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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/11/48/2024

Decision[1] of the 115th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of joint control by Alterra Africa Accelerator Fund LP, Alterra Africa Accelerator Fund (ZAR) Partnership, Phatisa Food Fund 2 LLC, PFF 2 Parallel LLC and PFF 2 Co-Invest Over Java House (Mauritius)

ECONOMIC SECTOR: Hospitality

COMESA COMPETITION COMMISSION
28 FEB 2025

28 February 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 20 December 2024, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed acquisition of joint control by Alterra Africa Accelerator Fund (ZAR) Partnership and Alterra Africa Accelerator Fund L.P. (together, "**Alterra**"), and Phatisa Food Fund 2 LLC, PFF 2 Parallel LLC, and PFF 2 Co-Invest (together, "**Phatisa**") over Java House (Mauritius) ("**Java Mauritius**" or the "**target firm**"), 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.

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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

Alterra ("acquiring firm")

4. The parties submitted that Alterra is an Africa-focused private equity firm that collaborates with entrepreneurs and management teams to foster business growth. Alterra targets investments across diverse sectors, including food and beverages, hospitality, retail, telecommunications, technology, financial services, consumer products and services, infrastructure services, and logistics. The parties submitted that Alterra established its maiden fund in 2022, the Alterra Africa Accelerators Fund ("**AAA Fund**"), to support these investments. The parties submitted that the AAA Fund does not have any activity and does not control any investee companies within the Common Market.

Phatisa ("acquiring firm")

5. The parties submitted that Phatisa is a private equity fund managed by Phatisa Fund Managers 2 Limited ("PFM 2"). PFM 2, a private equity fund manager, and the firms controlled by it in the Common Market are hereinafter referred to as the (the "**Phatisa group**"). Phatisa is active in printing; facilities management services; support activities for crop production, renting and leasing of other machinery, equipment and tangible goods; activities of holding company; administrative Services; and wholesale of agricultural machinery, equipment and supplies

6. Within the Common Market, the Phatisa group operates in the Democratic Republic of Congo (the "**DRC**"), Kenya, Malawi, Mauritius, Seychelles, and Zambia.

Java Mauritius (*the "target firm"*)

7. The parties submitted that the target firm is a Mauritian investment holding company, which through its subsidiaries, is involved in the fast food and restaurants business. The parties submitted that the target firm is active in restaurant and mobile food services, specifically: operating casual and quick-service restaurants, including producing baked goods, coffee, and ready-to-eat meals.

8. Within the Common Market, the target firm operates in Kenya, Rwanda and Uganda.

Jurisdiction of the Commission

9. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification

Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

"Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the *target firm, operate in two or more Member States, shall be notifiable if:*

a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and

b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State".

10. The undertakings concerned have operations in two or more Member States. The 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

11. The parties submitted that the proposed transaction entails the acquisition of joint control by Alterra and Phatisa over Java Mauritius.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

12. 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".***

13. The CID noted from the parties' submission that Phatisa is active in printing; facilities management services; support activities for crop production, renting and leasing of other machinery, equipment and tangible goods; activities of holding company; administrative Services; and wholesale of agricultural machinery, equipment and supplies.

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14. The target firm is active in restaurant and mobile food services, specifically: operating casual and quick-service restaurants, including producing baked goods, coffee, and ready-to-eat meals. The CID observed that the proposed transaction was not likely to raise any horizontal overlaps and focussed its assessment on the products provided by Java Mauritius.

The provision of casual and quick-service restaurant services

15. The CID noted that the casual and quick-service restaurant market comprises businesses operating dine-in and takeaway restaurants that provide fast and affordable meals. This market includes fast-food restaurants, self-service restaurants, and home delivery/take-away outlets. Within this market, some restaurants differentiate themselves by offering a more upscale and comfortable dining experience, often characterized by stylish decor and cozy seating arrangements. Furthermore, these establishments may include coffee offerings and ready-to-eat meal options, catering to both in-house dining and takeaway customers.

16. The CID further noted that a further segmentation of the casual and quick-service restaurant market could be explored based on demand-side substitutability. Factors such as service model, menu variety, and consumer preferences can influence the extent to which different types of restaurants are interchangeable. Casual dining restaurants provide table service, and a relaxed dining environment, while quick-service restaurants prioritize speed, affordability, and convenience, often featuring counter service and limited table seating.

17. The CID observed that while both segments serve the common function of providing food away from home, they may cater to different consumer needs, suggesting the potential for further segmentation into separate product markets. The CID further observed that, from a supply-side perspective, operators' ability to provide both casual and quick service restaurant options or to easily switch between the two supports the identification of a single market comprising both segments, namely casual dining and quick service restaurants. The CID noted that this is exemplified by Java Mauritius, which provides both casual dining and quick-service restaurant services in Kenya, Rwanda and Uganda.

