COMESA Competition Commission

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Common Market for Eastern and Southern Africa

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PRESS RELEASE

Mergers: COMESA Competition Commission prohibits AkzoNobel's acquisition of the Decorative Coatings Business of Kansai Plascon in Eswatini, Zambia, and Zimbabwe

The COMESA Competition Commission (the "**Commission**") has prohibited the proposed acquisition by AkzoNobel N.V ("**AkzoNobel**") of the decorative coatings business of Kansai Plascon East Africa Proprietary Limited and Kansai Plascon Africa Limited (together, "**Kansai Plascon**") in Eswatini, Zambia, and Zimbabwe. The merging parties are each other's closest competitors in terms of price and quality, and the merger would have created significant market share accretion and reduced choice in the market for decorative coatings in these Member States. The Commission held that the remedies offered by the merging parties were not sufficient to address these concerns.

The Commission's Assessment

The transaction was notified to the Commission on 8 November 2022. Under the COMESA Competition Regulations (the "**Regulations**"), the Commission has 120 days to assess a merger. The Regulations, however, provide that where the Commission requires a longer period to conclude its assessment, it can seek an extension. In view of the significant concerns identified during the investigation phase, and upon requests by the merging parties, the statutory assessment period was ultimately extended to 3rd September 2023.

The merging parties are all active in the manufacture and supply of decorative and industrial coatings in the Common Market. Within the industrial coatings markets, the Commission established that the transaction would not result to a significant market share accretion and therefore the transaction would not lead to any substantial lessening of competition. The merger was therefore approved in relation to the industrial coatings markets within the Common Market.

Within the decorative coatings segment, the Commission observed that a distinction can be made between premium paints and medium-to-economy paints. The merging parties' brands, in particular Kansai's Plascon brand, and AkzoNobel's Dulux in the

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Southern Africa region and Sadolin in the Eastern Africa region are consistently recognised as premium paints in the majority of the Member States, the exception being the Indian Ocean islands.

The merger would have resulted in the creation and/or strengthening of market power in the broad market for decorative coatings in the relevant geographic clusters identified, which would have increased the merging parties' ability to engage in unilateral conduct post-merger without significant competitive constraints from remaining players on the market. The merged entity would also have benefitted from the combination of two of the strongest paint brands in the Common Market, in addition to the combination of significant balance sheets. As a result of the popularity of their brands and perceived quality level, there would be no effective substitutes to whom customers and/or retailers could reasonably turn to if the merged entity were to engage in abusive conduct (exploitative or exclusionary). Pre-merger, there is evidence that the merging parties were each other's closest substitutes and the parties' behaviour and strategy on the market would have been constrained by each other. This important competitive pressure would have been lost as a result of the merger.

Remedies Proposed by the Merging Parties

In relation to the East Africa region, the merging parties offered to divest of the Sadolin brand. The divestiture would take the form of a perpetual royalty-free license for the Sadolin brand to a third party in Uganda. Importantly, the buyer would not be limited to the manufacture and sale of Sadolin in the territory of Uganda only; the territory will also cover the following Member States of the East African region: Burundi, Kenya, and Rwanda. The Commission considered that the remedy offered by AkzoNobel would adequately address the competition concerns, and the merging parties now have a period of six months to notify the Commission of their preferred buyer and divestiture license agreement, for the Commission's review to ascertain their compatibility with the Regulations. If within six months the Commission is not notified of the preferred buyer, the transaction shall be prohibited in the East Africa Region.

In Malawi, stakeholders submitted concerns that the merger would result in the closing down of manufacturing of paints by Kansai Plascon Malawi Ltd as it also happened with Dulux Paints Malawi Ltd when it was acquired by AkzoNobel. It should be noted that Article 1 of the Regulations define competition as "*the striving or potential striving of two or more persons or organisations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficient, high economic growth, increasing employment opportunities, lower prices, and improved choice for consumers*". The concept of competition within the meaning of the Regulations encompasses the consideration of employment opportunities and by extension, the consideration of job losses which may arise as a result of transactions under the purview of the Regulations. The potential closure of the manufacturing plant in Malawi would have inevitably resulted in job losses and would have affected competition and consumer choice in the market through the exit of a key player who is perceived to offer higher quality products.

To address this concern, the merging parties committed to continue production at the manufacturing plant in Malawi for a period of three years from the date of the merger approval.

In relation to the Southern Africa region (specifically Eswatini, Zambia, and Zimbabwe), the remedies offered by the merging parties were not sufficient to address the loss in effective competition that would arise from the merger. There was also a serious risk that the divestiture remedy proposed in relation to the Zimbabwean market could have had unintended consequences of partitioning the Common Market a situation that is inimical to the single market imperative of the COMESA Treaty objective. Therefore, the Commission has **prohibited the transaction in respect of the decorative coatings markets in Eswatini, Zambia, and Zimbabwe**.

The Commission's Decision

On 2nd September 2023, the Commission's Committee responsible for Initial Determinations issued the following determination:

a. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market in relation to the industrial coatings markets. The CID, therefore, approved the merger in relation to the industrial coatings markets within the Common Market

b. The CID determined that the merger is likely to substantially prevent or lessen competition in the Common Market in relation to the decorative coatings markets. The CID, therefore, issuesd the following orders in relation to the decorative coatings markets:

    i. In Malawi, the merger is approved subject to the parties' compliance with their commitment to continue production at the manufacturing plant in Malawi for a period of three years from the date of the merger approval.

    ii. In the geographic cluster affecting Burundi, Kenya, Rwanda and Uganda, the merger is approved subject to the parties divesting of the Sadolin brand to a buyer who must be capable of ensuring continued sales of the brand in Uganda for the foreseeable future. Within a period of six months from the date of the merger approval, the parties **<u>shall</u>** notify the Commission of the preferred buyer and licence agreement for the Commission's review and approval before the implementation of the divestiture. Until the approval by the Commission, the parties commit to ring-fence their respective businesses in the Common Market. The buyer of the divested brand must not have any structural relationship with the merging parties. Divestment shall include all required licenses to enable the buyer to independently access raw materials, manufacture, distribute, and market the Sadolin brand.

iii. Failing the notification by the parties within the six-months period, the merger **shall be** deemed prohibited in respect of the decorative coatings market in the East African cluster;

iv. The assessment of the suitability of the buyer and/or divestiture licence **shall be** completed not later than four months from the date of the notification by the parties. Where an appropriate divestiture licence and/or a suitable buyer is not identified within the four-months period, the merger **shall be** deemed prohibited in respect of the decorative coatings market in the East African cluster; and,

v. In each of Eswatini, Zambia, and Zimbabwe, the merger is prohibited.

For more information

A non-confidential version of the decision will be available on the Commission's website within 30 days, under the Mergers case registry under case number CCC/MER/09/45/2022.

Dr. Willard Mwemba
Director & Chief Executive Officer