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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/03/13/2024

Decision[1] of the 117th Meeting of the Committee Responsible for Initial Determinations Regarding the Merger involving Africa Poultry Development Limited and HMH-KUKU Limited

ECONOMIC SECTOR: Poultry

COMESA COMPETITION COMMISSION
03 MAY 2025

03 May 2025

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 9 April 2024, the COMESA Competition Commission (the "**Commission**") received a notification regarding the merger involving HMH-KUKU Limited, formerly known as HMH Rainbow Limited ("**HMH**" or the "**Target**"), Brixham Africa Holdings ("**BAH**") and RMR Investments ("**RMR**"), (BAH and RMR, together referred to as the **Direct Holdco Targets**) and Africa Poultry Development Limited ("**APDL**" or the "**Acquirer**"), 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.

4. Article 25(1) of the Regulations provides that the Commission shall examine a merger within 120 days after receiving the notification. The 120-day statutory timeline for assessing this merger expired on 13 August 2024. Pursuant to Article 25(2) of the Regulations the CID granted extensions of the assessment timeline for a total number of 240 days to allow the Commission to further assess the likely competition concerns from the transaction including engaging the relevant stakeholders in the affected Member States.

5. On 10 February 2025, the Commission issued the parties a Statement of Concerns which included proposed recommendations to address the identified competition concerns. The parties were provided sufficient and reasonable time to the Commission's Statement of Concerns until 4 April 2025.

The Parties

APDL (the "Acquirer")

6. The parties submitted that APDL is a holding company incorporated in Mauritius with operating subsidiaries in the Common Market in Kenya, Zambia and Uganda, namely Kenchic Limited in the Common Market in Kenya; Hybrid Poultry Farms Zambia Limited, Verino Agro Industries Limited and Eureka Chickens Limited in Zambia; and Kenchic Uganda Limited in Uganda.

7. The acquiring firm's shareholding in these operating subsidiaries is held through intermediate holding companies registered in Mauritius, namely Kenya Poultry Development Limited, Hybrid Poultry (Mauritius) Limited, Grassmere Holdings Limited and Ugabreed Limited. Within the Common Market, the acquiring group (collectively, APDL and its subsidiaries) is involved in poultry feed production, selling day-old chicks ("**DOCs**") and supplying processed chickens. In Kenya and Zambia, the acquiring group is involved in poultry feed production, selling DOCs and supply of processed chickens whereas its only activity in Uganda is the sale of DOCs.

8. The parties submitted that the following additional information regarding their operations in the Common Market[2]:

    i. The supply of DOCs by Kenchic Uganda Limited in the Ugandan market began in July 2023 when APDL opened its own hatchery in Uganda and prior to opening, the supply of DOCs to the Target and other customers in Uganda was done by the Acquirer from its hatchery in Kenya;

    ii. The acquiring firm also sells layer DOCs and coloured DOCs (i.e., hybrid of the layer and broiler DOCs) to third party customers in Uganda but it does not sell layer DOCs or coloured DOCs to the Target, given that layer DOCs and coloured DOCs are not the focus of the target firm's business, which is a broiler operation.

[2] The parties claimed confidentiality on this information

COMESA COMPETITION COMMISSION
03 MAY 2025

All sales of coloured DOCs by the Acquirer in Uganda are made to small scale farmers, and none to the Target;

iii. In addition to the Target and about [redacted] other significant customers who purchase up to [redacted] broiler DOCs at a time, the acquiring firm mainly sells broiler DOCs to small scale farmers through its shops/distribution points across Uganda. The Acquirer also sells bespoke feed at these distribution points, which are specifically made to support the growth of Ross 308[3];

iv. As a value add to its customers, [redacted]. All of this support is of direct benefit to the farmers by increasing their yield and their incomes over time;

v. Within the Common Market, the Acquirer produces Ross 308 eggs in Zambia from its breeder operation run through Hybrid Poultry Farms Zambia Limited, its wholly owned indirect subsidiary. The Acquirer produces the Ross 308 breed of eggs in Zambia under licence from Aviagen East Africa Limited ("**Aviagen EA**"). Aviagen EA is a Tanzanian based breeder operation and a subsidiary of the global Aviagen Group that owns the genetic/intellectual property right in the Ross 308 breed;

vi. The Acquirer has a non-controlling minority stake (24%) in Aviagen EA, with the global Aviagen Group holding the remaining 76% of the shares in Aviagen EA. As [redacted]. Eggs from the Acquirer's breeder operations in Zambia and the non-controlled breeder operation in Tanzania are supplied to the Acquirer's hatcheries in Kenya and Uganda, for hatching and further distribution of DOCs to customers within those markets;

vii. [redacted];

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[3] Ross 308 is a brand of broiler chicken breed which is owned by Aviagen, https://aviagen.com/en/

viii. In respect of the coloured DOCs, the Acquirer supplies Kenbro and Sasso breeds in Kenya and Uganda; and the Hubbard and Sasso breeds in Zambia;

ix. All the DOCs supplied by [redacted] The breeder operator (i.e., the Acquirer) can supply the eggs it produces without limitation within the Common Market, and it indeed does so, as explained in the paragraphs above. Further, customers can also purchase eggs directly from the genetic owners in any market within the Common Market.

HMH (the "Target")

9. The parties submitted that the Target is a Uganda registered company that is involved in poultry feed production and the supply of processed chickens in Uganda. The Target has dormant non-operating subsidiaries in the Common Market, namely HMH Rainbow (K) Limited in Kenya (which will be hived off from the Target prior to the completion of the proposed transaction) and HMH Rainbow (R) Limited in Rwanda.

10. BAH and RMR, the Direct Holdco Targets, are holding companies which do not have any turnovers or substantive assets in the Common Market or elsewhere except for their investments in the Target.

Jurisdiction of the Commission

11. 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".

12. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived value of asset of more than the threshold of USD 50 million in the Common Market and they each derived a turnover of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds

of their respective aggregate turnover or asset value in one and the same Member State. The CID was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

13. The notified transaction involves APDL acquiring the entire issued share capital of the Target (directly and indirectly through acquiring BAH and RMR).

Competition Assessment

14. The CID observed that countries in sub-Saharan (SSA) Africa have experienced relatively high economic growth from the mid-2000s, along with rapid urbanization, leading to the consequent increase in demand for processed food. Among the processed foods, poultry has been in particularly high demand as this is the main source of protein in southern African countries, as in most developing countries (Steinfeld et al. 2006).[4] As a result, the commercial poultry industries in some countries in the Common Market have been growing rapidly (Technoserve 2011a).[5]

15. The CID observed that the poultry industry is a very important part of agro-processing, a major driver of development and job creation within the region. Firstly, production of poultry has increased following the demand for processed foods spurred on by increases in urban populations. Secondly, poultry is the main source of animal protein in many African countries including the Common Market. Thirdly, consumption in the region has increased, particularly in South Africa, the largest market in southern Africa, increasing from 23 kg per capita in 2003 to almost 40 kg per capita in 2015. This shows the greater reliance on poultry as a source of protein. The CID also noted that poultry has strong backward linkages from poultry production to the production of maize and soya for animal feed which are key inputs in the poultry production process.[6]

16. In its assessment, the CID noted the poultry and feed value chain as per in Figure 1 below.

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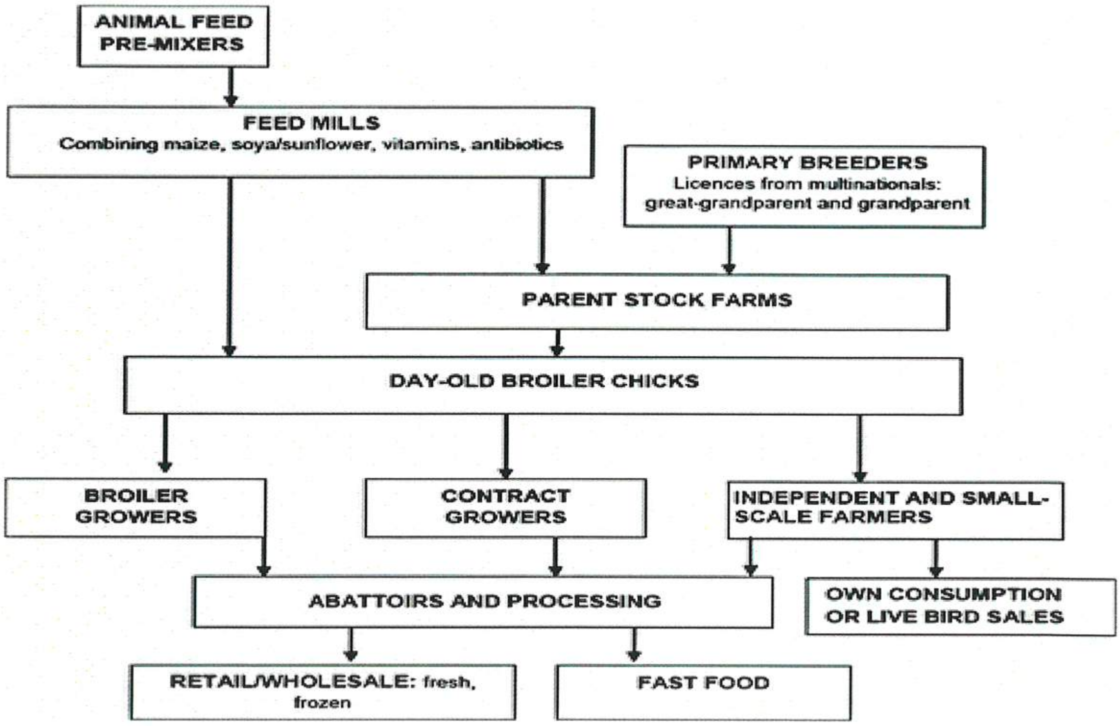
[4] Steinfeld, H., T. Wassenaar, and S. Jutzi (2006). 'Livestock Production Systems in Developing Countries: Status, Drivers, Trends'. Scientific and Technical Review, 25(2): 505–16.

[5] Technoserve (2011a). 'Southern Africa Regional Soybean Roadmap: Final Report'. Available at: http://www.technoserve.org/files/downloads/technoserve-bmgf-regional-presentation.pdf (accessed on 12 January 2025).

[6] **The southern African poultry value chain: Corporate strategies, investments and agro-industrial policies** '*under settings*' https://www.tandfonline.com/doi/full/10.1080/0376835X.2018.1426446#abstract (accessed on 12 January 2025)

Figure 1: Poultry and feed value chain



Source: Bagopi et al. (2014)

Consideration of the Relevant Markets

Relevant Product Market

17. Paragraph 7 of the COMESA Guidelines on Market Definition states that a *"**relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use**"*.

18. The CID noted that the acquiring group is active in the production and supply of poultry feed; breeding of broiler, layer and coloured DOCs; supply of broiler, layer and coloured DOCs and supply of processed chickens. The CID also noted that the target produces and supplies poultry feed; and processed chickens.

19. The CID further noted that there is a cross-shareholding between the Acquirer, APDL, and the Unga Group Limited through Seaboard Corporation which has shareholding in both these entities, [7] albeit Seaboard's indirect shareholding in Unga is a non-controlling minority stake. The CID noted that Unga Group Limited is a major player in the Common Market in animal feed production including poultry feed. The CID also noted that Unga Group Limited is the major supplier of the chicken feed to the APDL's subsidiaries in the

[7] See Nsomba et.al (2022a)

COMESA COMPETITION COMMISSION 03 MAY 2025

Common Market as is the case in Zambia (where APDL's subsidiaries are supplied poultry feed by National Milling Company whose shareholder is Seaboard; in Kenya where Kenchic Ltd is supplied poultry feed by Unga Ltd and Uganda where Kenchic Uganda Limited is supplied by Tunga Nutrition in which Unga Ltd is a joint shareholder.

