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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/10/41/2024

Decision[1] of the 116th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Sole Control by CP Spruce Holdings S.C.Sp over Baxter International Inc's kidney care segment known as Vantive

ECONOMIC SECTOR: Health

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

Having regard to the COMESA Merger Assessment Guidelines of 2014;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirous of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Determines as follows:

Introduction and Relevant Background

1. On 18 November 2024, the COMESA Competition Commission ("**Commission**") received a notification of a merger regarding the Proposed Acquisition of Sole Control by CP Spruce Holdings S.C.Sp ("**CP Spruce**") over Baxter International Inc's ("**Baxter**") kidney care segment known as Vantive (the **Target**), pursuant to Article 24(1) of the Regulations.

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

CP Spruce (the "acquiring firm")

4. CP Spruce is a special limited partnership (société en commandite spéciale) incorporated in accordance with the laws of Luxembourg. CP Spruce is an entity which has been incorporated for the purposes of the Proposed Transaction.

5. CP Spruce is represented by its managing general partner (associé commandité gérant) CP VIII Spruce GP S.à r.l. ("**CP VIII**"). CP VIII is indirectly controlled by affiliates of The Carlyle Group Inc. (together with its controlled funds and affiliates, "**Carlyle**" or "**the Acquiring Group**").

6. Carlyle is a global alternative asset manager, which manages funds that invest globally across three investment disciplines: (i) Global Private Equity (including corporate private equity, real estate and natural resources funds); (ii) Global Credit (including liquid credit, illiquid credit and real assets credit); and (iii) Investment Solutions (private equity fund of funds program, which include primary fund, secondary and related co-investment activities).

7. The parties submitted that in the Common Market, the Acquiring Group operates in all Member States, except Comoros and Eritrea.

Vantive (the "Target")

8. The target is the kidney care segment of Baxter International Inc. known as Vantive.

9. Following a pre-Transaction re-organization currently being conducted by Baxter, Vantive will be comprised of the following entities (and their respective subsidiaries) per Table 1 below:

Table 1 – The Target Entities

Name	Description of activities
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]	[redacted]

10. The parties submitted that Vantive is primarily active in the supply of replacement therapy (**RRT**) products.

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 a turnover 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 concerns the acquisition of sole control by CP Spruce, represented by its managing general partner CP VIII, over Vantive.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

14. Paragraph 7 of the Commission's 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**".*

15. The CID noted that the Acquiring Group invests in the following: (i) Global Private Equity (including corporate private equity, real estate and natural resources funds); (ii) Global Credit (including liquid credit, illiquid credit and real assets credit); and (iii) Investment Solutions (private equity fund of funds program, which include primary fund, secondary and related co-investment activities).

16. The CID further noted that the Target on the other hand, is active in the supply of RRT products. The parties have submitted that Vantive's operations have two primary divisions; (i) Chronic Therapies, comprised of Peritoneal Dialysis and Haemodialysis (HD) product portfolios, and (ii) Acute Therapies which is comprised of Continuous Renal Replacement Therapy and other organ support therapies used in ICU care.

17. In view of the absence of overlap between the activities of the merging parties in the Common Market, the CID analysed the products of the target for the purposes the assessment of this transaction.

18. The CID noted that RRT products are used to treat patients suffering from End-Stage Renal Diseases ("**ESRD**"). ESRD is the final stage of chronic kidney disease and refers to the condition where a patient's kidney has a renal failure of above 85%[2]. In such conditions, the patient's kidney no longer functions to remove wastes and extra fluid from the blood in the body. In such instances, the patient has to undergo dialysis or a kidney transplant to keep alive. The CID observed that dialysis refers to a treatment which uses an artificial way, including a machine, to clean the blood of a patient[3], in replacement of the kidney function in a human body.

