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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/01/01/2025

**Decision¹ of the 117th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition by CFAO Healthcare of 69.9% of the issued share
capital of Africa Chemist & Beauty Care Inc.**

ECONOMIC SECTOR: Pharmaceutical



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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

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 10 February 2025, the COMESA Competition Commission (“**Commission**”) received a notification regarding the Proposed Acquisition by CFAO Healthcare (“**CFAO**”) of Africa Chemist and Beauty Care Inc. (“**ACBC**”), 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

CFAO (the “Acquiring Firm”)

4. CFAO is a company incorporated under the laws of France. It is involved in the wholesale distribution of pharmaceutical and related products across Africa and the French overseas territories.
5. The Acquiring Firm is part of the CFAO Group (which is in turn part of the Toyota Tsusho Corporation Group) which is a key player in mobility, healthcare, consumer goods, infrastructure and energy in Africa. The Acquiring Firm, the CFAO Group and all entities under their common control are together referred to as the Acquiring Group.
6. The Toyota Tsusho Corporation (“**TTC**”) is a company incorporated under the laws of Japan, trading in the field of automotive logistics, projects and industrial equipment, agricultural equipment, pharmaceutical products having global automotive business network, good experiences on vehicle logistics, and strong focus on developing new businesses designs to solve including energy and infrastructure.
7. The main activities of the Acquiring Group in the Common Market are as follows:
 - i. Automotive: activities include new car sales and after-sales service, automobile production support, used car sales, vehicle assembly and production, import, wholesale and lease of construction and agricultural machinery, local parts manufacturing and distribution.
 - ii. Healthcare: through CFAO, the Acquiring Group engages in healthcare activities including production, wholesale, and retail of pharmaceutical products, and promotion of digitalization of the healthcare field through investment in startups.
 - iii. Infrastructure: development projects, mainly in the areas of renewable energy (including wind, solar, geothermal), port development, and water resources.
8. Within the Common Market, the Acquiring Group has subsidiaries in the following Member States: Democratic Republic of Congo (“**DRC**”), Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Uganda, Zambia and Zimbabwe.
9. The parties submitted that the Acquiring Group is engaged in the wholesale supply of pharmaceutical products only in Madagascar, Mauritius, Kenya, Uganda and Zambia.



ACBC (the “Target Firm”)

10. The parties submitted that The Target Firm is a holding company domiciled in Mauritius, which controls the following subsidiaries, together referred to as “**the Target Group**”, in the Common Market:
 - a) Goodlife Holdings Limited, a holding entity in Kenya;
 - b) Goodlife Pharmacy Limited – operating a chain of pharmacies in Kenya;
 - c) Mtaani Chemist Limited – a dormant entity registered in Kenya; and
 - d) Africa Chemist and Beauty Care Uganda Limited operating as Goodlife Pharmacy in Uganda.
11. The Target Group engages in the retail distribution of medicines, beauty and personal care products and provision of associated health services such as primary care consultations and pathology sample collection services through its subsidiaries in Kenya and Uganda.
12. In the Common Market, the Target Group operates in Kenya, Mauritius and Uganda.

Jurisdiction of the Commission

13. 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”.*
14. 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

15. The notified transaction concerns the proposed acquisition of 69.9% of the shares in the Target Firm by CFAO. In 2022, CFAO acquired a minority interest (30.10%) in ACBC. Accordingly, CFAO will own 100% of the shares in ACBC as a result of the proposed transaction.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

16. 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”***.
17. The CID noted that the Acquiring Firm supplies pharmaceutical products and beauty and personal care products to ACBC.
18. The CID considered that in line with Paragraph 3.4 of the COMESA Merger Assessment Guidelines, the assessment of the relevant market(s) would be made in conjunction with applicable theories of harm, including non-coordinated and coordinated effects.