20. The CID considered that the transaction may raise horizontal overlaps in respect of the supply of poultry feed and the supply of processed chickens given that the merging parties were both active in these markets within the Common Market. Further, the transaction also raises vertical overlaps given that the acquiring group supplies broiler DOCs while the target produces and supplies processed chickens.

21. The CID also noted that the acquiring group and Target currently have a supplier and customer relationship given that the acquirer supplies DOCs to the target which are raised for slaughter and supplied as processed chickens on the Ugandan market. The CID further noted that APDL has a 24% non-controlling minority stake in Aviagen EA, which supplies the Acquirer with its parent stock eggs. [redacted]. The CID noted the parties' submission that this arrangement does not extend to pricing and there is as such no preferential pricing or preferential supply offered to the Acquirer.

22. In view of the above, the CID focused its assessment on the markets below.

Supply of poultry feed

23. The CID noted that animal feed is intended for various livestock such as poultry, goats, pigs and cattle. The most common ingredients in animal feed include barley, corn, soybean meal, sorghum and wheat. The CID also noted that feed can be distinguished according to the type of intended livestock and the difference in nutritional composition, which may limit interchangeability. While one may attempt to assume that there are universal feeds that can be fed to different livestock, the CID observed that technology has not yet developed to produce such feed. It would be difficult to produce optimal results with such feed because different animals have different nutritional needs depending on their growth stage, physical needs, body mass and uses. Therefore, feed producers produce specific feeds for specific livestock to ensure maximum results. For instance, the feed intended for cattle may differ from feed intended for poultry or pigs as the nutritional requirements and quantities that each of these livestock requires for growth are different.

24. The CID observed that the foregoing was supported by evidence that there is no universal feed as each species has different requirements in terms of carbohydrates, proteins and micro-nutrients.[8] Further, the CID noted that it is not possible to have universal feeds for livestock due to the fact that the nutritional requirements and combinations for different

[8] Commission's third party interviews held on 3rd January 2025

livestock differ. The CID observed that such universal feeds would be far from producing optimal results. Further, even within the poultry sector, feed for layers may not be optimal for broilers. To maximise performance, broilers, layers and other types of chickens would need feed specifically formulated for them.

25. The CID observed that from a demand perspective the feed intended for specific livestock such as poultry is likely to face a different demand pattern from other livestock such as pigs) given that the usages will be different. The CID observed that it is unlikely that if there was an increase in the price of feed for poultry, farmers would switch to buying feed for other livestock like pigs. This is because such a switch would not make commercial sense as any artificial gains made in purchasing the cheaper alternatives would be eroded by the poor performance of the chickens, ultimately resulting in losses. The CID observed that a similar argument could be advanced within the poultry sector itself where farmers, especially commercial farmers, may not be compelled to switch from broiler feed to layer feed in response to increases in the price of feed for broilers. The CID considered that this leads to the conclusion that poultry feed is in a distinct market which can be delineated further into specific feed for different types of chickens such as broilers and layers.

26. However, the CID observed that from a supply perspective, there are common ingredients that are added in the processing of livestock feed such as different types of grains meant to provide livestock with energy and proteins for growth. Further, the plants, equipment or machinery used to produce feed do not appear to be significantly different and therefore, it is possible for feed producers to switch to another feed type. The CID noted that there is evidence that some feed producers are able to produce various types of animal feeds. For example, the CID observed that Tiger Animal Feeds in Zambia produces feed for poultry, fish, pigs and other livestock.[9] Thus, from a supply perspective it may be argued that the market for animal feeds comprises a single market where producers can easily switch to providing feed for various animals without incurring significant costs since the main ingredients into livestock feed are common.

27. The CID considered that the demand side substitutability would give a more accurate definition of the market because the type of feed determines effectiveness of performance on specific livestock. Livestock farmers will demand feed that guarantees maximum results that they are unlikely to switch to another feed type which does not give similar results. The CID noted that for the commercial production of poultry, such as broilers in the current transaction, specially formulated feed for broilers is critical for timely growth in readiness for the market. An attempt to substitute commercial broiler feed with alternative feed is unlikely to produce quality results.

28. The CID observed that this argument is supported by Anderson International Corp that nutrition is critical for efficient poultry farming.[10] Not only does feeding account for about

[9] http://www.tigerfeeds.com/page/contact.html# (accessed on 3 January 2025)
[10] https://www.andersonintl.com/comparing-the-poultry-nutrition-needs-of-broilers-vs-layers/ (accessed on 3 January 2025)

75% of poultry production costs, but it can directly impact bird performance and production. Whether raising chickens for commercial egg or meat production, each flock requires certain poultry nutrition considerations depending on its end use. The same diet does not suit all types of birds through every stage of growth.

29. **In view of the foregoing, the CID considered that for the purposes of this transaction, the supply of broiler feed was the relevant product market.**

Supply of DOCs

30. The CID noted that DOCs are produced following the laying of eggs by parent stock after which the eggs are taken through an incubation process before they hatch into DOCs. DOCs may be sold to farmers for growing into broilers (chickens for meat) or into layers (chickens for laying eggs) or coloured chickens which are hybrid of layers and broilers.

31. The CID therefore observed that DOCs are a key input into the production of chickens for slaughter/processing or the production of chickens for laying eggs. The CID noted that DOCs are categorized as broiler, layer or coloured DOCs. In view of this, the CID had the responsibility of determining whether these categories constitute distinct markets or a broader market for DOCs exist. To discharge this responsibility, the CID analyzed the characteristics and the intended use of the different categories of DOCs.

Broilers

32. Broilers are chicken that are raised for meat production. These meaty birds grow quickly, requiring diets high in energy and protein to sustain their rapid weight gain.[11] Most commercial broilers reach slaughter weight at about six (6) to seven (7) weeks of age. Typical broilers have white feathers and yellowish skin. The white feathered broiler appears to be preferred by both processors and farmers although it is not uncommon to find other colours. Chicken broilers have been bred to a uniform size specifically for meat yield. A common broiler strain combines Cornish genes for conformation and fleshing with the White Plymouth Rock for white feathers and faster growth. White-feathered birds are the norm for commercial broiler production because of their cleaner-looking defeathered carcasses.[12] Many factors have contributed to the efficiency and economics of broiler production. Advances in breeding, nutrition, disease control, and management practices have enabled the broiler industry to produce a chicken weighing 1.8 kg in 6–7 weeks. Vaccines, antibiotics, confinement rearing, and computer-balanced rations assist in producing broilers with a feed conversion ratio of less than 2 kg of feed per kg gain.[13]

33. While all chickens are similar in most respects, differences exist in tenderness that greatly impact the ultimate use of the meat. Broiler chickens are hatched, grown, and processed by 7 weeks of age because their sole function is meat production. The chickens (laying

[11] https://www.andersonintl.com/comparing-the-poultry-nutrition-needs-of-broilers-vs-layers/ (accessed on 3 January 2025)
[12] https://www.sciencedirect.com/topics/food-science/broiler-chicken (accessed on 3 January 2025)
[13] Ibid

hens) that lay table eggs for human consumption and the other chickens (broiler breeders) that lay eggs to be hatched for broiler production (these eggs are not the same) are generally processed after their egg production abilities are exhausted (>1 year of age). The meat from these older birds is much tougher than broiler meat because as an animal matures, the connective tissues holding the muscle together become very heat resistant and no longer break down easily during cooking. As a result, meat from these older birds is used in products receiving extreme heat treatments such as the retorting of canned soups or the prolonged cooking of stewing hens. These extreme heat treatments are sufficient to overcome the heat resistance of the connective tissue in older animals.[14]

Layers

34. Layers are chickens that are raised specifically for egg production. These hens require specific nutrients, like calcium, to steadily produce high-quality eggs throughout their laying lifespan.[15] A layer chicken is a female chicken that is raised for the purpose of producing eggs. They are a popular choice in the commercial egg industry because they lay eggs more frequently than other chicken breeds.

Breeders for broiler and layer day old chicks

35. Breeders, on the other hand, are birds raised to lay fertilized eggs that will hatch into healthy chicks and eventually grow into broilers or layers themselves—perpetuating the flock through the next generation.[16] They are primarily for breeding purposes and not held primarily for sale. Companies are able to produce breeders under license mostly from Cobb Vantress and Aviagen, the two companies that dominate the global market for production of breeders.

36. Having identified the above products, the CID assessed whether these products were interchangeable or substitutable from the consumers' perspective by way of product characteristics, intended use and price. The CID concluded that the intended use and characteristics are interchangeable.

37. The CID considered that from the intended use point of view, it appeared that the three products identified above were distinct. For instance, the CID observed that broilers were bred for their meat and not their eggs as is the case for layers. Therefore, it is unlikely that farmers keeping broilers would shift to keeping layers in the short run given the different intended use. The CID considered that several factors would constrain this among others, the equipment and nutritional requirements that may not support an immediate shift. The CID observed that while broilers are grown within a short period of time, layers take time to reach maturity and begin to lay eggs. In terms of timeliness to switch, a farmer may have to modify his plant to accommodate the collection of eggs in an effective manner, which may take some time. The CID recalled that such a shift should

[14] Ibid
[15] https://www.andersonintl.com/comparing-the-poultry-nutrition-needs-of-broilers-vs-layers/ (accessed on 3 January 2025)
[16] https://www.andersonintl.com/comparing-the-poultry-nutrition-needs-of-broilers-vs-layers/ (accessed on 3 January 2025)

be timely, sufficient and likely. The CID considered that it did not appear that this would be so in the present case. The CID further considered that even for ultimate consumers, it is not possible that those intending to buy the chicken for meat to easily substitute this for eggs given the differences in the utility obtained from the two products. The CID observed that eggs are mostly preferred for breakfast, baking and other uses different from chicken meat and therefore such a substitution may not be effective. This of course does not eliminate the possibility especially among the lower income demographic that may consider eggs as an alternative to chicken meat.

38. The CID also considered that the converse was also true. A farmer keeping layers for egg production is unlikely to shift to keeping broilers in the short run because the intention is egg production and not meat production. Further, there are other logistical challenges that may be involved such as seeking new markets for the new product and seeking stable supply contracts which may make such substitutability ineffective. In respect of breeders, the CID observed that this was completely different from layers and broilers as these are bred to specifically produce eggs for broiler and layer DOCs. Therefore, the possibility of greater substitutability is not conceivable. Several factors render this possibility very slim. Firstly, breeding is only done under very strict license conditions and only a few meet these conditions. Further, the plant requirements and other requirements such as biosecurity and nutritional requirements are very different which may render substitution in response to market conditions improbable.

39. The CID also noted the parties' submission that the Acquirer produces and supplies coloured DOCs. The CID assessed if this category fell in a separate distinct market or it is part of the relevant markets identified above. The CID observed that in most cases the coloured DOCs have similar characteristics as other broiler or layer DOCs except for colour. However, they may not be popular in some parts of the world like in Zambia due to consumer perceptions. Most consumers are used to a certain colour especially white for broilers that any other colour may affect consumer perception and lead to loss of customers. On the other hand, the CID noted that the coloured DOCs are called improved road runners. They fall in between broilers and non-broiler chickens. They also take longer to grow compared to broilers and their meat is harder than that of a broiler. The CID also noted that the coloured chickens are duo purpose birds which produce both meat and eggs.

