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Common Market for
Eastern and Southern Africa

Staff Paper No. 2018/12/RR/04

Decision¹ of the Fourth-Eight (48th) Committee Responsible for Initial Determination on the Application for Authorisation of the Proposed Acquisition by UPL Corporation Limited of Arysta LifeScience Inc.

ECONOMIC SECTOR: Agriculture

05th December 2018

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 22nd August 2018, the Commission received a notification for approval of a merger from UPL Corporation Limited (“UPL”) and Arysta LifeScience Inc. (“Arysta”), pursuant to Article 24(1) of the COMESA Competition Regulations (the “Regulations”).
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 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

UPL (the Acquirer)

4. UPL is controlled, as to 100% of its issued share capital, by UPL Limited which is based in India. The UPL group is active worldwide in the manufacture of products for the protection of plantations, intermediates, specialty chemicals and other industrial chemicals, including insecticides, fungicides, herbicides, fumigants, plant growth regulators, and rodenticides.
5. UPL does not have any manufacturing facilities in COMESA and supplies insecticides, herbicides, fungicides, plant growth regulators, fumigants and soil conditioners to distributors in the region. UPL has operations in the following Member States: Burundi; Egypt; Ethiopia; Kenya; Madagascar; Malawi; Mauritius; Rwanda; Sudan; Uganda; Zambia; and Tunisia - UPL supplies finished branded products (fungicides, herbicides, insecticides, PGRs and fumigants) to national distributors for onward sales in the country.

Arysta (the Target)

6. Arysta is a wholly-owned subsidiary of Platform Specialty Products Corporation. Arysta is active in the supply of agricultural solutions products in three core portfolios: Crop protection chemicals, BioSolutions, and Seed treatment chemicals.
7. Arysta supplies its products through multiple sales channels, including co-operatives, retailers and national and regional distributors, as well as direct sales at the farm and through government entities. Arysta conducts its activities in the following Member States:

Burundi; the Democratic Republic of Congo ("DRC"); Eritrea; Egypt, Ethiopia, Kenya; Mauritius; Madagascar; Rwanda; Eswatini; Sudan; Tunisia, Uganda, Malawi, Zambia and Zimbabwe.

Nature of the Transaction

8. The transaction comprises the proposed acquisition by UPL of all of the issued and outstanding shares of Arysta (the "Proposed Transaction"). Pursuant to the Proposed Transaction, Arysta will be solely controlled by UPL.

Competition Analysis

9. The CID defined the relevant product and geographic markets as follows:
 - a) Global supply of the active ingredients Metalaxyl, Imidacloprid, Profenophos Tech, Cypermethrin, Zinc Phosphide and Permethrin Tech;
 - b) National supply of selective and non-selective herbicides, segmented by crop type, and weed type, in Egypt, Ethiopia, Eswatini, Kenya, Malawi, Mauritius, Tunisia, Uganda, Zambia, Zimbabwe;
 - c) National supply of foliar and soil insecticides, segmented by crop type, in Burundi, Egypt, Eritrea, Eswatini, Kenya, Madagascar, Malawi, Mauritius, Sudan, Rwanda, Uganda, Tunisia, Zambia, Zimbabwe;
 - d) National supply of fungicides, segmented by crop type, in Burundi, the DRC, Ethiopia, Egypt, Eswatini, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Uganda, Tunisia, Zambia, Zimbabwe;
 - e) National supply of plant growth regulators, segmented by crop type in Eswatini, and Tunisia; and
 - f) National supply of seed treatment formulations, segmented by crop type, in Egypt, and Mauritius, Kenya.
10. The CID considered that the merging parties' post-merger combined market shares are unlikely to raise significant competition concerns and will not materially alter the competitive structure of the relevant markets.

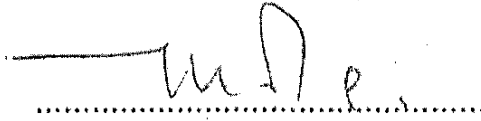
Determination

11. The CID determined that the merger is not likely to lessen competition in the Common Market and/or negatively affect trade between Member States.
12. The CID therefore approved the transaction unconditionally.

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

Dated this 5th of December 2018



Commissioner Patrick Okilangole (Chairperson)



Commissioner Brian Lingela
(Member)



Commissioner Thembelihle Dube
(Member)