The wholesale distribution of pharmaceutical products

19. A pharmaceutical product is made up of one active ingredient which is used to treat particular conditions, such that its intended therapeutic use limits its therapeutic substitutability.²
20. Based on the previous decisions of the CID³, it is noted that pharmaceutical products can be broadly categorised into pharmaceutical products for human consumption and animal consumption where each category of the pharmaceutical product cannot be administered to the other category of users, i.e., medication

² Decision of the Ninety-Fifth (95th) Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Elgon Healthcare Limited and Westlands Heights Limited

³ Decision of the Seventy-Fourth (74th) Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of 98.7277931% of the issued share capital of Advia Company S.A.E. by Zanzibar Pharma Limited. Case File No. CCC/MER/08/18/2020; and Decision of the Seventy-Eight (78th) Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving Ultra Welfare Ltd and Amoun Pharmaceutical Company S.A.E. Case File No. CCC/MER/03/11/2021.



intended for human consumption cannot be administered on animals and vice-versa. The CID noted that this present transaction concerns the supply of human pharmaceuticals only.

21. CID noted that the supply of pharmaceutical products at the wholesale level refers to the distribution of such products to pharmacies, hospitals, clinics, and some dispensing doctors who in turn deliver such products to patients, who are the end customers. The customers of the wholesalers of pharmaceutical products are therefore not the patients themselves.
22. CID noted that wholesale distributors of pharmaceutical products are usually appointed by the manufacturer and are therefore the official distributors of such products. The distribution thus takes place within a specified legal framework and under distribution agreements which are required given the sensitive nature of the products. The distribution of pharmaceuticals products must be done under controlled conditions such as correct temperature and packed in appropriate boxes such that when the product reaches the end customer, it is safe for consumption.
23. While the CID observed the differences between each of the segment of the provision of pharmaceutical products, notably for human and animal consumption, for the purposes of this transaction, a broad market for the wholesale distribution of pharmaceutical products is defined. This is because any other narrower definition of any market will not change the competitive assessment of this transaction.

The retail distribution of pharmaceutical products

24. The CID noted that retail distribution of pharmaceutical products refers to the supply of the later products to end customers, the patient, via specific retail channels, including pharmacies. The retail distribution of pharmaceutical products can be segmented into over the counter or on prescription. CID further noted that the counter medication requires no prescription to be dispensed to the customer whereas prescription medication can only be dispensed upon the recommendation of a treating medical practitioner. Medication which can only be dispensed on prescription and their supply are regulated. Over the counter medication are usually advertised to patients and customers can choose a brand for such type of medication. On the other hand, prescription medication is usually chosen by the medical practitioner on behalf of the patient.
25. CID noted that as a retail distributor of pharmaceutical products, it is evident that the target supplies both over the counter and prescription medication. However, considering the absence of horizontal overlap in the activities of the merging parties with respect to the retail distribution of pharmaceutical products, the CID



did not find it necessary to delve into assessing which of the target's products are sold over the counter and the ones sold on prescription.

26. While the CID observed the differences between each of the segment of the provision of pharmaceutical products, for the purposes of this transaction, a broad market for the retail distribution of pharmaceutical products is defined, as any narrower market does not change the competitive assessment of this transaction

The wholesale distribution of beauty and personal care products

27. CID noted that beauty and personal care products are the range of consumables which encompass soaps, hair care products, skin care including body, facial and hand care products, colour products, deodorants, fragrances, men's care products and sun care products. Such products are by their composition non-pharmaceutical products.
28. CID noted that such products are designed to be used on several parts of the human body. They are intended to improve the physical appearance of the user and enhance hygiene practices of the user.
29. CID noted that within the broad beauty and personal care products, several segmentations may be made, such are facial care, hair care, nail care, body care, make-up, personal hygiene and fragrances. This is because on the demand side, such products are meant to be used on one body part. For instance, a moisturiser is used in the body care segment to enhance the vitality and nourish the broader skin area. The composition of the product is designed to meet the end need of the customer. This product will typically be greasy to provide the required amount of moisture. Such a product can therefore not be applied on the body part which produces sebum. For instance, a body moisturiser will be too greasy to apply on the face. Similarly, a face moisturiser will not provide the required amount of moisture to other parts of the body which are not naturally moisturised. Similar, the hair care products have been designed to be used specifically for the scalp and hair.
30. While acknowledging that that the broad market for the wholesale distribution of beauty and personal care products can be further segmented according to the intended use of the product, the CID is of the view that for the purposes of this assessment, a broad market for the wholesale distribution for beauty and personal care products can be adopted as any narrow market will not alter the competitive assessment of this transaction.