40. In view of the foregoing, the CID considered that coloured DOCs may fall in a distinct market because they are not yet popular to provide an effective substitute, consumers that prefer tender meat of a traditional broiler may not immediately substitute for coloured chickens and finally farmers wishing to produce chickens in a short period of time may not immediately substitute traditional white broilers with coloured chickens. The CID noted that there is anecdotal evidence that commercial breeding of coloured chickens is not as popular as white chickens because slaughterhouses and processing plants prefer white

or light-coloured chickens. Coloured chickens have “hair” that requires singeing after plucking, which is not necessary for white chickens.

41. The CID observed that there are likely overlaps between coloured chickens and layers in that coloured chickens may also lay eggs but the prolificness and effectiveness with which they can compare to layers is doubtful to construe them as an effective substitute. The CID also observed that the acquirer does not supply coloured DOCs in Uganda and therefore horizontal concerns with regard to this category are not immediately manifest. The CID therefore concluded that the supply of coloured DOCs was a distinct market.

42. **In view of the foregoing, the CID identified the following as distinct markets:**

    a) Supply of broiler day old chicks;

    b) Supply of layer day old chicks;

    c) Supply of coloured day old chicks; and

    d) Production and supply of breeders for broiler and layer day old chicks.

Supply of processed chickens

43. The production and processing of animals such as poultry, pigs and cattle for slaughter entails raising the animals to a tender age when they can be slaughtered before being sold to consumers (retailers, wholesalers or individuals). From a supply perspective, the production requirements for various types of animals are likely to differ and not to be substitutable thus comprising separate markets. For instance, it is not easy to switch from production of poultry to production of pigs or cattle given that each of these animal species has different requirements. For instance, the animal shelters, feeding requirements and vaccine requirements are likely to differ for each animal species. The CID observed that it is unlikely that producers are likely to alter their facilities and shift to producing different meat species for processing.

44. The CID observed that from a demand perspective, it may appear that a large number of consumers would not mind substituting different types of processed meats. Anecdotal evidence suggests most consumers interchange between different types of processed meats. Only a few may distinguish between the processed meats for health, cultural and religious reasons. For instance, meat for chicken and pork is often considered white meat and healthier while beef is considered red meat and less healthy. Thus, customers who are particular about consuming white meat are likely to distinguish chicken or pork from beef. Further, on religious grounds some people may distinguish pork from chicken and other processed meats. However, these consumer groups may not constitute a critical mass to fall in distinct relevant product markets. The foregoing supposition is supported by an observation that there may be categories of consumers on the basis of health, culture and religion but such a category may not be significant to determine the relevant product market with comforting confidence levels or precision. In view of the foregoing

analysis, the CID considered that using the demand approach to determine the relevant product market may not be conclusive. Therefore, the CID relied on the supply side approach where it is more likely than not that these different processed meat products may constitute distinct markets for reasons advanced above.

45. In view of the foregoing, the CID identified the supply of broiler processed meat as a relevant product market from a supply side substitution point of view.

46. **From the foregoing, the CID identified the following relevant product markets:**

    a) **Supply of broiler feed;**

    b) **Supply of broiler day old chicks;**

    c) **Supply of layer day old chicks;**

    d) **Supply of colored day old chicks;**

    e) **Supply of broiler processed meat; and**

    f) **Production and supply of breeders for broiler and layer day old chicks.**

Relevant Geographic Market

47. The COMESA Competition Commission Guidelines on Market Definition define the relevant geographic market in Paragraph 8 as follows:

    "*The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas*".

<u>*Broiler Feed*</u>

48. Animal feed comprises a significant cost in the livestock production value chain, including poultry. The key inputs required for the production of animal feed which are imported into the region include oilcakes and soybeans. Animal feed is a key component in poultry production as it constitutes 60 to 65% of the costs of producing a chicken.[17] Some reports have suggested that it may even constitute 75% of the cost of producing a chicken[18].

49. Recent investments in Zambia's soybean production capacity raise the question of why there has not been a greater reliance on trade within the region. In this respect, issues related to high road transport and logistics costs have been cited as having historically

[17] The southern African poultry value chain: Corporate strategies, investments and agro-industrial policies '*under settings*' https://www.tandfonline.com/doi/full/10.1080/0376835X.2018.1426446#abstract (accessed on 12 January 2025)

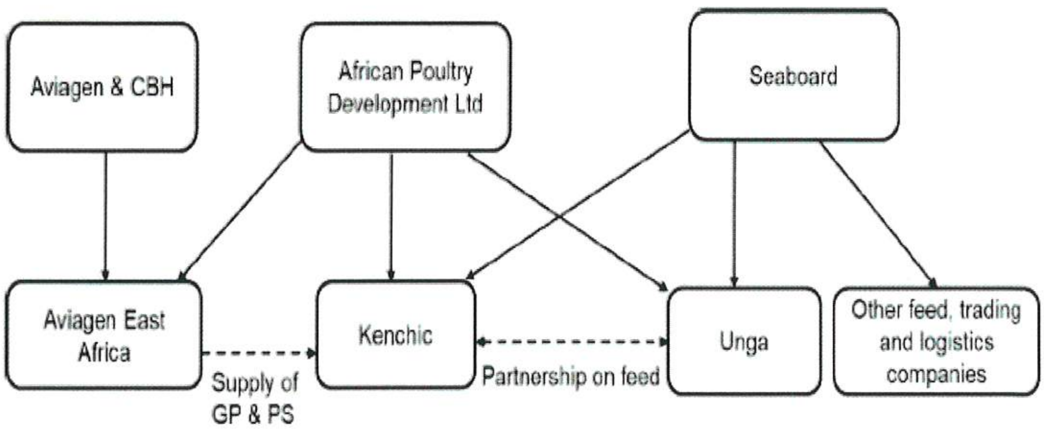
[18] See paragraph 28 of this Decision

inhibited the degree of integration within the region. This supposition is supported by Gregory & Bumb.[19]

50. The CID also observed that most big poultry companies are vertically integrated and produce feed for broilers. For example, the acquirer through its subsidiaries is involved in the supply of feed. The target is also involved in the supply of feed in Uganda. The CID observed that although the acquirer does not supply feed to the Target or any other players in Uganda, the acquirer has a 29.29% interest in the target, pre-merger. The CID however observed that that feed can move across borders. However, it was important to determine whether such cross-border trade in feed is sufficient to broaden the relevant geographic market.

51. The CID noted that research supports the above position that there appears to be important relationships between producers of poultry feed and its main ingredients , including soycake/meal, a product of processing soybeans. The CID also noted that Seaboard, which has identified APDL as an affiliated company, indirectly holds shares in Kenchic (through its 100% shareholding in Vinprom Holdings LLC, which is a joint controlling shareholder in APDL) and Unga Holdings Limited, a subsidiary of Unga group. However, the CID noted the parties' submission that Seaboard's interest in the Unga group (including in Unga Holdings Limited and Unga (U) Millers in Uganda) is a non-controlling minority interest. Seaboard is also owner in National Milling Company in Zambia. The CID also noted the links elaborated below between APDL and Seaboard's ownership and alliances between them.

Figure 2: APDL and Seaboard ownership and alliances



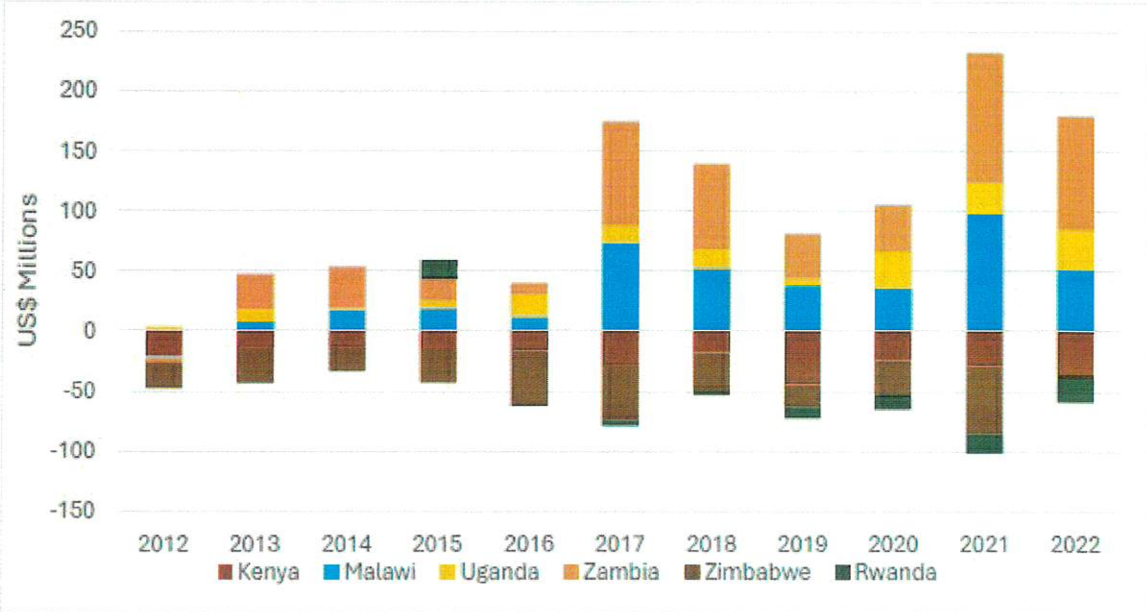
Source: Nsomba et al. (2022a)

[19] Gregory, DI & Bumb, BL, 2006. Factors affecting supply of fertilizer in sub-Saharan Africa. World Bank Agriculture and Rural Development Discussion Paper 24.

COMESA COMPETITION COMMISSION 03 MAY 2025

52. The CID considered that the main constituents of poultry feed can and are traded across east and southern Africa. Further, Soybean and meal are exported from Uganda and Zambia, while Kenya and Rwanda are net importers as per the figure 3 below.

Figure 3: Net trade balance of soybean & oilcake, selected COMESA countries



Source: TradeMap

53. The CID observed that crushers of soybean in Uganda and Zambia are actual or potential competitors into Kenya with regard to the supply of this main poultry feed input. The merging parties appear to have interests in animal feed and Seaboard is involved in crushing of soybeans in various countries in COMESA.

54. The CID observed that the trade flows may be shaped by ownership and other arrangements and hence a lack of trade between certain countries could be the result of anti-competitive arrangements such as coordination or other logistical challenges such as transportation and government regulation.

55. The CID noted from the foregoing that with regard to relevant geographic market for feed for broilers, some form of cross-border trade on the final product or the constituent inputs can be established. This notwithstanding, the CID considered whether this cross-border trade was sufficient to warrant broadening of the relevant geographic market beyond national.

56. The CID considered that feed constitutes the single most significant cost in broiler production. Therefore, from a demand point of view, a consideration of importing poultry feed from a foreign supplier is likely to pose additional impediments to poultry producers

due to high importation costs. The companies involved in the importation of this feed may be big companies such the acquirer in this case. These are able to absorb and cushion the huge costs of importation due to economies of scale where their per unit costs of production are significantly diminished. The CID observed that most of these companies are vertically integrated including with regard to feed production such that even with such imports, it would be considered trade within the same group of companies. With regard to poultry producers that are outside this group of integrated companies, importation may not be immediately viable in reaction to increase in the price of feed which is likely to be dwarfed by the costs of importation. The CID therefore considered that it was more likely for a poultry producer to demand poultry feed from local suppliers as opposed to foreign suppliers, thus limiting the geographic scope for production and supply of poultry feed to a country.

