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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/4/12/2020

Decision[1] of the Seventy-First (71st) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Borealis AG and OMV Aktiengesellschaft

ECONOMIC SECTOR: Petroleum and Agriculture

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 21st April 2020, the Commission the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving Borealis AG ("**Borealis**") as the target undertaking and OMV Aktiengesellschaft ("**OMV**") as the acquiring firm.

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

OMV (the Acquirer)

4. It was submitted that the acquirer, OMV, is active globally in: (i) the upstream exploration, development and production of oil and gas in certain core regions including Central and Eastern Europe, the North Sea, Russia, the Middle East, Africa and Asia-Pacific; (ii) downstream operation of refineries in Austria (Schwechat), Germany (Burghausen) and Romania (Petrobrazi), which produce and sell LPG, jet fuel, naphtha, gasoline, diesel, light fuel oil, heavy fuel oil, sulphur and calcined coke. OMV also operates vertically integrated petrochemical businesses, notably steam crackers for the production of olefins (ethylene and propylene). In the Common Market, OMV derives turnover in Libya and Tunisia.

Borealis (the Target)

5. The parties submitted that the target, Borealis, is active in: (i) the production of polyolefins which are used in a wide range of areas, namely energy, automotive, consumer products and pipes; (ii) the production of base chemicals such as melamine, phenol, acetone, ethylene and propylene; and (iii) the supply of fertilizers and technical nitrogen products. In the Common Market, the target derives turnover in the following Member States: Comoros, Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

Nature of the Transaction

6. It was submitted that the notified transaction concerns the proposed acquisition of the majority of the shares in Borealis by OMV from Mubadala Petroleum Petrochemicals Holding Company L.L.C. ("Mubadala") which will result in OMV gaining sole control of Borealis (the "Proposed Transaction"). It has been submitted that currently, Borealis is jointly controlled by OMV and Mubadala. OMV holds a stake of 36% in Borealis and the

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remaining shares are held by Mubadala. By way of the Proposed Transaction, OMV intends to acquire an additional 39% of the shares in Borealis from Mubadala, which results in OMV holding 75% of the shares in Borealis. Mubadala will remain the only other shareholder, with a stake of 25%. As a result, the Proposed Transaction represents an acquisition of the majority of the shares in and a change from joint to sole control of Borealis.

Competition Analysis

Relevant Product Market

7. The OMV Group is active in the exploration, development and production of oil and gas in the Common Market. Specifically, the OMV Group produces only crude oil in Libya and both crude oil and natural gas in Tunisia. Borealis is active in the downstream sale of polyethylene, polypropylene and fertilizer in several Member States. Given the absence of horizontal overlaps, the CID has focused on the activities of the target group for purposes of defining the relevant market(s).

8. The relevant product markets have been defined as follows:
    a. supply of low-density polyethylene;
    b. of high-density polyethylene;
    c. supply of polypropylene;
    d. supply of N-fertiliser;
    e. supply of K-fertilisers; and
    f. supply of P- fertilisers.

Relevant Geographic Market

9. With regard the geographic scope, the CID observed that trade flows in polyethylene and polypropylene products are worldwide, with significant imports and exports between continents. Both can be easily transported in bulk or in package form or in package form. Each major manufacturer has only a few production facilities worldwide supplying customers all around the globe, as evidenced by the imports of the merging parties' products into the Common Market. The CID further observed the parties' submission that Boealis does not have fertilizer, polyethylene or polypropylene production facilities in the Common Market; its products are formulated in Europe and then imported and sold into the Common Market.

10. In line with past decisions , the CID considered that the relevant geographic markets for the supply of N-, P-, and K-fertilisers are likely to be at global. Most fertilizer consumed in Africa is imported from outside the continent and fertilisers are largely traded at global level.

11. The CID thus defined the relevant geographic markets as global.

12. The CID observed that the transaction would not result in a change in the market structure due to the absence of any horizontal overlap in the activities of the parties pre-merger. The CID therefore concluded that the transaction will not lead to any increase in market concentration.

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Determination

13. 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 and is not inimical to the single market imperative of the COMESA Treaty. The CID therefore approved the transaction.

14. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 8th day of June, 2020

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Commissioner Islam Tagelsir Ahmed Alhasan (Chairperson)

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Commissioner Brian M. Lingela **Commissioner Thembelihle P. Dube née Dlamini**