance and auctioneering solutions to the financial, leasing and insurance industries
Zambia	Spectrum Credit Limited	Provides loans to individuals and small and medium sized enterprises

Zoscales Fund I

6. Zoscales Fund I is a limited partnership with legal personality registered in Mauritius. Zoscales Fund I is ultimately controlled by Zoscales General Partners, which together with its controlled and controlling affiliates is referred to as the “**Zoscales Group**”, is a private equity fund with offices in Addis Ababa, Nairobi and Zurich. In the Common Market, the Zoscales Group’s controlled portfolio companies are active in Ethiopia and Kenya.
7. The Zoscales Group’s controlled portfolio companies engage in the following activities in the Common Market as listed in Table 2 below.

Table 2 – Activities of the Zoscales Group’s controlled portfolio companies in the Common Market

Member State	Name of Company	Activity
Ethiopia	Crown Cork Manufacturing PLC	Manufactures and supplies metal crown caps to the carbonated soft drinks and beer producers
	Ethio–Asian Industries S.C.	Manufactures and distributes a diverse portfolio of well-known personal care and laundry soaps



	Ahadukes Food Products S.C.	Mainstream biscuit production
	Pioneer Diagnostic Centre	Provider of quality imaging diagnostic services in Ethiopia, with a portfolio of state-of-the-art new generation 1.5T MRIs, CT scans, X-Rays and Ultrasounds
	Africa Jobs Network	Online employment search engine with operations in Ethiopia and Kenya. The company generates a large proportion of its revenue from online job listing packages, recruitment services and consultancy and training
Kenya	Premier Hospital	Healthcare provider in Mombasa, Kenya
	Africa Jobs Network	Online employment search engine with operations in Ethiopia and Kenya. The company generates a large proportion of its revenue from online job listing packages, recruitment services and consultancy and training

Awash (the target)

8. Awash is a company incorporated in accordance with the laws of Ethiopia. Awash is only active in one Member State, namely Ethiopia, where it carries on the business of producing wine and a ready-to-drink cocktail.

Jurisdiction of the Commission

9. 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 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, 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.

10. The undertakings concerned have operations in two or more Member States. The merging parties hold a combined asset value in excess of the threshold of USD 50 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate 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

11. This transaction entails Ascent Capital and Zoscales Fund I acquiring an indirect joint control of Awash through Bacchus M8 Limited.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

12. The CID noted that Ascent Capital is an investment holding company with investment in companies operating in the finance, insurance, plastic and healthcare sector.
13. The CID also noted that Zoscales Fund I's portfolio companies operate in a range of sectors, namely manufacturing (metal crown caps for use by the carbonated soft drinks and beer producers, personal care and laundry soaps, biscuits), medical equipment, consultancy, healthcare and online employment search engine.
14. The CID noted that the target on the other hand produces wine and ready to drink alcoholic cocktails.
15. The CID observed that the metal crown caps of Zoscales can be used for the ready to drink alcoholic cocktails produced by the target. The CID observed that this creates a vertical overlap between the activities of the target and Zoscales whereby the metal caps can be used as an input to the production of the target's ready to drink alcoholic cocktails.



16. The CID has previously distinguished the beverages market into the alcoholic and non-alcoholic segment². The CID considered the market for alcoholic beverages as distinct from the market for non-alcoholic beverages on the premise that the utility derived from consuming an alcoholic beverage is different from that derived from consuming a non-alcoholic beverage. The CID also pondered on the high unlikelihood or improbability of consumers switching to consuming a non-alcoholic beverage on account of a 5 – 10% increase in the price of an alcoholic beverage. The identification of the relevant product market in the current assessment will therefore take a similar approach and will be limited to assessing the alcoholic beverages' market as a unique and distinct market from the non-alcoholic beverages.
17. Given that the target manufactures alcoholic drinks, the focus of the product market is on the alcoholic beverages segment.

The manufacture and supply of wine

18. The alcoholic beverages market comprises of different alcoholic drinks such as wine, beer, whisky, gin, vodka and brandy. The taste, characteristics and composition of these products also vary. For instance, the alcoholic content of beer is much lower, beer is fizzy and beer can be consumed directly whilst spirits are often consumed with mixtures such as water or another soft drinks.
19. For the reasons of taste, product characteristics, alcoholic content, intended use and production process, each type of alcoholic drink constitute a different market. While it is noted that both beer and wine are produced through the process of fermentation, the key inputs in the production processes are different. Beer is produced from grain while wine is produced from grapes (red or white) which gives it a unique colour as compared to beer. Further differences can be seen in the pricing whereby beer tends to be cheaply priced than wines. However, it is unlikely that given a small but significant non-transitory increase in the price of wine, a consumer would switch to another alcoholic beverage, since alcoholic drinks such as wine and whiskeys tend to be consumed by people with a certain acquired taste of the drink and related to a lifestyle whereby wine is consumed on certain occasions and paired with certain meals.
20. From a supply perspective, it is also unlikely that a winery would switch to production of another alcoholic beverage given a small but significant non-transitory increase in the price of beer in comparison to the price of wine. The cost