19. The CID has previously considered[4] that dialysis is an artificial process that performs the key functions of healthy kidneys: filtering the blood, controlling the blood's electrolyte composition, and balancing fluid levels. It serves two categories

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[2] National Kidney Foundation, 'Kidney Failure' https://www.kidney.org/kidney-topics/kidney-failure
[3] American Kidney Fund, 'Kidney failure (ESRD) - Symptoms, causes and treatment options' www.kidneyfund.org/all-about-kidneys/kidney-failure-symptoms-and-causes
[4] Decision of the 107th Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by AsterRx Holdings Over Allmed Medical Care Holdings Ltd

of patients who require such therapies: (i) chronic kidney disease/patients with an end-stage renal disease ("**CKD**") and (ii) acute kidney injury/patients facing a sudden kidney failure ("**AKI**").

20. The CID considered in the previous transaction that dialysis services are of two types, namely, hemodialysis ("**HD**") and peritoneal dialysis ("**PD**").[5]

21. The CID noted that HD uses a dialyzer, a machine, also known as an artificial kidney machine to clean the blood.[6] During the HD treatment, the patient's blood is run through the dialyzer from a fistula needle, which is the access point in the body. The dialyzer filters the patient's blood using a membrane. The waste products in the blood pass through the membrane and are washed away using a fluid called dialysate. The waste products are discarded and the cleansed blood is returned to the body. HD is mainly used for chronic patients and is an intermittent therapy, which is given to the patient on an average frequency of three times a week and each session spanning between two to four hours. HD is usually offered in hospitals and clinics and rarely is an option which is available as home-based treatment.

22. The CID further noted that HD treatment system consists of a monitor, disposables (including a dialyser and bloodlines) and fluids that are prepared from concentrates (fluids and disposables being also referred to as "consumables"). The monitor allows the physician or nurse to choose the treatment modalities (such as blood pump speed) and to check how the patient responds to the treatment. The monitor has a control display and serves as the apparatus to which the disposables are attached. Bloodlines are tubes that connect the patient's blood stream with the dialyser and the fluids.

23. The CID noted that PD on the other hand does not require an external machine to filter blood but uses the lining in the belly as a natural filter to cleanse the blood of the patient, as a kidney would. During the PD treatment, the dialysate is run into the abdomen's peritoneal cavity using a PD catheter. The parties have submitted that there are two types of PD therapy currently available: (i) CAPD therapy (which is a manual form of PD in which the patient is required to exchange old solution for the new solution one to four times per day depending on the patient's needs); (ii) APD therapy (which automates the exchange of dialysis solution to remove toxins and fluid). The equipment required to perform PD consists of a small pumping machine, a cycler (only necessary for automated PD treatments) and several disposables, including a transfer set that connects the catheter to a bag system. It is the primary treatment option for patients experiencing AKI.

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[5] Ibid

[6] www.durhamnephrology.com/hemodialysis-vs-peritoneal-dialysis/

24. The CID noted that Continuous Renal Replacement Therapy ("**CRRT**"), is a treatment which uses the same mechanism as HD but is a continuous treatment given to the patient. This treatment can last 24 hours to treat acute patients. CRRT is primarily performed in intensive care units (ICU) using special equipment, consisting of a dedicated CRRT monitor and disposables. The disposables include dialysers and bloodlines, which can be provided together as a "set", and CRRT requires fluids that are delivered in ready-to-use bags. The disposables include dialysers and bloodlines, which can be provided together as a "set", and CCRT requires fluids that are delivered in ready-to-use bags.

25. The CID further noted that Vantive's medical devices, which include dialyzers, bloodlines, acid concentrates, bicarbonate cartridges, and as well as pharmaceutical products, are utilized collectively in processes such as PD, HD and CRRT. The CID observed that pharmaceutical devices for PD comprise a small pumping machine known as a cycler, dialysate fluid bags, and various disposables like a transfer set that connects the catheter to the bag system.[7] Pharmaceutical devices necessary for HD include a monitor, bicarbonates, concentrates, purified water, dialysers containing filtering membranes, bloodlines, tubing connecting the patient's bloodstream (via a fistula needle or catheter) to the machine.