57. From a supply perspective, while it is not uncommon to generally find foreign suppliers of animal feed within the Common Market, it is unlikely that these suppliers would timeously shift to supply feed across borders in the Common Market in response to changes in competition dynamics given the cost implications arising from poor transport systems and trade restrictions, among others. The trade policies also appear to be erratic in the Common Market with various restrictions that are imposed and lifted anyhow making them erratic and unreliable in making commercial decisions. The CID observed that entry should be timely, likely and sufficient which did not appear to be the case in this assessment. The CID considered that most of the companies involved in feed production were already related as observed above and therefore, there would be no immediate incentive to supply into countries where their affiliated companies already exist.

58. The CID therefore considered that supply side substitution would not appear to broaden the market in this case due to the factors discussed above. Nevertheless, the CID observed that the constituents or inputs into feed production are tradable across borders. Therefore, what may need to be established is the extent to which such derived demand may be critical in establishing the relevant geographic market. Derived demand is construed when the demand for an intermediate good such as maize meal or soycake in this case is as a result of the demand for the final good, feed in this case.

59. The CID observed that the demand for feed has an implication on the demand for inputs used for its production. Further, if the demand for feed fell, it is more likely than not that the demand for the inputs would as well fall. The CID also observed that under some circumstances, these inputs move across borders. The question that may be posed is whether such cross-border movements may establish a regional relevant geographic market. This largely does not appear to be the case for reasons espoused subsequently. Further, the CID observed that users of feed apart from those that are vertically integrated may not be the producers. Most farmers including small scale farmer do not produce feed nor grow the inputs but purchase the final product. Therefore, it defies all economic logic

COMESA COMPETITION COMMISSION
03 MAY 2025

and sense to argue that the movement of inputs across borders makes the feed market regional.

60. Furthermore, even the movement of these inputs is within a group of companies that are vertically integrated making any cross-border movement of these inputs irrelevant in addressing competition concerns that may arise from the merger. Companies that may not be vertically integrated but are also involved in the production of feed may not find it very profitable to import the inputs and it is more likely than not that they may face competition constraints from their competitors who are vertically integrated and control the input market as well as has already been observed in this report. Lastly, cross-border flow of the inputs is erratic as it is characterised by intermittent export/import bans and lifts. To be specific, these include protectionist measures, the costs of transport, and the role and strategies of large corporations stretching across countries in the region. The Commission's research under the Africa Market Observatory has made these findings and made policy recommendations on making the markets work to remove these bottlenecks.[20]

61. Given the foregoing analysis, the CID considered that the relevant market for feed for poultry was not likely to be regional but rather national. Therefore, the CID identified the relevant geographic market for broiler feed as Uganda.

Day Old Chicks

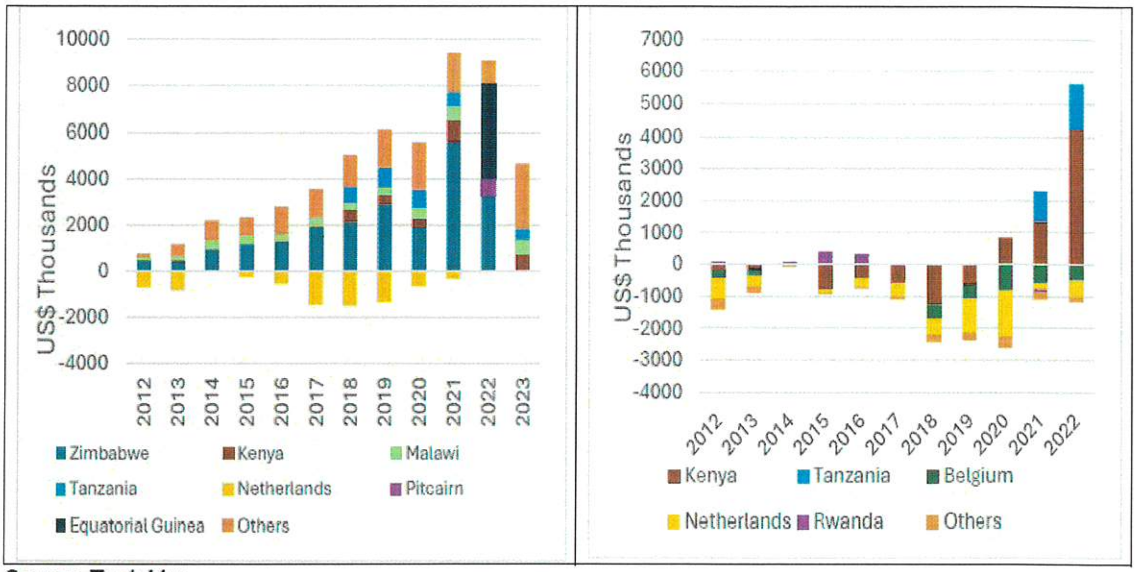
62. The poultry industry in the region has grown strongly due to investments by a small number of regional producers who are vertically integrated and have international relationships, such as for sourcing breeding stock. The development of the sector across the region has thus been related to the strategies and investments of large firms. This is what is observed in the current merger where APDL has relations to a number of companies in the supply of DOCs, production of grandparents and parent stock, supply of processed chickens and the production and supply of feed. For example, the third party submissions, observed that the networks of alliances, through which APDL is central in the east and southern African context, are indicative of the cross-border nature of geographic markets in the proposed merger. This is reinforced by the publicly available trade data for DOCs supplied by poultry breeders as well as for feed constituents.

63. The CID observed that Zambia has developed as a major exporter of poultry DOCs and as a hub for poultry breeding and supply, including exports to Kenya, Malawi and Zimbabwe in the Common market as per figure 4 below.

[20] See the Commission's Africa Market Observatory Reports.

Figure 4: Trade balance of DOCs, by main destinations

3a. Zambia **3b. Uganda**



Source: TradeMap

Notes: Pitcairn Island and Equatorial Guinea are each recorded as export destinations for Zambian exports in 2022 yet this seems unlikely to be the case in practice and these countries may reflect the location of trading companies which are registered as the buyers.

The Zambia data for 2023 are incomplete, 2023 Uganda data unavailable.

64. Further, Uganda has increased DOCs exports to Kenya since 2020 (being a net importer from Kenya prior to that year) (Figure 3b). This appears highly relevant for the potential effects of the proposed merger. From the perspective of Kenyan poultry producers sourcing DOCs, Zambia and Uganda have been alternative sources of supply pointing to cross-border competition.

65. The CID noted the parties' submission that the acquirer has been a supplier of DOCs to the target and prior to July 2023 it supplied the target from its hatchery in Kenya. The CID also noted that the acquirer's breeder operations in Zambia supplies Ross 308 breed in respect of broiler DOCs, in each of Uganda, Kenya and Zambia. Therefore, from a supply point of view, it may be tempting to conclude that the relevant geographic market is more likely than not to be regional. However, the CID considered that the fact that there are regional movements of DOCs does not mean the relevant market is broader than national. Several factors have to be considered before arriving at an accurate disposition of this relevant market. The CID observed that most of the companies involved in the poultry industry have linkages both horizontal and vertical.

66. The CID, for example, observed that APDL had a 24% non-controlling stake in Aviagen EA, which is a subsidiary of the Aviagen/EW Group, one of the two companies accounting for more than 90% of breeding stock globally. Further, there has been a substantial

increase in concentration globally in poultry breeding with market consolidation and mergers in the industry leading to two companies dominating broiler genetics, namely ***Tyson Foods through Cobb-Vantress and the EW Group/Aviagen***. The two main breeds supplied by these companies being ***Cobb breed*** (supplied by Cobb-Vantress) and the ***Ross Breed*** (supplied by Aviagen). The CID observed that Aviagen also supplies other breeds such as Indian River, Arbor Acres and Hubbard while Tyson supplies the Sasso bird through a joint venture with Hendrix Genetics (Hendrix).

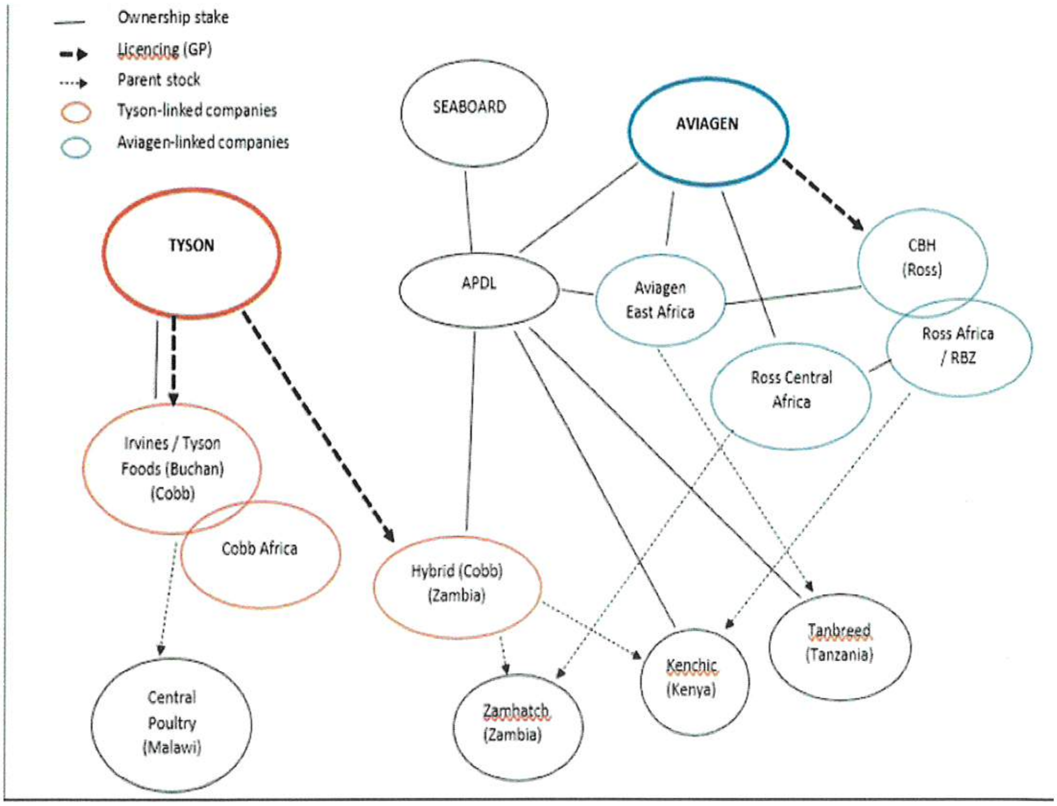
67. The CID observed that this network of relationships and cross shareholdings extend into southern and east African poultry markets where Tyson and Aviagen have direct influence over poultry production in the region, noting that APDL is associated with Aviagen. APDL is the parent company of Kenchic Limited in Kenya (which is the largest supplier of Ross breed DOCs in Kenya with *approximately [60 – 75]%* market share) and Kenchic Uganda Limited in Uganda; and Hybrid Poultry Farms Ltd in Zambia (which has been the holder of Cobb breeding rights in Zambia).

68. The CID noted that APDL represents the largest group of integrated poultry companies in Zambia, East and Central Africa. Further, APDL, through a joint venture with Aviagen, is the part owner of Aviagen EA, together with Country Bird Holdings (CBH). Aviagen EA consists of grandparent farms and parent stock hatcheries of Aviagen breeds, which include Ross 308. CBH is another part owner of Aviagen EA and also owns Ross Breeders Zambia (RBZ) for breeding rights of the Ross breed for southern and east Africa except South Africa.