The retail distribution of beauty and personal care products

31. CID noted that the retail distribution of beauty and personal care products refers to the supply of the later products to end customers, the patient, via specific retail channels, including pharmacies and supermarkets.



32. While the CID acknowledged the differences between each of the segment of the provision of beauty and personal care products, for the purposes of this transaction, a broad market for retail beauty and personal care products is defined.
33. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets are determined as:
- i. **the wholesale distribution of pharmaceutical products;**
 - ii. **the retail distribution of pharmaceutical products;**
 - iii. **the wholesale distribution of beauty and personal care products; and**
 - iv. **the retail distribution of beauty and personal care products**

Relevant Geographic Market

34. 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"***⁴.
35. The CID recalled its decisional practice⁵ that the geographic market for upstream supply of pharmaceutical products was likely to be wider than national. While licensing and importation restrictions differ per Member State, wholesale or retail distributors are not generally constrained in their ability to source products from several overseas jurisdictions, including outside the Common Market. The CID observed that the major distributors of pharmaceutical products are global players. The CID therefore considered that the geographic market for wholesale distribution of pharmaceutical products was likely to be broader than national. However, the CID observed that any alternative definition of the relevant geographic market was unlikely to alter the competitive assessment. The CID therefore left the definition of the relevant geographic market open.
36. CID noted that in relation to the retail distribution of pharmaceutical products on the other hand, in view of security of supply and transportation costs, on the demand side, patients procure their required products from distributors which are geographically closer, and more likely than not, within the national borders. For instance, a patient will get his required medication from the pharmacy which is

⁴ Paragraph 8

⁵ Decision of the Seventy-Eight (78th) Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving Ultra Welfare Ltd and Amoun Pharmaceutical Company S.A.E. Case File No. CCC/MER/03/11/2021 and Decision of the Eighty-First (82nd) Committee Responsible for Initial Determination Regarding the Proposed Merger involving DAWAA'A Restricted Ltd and Pharma Strategy Partners GmbH Case File No. CCC/MER/12/31/2021.



closest to his hometown. For this reason, the CID considered that the geographic market for retail distribution of pharmaceutical products is national.

37. Similarly, the CID considered that the market for the wholesale distribution of beauty and personal care products could be left open while the market for the retail distribution of beauty and personal care products was national.

Conclusion of Relevant Market Definition

38. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID has identified the relevant markets as the:
- i. **wholesale distribution of pharmaceutical products whose definition of the relevant geographic market was left open;**
 - ii. **retail distribution of pharmaceutical products in Kenya and Uganda;**
 - iii. **wholesale distribution of beauty and personal care products whose definition of the relevant geographic market was left open; and**
 - iv. **retail distribution of beauty and personal care products in Kenya and Uganda.**

Consideration of Substantial Lessening of Competition or “Effect” Test Market Shares and Concentration

39. The CID noted there are a number of international manufacturers that sell pharmaceutical goods into the Common Market, including Novartis, Pfizer, GlaxoSmithKlein, Johnson & Johnson, Sanofi, AstraZeneca, Bayer Healthcare AG, Abbott, Boehringer Ingel, Merck & Co, Pharco, Alexandria, Roche, DENK Pharma, Pharmathen, Eva Pharma, Mylan, Cipla, Microlabs, Dar Aldawa, Sandoz.
40. The CID also noted that generic medicines impose effective competitive constraints on branded medication and vice versa and the dynamic nature of generic medicines is such that new variations of existing products and innovative are introduced in the Common Market. To this end, the CID noted that generic pharmaceutical products from many suppliers in India and Pakistan are available in the Common Market.
41. The CID considered that it was not necessary to consider the market shares for the wholesale distribution of pharmaceutical products given that the relevant geographic market was left open. This notwithstanding, the CID noted the following market shares submitted by the parties for the retail supply of medicines and associated health services for the target and its competitors in Kenya and Uganda, per Tables 1 and 2 below.



