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**Common Market for Eastern
and Southern Africa**

Staff Paper No: 2016/09/JB/01

**Decision¹ of the Twenty Fourth Committee Responsible for Initial
Determination Meeting Regarding the Proposed Merger between
the Dow Chemical Company and E.I. du Pont de Nemours
Company**

ECONOMIC SECTOR: Agro-Chemicals

28th September 2016 – Johannesburg, South Africa

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 13th June 2016, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification for approval of a merger from the Dow Chemical Company (hereinafter referred to as "Dow"); and E.I. du Pont de Nemours and Company (hereinafter referred to as "DuPont").
2. The transaction was notified with the Commission under Article 24(1) of the Regulations. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed transaction between the parties 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 Commission has jurisdiction on the said merger because it satisfies the regional dimension requirement as provided for under Article 23 of the COMESA Competition Regulations.

The Parties

Dow

4. Dow is a Company based in the United States of America, listed on the New York Stock Exchange and is the parent company of the Dow Group. Dow conducts its worldwide operations through global businesses which are reported in five operating segments namely: Agricultural Sciences, Consumer Solutions, Infrastructure Solutions, Performance Materials and Chemicals and Performance Plastics.

DuPont

5. DuPont is based in the United States of America, listed on the New York Stock Exchange and is the parent company of the DuPont Group which researches, develops, produces, distributes and sells a variety of chemical products, polymers, agro-chemicals, seeds, food ingredients and other materials.

Nature of the Transaction

6. Dow and DuPont have incorporated a new holding company, DowDuPont in which each Party's shareholders will own approximately 50% shares (on a fully diluted basis, excluding preferred shares).

Competition Analysis

7. The CID defined the relevant markets as the supply of:

- Fungicides
- Herbicides
- Insecticides
- HiPED
- Purified CMC/Food Texturizers
- Seed and Seed Solutions

In the Common Market.

8. The CID established that the market concentration (CR3) will remain the same post-merger as the parties are not among the top three market players in the relevant markets.
9. The CID observed that the relevant markets are highly contested. In view of this, the CID established that the merger is unlikely to affect the pattern of trade in the Common Market. This is because it is not foreseeable with sufficient degree of probability that it will frustrate the competition in the relevant markets.

Determination

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

Dated this 28th day of September, 2016.



Commissioner Matthews Chikankheni (Chairperson)



Commissioner Thabisile Langa (Member)



Commissioner Chilufya Sampa (Member)