18. The CID observed that this market may include fast-food restaurants (hamburger and non-hamburger), self-service restaurants, and homedelivery/take-away outlet. The CID observed that restaurants with quick service format were regarded as belonging to the same product market, despite serving different types of meals. The main features observed amongst such restaurants was they were convenience, had speedy, and inexpensive prices. It was also observed that these quick service restaurants would exclude restaurants seen as more sophisticated or more expensive restaurant.

19. In view of the foregoing and observing that the market structure is not likely to change as a result of the transaction, the CID considered that the broad market for provision of quick service restaurant service was relevant to conduct a competitive assessment in the transaction. The CID concluded that narrowing of the market was unnecessary given the absence of overlap in the activities of the merging parties.

20. **Based on the above considerations and without prejudice to the CID'S approach in similar future cases, the CID determined the relevant product market as the provision of quick service restaurant services.**

Relevant Geographic Market

21. The COMESA 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".***[2]

22. The CID observed that the provision of quick service restaurant services is typically localised at the city level within a given country. From a demand side, consumers tend to prefer dining options that are easily accessible. The scope of competition in this market is primarily influenced by consumer behavior, transportation costs, and the availability of nearby alternatives.[3]

23. Furthermore, the CID observed that consumers tend to make frequent and spontaneous decisions when selecting casual dining and quick-service restaurants, limiting their willingness to travel long distances. The CID contended that while leaving the precise geographic market open, the market was likely local or had at least a local dimension. Moreover, time is a key factor in consumer decision-making, particularly for takeaway and delivery services, highlighting the importance of proximity.

24. The CID observed that given the localized nature of casual and quick-service restaurant services, consumers prioritize convenience, accessibility, and price, making it unlikely that they would travel beyond their immediate urban area for casual or quick-service meals. The CID observed that this was supported by the view that competition in this sector primarily occurs at the city/town level rather than on a national or regional scale.

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[2] Paragraph 8 of the COMESA Market Definition Guidelines
[3] https://pmc.ncbi.nlm.nih.gov/articles/PMC7503372/, accessed on18 February 2025.

25. The CID observed that the target firm has several outlets in Nairobi and different towns in Kenya, such as Eldoret, Kericho, Kimathi, Naivasha, Nakuru, Nanyuki, Kwale, and Mombasa.[4]

26. The CID also observed that from a supply side, several factors support the city-based nature of competition. Market entry conditions, such as rental expenses, licensing requirements, and labor costs, vary significantly between cities, making it challenging for a single operator to compete effectively across multiple urban centers. The CID further observed that in the 2017 Java House merger case[5] reviewed by the Competition Authority of Kenya, it was revealed that there were distinct consumer behaviors and competitive dynamics in Nairobi compared to other towns in Kenya, further supporting a localized market approach.

27. In view of the foregoing, the CID considered that the provision of quick-service restaurant services was likely to be narrower than national and localized to cities/towns such as Nairobi, Naivasha, Nakuru, Kwale, Eldoret, Mombasa, Kisumu, Kericho, Thika, Nanyuki in Kenya; Kigali in Rwanda; and Kampala and Jinja in Uganda.

28. However, given that the transaction was not likely to affect the market structure in the identified relevant product market, the CID considered that the geographic scope for the provision of quick service restaurant services should be left open as any alternative geographic scope was not likely to alter the competitive assessment.

Conclusion on Relevant Markets

29. Based on the foregoing assessment, and without prejudice to its approach in similar future cases, the CID identified the market for the provision of quick service restaurant services whose geographic scope was left open.

Market Shares and Concentration

30. The CID noted the estimated market shares of the target firm and its top competitors in Kenya, Rwanda and Uganda and observed that the market for the provision of casual and quick-service restaurant services in these Member States was highly fragmented and characterised by several other players. The CID considered that the markets were competitive with many small businesses vying for a significant portion of the market. The CID also observed that the Kenyan, Rwandan and Ugandan market structures will not change as a result of the transaction given the absence in overlap of the activities of the merging parties.

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4 https://www.businessthisday.com/2024/06/21/java-house-kenya-branches-operating-hours-contacts-and-menu/, accessed on 18 February 2025.

5 https://cak.go.ke/sites/default/files/2019-06/CAK_Decision_on_Acquisition_of_Java_House_by_Actis_International.pdf, accessed on 18 February 2025.

31. In view of the foregoing, the CID considered that the transaction is not expected to affect the market structure in the relevant markets and the merged entity will continue to face competition pressures from existing other competitors.

32. The CID also considered that the barriers to entry in the relevant market were not insurmountable.

Consideration of Third-Party Views

33. In arriving at its determination, the CID also considered submissions from the national competition authorities of DRC, Kenya and Mauritius which confirmed the absence of competition and public interest concerns.

Determination

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

35. The CID, therefore, approved the transaction.

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

Dated this 28th day of February 2025

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Vipin Naugah**