Table 1: Market shares of ACBC and its competitors for the retail supply of pharmaceutical products in Kenya⁶

Supplier	Market Shares (%)
ACBC	1 - 3
Pharmaplus Pharmaceuticals Ltd	1 - 3
Malibu Pharmacy Ltd	0 - 2
Haltons Pharmacy	0 - 2
Dovey Pharma Ltd	0 - 2
Rangechem Pharmaceuticals Ltd	0 - 2

Table 2: Market shares of ACBC and its competitors for the retail supply of pharmaceutical products in Uganda⁷

Supplier	Market Shares (%)
Ecopharm Pharmacy	0 - 2
Guardian Health Pharmacy	0 - 2
Abacus Pharma (A) Ltd	0 - 1
ACBC	0 - 1
C&A Pharmacy	0 - 1
First Pharmacy Uganda Limited	0 - 1

42. The CID observed that the target has minimal market shares for the retail distribution of pharmaceutical products in Kenya and Uganda. The CID noted that the retail markets in Kenya and Uganda are highly fragmented and players have insignificant market shares. The nature of the market is such that no one player is likely to hold market power in this market.
43. The parties did not provide market shares of the Acquiring Firm and its competitors for the wholesale distribution of beauty and personal care products. Notwithstanding the market being left open, the CID observed that this market was highly competitive and fragmented with a whole range of suppliers. The CID concluded that due to the many players in the relevant market the Acquiring Firm is unlikely to have a dominant position on the market for the global market for the wholesale distribution of beauty and personal care products.
44. The CID considered that the merged entity will continue to face competition from numerous existing players and potential new entrants. Accordingly, the proposed transaction is unlikely to negatively impact competition in the relevant market.
45. The CID noted the following market shares submitted by the parties for the retail supply of beauty and personal care products for the target and its competitors in Kenya and Uganda, per Tables 3 and 4 below.

⁶ Information claimed as confidential by merging parties

⁷ Information claimed as confidential by merging parties



Table 3: Market shares of ACBC and its competitors for the retail supply of beauty and personal care products in Kenya⁸

Supplier	Market Shares (%)
Naivas Limited	1 - 5
Majid Al Futtaim Retail (Carrefour)	1 - 3
QuickMart Limited	0 - 2
Chandarana Foodplus Ltd	0 - 2
Cleanshelf Supermarkets	0 - 2
ACBC	0 - 1

Table 4: Market shares of ACBC and its competitors for the retail supply of beauty and personal care products in Uganda⁹

Supplier	Market Shares (%)
Carrefour Uganda	0 - 1
Guardian Health Pharmacy	0 - 1
Ecopharm Pharmacy	0 - 1
ACBC	0 - 1

46. The CID noted that the target has minimal market shares for the retail distribution of pharmaceutical products in Kenya and Uganda. The CID also noted that the retail markets in Kenya and Uganda are highly fragmented and players have insignificant market shares. The nature of the market is such that no one player is likely to hold market power in this market.
47. The CID considered that in the absence of a horizontal overlap in the parties' activities, the transaction will not affect the market structure in the relevant market. Further, the merged entity will continue to face competition pressures from existing other competitors listed above.

Consideration of Third-Party Views

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

Determination

49. 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.
50. The CID, therefore, approved the transaction.

⁸ Information claimed as confidential by merging parties

⁹ Information claimed as confidential by merging parties



51. 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

