CAK DECISION ON THE PROPOSED ACQUISITION OF ALL SHARES IN KEL CHEMICALS LIMITED BY VARIOUS INDIVDUAL INVESTORS

1. The Competition Authority of Kenya has unconditionally approved the full acquisition of KEL Chemicals Limited by Jeetendra Kumar Somchand, Mahendra Kumar Somchand Haria, Pankaj Somchand Haria, Pradip Somchand Haria, and Deveshkumar Bhupendrabhai Patel.

2. The approval has been granted on the finding that the transaction is unlikely to negatively impact competition concerns nor elicit negative public interest concerns, the two key considerations during merger analysis.

3. The acquirers are Kenyan citizens working within the Republic of Kenya. They are engaged in the manufacture of paper products and plastic containers, building and civil engineering contracting, and wholesale trade in general merchandise locally.

4. The target is a limited liability company incorporated in Kenya. KEL manufactures phosphate fertilizers, water treatment products, and sulfuric acid-based industrial chemicals.

5. The proposed transaction involves the acquisition of all shares in Kel Chemicals Limited by the aforementioned five (5) individuals. **T**he transaction, therefore, qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No. 12 of 2010. The Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, vertical integration.

6. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority prior to implementing the transaction. The transaction met this threshold for mandatory notification and full analysis as provided in the Competition (General) Rules, 2019.

7. In order to assess the impact a transaction will have on competition in a specific market, the Authority determines the relevant product market and the relevant geographic market as part of the merger analysis process.

8. The **relevant product market comprises products/services that are interchangeable or substitutable by the consumer** due to characteristics, prices and/or intended use. Based on this criteria, and the fact that the transacting parties' activities do not overlap, the relevant product markets for the proposed transaction was determined as markets for the manufacture of fertilizers, water purification chemicals, and industrial chemicals and acids.

9. Determination of the relevant geographic market seeks to understand the marketplace within which the parties to a merger transaction are involved in supplying their goods or services and in which the competition conditions are similar. With regard to this transaction, the parties distribute their products throughout the country and therefore the relevant geographic market is national.

10. Subsequently, the Authority reviews the undertakings' (pre- and post-merger) business performance within the relevant product and geographic market/sector in order to understand their current competitiveness as well as any positive or negative outcomes **(structure or concentration of the market)** that may result from the transaction.

11. Agriculture is the largest sector of the Kenyan economy, accounting for 22.4% of the overall GDP (2021). Agriculture yields in the country is highly dependent on accessibility of quality fertilizers. Modern chemical fertilizers include one or more of three key elements in plant nutrition: nitrogen, phosphorus, and potassium (NPK).

12. Whereas fertilizer use in Kenya is still dominated by commodity NPKs, emerging products are designed to meet crop-specific nutrient demands based on perceived nutrient deficiencies.

13. A study conducted by the International Fertilizer Development Center (IFDC) showed that Diammonium Phosphate (DAP) represents 46% of the fertilizers traded locally. Urea, Calcium Ammonium Nitrate (CAN), NPK 23-23-0, and NPK 17-17-17 represent 23%, 13%, 7%, and 5% of the market, respectively. The target mainly manufactures commodity NPK fertilizers.

14. The main manufacturers of fertilizer in Kenya and their approximate market shares are: ETG Kenya Ltd (35.00%), YARA Kenya Ltd (25:00%), Supply & Service Ltd (15:00%), Elgon Kenya Ltd (9:00%), MEA Ltd (4.00%), Amiran Kenya Ltd (3.00%), Toyota Tshusho (3.00%), Minjingu Mining Ltd (2:00%), Athi River Mining Ltd (1:00%), Kel Chemicals (0:40%), and Others (2.60%). The target has 0.4% market share.

15. Post-merger, there will be no change in the market structure and concentration of fertilizer manufactures since the parties' activities do not overlap. Additionally, the merged entity will

continue to face competition from the other fertilizer manufacturers and the affordable fertilizer program under the Government.

16. Water purification can be achieved through a variety of methods, including physical, chemical, and biological processes. The major manufacturers of water purification chemicals and their market shares in Kenya are: Pan African Chemicals (55%), Kel Chemicals (25.7%), Priyan Enterprise Ltd (5%), Diamond Chemical (5%), Metro Plastics – Trader/Importer (3%), Spenomatic Labs and Chemicals Ltd (3%), Shidhham Chemicals (2%), Junaco Ltd (1%) and others (0.3%). The target is the second largest market player with a share of 25.7%. Post-merger, this market share will remain the same while the company will continue receiving competitive pressure.

17. The chemical sector contributes 6% of the national GDP and about 11% of the manufacturing GDP in Kenya. Kenya's chemical industry is diverse and includes chemicals for fertilizers and pesticides, water treatment, mining, manufacturing, cement, timber and paper, mineral fuels, hydro energy, and metal processing. The target mainly produces sulphuric acid.

18. The major producers and suppliers of sulphuric acid in Kenya and their market shares are: Pan African Chemicals (60%), Kel Chemicals (28%), Diamond Chemical (6%), Metro Plastics (4%), and Priyan Enterprise Ltd (2%). The target has 28% market share and is the second largest player.

19. Post-merger, there will be no change in the various market structures and concentrations in sectors since the parties' commercial activities do not overlap. Therefore, **the proposed transaction is unlikely to lead to a substantial lessening of competition in the relevant market or raise any competition concerns.** Additionally, the merged entity will continue to face competition from the other players in the markets.

20. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. Public interest in this case refers to various economically-inclined concepts that, when considered, protect the welfare of the Public. Per the Competition Act, some of the public interest considerations are;

    a) extent to which a proposed merger would impact employment opportunities;
    b) impact on competitiveness of SMEs;
    c) impact on particular industries/sectors; and
    d) impact on the ability of national industries to compete in international markets

21. The transaction is **unlikely to lead to any negative public interest issues.** Specifically, on employment, the parties indicated that the proposed transaction will not result in the redundancies of any of the employees of the target.

22. Premised on the foregoing, the Competition Authority of Kenya approved the proposed acquisition of all shares in Kel Chemicals Limited by Jeetendra Kumar Somchand, Mahendra Kumar Somchand Haria, Pankaj Somchand Haria, Pradip Somchand Haria, and Deveshkumar Bhupendrabhai Patel unconditionally.