² CCC/MER/03/03/2015, Decision of the 16th meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Coca-Cola Beverages Africa Limited and the Coca-Cola SABCO Proprietary Limited



of switching production of wine to the other alcoholic beverage would be impracticable and likely to be high, entailing modifying the production equipment. For instance, whisky, beer and wine all require some time to mature after production but the equipment used in maturity process are different. Beer matures in cooled pressure tanks³ while wine matures in barrels that are stored under cool temperatures. Switching production from beer to wine would therefore mean purchasing new wine barrels and abandoning the pressure tanks. Further, since wine requires a longer maturity period ranging from 6 months to 3 years while beer requires 1 to 2 weeks before it is bottled and ready for consumption, it can be interpreted that the cost of switching production of beer to production of wine would be significantly high in this sense.

21. In line with the CID's previous decision⁴ which determined that based on their characteristics, beer, wine and spirits are different products, the CID is of the view that wine constitutes a different product market.
22. As stated, wine is an alcoholic beverage made from fermented grape juice using cultured yeast where sugar and yeast combine and produce alcohol and carbon dioxide⁵. After fermentation, wine is stored in barrels at cool temperature for maturity. In the case of red wine, the grape skins are firstly removed from the wine before placing it in the barrels. The maturity process for wine can take anything from 6 months up to 3 years. The quality of wine increases as the wine ages.
23. Wine can either be still or sparkling. Still wine is the oldest type of wine which is mostly consumed around the world. Sparkling wine is fizzy and is a relatively new product which is consumed as part of the mild alcoholic category. Wine can also be further segmented according to flavours, namely red, white and rose wine. Red wine is the most popular flavour and is usually warmer and consumed for its perceived health related benefits to improve the heart's health. White wine is usually colder and consumed paired with certain meals. Rose wine has a lower alcoholic content and usually the preferred to be consumed by female customers.
24. For the purposes of this transaction, the CID, while acknowledging that there can exist sub-markets or narrower markets, considered that a broad market for the manufacture and supply of wine can be defined.

³ <http://www.czechminibreweries.com/production/nanobreweries/>

⁴ CCC/MER/12/32/2016, Decision of the 31st meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger between B.I.H. Brasseries Internationales Holdings Limited and Carlsberg Malawi Limited

⁵ <https://www.verifiedmarketresearch.com/product/wine-market/> accessed 3 November 2023



The manufacture and supply of alcoholic cocktail mix

25. A cocktail drink is a mixed drink comprising of a base, which can be sparkling water, fruit juice, iced tea or a carbonated soft drink to which scents, flavours and alcohol is added. The base used for cocktails give the drink a fresh taste and is thirst - quenching. Cocktails are usually in the form of a long drink designed to be consumed on its own or to accompany a meal. Cocktails are usually consumed for a happy moment or a moment of relaxation.
26. Alcoholic cocktails have very low alcohol content as compared to an alcoholic drink. Cocktails can also be categorised into alcoholic and non – alcoholic. Non-alcoholic cocktails are also consumed by different target groups. For instance, non-alcoholic cocktail can be served to under aged people whereas alcoholic cocktail can only be consumed by adults.
27. To this end, the CID considered that there exists a distinct market for the manufacture and supply of alcoholic cocktail mix.

The manufacture and supply of metal crown caps

28. Caps used in the packaging of drinks can be made of plastic or metal. Metal caps can be in the form of screw caps or crown caps. Plastic caps are only in the form of screw caps.
29. Screw metal caps as stated can be made of plastic or metal. The purpose of such caps is to allow the consumer to open the drink by unscrewing it. Screw caps allow the consumer to screw the caps again on the packaging to save the remaining portion of the drink. The neck of the packaging has to been designed to fit a screw cap. Without the screwing tip, a screw metal cap cannot be used on a bottle. Plastic screw caps form a part of the packaging of drinks in PET bottles.
30. Metal crown caps are used in the packaging of drinks which are sold in glass bottles to seal the packaging and maintain the freshness of the drink. Such caps serve to make the packaging airtight which keeps the product fresh and carbonated. The metal cap is crimped onto the glass bottle through sealing pressure. Such packaging requires to be opened with the help of a bottle opener and once opened, the cap cannot be put back on the packaging. For this reason, metal crown caps are mostly used on drinks which are packaged in a format which are relatively small. Metal crown caps are therefore mostly used for 350 ml drinks which come in glass bottles such as beer and ready to drink alcoholic beverages.
31. On the demand side, therefore, the type of the bottle will dictate the type of cap which is required.



32. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets were considered as the:
- a) manufacture and supply of wine;
 - b) manufacture and supply of alcoholic cocktail mix; and
 - c) manufacture and supply of metal crown caps.