69. The CID also noted that there has been a succession of mergers and acquisitions which have extended ownership links by the multi-national corporations such as the joint venture between RBZ and Aviagen to create Ross Breeders Central Africa. For instance, in March 2021, the Competition and Consumer Protection Commission ("**CCPC**") of Zambia approved a merger involving Aviagen and RBZ establishing a joint venture for the purposes of promoting the breeding of grandparent stock in Zambia and increasing the availability of the supply of parent stock to various customers in Zambia (through Ross Breeders Central Africa). The CCPC granted conditional approval due to competition concerns and imposed conditions including that Aviagen undertook not to restrict companies in Zambia from importing other breeds under the Aviagen group. Further, in August 2021, the Competition Authority of Botswana approved the same transaction, indicating that Aviagen European Holdings Limited acquired 25% of Ross Breeders Central Africa, incorporated in Zambia and a wholly-owned subsidiary of RBZ (itself a subsidiary of Ross Africa Ltd, in turn a wholly owned subsidiary of CBH). The merger was notified in Botswana as parent stock is sold by RBZ to its sister company Master Farmers Feeds in Botswana, which is also ultimately controlled by CBH. Further to the foregoing, the CID observed that the relationships between the major breeds for broiler chickens with the key companies active in these markets are as depicted in Figure 5 below.

COMESA COMPETITION COMMISSION
03 MAY 2025

Figure 5: Regional networks of relationships for Cobb and Ross breeds, outside South Africa



70. Therefore, the CID observed that movement of DOCs across borders may not immediately mean that the relevant geographic market is regional. The same companies or their affiliates are present in different countries. For Hybrid Zambia, which is under APDL, it exported DOCs to Kenchic in Kenya which is also under APDL. Such cross-border movement of DOCs may suggest that the market is regional but not that the relevant geographic market is also regional. Supply from one country is mainly due to capacity issues by an affiliated company or a commercial decision of having breeding plants in some countries while exporting to other countries for cost and efficiency reasons. The CID considered that it was not probable that supply substitution would occur due to changes in competition conditions as most of these companies are related and have licenses for the breeding of DOCs.

71. The CID noted that consumers of DOCs usually source them locally where there are local suppliers and it is unlikely that they would source them from abroad where there are likely to face the same conditions because they would still deal with companies who are affiliated to those by whose behaviour, such a potential shift would be triggered. This, coupled with transport and other logistical challenges may render any shift to alternatives outside the country improbable. The CID observed that the same situation is likely even

in the case of Kenchic which supplied DOCs into Uganda *hitherto*, because the acquirer already had a 29.29% interest in the target.

72. To support this supposition, the CID noted that in Zambia, the prices of DOCs have been much higher than those in South Africa.[21] Further, prices for Zambia's poultry industry for the first quarter of 2016 to 2023 were analysed using data from the Poultry Association of Zambia (PAZ). The analysis revealed that prices for DOCs and point-of-lay (POL) pullets increased by 57–125%. Despite these relative high prices, there is no evidence that Zambian consumers have shifted sourcing of these products from outside Zambia. In view of this assessment, the conclusion of the report is that the relevant geographic market for DOCs is national. This definition applies to DOCs for layers, broilers and coloured chickens since the same conditions above are likely to apply.

Supply of broiler processed meat

73. With regards to the supply of processed chickens, the CID noted that the target's supplies are only limited to Uganda. However, the CID observed that with additional investments in refrigerated transportation facilities, it is theoretically possible that processed chickens can be supplied beyond the borders of a country and similarly imported processed chickens may compete on the local market with locally processed chickens. However, such a shift may not be timely given the additional investments required. Further, importation or exportation of processed chickens may also be limited by health certification requirements by individual countries. For example, in Mauritius and Zambia, trade in processed chickens is not permissible by government policy. In this case, the relevant geographic market is therefore, the supply of processed chickens in Uganda.

Production and Supply of breeders for broiler and layer day old chicks

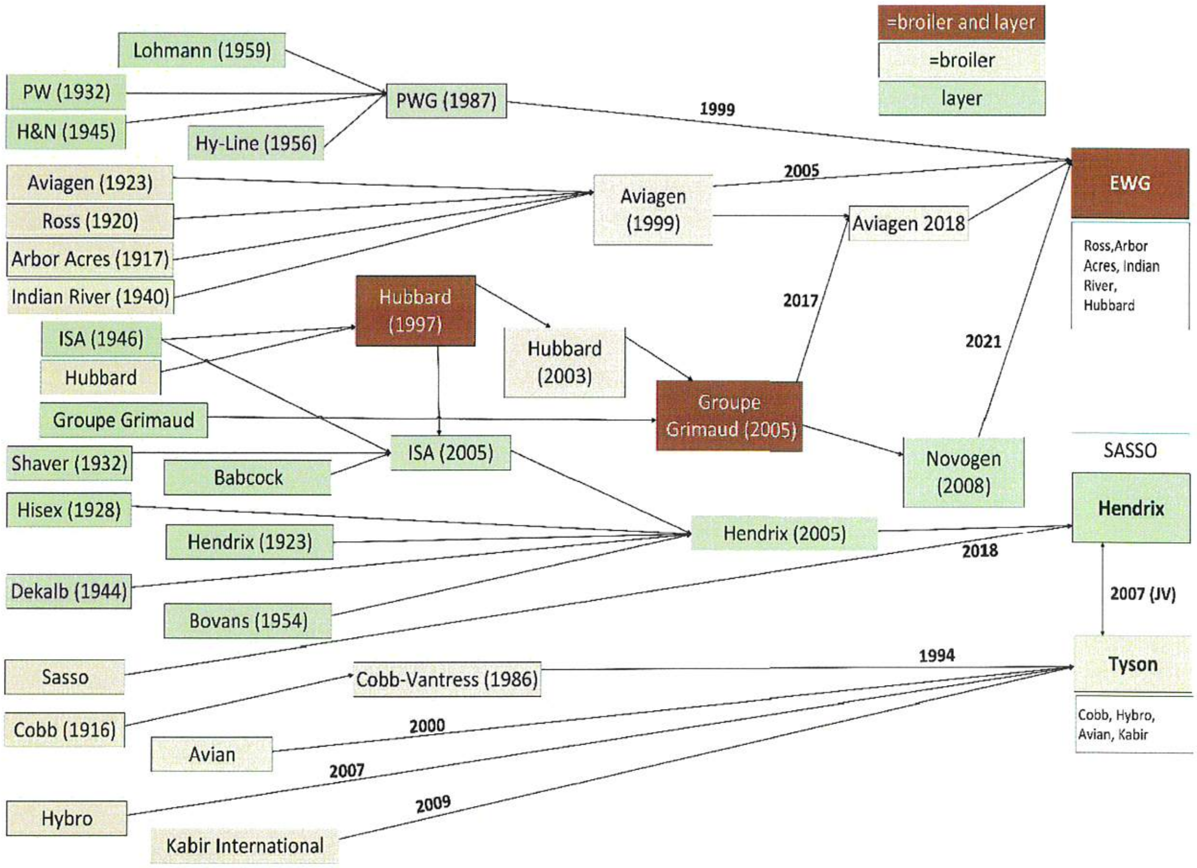
74. The CID recalled that breeders are birds raised to lay fertilized eggs that will hatch into healthy chicks and eventually grow into broilers or layers themselves—perpetuating the flock through the next generation. They are primarily for breeding purposes and not held primarily for sale. Companies are able to produce breeders under license mostly from Cobb Vantress and Aviagen, the two companies that dominate the global market for production of breeders.

75. There has been a very substantial increase in concentration globally in poultry breeding. In 1981, there were 26 substantial commercial broiler genetics companies worldwide. By 2022 consolidation and mergers in the industry had led to two companies dominating broiler genetics – Tyson Foods and the EW Group. This includes acquisitions of the slow growing ('free range') breeds. The slow-growing Hubbard breed was acquired by the EW group (with Groupe Grimaud in 2017/18). Hendrix which acquired the slow-growing SASSO breed has a research collaboration, and a series of joint ventures and joint

[21] Ncube, Phumzile; Roberts, Simon; Zengeni, Tatenda Development of the animal feed to poultry value chain across Botswana, South Africa, and Zimbabwe.

products with Tyson.[22] Figure 6 below shows the consolidation of poultry breeding companies through mergers:

Figure 6: Global consolidation of poultry breeding companies through mergers



76. The global picture is essential to understanding concentration and competition in southern Africa. Mergers approved in the USA and Europe have impacted on rivalry in breeding stock, such as Aviagen's acquisition of Hubbard in 2017/18 approved by the UK's Competition and Markets Authority. The two lead companies (Tyson and the EW Group) have subsidiaries all over the world and keep breeding stock on different continents. The rights to produce are then licenced to companies at the grandparent stock level. Grandparent stock cannot themselves be sold by licensees; these companies produce and can on-sell parent stock, depending on the distribution licence, or retain parent stock to themselves produce broiler DOCs. The broiler DOCs are reared by poultry farmers. From one female grandparent, 4 million broilers can be produced.[23]

[22] Multinationals and competition in Poultry Value Chains in South Africa, Zambia and Malawi. A CCRED Working Paper by Sumaya Goga and Simon Roberts; August 2023.

[23] Multinationals and competition in Poultry Value Chains in South Africa, Zambia and Malawi. A CCRED Working Paper by Sumaya Goga and Simon Roberts; August 2023.

77. The CID observed that it appears the market for the production of breeders may be broader that national. The foregoing notwithstanding, the CID considered that it was not necessary to reach a definite geographic scope of the market for production and supply of breeders for broiler and layer day old chicks given the structure of this market will not be altered post-merger and the competition assessment is unlikely to be altered under alternative geographic markets. Therefore, the CID left the market for production and supply of breeders for broiler and layer day old chicks open.

Conclusion on Relevant Markets

78. Based on the foregoing assessment, and without prejudice to its approach in similar future cases, the CID identified the following relevant markets:

a) Supply of broiler feed in Uganda;

b) Supply of broiler day old chicks in Uganda;

c) Supply of layer day old chicks in Uganda;

d) Supply of coloured day old chicks in Uganda;

e) Supply of broiler processed meat in Uganda; and

f) Production and supply of breeders for broiler and layer day old chicks (determination of relevant geographic market left open for reasons advanced above).

Market Shares and Concentration

Supply of broiler day of chicks in Uganda

79. The CID noted the parties' submission of the following market shares and market shares of their competitors in Uganda, where the target has operations.

Table 1: Estimated market share for broiler DOCs in Uganda[24]

Entity	Market shares by production	Total production	Broiler DOCs sold	DOCs placed	Export to Kenya	Export to Congo
Biyinzika	[30 – 35]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Kenchic	***[20 – 25]%***	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
S.R. Afro	[10 – 15]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Ugachic	[10 – 15]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Kuku Chic	[5 – 10]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Farm Up	[1 – 5]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Quantum Feeds	[1 – 5]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[24] Confidentiality claimed by the parties

Tyson Feeds	[1 – 5]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Imports	[1 – 5]%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	**100%**	[redacted]	[redacted]	[redacted]		

80. The CID observed that given the target is not active in the supply of broiler DOCs in Uganda, the structure of the broiler DOCs market in Uganda will not change as a result of the proposed transaction. The CID also observed that the market is characterised by the presence of several players hence likely to remain competitive post-merger. This notwithstanding, the CID is observed that the acquirer is one of the most integrated companies in the poultry sector and has integrated subsidiaries in the Common Market such as in Zambia and Kenya. The merged entity will therefore have the ability to acquire greater market share in the medium to long run and possibly engage in unilateral or coordinated anti-competitive conduct.