26. The CID observed that from a demand perspective, the end use and purpose of medical devices and pharmaceutical products are therefore different. While medical devices are the physical tools and equipment used directly in the dialysis treatment process, pharmaceuticals are medications and drugs administered to manage various aspects of kidney disease and its complications during dialysis. The CID has previously noted that medical devices for dialysis are different from the pharmaceutical products used in the dialysis treatment process and therefore considered that each can be classified as separate markets as medical devices for dialysis and pharmaceuticals for dialysis.[8]

27. In line with the CID's decisional practice, the CID considered that further segmentation within the medical devices for dialysis and pharmaceuticals for dialysis can be made.[9] The CID noted that within the medical devices segment, a bloodline functions as a tube connecting the patient to the dialysis machine, a fistula needle is used for accessing blood during hemodialysis while a bicarbonate cartridge is used in hemodialysis machines to regulate bicarbonate levels in the blood). Regarding the dialysis treatment, as has been discussed above, the CID observed that segmentation may also be possible depending on the type of dialysis intended to be administered i.e., HD or PH.

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[7] https://ec.europa.eu/competition/mergers/cases/decisions/m6851_3812_2.pdf
[8] Decision of the 107th Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by AsterRx Holdings Over Allmed Medical Care Holdings Ltd.
[9] Ibid

28. The above notwithstanding, given that there was no overlap in the activities of the parties, the CID was of the view that a further narrowing of the market was not necessary as any alternative market definition would not alter the competitive assessment with respect to **the manufacturing and supply of medical devices and pharmaceuticals products for dialysis**.

29. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets are defined as:

    i. **the manufacturing and supply of medical devices for dialysis, and**

    ii. **the manufacturing and supply of pharmaceuticals for dialysis.**

Relevant Geographic Market

30. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising *"**...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**".*[10]

31. The CID noted [redacted].[11]

32. The CID observed that the parties considered the following global players as their competitors: [redacted][12]

33. In view of the above, the CID noted that the geographic scope for the manufacture and supply of medical devices for dialysis and pharmaceuticals for dialysis was likely to be broader than the Common Market and may extend globally given that manufacturers and sellers are global players. Therefore, the CID determined that the geographic scope for the relevant markets was global.

Conclusion of Relevant Market Definition

34. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID defined the relevant markets as:

    i. **the global market for the manufacturing and supply of medical devices for dialysis, and**

[10] Paragraph 8
[11] Confidential information claimed by the merging parties.
[12] Confidential information claimed by the merging parties.

ii. **the global market for the manufacturing and supply of pharmaceuticals for dialysis.**

Consideration of Substantial Lessening of Competition or "Effect" Test

Market Shares and Concentration

35. The CID noted the parties' submissions that Vantive competes with large and sophisticated suppliers, including [redacted][13] The CID observed that the latter players have broad RRT portfolios that include PD, HD and CRRT products and a global presence that allows them to offer RRT products across the world.

36. The CID further noted the parties' submissions that the following global market shares for Vantive for PD, HD, and CRRT represented approximately 5 - 10%, 80 - 90%, and 0 - 5%, respectively.

37. The CID noted that there is no overlap in the activities in the merging parties. The CID was thus of the view that the existing market structure would not change following the proposed transaction.

38. The CID observed that the global market for the supply of dialysis devices market is relatively fragmented, with a high level of competition, where Fresenius Medical Care AG & Co. KGaA, Baxter International Inc., B. Braun Melsungen AG, Nipro Corporation, DaVita Inc., MEDIVATORS Inc., Nikkiso Co. Ltd., Asahi Kasei Corporation and NxStage Medical Inc., are among the top players globally.[14]

39. Given the absence of overlap pre-merger combined with the fact that the merged entity would continue to face competition from the existing competitors which include major global and regional players, the CID considered that a detailed assessment of market shares and concentration was not necessary.

Consideration of Third-Party Views

40. In arriving at its determination, the CID also considered submissions from the national competition authorities of DRC, Egypt, Eswatini, Kenya, Libya, Mauritius, Seychelles and Zambia which confirmed the absence of competition and public interest concerns.

Determination

41. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor will it be contrary

[13] Confidential information claimed by merging parties
[14] https://www.skyquestt.com/report/dialysis-equipment-market#:~:text=Global%20Dialysis%20Equipment%20Market%20Insights,period%20(2023-2030)

to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

42. The CID, therefore, approved the transaction.

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

Dated this 25th day of March 2025

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Vipin Naugah**