Relevant Geographic Market

33. The CID noted that the target is engaged in the production of wine and alcoholic cocktail mix in Ethiopia only. The CID is of the view that it is unlikely that the target will be able to timely switch the production of the latter products to another Member State in response to a 5 – 10% increase in the prices of the products in the other Member State. This is because the production of such products is done with a regulated framework whereby licences, including relevant operating and environmental licences are required. Additionally, raw materials, grapes are not grown in every Member State given the differing climatic and topographical conditions.
34. In view of the foregoing, for purposes of this transaction, noting that any alternative market definition would not affect the outcome of the competitive assessment, the CID focussed on the national markets of Ethiopia for wine and alcoholic cocktail mix.
35. Metal crown caps can be produced in Member States such as is the case with Zoscales or can be imported from outside the Common Market, from countries such as China and India. Importation of metal crown caps is not likely to require prohibitive import licensing requirements in the Common Market. Importation of such products are likely to be in bulk whereby the per unit price is likely to be obtained at relatively low. In the case of a 5-10% increase in the price of metal crown caps in the Common Market, it is considered that manufacturers of drinks are likely to switch their purchases from suppliers outside the Common Market. Therefore, the CID considered the market for the production and supply of metal crown caps as global.

Conclusion on Relevant Market Definition

36. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID identified the relevant markets as:
- a) ***the manufacture and supply of wine in Ethiopia,***



- b) *the manufacture and supply of alcoholic cocktail mix in Ethiopia, and*
- c) *the global market for the manufacture and supply of metal crown caps.*

Market Shares and Concentration

37. The CID noted the submitted the market shares of the target and its competitors in Ethiopia per Table 3 below.

Table 3: Estimated Market Shares of the target and its competitors for the production of wine and alcoholic cocktail mix

Manufacturer	Market Shares (June 2022 – June 2023)
Castel Winery PLC	10% - 15% based on sales volumes
Komari Beverage PLC	75% - 80% (based on sales volumes and specifically relating to the ready-to-drink cocktail segment)
Target	<p>75% - 80% in the value category (comprising the Awash and Gouder brands)</p> <p>5% - 10% in the premium category (comprising the Kamila, Axumit and Gebeta brands) and</p> <p>10% - 15% in the wine based cocktail category (comprising the Dankira brand).</p>

- 38. The CID noted that the acquirers do not operate in these relevant markets. Hence, the transaction will not result in a change in the market structure, by way of market share accretion, in the respective markets for the manufacture and supply of wine and alcoholic cocktail mix in Ethiopia.
- 39. The CID also noted that Zoscales’ estimated market shares for the manufacture and supply of metal crown caps in Ethiopia is approximately 25%-30%.
- 40. The CID assessed whether post the transaction, the merged entity will have the ability and incentive to restrict the supply of its metal crown caps to competitors of the target, in a manner which will significantly lessen competition in the market for the supply of alcoholic cocktail mix (input foreclosure); and/or whether the merged entity will have the ability and incentive to stop purchasing metal crown caps from the competitors to Zoscales in a manner which will significantly lessen competition in the market for the supply of metal crown caps (customer foreclosure).



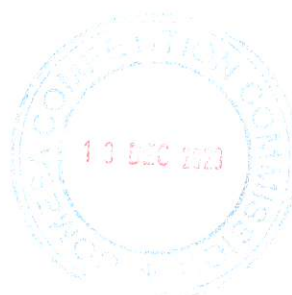
41. The CID noted that Zoscales has a market share of approximately 25%-30% for the manufacture and supply of metal crown caps in Ethiopia. The CID noted that the demand for metal crown caps in Ethiopia exceeds the local supply and that multinational breweries and carbonated soft drink bottlers in Ethiopia import metal crown caps to meet their demand. In view of the high demand for metal crown caps and limited supply, the CID assessed whether the transaction is likely to lead to input foreclosure.
42. The CID noted that the market for the manufacture and supply of metal crown caps is characterised by substantial imports. Despite Zoscales having a market share of approximately 25% - 30% in this market, it is unlikely to have market power to increase prices without any competitive constraint. The CID considered that the merged entity does not have any ability to engage in input foreclosure, because any attempt to increase prices will result in its customers choosing to import metal crown caps.
43. The CID noted that metal crown caps form part of packaging of the alcoholic cocktail mix and represents a minimal cost in the production of the product. In view of the minimal proportion that metal crown caps represent in the total cost of production, the CID is of the view that it is unlikely that the merged entity will have the incentive to engage in input foreclosure.

Consideration of Third-Party Views

44. The CID considered submissions from the national competition authorities of Mauritius, Kenya and Zambia which did not raise any concerns in relation to the transaction, which submissions are consistent with the CID's findings, as discussed above.

Determination

45. Based on the circumstances of the case and having regard to the foregoing assessment, 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.



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

Dated this 13th day of December 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

