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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/12/43/2019

Decision¹ of the Seventy-First (71st) Committee Responsible for Initial Determination Regarding the Proposed Acquisition by Akzo Nobel Coatings International B.V. of Mauvilac Industries Limited

ECONOMIC SECTOR: Paints

8th June 2020

T.P.D. 



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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 11th February 2020, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger involving Akzo Nobel Coatings International B.V. (“**ANCI**”) and Mauvilac Industries Limited and its subsidiary (“**Mauvilac**”).
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

ANCI (the Acquirer)

4. It was submitted that the acquiring firm, ANCI, is a wholly owned subsidiary of Akzo Nobel N.V, which is a limited liability company incorporated under the laws of the Netherlands, with free float common shares listed on the Euronext Amsterdam. ANCI and Akzo Nobel N.V are part of the AkzoNobel Group (“AkzoNobel”). AkzoNobel is a global manufacturer and distributor of a wide range of paints and performances coatings, it is also active in over 150 countries. The products of the acquiring group are supplied into the following Member States: Democratic Republic of Congo, Egypt, Eswatini, Ethiopia, Kenya, Mauritius, Madagascar, Rwanda, Seychelles, Malawi, Libya, Tunisia, Uganda, Zambia and Zimbabwe.

Mauvilac (the Target)

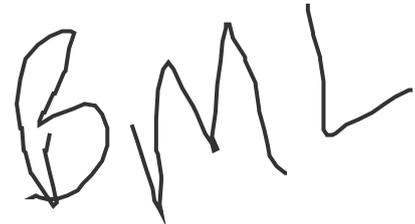
5. It was submitted that Mauvilac is engaged in the business of manufacturing and distributing decorative and specialty paints and coatings. Mauvilac operates in the following COMESA Member States: mainly in Mauritius and peripherally in Seychelles and Madagascar.

Nature of the Transaction

6. The parties submitted that the transaction involves the acquisition by ANCI of 100% of the share capital and voting rights of Mauvilac from Coloris Holding Limited and Mr. Gérard Alexandre Roland Maurel (the “**Proposed Transaction**”).

Competition Analysis

7. The CID observed that both AkzoNobel Group and the target are involved in the manufacture and supply of decorative coatings and industrial coatings.

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8. The CID considered that there were distinct product markets for the supply of industrial coatings, and for the supply of decorative coatings, having regard to limited substitutability from a demand perspective.
9. The CID defined the geographic scope of the paints markets as national in scope. The CID considered that coatings in the Common Market are generally supplied by manufacturers selling mainly within their own countries, and exports account for a relatively limited share of their sales. Role of brands and presence of national distribution networks could also suggest that competition in coatings, particularly decorative coatings, could have a relatively important national dimension. The CID further observed that the parties' operations overlap in the territories of Mauritius, Madagascar, and Seychelles. The CID considered that while import of paints may be relatively easy for certain Member States in the Common Market, the geographic location of Mauritius, Seychelles, and Madagascar implies limited, and potentially more expensive, transport options such that imports may not constitute a strong substitute to locally produced paints when consideration is given to transport costs. Based on the foregoing, the CID identified the relevant geographic markets as the national markets of Madagascar, Mauritius and the Seychelles.
10. The CID thus defined the relevant markets as follows:
 - a) national supply of industrial coatings in each of Madagascar, Mauritius and the Seychelles; and,
 - b) national supply of decorative coatings in each of Madagascar, Mauritius and the Seychelles.
11. The CID observed that the transaction would not materially change market structures in the national markets affecting Madagascar, and Seychelles and the merged entity would still face significant competitive pressures from remaining competitors.
12. In Mauritius, while the transaction would not lead to significant market share accretion, the CID was concerned that the transaction may result in increased incentives for the acquirer to engage in anti-competitive tying or bundling strategies as a result of the strong market position of the target brand and the lower market share of the acquirer brands. The CID also identified potential public interest concerns in the event the acquirer was to shift production away from Mauritius.

Determination

13. The merging parties provided the following commitments to the CID in order to remedy the competition and public interest concerns identified:
 - a. **Akzo Nobel Coatings International B.V commit that the sale of Mauvilac paints to retailers in Mauritius shall not be conditioned on a requirement or obligation for retailers to also purchase Dulux/ International Paints brands, for a period of three (3) years from 1st April 2020;**
 - b. **Akzo Nobel Coatings International B.V commit that production of paint in Mauritius by Mauvilac is guaranteed to continue for a period of ten (10) years from the 1st April 2020;**

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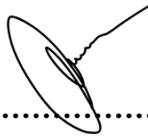


- c. Akzo Nobel Coatings International B.V (or another entity of the AkzoNobel Group) may, at any time after a period of three (3) years from 1st April 2020, apply to the Commission for the commitment in 13(b) to be amended or revoked, should prevailing market conditions change to render compliance to the commitment impossible or significantly improbable; and
- d. Akzo Nobel Coatings International B.V (or another entity of the AkzoNobel Group) shall produce an annual report which details the compliance with the commitments in 13(a) and 13(b) above. Such report will be submitted to the Commission within one month of each anniversary of the Decision Date, for the duration of the respective commitments, and will be accompanied by affidavits or declarations attesting to the accuracy thereof by directors of Akzo Nobel Coatings International B.V. (or another entity of the AkzoNobel Group). As from the end of the commitment in 13(a), the report in relation to commitment 13(b) will be produced upon request of the Commission.

14. The CID was satisfied that the commitments provided by ANCI adequately and sufficiently address the competition and public interest concerns identified. Therefore, the CID granted approval to the merger on the basis of the foregoing undertakings from the merging parties.

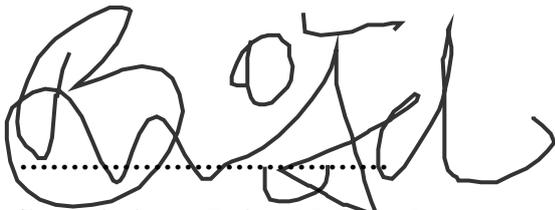
15. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 8th day of June, 2020

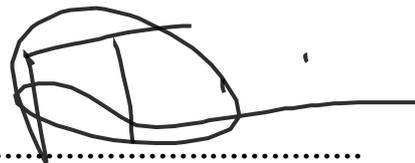


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Commissioner Islam Tagelsir Ahmed Alhasan (Chairperson)



Commissioner Brian M. Lingela



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Commissioner Thembelihle P. Dube née Dlamini