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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/03/07/03/JB

**Decision¹ of the Nineteenth Meeting of the Committee Responsible for
Initial Determination Regarding the Proposed Merger between Yara
Nederlands BV and Greenbelt Fertiliser Limited Zambia and Greenbelt
Fertiliser Malawi**

ECONOMIC SECTOR: Agriculture

7th March 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4th December 2015, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification for approval of a merger between Yara Nederlands BV (hereinafter referred to as "Yara") and Greenbelt Fertiliser Limited Zambia and Greenbelt Fertiliser Limited Malawi collectively (hereinafter referred to as "Greenbelt").
2. The transaction was notified with the Commission under 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 of Initial Determination (hereinafter referred to as "the CID") noted that the parties operate in two or more COMESA Member States. This therefore, means that the regional dimension requirements under Articles 23(3) and 23(5) of the Regulations are met and asserts jurisdiction of the Commission to assess the transaction. The parties to the transaction are currently operating in the following COMESA Member States:
 - Ethiopia
 - Comoros
 - Kenya
 - Mauritius
 - Uganda
 - Zambia
 - Zimbabwe
4. Further, the CID observed that the parties met the merger notification thresholds prescribed under Rule 4 of the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Method of Calculation. The aforementioned Rule 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 COM\$² 50million; 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 COM\$ 10 million,***

unless each of the parties to a merger achieves more than two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State".

² One COM\$ is equivalent to one US\$

unless each of the parties to a merger achieves more than two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State".

The Parties

Yara

5. Yara is a Norwegian company, which was listed on the Oslo Stock Exchange on 25 March 2004. Yara is mainly active in the production and marketing of mineral fertilizers and related nitrogen based chemicals. No single shareholder has a controlling shareholding in Yara. The Norwegian government is the largest shareholder with 36.2% of the shares in the company. The remaining shares are held by a range of companies and entities.

Greenbelt

6. Greenbelt focuses on fertilizer blending and marketing in the countries where they operate. The group focusses on producing crop and soil specific fertilizers, primarily for the commercial farming sector, but also have some dealings with small scale farmers. Greenbelt also provides sampling and analysis of soil services for its customers. Greenbelt operates in Zambia, Malawi and Mozambique.

Nature of the Transaction

7. Yara Nederland BV and Yara Fertilizer Zambia Ltd entered into agreements in terms of which:
 - a) Yara Nederland BV acquires the shares in Greenbelt Fertilizer Ltd (Malawi) from CHC Commodities Ltd (99%) and Greenbelt Fertilizer Ltd (Zambia) (1%);
 - b) Yara Nederland BV acquires the shares in Greenbelt Africa Ltd (which holds 100% of the shares in Greenbelt Fertilizantes da Mozambique, Limitada) from R N Coventry (33.33%), K N Coventry (33.33%) and C J Hawke (33.33%); and
 - c) Yara Fertilizer Zambia Ltd purchases the business and certain assets of Greenbelt Fertilizer Ltd (Zambia) and an immovable property from CHC Commodities Ltd, being the shareholder of Greenbelt Fertilizer Ltd (Zambia).

Competition Analysis

8. The CID defined the relevant product market as the supply of Nitrogen fertilisers while the relevant geographic market is defined as the global supply of Nitrogen fertilisers and the national distribution of Nitrogen fertilisers.
9. The CID observed that the markets are highly contested with several players operating therein. In view of this, the CID established that the merger is unlikely to affect the pattern of trade and structure of the market in the Common Market. This is because it is not foreseeable with sufficient degree of probability that it will frustrate the establishment of undertakings' agencies, branches or subsidiaries in other Member States. The CID noted that the merged entity is unlikely to unilaterally engage in market foreclosure or

influence any other conditions of trade in the Common Market on account of its market position and countervailing power by the buyers.

Determination

10. The CID determined that the merger is not likely to substantially prevent or lessen Competition and is compatible with the Treaty Establishing the Common Market for Eastern and Southern Africa. The CID therefore decided to approve the transaction.
11. This decision is adopted in accordance with Article 26 of the COMESA Competition Regulations.

Dated this 7th day of March, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Georges Tirant (Member)