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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/11/39/2018

**Decision¹ of the Fifty-Third (53rd) Committee Responsible for Initial
Determination Regarding the Proposed Acquisition by BSA
International S.A. of Aspen Pharmacare Holdings Limited**

ECONOMIC SECTOR: Infant Nutrition

9th February, 2019

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 8th November, 2018, the COMESA Competition Commission (the "Commission") received a notification for approval of a merger transaction involving the sale by Aspen Pharmacare Holdings Limited ("Aspen") of its Infant Nutritional Business (INB) to BSA International S.A. ("BSA International").
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (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 Responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operated in more than one COMESA Member State. 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

BSA International (the Acquiring Undertaking)

4. BSA International, is a Belgium-based holding company incorporated in accordance with the laws of Belgium. BSA International holds all the businesses of the Lactalis group of companies located outside France. Lactalis is a multinational group of companies which produces dairy products such as yoghurt, butter, cheese, powdered milk, infant formula and milk drinks. Its brands include Galbani, Société, Bridel, Parmalat, Président, Skånemejerier, Rachel's Organic, Valmont and Stonyfield Farm.
5. BSA International has operations in the following COMESA Member States: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Zambia, and Zimbabwe.

Infant Nutrition Business of Aspen (target undertaking)

6. The Infant Nutrition Business of Aspen, (INB) produces a wide range of infant nutritional and growing-up milk products across both the premium and value segments. Aspen is a public company headquartered in South Africa and is active in the infant milk formula market, specifically, in the supply of INFACARE infant milk products and S26 infant milk formula.
7. The target undertaking is active in the following COMESA Member States: Eritrea, ESwatini, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles and Zambia.

Nature of the Transaction

8. The proposed transaction entails Aspen selling its Infant Nutrition Business to BSA International. Further, BSA International intended to acquire, inter alia, all the businesses and companies comprising the target undertaking globally from Aspen.

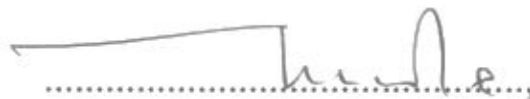
Competition Analysis

9. The CID defined the relevant product and geographic markets as follows:
 - a) The global manufacture and sale of infant milk formula; and
 - b) The distribution of infant milk formula in the Common Market.
10. As regards the market for the distribution of infant milk formula, the CID considered that it was not likely to result in market accretion due to the lack of overlap in the parties' activities in the Common Market. This is because the acquiring party had no operations in the Common Market *hitherto*. The CID further considered that even if the parties' activities overlapped in the manufacture of infant milk formula, competition concerns were not likely to arise post-merger because the market was highly contested.
11. The CID concluded that the transaction was not likely to raise competition concerns since the relevant markets were competitive and characterised by alternative producers and distributors of infant milk formula.

Determination

12. The CID determined that the merger was not likely to lessen competition in the Common Market and/or negatively affect trade between Member States. The CID further determined that the transaction was not inimical to the COMESA Treaty objective of full market integration and therefore approved the transaction.
13. This decision was adopted in accordance with Article 26 of the Regulations.

Dated this 9th day of February, 2019



Commissioner Patrick Okilangole (Chairperson)



Commissioner Brian M. Lingela
(Member)



Commissioner Thembelihle Dube Nee Dlamini
(Member)