81. The CID observed that a cursory review of the market may lead to the conclusion that the broiler DOCs market is open to importation and exportation given current exports to Kenya which are by the competitors and the export to DRC by the acquiring entity. The CID also noted that the acquiring group supplies eggs to hatcheries in Kenya and Uganda from its breeder operation in Zambia and its non-controlled breeder operation in Tanzania. The fact that there is cross-border movement of DOCs may not always mean that the market is broader than national. For example, exports from Zambia may not give a good picture of true competition as the acquirer is heavily involved in Zambia and exports to Uganda and Kenya. This may therefore be the same or interrelated companies which may not practically offer any meaningful competition. Further, the assessment is not concerned with exports into Kenya but competition dynamics in Uganda which is the identified relevant geographic market.

82. The CID noted the parties' submission that based on production volumes, out of *the [20 – 25]* % market share for DOCs of the acquiring group, *[5 – 10]* % is supplied to the target while *[10 – 15]* % is supplied to third party customers[25], thus the target entity is a significant customer of the acquirer. Therefore, even if horizontal concerns as a result of the merger are not likely, vertical concerns would be likely in that the merged entity would now be supplying DOCs to its competitors downstream. Therefore, foreclosure concerns are likely to occur. The conclusion would be the same for layer and coloured broiler DOCs. These sub-markets have not been analysed further as it is inconceivable that competition concerns are likely to occur therein. This is on the premise that the target firm is not involved in the two sub-markets before the merger.

83. Notwithstanding that the market structure will not change and given the geographic scope of the supply broiler DOCs market is Uganda, the CID assessed the level of concentration in this market to understand any likely competition effects the transaction may raise.

[25] According to the parties' submissions dated 1 August 2024. Confidentiality claimed by the parties

84. The CID observed that according to Section 8.8 of the COMESA Merger Assessment Guidelines, the Commission may use sales revenue, production volume, capacity of reserves to measure market shares. The CID therefore observed while the parties' submitted market shares by production volumes, these may not be representative of the level of concentration in Uganda given some of the DOCs production in Uganda are exported. The CID therefore considered the market shares for the total number of DOCs sold in Uganda as follows:

Table 2: Estimated market shares by DOCs Supplied in Uganda

Entity	**No. Broiler DOCs sold**	**Market shares by DOCs sold**
Biyinzika	[redacted]	[30 – 35]%
Kenchic		[15 – 25]%
S.R. Afro		[10 – 15]%
Ugachic		[10 – 15]%
Kuku Chic		[5 – 10]%
Farm Up		[1 – 5]%
Quantum Feeds	[redacted]	[1 – 5]%
Tyson Feeds	[redacted]	[1 – 5]%
Imports		[1 – 5]%
Total	[redacted]	**100**

85. The CID considered the pre- and post-merger market concentration ratios for the broiler DOCs supplied in Uganda using CR3 as follows:

*Pre-Merger: [30 – 35]% Biyinzika + **[15 – 20]% Kenchic (Acquirer)** + [10 – 15]% S.R. Afro = [60 – 65]%*

*Post-Merger: [30 – 35]% Biyinzika + **[15 – 20]% Kenchic (Acquirer)** + [10 – 15]% S.R. Afro = [60 – 65]%*

86. The CID observed that the market for the supply of broiler DOCs in Uganda was moderately concentrated, with about [60 – 65]% of the market being shared by the top three players. The CID observed that the same market structure was likely to remain unchanged post-merger with the merged entity's market share remaining at approximately [15 – 20]%. In view of this, the CID observed that while competition concerns were likely given the concentrated nature of the market, competition concerns were unlikely due to the merger but due to the status quo as the merger did not change anything to the structure of the market or resulted in the merged entity gaining significant market shares to raise concerns of unilateral abusive conduct.

<u>*Supply of broiler feed*</u>

87. In competition assessment, market shares are a necessary but not always a sufficient requirement in determining whether a merger is likely or not to raise competition concerns. With

regards to the relevant market under consideration, the parties submitted the following market shares in Uganda.

Table 3: Estimated market share in the supply of poultry feed in Uganda[26]

Competitors	Estimated market shares (%)
Biyinzika Limited	[30 – 35]%
SR-Kuku	[25 – 30]%
Grain Pulse	[20 – 25]%
Target	***[10 – 15]%***
Hendrix	[5 – 10]%

88. The CID observed that Hendrix, which commands a [5 – 10]% market share is indirectly linked to the acquiring group. The CID also noted that Hendrix feed is produced by Tunga Nutrition in Uganda, a joint venture entity formed following the merger involving Nutreco International B.V. and each of Unga Farm Care E.A. Limited and Unga Millers (Uganda) Limited.[27] The joint venture is owned equally by each parent company. The CID recalled that APDL's shareholder Seaboard is also a non-controlling shareholder in Unga Ltd. The CID noted further confirmed reports that, "*Tunga Nutrition Uganda would make use of Unga Millers' dormant flour mill in Kampala, converting this into a state-of-the-art feed mill producing animal feeds and concentrates. Its products will be sold under both Trouw Nutrition's Hendrix and Unga's Fugo Brands*".[28] The CID therefore considered that APDL is indirectly involved in the supply of broiler feed in Uganda. The foregoing notwithstanding, the CID considered that the combined market share of the post-merger entity will be [15 – 20]%, a position that is not likely to give the merged entity a position of dominance.

89. The CID also observed that the market for the supply of broiler feed is characterised by the presence of other significant players that will continue to give competitive constraints to the merged entity. A further assessment of the pre- and post-merger market concentration ratio reveals that competition concerns in this market will not arise by virtue of this merger since the CR3 pre- and post-merger will remain the same as per the computation below.

Pre-Merger: [30 – 35]% Biyinzika + [25 – 30]% SR-Kuku + [20 – 25]% Grain Pulse = [80 – 85]%

Post-Merger: [30 – 35]% Biyinzika + [25 – 30]% SR-Kuku + [20 – 25]% Grain Pulse = [80 –85]%

90. The CID observed that the above computations reveal that the pre-merger and post-merger concentration levels were likely to remain the same. At first sight, one may be tempted to conclude that the merger would therefore not raise competition concerns in the relevant market for the supply of feed. Horizontal competition concerns in the market

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[26] Confidentiality claimed by the parties

[27] See 80th CID Decision on the Establishment of Greenfield Full Function Joint Ventures in Kenya and Uganda involving Nutreco International B.V. and each of Unga Farm Care E.A. Limited and Unga Millers (Uganda) Limited https://comesacompetition.org/wp-content/uploads/2021/09/CID-Decision-Unga-Nutreco.pdf

[28] https://www.skretting.com/en-gm/tunga, accessed on 8 February 2025

may therefore not be as a result of the merger but an already highly concentrated market pre-merger. Nevertheless, a detailed assessment of the transaction reveals that vertical competition concerns are likely. *Hitherto*, the acquirer was supplying DOCs to the target and other competitors in Uganda. Post-merger, the merged entity will be supplying DOCs to companies that were its competitors before the merger. The CID considered that the merged entity may therefore be inclined to demand feed purchases as a condition for the supply of DOCs. Further, the merged entity may also force buyers of its feed to also purchase DOCs from it. The merged entity will be part of the APDL group which is a large group of companies and a giant in the supply of DOCs.

Supply of broiler processed chickens in Uganda

91. The CID noted the parties' submissions with respect to the market for the supply of processed chickens as follows:

Table 4: Estimated market shares in the supply of processed chickens[29]

Competitors	Estimated % market shares
Target	***[30 – 35]%***
Biyinzika Limited	[25 – 30]%
Ugachick Limited	[25 – 30]%
SR-Kuku	[25 – 30]%

92. The CID considered that the market structure for the supply of processed chickens is unlikely to be altered because of the proposed transaction given the absence of horizontal overlapping relationship between the target and acquirer. The acquirer is not involved in the supply of broiler processed chickens in Uganda *hitherto.* However, the market is highly concentrated if assessment of market concentration ratios using CR3 is considered as follows:

Pre-Merger: ***[30 – 35]% HMH (Target)*** *+ [25 – 30]% Biyinzika + [20 – 25]% Ugachick Limited = [80 – 85]%*

Post-Merger: ***[30 – 35]% HMH (Target)*** *+ [25 – 30]% Biyinzika + [20 – 25]% Ugachick Limited = [80 – 85]%*

93. Notwithstanding the absence of horizontal overlap in this market, vertical concerns are likely to arise. The CID observed that the acquiring group is a significant player in the supply of DOCs and from the indications obtained from the market, it is reasonable to believe that tying of DOCs to the supply of chickens for processing is likely (i.e., the merged entity may precondition the sale of DOCs to customers who agree to process the chickens which are ready for slaughter with the merged entity. The merged entity will continue to command a significant share of the market at [30 – 35]% giving it the leverage to engage in tying/bundling of DOCs with processed chickens.

[29] Confidentiality claimed by the parties

94. In view of the foregoing, the CID observed that the relevant markets were either moderately concentrated such as the market for the supply of DOCs where the CR3 is 69% or highly concentrated such as the market for the supply of poultry feed and supply of processed chickens where the CR3s are, [80 – 85]% and [80 – 85]%, respectively.

95. The CID noted that while the transaction may not appear to raise horizontal concerns, in the relevant markets, the transaction raised vertical interrelationships between the merging parties which warrant further interrogation in markets such as breeding of broiler DOCs, supply of broiler DOCs and production/supply of processed chickens. Further, through the cross shareholding of Seaboard in APDL and Unga Group Limited, foreclosure concerns may arise given Unga Group is a major player in the supply of chicken feed and currently a key supplier to the Acquiring group. In particular, the CID observed that the transaction will result in the merged entity operating across the entire poultry production value chain, namely breeding and supply of DOCs for broilers, supply of poultry feed and supply of processed chickens. Further, the merged entity may engage in foreclosure by refusing to supply DOCs to third parties that are also involved in the supply of processed broiler chickens or may force purchasers of DOCs to sell the broilers only to them for processing and not their competitors. Further, noting that the Acquiring Group is a major player in the DOCs market, the merged entity may force customers of DOCs to purchase feed from Unga Group affiliated entities where the Acquiring Group has a common shareholder.

96. Therefore, the CID further assessed the likely competition effects across the entire poultry value chain as presented below.

<u>*Production and supply of breeders for broiler and layer day old chicks*</u>

97. The CID observed that horizontal competition concerns in this market were unlikely to arise because the target is not involved in the acquisition of breeding rights. This market is global and not national and therefore, a further interrogation of horizontal concerns is not warranted. Nevertheless, vertical concerns were likely in that the acquirer is involved in the breeding of the parent stock and the production of DOCs which may not be the case with its downstream competitors. The CID recalled that the acquiring firm, APDL, has a 24% non-controlling interest in Aviagen EA [redacted] While this has not occurred to date, according to the parties, the fact that APDL is a shareholder in Aviagen EA which is one of the only two suppliers of parent stock eggs in COMESA is a potential concern because this may distort competition in the downstream DOCs market where the merged entity will be active.

Barriers to Entry

98. The CID observed that since potential competition is likely to reduce the market power of firms, barriers to entry are a critical element in determining whether the incumbent has market power or not. Barriers to entry refer to obstacles for potential new entrants to

enter the market and compete with the incumbents; while barriers to expansion refer to obstacles for incumbents to grow in the market. Where the barriers to entry are high, the incumbents have more freedom to abuse their position in the market because they do not face any competitive restraint from potential competition.

