



**CAK DECISION ON THE PROPOSED PURCHASE OF THE ENTIRE ISSUED SHARE
CAPITAL OF PROVEXA PHARMA KENYA LIMITED BY SHALINA HEALTHCARE
KENYA LIMITED**

1. The Competition Authority of Kenya has approved the proposed acquisition of the entire issued share capital of Provexa Pharma Kenya Limited by Shalina Healthcare Kenya Limited unconditionally.
2. This approval has been granted on the finding that the transaction is unlikely to negatively impact competition in the market for wholesale distribution of pharmaceutical products nor elicit negative public interest concerns. These are the two key considerations during merger analysis.
3. Provexa Pharma Kenya Limited, the acquirer, is an undertaking incorporated in Kenya involved in the business of wholesale distribution of low priced, generic pharmaceutical products.
4. Shalina Healthcare Kenya Limited, the target, is incorporated and registered in Kenya and is involved in the wholesale distribution of generic pharmaceutical products particularly pain, dermatology and anti-malarial drugs.
5. The proposed transaction involves the acquisition of the entire issued share capital of Provexa Pharma Kenya Limited by Shalina Healthcare Kenya Limited.
6. The 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.
7. 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 proposed transaction. The transaction between Provexa Pharma Kenya Limited by Shalina Healthcare Kenya Limited met this threshold for mandatory notification and full analysis as provided in the [Competition \(General\) Rules, 2019](#).

8. During merger analysis, and in order to determine the impact that a transaction will have on competition in a specific market, the Authority identifies the **relevant product market** as well as the **relevant geographic market**.
9. The **relevant product market** comprises products/services that are interchangeable or substitutable by the consumer due to their characteristics, prices and/or intended use. Based on this criteria, the relevant product market for the proposed transaction is the **market for wholesale distribution of pharmaceutical products**.
10. Determination of the **relevant geographic market** involves interrogating the area in which merging parties undertake the business and in which competition conditions are sufficiently similar. With regard to the proposed transaction, the acquirer and the target sell their products throughout the country. Therefore, the Authority determined the relevant geographical market is **national**.
11. Pharmaceutical wholesalers are intermediaries between pharmaceutical manufacturers and retailers.
12. Pharmaceutical products are distributed by qualified and licensed personnel as prescribed under the Pharmacy and Poisons Act, CAP 244b. Currently, there are approximately 569 pharmaceutical wholesale distributors registered in Kenya.
13. The main pharmaceutical distributor are Dawa Life Science (Medisel Kenya), Omaera Pharmaceuticals Ltd, United Pharma Kenya Limited, Ripple Pharmaceuticals, Prunus Pharma, Knight pharmaceuticals, Surgilinks Limited, Surghipharm, Generics Africa Ltd, Laborex Kenya, Transwide Pharmaceuticals Limited and Shalina Healthcare, among others.
14. The Kenya Pharmaceutical Industry Diagnostic Report, 2020 indicated that the pharmaceutical market is dominated by multinationals. Local companies are mainly involved in distribution. The acquirer and the target individual market shares are

below 2.3%. However, they are in the majority category (40.2%) of the approximately \$300 Million that in pharmaceutical products consumed in Kenya annually.

15. One criteria of assessing a merger's impact on competition is the post-merger market share of the undertakings involved in the transaction. With regard to the proposed merger, post-merger, the transaction is unlikely to raise competition concern as there are over 569 players at the wholesale level.
16. Additionally, the merged entity will face competition from wholesale pharmaceutical products supplied directly to hospitals and pharmaceutical retailers. Premised on the foregoing, **the proposed transaction is unlikely to lead to a substantial lessening of competition in the market for wholesale distribution of pharmaceutical products in Kenya.**
17. 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. In 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.
18. As per the parties' submissions, this transaction will not elicit negative public interest concerns. Specifically, the target's 85 employees will be retained under the same employment terms.
19. Premised on the above, the Authority approved the proposed acquisition of the entire issued share capital of Provexa Pharma Kenya Limited by Shalina Healthcare Kenya Limited unconditionally.