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**Common Market for Eastern  
and Southern Africa**

**Staff Paper No. 2017/06/JB/06**

**Decision<sup>1</sup> of the Thirty Third Committee Responsible for Initial  
Determination on the Application for Authorisation of the Acquisition of  
Monsanto Company by Bayer Aktiengesellschaft**

**ECONOMIC SECTOR: Agriculture**

**23<sup>rd</sup> June 2017 – Johannesburg, South Africa**

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<sup>1</sup> 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

## **Information and Relevant Background**

1. On 16 February 2017, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification in relation to the acquisition of Monsanto Company (hereinafter referred to as "Monsanto") by Bayer Aktiengesellschaft (hereinafter referred to as "Bayer").
2. The transaction was notified with the Commission in accordance with Article 24(1) of the COMESA Competition Regulations (hereinafter referred to as "the Regulations"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed 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. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operate in more than one COMESA Member State. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

### **The Parties**

#### **Bayer**

4. Bayer is an international company whose registered office is in Leverkusen, Germany. Bayer has operations in Europe, North America, Asia, Africa, Latin America, the Middle East and Australia. Its line of business comprises three business divisions, namely Pharmaceuticals, Consumer Health, Crop Science, as well as the Animal Health business unit.

#### **Monsanto**

5. Monsanto is a company incorporated under the laws of the State of Delaware, United States of America headquartered in St Louis, Missouri, listed on the New York Stock Exchange. Monsanto has operations in Europe, North America, Asia, Africa, Latin America, the Middle East and Australia. Monsanto is a global provider of agricultural products for farmers. It supplies seeds, biotechnology trait products and herbicides that provide farmers with solutions that improve productivity and reduce the costs of farming.

### **Nature of the Transaction**

6. The parties submitted that pursuant to an agreement, Bayer will acquire Monsanto through a special purpose vehicle called KWA Investment Co.

### Competition Analysis

7. The CID defined the relevant markets as the supply of vegetable and broad acre seeds; and herbicides in the Common Market.
8. The CID established that the merger is not likely to substantially prevent or lessen competition in the relevant markets and is not likely to be contrary to public interest as provided for under Article 26(3) of the Regulations.

### Determination

9. The CID determined that the merger is not likely to substantially lessen competition in the Common Market and/or negatively affect trade between Member States. The CID therefore approved the transaction.
10. This decision is made in accordance with Article 26 of the Regulations.

Dated this 23<sup>rd</sup> day of June 2017

  
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Commissioner Langa (Chairperson)

  
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Commissioner Patrick Okilangole

  
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Commissioner Chilufya Sampa