Supply of broiler feed

99. The CID noted the parties' submission that there are no significant barriers to entry in the poultry feed and processed chickens' markets. Entry into these markets is not prohibitive from either a regulatory or capital perspective. From a regulatory perspective, an entrant requires to obtain appropriate business permits and statutory licences. However, a further consideration of the market may reveal that significant barriers to entry exist in this market. This is because most poultry companies are vertically integrated and also produce their own feed which are sold to consumers some of them under the contract or out-grower schemes. Therefore, any new entrant would need to secure the market for its feed which may not be easy. A cursory review of the market also reveals that there have not been significant entries in the last three years supporting the conclusion that barriers to entry may exist in this market.

Supply of broiler day old chicks

100. The CID noted the parties' submission that the entry into the broiler DOCs market at a small scale is at a relatively insignificant cost. At a larger scale the cost will be dependent on what is being developed. For a broiler farm growing about 60,000 chicks in open houses the cost of development will be approximately USD 720,000. However, the parties submitted that these types of developments tend to have a very significant carbon dioxide footprint. For a similar farm with environmentally controlled houses and proper biosecurity, the cost of entry will be approximately USD 1.2 million. Such an only works for a contracted out-grower who will supply to a processing facility on a six-weekly basis. For an integrated operation including broiler DOCs and processing, an entity would need at a minimum 4 to 5 farms of this nature.

101. The CID considered that above submission from the parties was misleading as it does not relate to the identified relevant market but relates to the growing of broilers for processing or sale to processors. The CID considered that the relevant market presented barriers to entry. The CID observed that the extent of integration of an entity across the poultry and poultry products value chain is essential to give an entity competitive advantage over its rivals who may not be vertically integrated. For instance, the CID observed that breeding and supply of DOCs require an entity to invest in breeding facilities such as hatcheries and possess the necessary licenses for breeding of DOCs which is vital to a successful breeder operation. Further, an entity operating across the entire poultry value chain such as in breeding and production of DOCs, production and supply of poultry feed and supply of processed chicken is likely to be more competitive and thus

present significant constraints to rivals and limit the timely entry of other players that may not be operating across the entire value chain.

102. The CID noted that the acquirer is licensed by Aviagen EA to breed Ross 308 eggs and it supplies broiler DOCs to Uganda, Kenya and Zambia from its breeder operations in Zambia.

103. The CID also recalled that given the fact that the Acquirer holds a non-controlling minority stake of 24% in Aviagen EA, [redacted] On this basis, the acquirer also supplies breeding eggs from its non-controlled breeder operation in Tanzania to hatcheries in Kenya and Uganda, for hatching and further distribution of DOCs to customers within these markets.

104. The CID considered that these existing licensing arrangements pose a significant barrier to entry in the market for the supply of DOCs due to vertical integration arrangements. A new entrant would require obtaining such licenses and invest in hatcheries to be competitive in this market. To support this assessment, the paragraph below gives the global picture of this market that has resulted into the consolidation of the barriers to entry identified above.

105. The CID also noted that mergers approved in the USA and Europe have impacted on rivalry in breeding stock, such as Aviagen's acquisition of Hubbard in 2017/18 approved by the UK's Competition and Markets Authority. The two lead companies (Tyson and the EW Group/Aviagen) have subsidiaries all over the world and keep breeding stock on different continents. The rights to produce are then licenced to companies at the grandparent stock level. Grandparent stock cannot themselves be sold by licensees; these companies produce and can on-sell parent stock, depending on the distribution licence, or retain parent stock to themselves to produce broiler DOCs. The CID further noted that setting up grandparent breeder facilities requires the breeding licence, significant capital investment, specialised knowledge in breeder technologies, and infrastructure to meet biosecurity and animal welfare standards. There are therefore significant barriers to entry into breeding operations. Setting up a grandparent operation in South Africa is estimated to cost around R50-R70 million ($3 million-$4million).[30] In addition, it can take 15 to 24 months from receipt of grandparent stock to produce the first commercial-level day old chick (Bagopi et al., 2014). Poultry producers thus require up to two years of capital to sustain a breeding business before realizing revenue from the sale of commercial broilers. Since the investment costs are large, a company setting up a breeder operation would first need to be certain of a customer base, meaning having off-take agreements or being vertically integrated. Being a breeder at the grandparent level

[30] Multinationals and competition in Poultry Value Chains in South Africa, Zambia and Malawi. A CCRED Working Paper by Sumaya Goga and Simon Roberts; August 2023.

means being able to sell both parent stock and broiler DOCs into the market (depending on how the companies' operations are set up). The CID observed that firms with distribution licences, such as the acquiring group, have a significant cost advantage over downstream breeding firms who acquire parent stock to produce DOCs.

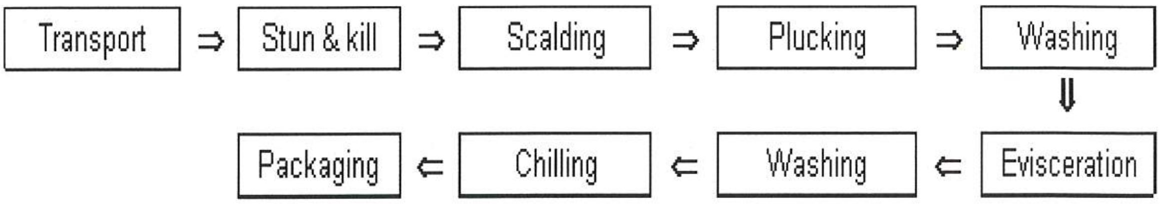
106. The CID noted that vertical integration with key inputs such as animal feed is a key characteristic in the poultry value chains in Botswana, South Africa, and Zimbabwe, particularly for the larger players. This is important for the co-ordination of production, especially for those firms operating on a large scale. The major producers in each country are generally vertically integrated, starting from breeding operations and feed production to slaughtering and processing (FAO 2013; Louw et al. 2013). In Zimbabwe, where the bulk of chicken supplied to the market is from small-scale farmers, vertical integration is only a key feature for the few large firms that supply the formal market. Moreover, a number of the players, especially large South African poultry companies, have operations in more than one country in the region.

107. In view of the foregoing, the CID observed that entry into this market has substantial barriers and confirms why there has not been significant entry in the market in the last three years except for companies that have interrelations with the incumbent.

Supply of broiler processed meat

108. Broiler chickens are processed for meat, and the process involves catching, stunning, scalding, and more. The goal is to produce meat that is safe to eat and meets consumer demand. This process requires significant investment in equipment and machinery which may not be afforded by a number of companies except those that are vertically integrated as is the case with the acquiring firm. Such technology and equipment is important to ensure that chickens are not contaminated with bacteria during processing. Once the broilers have reached the proper size and weight, workers trained in humane care arrive to catch each chicken at the farm, by hand.[31] During this process, chickens are transferred into holding cages or modular bins, specifically designed for transport to the processing plant, aimed to ensure that birds don't hurt themselves or other birds, and that air is able to circulate.

Figure 7: A flow chart describing transport and processing of raw poultry meat (from Eley,1996)[32]



[31] https://www.chickencheck.in/day-in-the-life/chicken-transport-processing/ accessed on 14 January 2025
[32] https://www.fao.org/4/y4392e/y4392e0m.htm accessed on 14 January 2025

109. Key factors to consider when planning to set up a chicken processing plant include:

i. Performance of the poultry market

ii. Price trends of various feedstocks in the poultry industry

iii. Structure of the poultry industry and the key players

iv. Various unit operations involved in a poultry processing plant

v. Total size of land required for setting up a poultry processing plant

vi. Layout of a poultry processing plant

vii. Machinery requirements for setting up a poultry processing plant

viii. Raw material requirements for setting up a poultry processing plant

ix. Packaging requirements for setting up a poultry processing plant

x. Transportation requirements for setting up a poultry processing plant

xi. Human resource requirements for setting up a poultry processing plant

xii. Infrastructure costs for setting up a poultry processing plant

xiii. Capital costs for setting up a poultry processing plant

xiv. Operating costs for setting up a poultry processing plant

xv. Pricing mechanism of the final product

xvi. Income and expenditures for a poultry processing plant

xvii. Time required to break even

xviii. Profit projections for setting up a poultry processing plant

xix. Key success and risk factors in the poultry industry

xx. Key regulatory procedures and requirements for setting up a poultry processing plant

xxi. Key certifications required for setting up a poultry processing plant

110. The CID observed that most of the above factors seem to favour companies that are vertically integrated. For example, vertically integrated companies will have an advantage with regard to access to the market and other raw materials like the live chickens. Further, with regard to costs, vertically integrated companies have advantages of economies of scale. It is therefore concluded that the barriers to entry in the processing market are significant. This explains why there are not too many processors in each of the countries of the Common Market including Uganda which is the focal market for purposes of this transaction.

Production and Supply of breeders for broiler and layer day old chicks.

111. The CID did not to delve into this market as the target firm does not produce breeders for broiler DOCs. However, for purposes of completeness and to give a full picture of the dynamics of the poultry industry, the CID assessed the possibility for barriers to entry. Further, the CID observed that merger shall confer such production capacity on the incumbent and therefore present vertical concerns in so far as other players would purchase DOCs from the merged entity. The CID posited that barriers to entry in this market are more prohibitive than any of the markets identified above due to the licensing arrangements, sanitary and phytosanitary measures and the plant and equipment requirements.

112. For example, the CID observed barriers would emanate from the Acquirer's minority shareholding in Aviagen EA which is part of the Aviagen/EW Group, one of the two companies accounting for more than 90% of breeding stock globally. Further, the CID observations of substantial increase in concentration globally in poultry breeding with market consolidation and mergers in the industry leading to two companies dominating broiler genetics, namely ***Tyson Foods through Cobb-Vantress and the EW Group/Aviagen***.

113. The CID further noted that barriers to entry were present given the existing network of relationships and cross shareholdings extending into southern and east African poultry markets where Tyson and Aviagen have direct influence over poultry production in the region, noting that APDL is associated with Aviagen.

114. The CID noted that the existing networks between the players in the poultry sector across the region including stringent licensing requirements posed significant barriers to entry in the relevant markets.

Countervailing buyer power

115. Countervailing buyer power exists in a market where an individual customer or a group of customers can use their negotiating strength to limit the ability of a merged undertaking to raise prices.

Supply of broiler day old chicks

116. In the market for DOCs, it is recalled that the target is a significant customer of the acquiring group post-merger, accounting for [10 – 15] % of the [20 – 25] % market share held by the acquirer in the DOCs market for Uganda alone. The CID is of the view that pre-merger, the target entity presents significant countervailing power on the acquiring entity whose competitive constraint will no longer be present post-merger. Therefore, any meaningful countervailing power that could have been existing in this market would be

virtually eliminated. The other customers do not present significant purchase volumes for them to have the capacity of offering any meaningful countervailing power.

Supply of broiler feed

117. The CID noted that it was plausible that the target's main customers in Uganda would be to other producers of poultry feed in the event of unfavourable terms by the target. This is likely given the market for poultry is replete of other players growing chickens for slaughter. It is also noted that the target is not a significant player in the poultry feed market such that its competitors could easily supply the market in the absence of the target entity.

118. The foregoing notwithstanding, the CID observed that the merged entity shall be vertically integrated along the value chain from the acquisition of licenses to breed grandparents and parents, the production and supply of DOCs, the production and supply of poultry feed and the sale of processed chickens. The CID therefore considered that the Target is likely to use this vertical integration to influence market conditions in any of the identified markets including the market for feed by engaging in anti-competitive conduct such as tying and bundling. Such a situation would negate any meaningful exercise of countervailing power.

