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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/2/4/2020

Decision¹ of the Seventy First (71st) Committee Responsible for Initial Determination Regarding the Proposed Merger between Upjohn Inc. and Mylan N.V.

ECONOMIC SECTOR: Pharmaceuticals

8th June 2020

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 24th February 2020, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of the proposed merger involving Upjohn Inc. (“**Upjohn**”) and Mylan N.V. (“**Mylan**”)
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the “**Regulations**”). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the 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 (the “**CID**”) established that the parties operate in more than one COMESA Member State and they meet the prescribed notification thresholds. 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

Upjohn (the Acquiring Undertaking)

4. It was submitted that Upjohn is a special purpose vehicle formed in 2019 for the purpose of the proposed transaction and has no current business activities. Upjohn is incorporated in the state of Delaware and is wholly controlled by Pfizer Inc. (“**Pfizer**”), a public company listed on the New York Stock Exchange and currently a wholly owned subsidiary of Pfizer to which the Upjohn Business will be contributed for the purpose of the separation and combination. The acquiring group has operations in the following COMESA Member States: Burundi, Democratic Republic of Congo, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Malawi, Rwanda, Mauritius, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Mylan (the Target Undertaking)

5. It was submitted that Mylan is a global pharmaceutical company engaged in global development, licensing, manufacture, marketing and distribution of generic, branded generic, brand-name and over the counter pharmaceutical products, as well as active pharmaceutical ingredients in North America, Europe and the Rest of the World. The target group has operations in the following COMESA Member States: Burundi, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Uganda and Zambia.

Nature of the Transaction

6. The parties submitted that the proposed transaction concerns the intended combination of Mylan and Upjohn. As a first step of the proposed transaction, Pfizer’s Upjohn Business (the “Upjohn Business”), including Greenstone LLC (“Greenstone”), will separate from Pfizer and will be contributed to Upjohn/NewCo. Upjohn/NewCo and Mylan will then implement a transaction whereby all Mylan’s assets and liabilities will be transferred to Upjohn/NewCo. Upon completion of the proposed transaction, the Upjohn Business and Mylan’s Business will be wholly-owned by NewCo, which will be renamed Vaitris. The proposed transaction will enable the creation of a new company combining Mylan’s and the Upjohn Business’

highly differentiated and complementary portfolio and pipeline products of prescription medicines, complex generics, over the counter (OTC) products and biosimilars. Given the complementary global footprints of the parties, the proposed transaction will allow the expansion of the geographic reach of Mylan's existing broad portfolio and future pipeline into new growth markets (including China and other emerging markets) where the Upjohn Business has existing sales infrastructure and local market expertise.

Competition Analysis

7. The CID defined the relevant product markets as follows:
 - a) The marketing and distribution of prescription medicines; and
 - b) The marketing and distribution of over-the-counter medicines.
8. The CID defined the relevant geographic market for both product markets as global.
9. The CID observed that the transaction does not result in a significant increase in the market concentration since there is only minimal horizontal overlaps in the activities of the parties in the Common Market particularly in respect of the marketing and distribution of prescription medicines. The CID further observed that with respect to the marketing and distribution of over-the-counter medicines, competition is rife as such competition concerns are not likely post-merger.

Determination

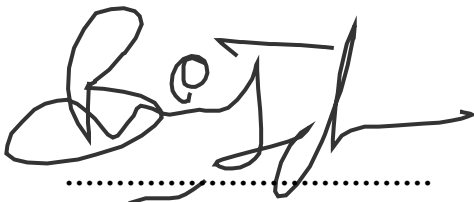
10. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID therefore approved the transaction.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

Dated this 8th June 2020

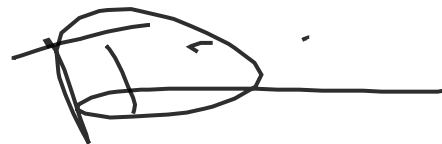


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Commissioner Islam Tagelsir Ahmed Alhasan (Chairperson)



Commissioner Brian M. Lingela



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Commissioner Thembelihle P. Dube née Dlamini