Supply of broiler processed meat

119. With regards to the market for processed chickens, the CID considered that countervailing power was present given the nature of the customers served by the target entity, namely Kuku Foods Company Limited (a KFC franchisee in Uganda), Café Javas, Finsbury Trading Limited, and Capital Shopper Limited.

120. Notwithstanding the above, The CID observed that the market for the supply of processed chicken is highly concentrated such that the customers would not have greater options. Countervailing power is strengthened not just where the consumer constitutes a significant level of purchases from the supplier but also where there are many other alternative sources of supply which does not appear to be the case in the relevant market. The CID noted that the sector depicts high concentration levels found in the relevant market which may render any meaningful possibility of countervailing power impotent.

Table 5: Estimated market share in the supply of poultry feed in Uganda[33]

Competitors	Estimated market shares (%)
Biyinzika Limited	[30 – 35] %
SR-Kuku	[25 – 30] %
Grain Pulse	[20 – 25] %
Target	***[10 – 15] %***
Hendrix	[5 – 10] %

[33] Confidentiality claimed by the parties

COMPETITION COMMISSION
03 MAY 2025

Production and supply of breeders for broiler and layer day old chicks

121. The CID noted that the target firm does not produce breeders for broiler DOCs. Further, countervailing power in this market appears to be virtually non-existent give the market at the licensing level is highly concentrated. More than 90% of the global market is dominated by only two companies; namely Cobb-Vantress and EW Group/Aviagen. The CID observed that this means that customers do not have many options for them to exercise countervailing power.

Consideration of Dominance/ Unilateral Effects

122. Unilateral effects may arise where, as a result of a merger, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. Pre-merger, any increase in the price of one of the merging parties' products could have led to a diversion of its sales to the other party (depending on the extent of competition between them). However, post-merger the competitive constraints that each firm imposed on the other is eliminated which may provide incentives for the merged entity to increase prices.

123. For unilateral effects to be present, the merged entity should be in a dominant position. A dominant position exists where the undertaking concerned is in a position of economic strength which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.[34] According to the COMESA Guidelines on Abuse of Dominance, "*...an undertaking holding a market share of at least 30% of the relevant market is presumed to hold a dominant position...*".

124. The CID observed that while market structures in the relevant markets are unlikely to be altered due to the proposed transaction, the merged entity can be said to hold a dominant position in the market for the production and supply of processed chickens in Uganda with a market share of [30 – 35]%. The merged entity is therefore likely to engage in unilateral conduct given these market shares which presume dominance. However, the presumed dominance would not be a function of the merger but the status quo.

125. The foregoing notwithstanding, given the merged entity will operate across the poultry value chain, it may leverage on this to its competitive advantage in the other related markets. Given the Target is already a customer of the acquiring undertaking in respect of the broiler DOCs, the transaction may result in the merged entity exclusively limiting its supply of DOCs for itself or prioritising its own supply over other customers with whom it

[34] Case 27/76 United Brands Company and United Brands Continental BV v. Commission of the European Communities [1978] ECR 207 para 3

competes in the market for processed chickens. This is more likely given that the merged entity is guaranteed of DOCs given that it is a license holder for the Ross 308 breed from its breeder in Zambia and through its non-controlling sharing in Aviagen EA which guarantees the acquirer supply of breeder eggs on a first come basis.

Consideration of vertical effects and links

126. The CID noted the parties' submission that they are active on markets in Uganda that are vertically related to each other, namely breeding and supply of DOCs; production and supply of processed chickens and production and supply of poultry feed.

127. The nature of supply chain relationships through the poultry value chain and the level of concentration means that there may also be likely vertical competition concerns. The merging parties include one of, if not the, largest poultry breeding, feed and poultry producer in Eastern and Southern Africa. Vertical concerns include possible foreclosure, exclusive arrangements, and/or tying arrangements.

128. The proposed transaction will affect these markets if the merged entity has the ability and incentive to foreclose its rivals, and that the foreclosure strategy will result in a substantial lessening of competition in any of the relevant markets as further assessed below.

Input Foreclosure

129. In assessing input foreclosure, the CID's concern was whether the merged undertaking could increase the price it charges for the inputs in the production and supply of processed chickens, namely supply of DOCs and supply of poultry feed to competing producers of live chickens for processing. The CID noted this would make it hard for the merged entity's competitors in the market for processed chickens to compete by increasing their costs, making them less competitive in the processed chickens market where the target currently holds a dominant position. It should however be noted that such a strategy would only be feasible if it is profitable to do so. Where there is risk of loss of sales as a result of such a strategy, the merged entity may not have an incentive to engage in this conduct.

130. An examination of the relevant markets reveals that the main competitor of the merged entity across the markets in Uganda is Biyinzika Limited which also has vertical linkages along the feed, processed meat and supply of DOCs markets. It therefore follows that any input foreclosure strategy by the merged entity in Uganda is likely to backfire as Biyinzika Limited is dominant across the value chain compared to the merged entity except in the supply of processed chickens. This report therefore concludes that input foreclosure is unlikely given this potential loss of sales.

Tying

131. Given the acquiring group is indirectly active in production and supply of broiler feed, tying post-merger is more likely than not. The CID noted that the possibility of tying is further consolidated given the acquirer's capacity to supply broiler DOCs since it possesses the

relevant breeding license, has capacity to breed through its operations in Zambia and has hatcheries in Kenya and Uganda. It is further considered that the Acquirer [redacted] CID observed that any competition authority would be concerned with this arrangement and would seek guarantees through undertakings that such arrangements would not lead to distorting competition in the market.

Consideration of Coordinated Effects

132. The CID noted that removal of a competitor from a market through a merger may facilitate coordination whether express or tacit, among the remaining firms in the industry, leading to reduced output, increased prices, or diminished innovation. Stable or successful coordination requires an ability to detect and punish deviations that would undermine the coordinated interaction. Coordination is more likely in markets that are transparent and concentrated. This is what has been observed in all the markets that have been identified in this case. It is important to make note however that the concentration levels identified are not a function of the merger but the status quo. However, coordination should still be examined as the different linkages existing in the industry are likely to result in this possibility post-merger.

133. CID noted that it is manifestly observable that increased concentration, including at a regional level and in this case with multi-market contact, means a greater likelihood of coordination. The target firm HMH had an ownership stake by Rainbow (part of RCL Foods), which in South Africa holds the Cobb licence while an owner of APDL is the rival breeding company Aviagen/EW. The merger may reinforce geographic division of company operations across the continent. Furthermore, relationships among firms may make it easy to share information and monitor sales, along with all of the other factors being clearly met relating to a high likelihood of coordination, across COMESA Member States and beyond.

134. The CID observed that the potential for coordinated conduct is linked to the ability to share information on production, sales and even prices (which may not be transparent across markets). This can be facilitated through complex ownership patterns as discussed above where common ownerships allow for access to strategic information between would-be rivals. Consideration of the exchange of information to facilitate coordinated conduct without constituting explicit agreements should also be regarded. The general consensus is that the frequent exchange of individual, disaggregated price and quantity information, as well as the sharing of strategic, future plans between rivals and not the public, has the highest collusive potential. This is especially the case in markets that are highly concentrated with large barriers to entry and relatively

COMPETITION COMMISSION
0 3 MAY 2025

homogenous products, all which are characteristics in the potential product markets in the proposed merger.

135. CID noted that research on animal feed has already pointed to export permits for soymeal/cake from Zambia raising coordination concerns.[35] The CID further noted that merging parties and their owners are involved in Zambia in various related activities. In addition, the CID also noted role of the East African Grain Council (EAGC). EAGC is a membership-driven group of grain producers and traders across east and southern Africa may be relevant. The EAGC collates and shares information across the region on key inputs to animal feed, namely maize and soybeans. The merging parties (including their associated companies in trading and processing of feed inputs) may participate in these arrangements.

136. The CID observed that the foregoing raise complex concerns relating to vertical interactions, actual and potential cross-border competition concerns, coordinated effects and information exchange. The CID therefore concluded that while the merger is not significantly changing the market structure, it is likely to reinforce vertical links. For example, the target was not involved in the supply of DOCs pre-merger. Post-merger, it will be related to the APDL group of companies which operate at all the different levels of the value chain thereby raising competition concerns as observed above.

Consideration of Effect on Trade between Member States

137. In the transaction under review, no significant alteration of the market structures is expected in the foreseeable future. However, the CID concluded that the transaction poses competition concerns including having an effect on trade between Member States. The CID's conclusion is informed by the fact that the transaction reinforces vertical linkages and common ownership among companies involved in the entire value chain of the poultry industry. A scenario the CID observed would make *de novo* entry very difficult as potential entrants would find it difficult to enter and expand.

Consideration of Third-Party Views

138. The CID noted that stakeholder submissions were received from the National Competition Authority of Kenya and Zambia which did not raise concerns in relation to the transaction. However, the CID noted that despite the stakeholders not raising competition concerns, the Secretariat's detailed investigations, understanding of the market and subsequent assessment pointed to a different conclusion i.e. that competition concerns existed in this market mainly due to its structure and some legacy issues. The CID observed that the Commission was not bound to adopt submissions from stakeholders and that such submissions are used to obtain a deeper insight into the operations of the markets which

[35] See the Commission's Africa Market Observatory Report

the Commission then subjects to a rigorous assessment in addition to other information to draw its conclusions.

Determination

139. Given the foregoing reasons, the CID determined that the transaction has a likelihood of substantially preventing or lessening competition in the relevant markets. The CID therefore considered that the merger should be approved subject to remedies to address the competition concerns.

140. The CID, therefore, approved the transaction with the following conditions:

a) **The merged entity shall not engage in any conduct that relates to conditional purchasing including tying, bundling or refusal to deal, in relation to the supply of broiler DOCs and broiler feeds in Uganda.**

b) **The merged entity shall not engage in any conduct that relates to conditional purchasing including tying, bundling or refusal to deal in relation to the supply of broiler DOCs and processing of chickens for slaughter in Uganda, provided that:**

   i. **This condition does not apply to outgrower scheme/arrangements; and**

   ii. **With regard to outgrower scheme/arrangements, the merged entity shall not restrict or prohibit outgrower farmers from contracting with the merged entity's competitors.**

c) **The preferred customer status conferred on APDL and as it relates to the Ugandan market should cease. An objective criterion should be established with regard to sourcing of breeding stock from Aviagen East Africa Limited. The objective criterion should be submitted for the Commission's approval within three (3) months of the Approval Date of this merger.**

d) **The merged entity should put in place firewalls/information barriers between its broiler breeder DOCs and broiler DOCs businesses, to ensure that commercially sensitive information of the merged entities' customers for broiler DOCs is not exchanged under any circumstances with the merged entity's own broiler DOCs business. The merged entity shall submit a report for the Commission's consideration on the measures put in place to establish the information barriers within three (3) months of the Approval Date of this merger.**

e) **The merged entity shall produce an annual report which details its compliance with the conditions contemplated above. Such a report shall be submitted to the Commission within three (3) months of each anniversary of the Approval Date, for the period of the conditions and should be accompanied by affidavits or declarations attesting to the accuracy.**

141. **The conditions shall be effective for a period of three (3) years from the Approval Date. At the expiration of the period of the conditions, the Commission shall review the relevance of the conditions and determine whether the conditions shall continue and any monitoring and reporting thereof or be terminated based on the prevailing market conditions. Nothing shall prevent the Commission from conducting its independent review and assessment of the parties' compliance with these conditions at any time.**

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

Dated this 3rd day of May 2025

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Vipin Naugah**