Competition Commission
COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/02/08/2024

Decision[1] of the 107th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Sole Control of Fertiglobe Plc by ADNOC Fertilizers – Sole Proprietorship L.L.C

ECONOMIC SECTOR: Agriculture

COMPETITION COMMISSION
20 MAY 2024
COMESA COMMISSION

20 May 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 21 March 2024, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving ADNOC Fertilizers – Sole Proprietorship, L.L.C. ("**ADNOC Fertilizers**" or the "**primary acquiring firm**") and Fertiglobe plc ("**Fertiglobe**" or the "**target firm**"), pursuant to Article 24(1) of the Regulations.

2. 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. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

ADNOC Fertilizers (the primary acquiring firm)

4. The parties submitted that ADNOC Fertilizers, is an indirect wholly owned subsidiary of Abu Dhabi National Oil Company (ADNOC) P.J.S.C. ("**ADNOC**"), which is an energy and petrochemicals group operating across the entire hydrocarbon value chain through a network of fully integrated businesses. ADNOC is principally active in the exploration, production, storage, refining, and distribution of oil and gas, as well as in the development of petrochemical products.

5. The parties submitted that in the year 2022, the ADNOC Group[2] had the following activities in the Common Market:

Table 1: ADNOC Group's activities in the Common Market

Member State	**Description of Activities**
Comoros	Sales of polyethylene
Democratic Republic of Congo ("**DRC**")	Sales of lubricants, polyethylene and polypropylene
Djibouti	Sales of polyethylene and polypropylene
Egypt	Sales of butane, propane, sulphur, carbon black N220, carbon black fines, ammonia, urea, other nitrogen-based fertilizers, gasoline, diesel and other non-petroleum products (such as compressed natural gas), gas oil and heavy fuel oil; lubricants (including the production thereof), jet fuel, polyethylene and polypropylene
Eritrea	Sales of gasoline, gas oil, fuel oil and jet fuel
Ethiopia	Sales of urea and polyethylene
Kenya	Sales of gas oil, jet fuel, urea, polyethylene and polypropylene
Libya	Production of crude oil
Madagascar	Sales of sulphur, ammonia, lubricants, polyethylene and polypropylene
Malawi	Sales of polyethylene
Mauritius	Sales of jet fuel, lubricants, polyethylene and polypropylene
Rwanda	Sales of polyethylene
Seychelles	Shipping services
Somalia	Sales of lubricants
Sudan	Sales of urea, polyethylene and polypropylene
Tunisia	Sales of sulphur, ammonia, polyethylene, polypropylene, crude oil, natural gas and natural gas liquids
Uganda	Sales of lubricants
	Sales of polyethylene and polypropylene
Zambia	Sales of polyethylene and polypropylene

[2] The ADNOC Group means – (i) ADNOC; (ii) all firms controlled (whether directly or indirectly) by ADNOC; (iii) all firms controlling (whether directly or indirectly) ADNOC; and (iv) all firms controlled by the firms controlling ADNOC (whether directly or indirectly) (collectively the "**ADNOC Group**").

Zimbabwe	Sales of polyethylene

Fertiglobe plc (the primary target firm)

6. The parties submitted that the target firm, Fertiglobe, is a United Arab Emirates-based nitrogen fertilizer producer and distributor with production plants in the United Arab Emirates, Egypt and Algeria. In particular, Fertiglobe produces and sells anhydrous ammonia and urea (including urea for fertilizer use).

    i. Ammonia: Fertiglobe produces anhydrous ammonia, with a production capacity of [][3] Kilotons[4] (KT) per annum. It uses most of its ammonia production captively for the production of urea. The principal feedstocks currently used in the production of ammonia is natural gas and nitrogen, which Fertiglobe sources through long-term supply agreements. Fertiglobe has plans to produce renewable ammonia (green ammonia) and low-carbon ammonia (blue ammonia).

    ii. Urea: Fertiglobe produces urea, with a production capacity of around [][5] KT per annum. In 2022, Fertiglobe's worldwide sales to third parties from its own production amounted to [][6] KT. Fertiglobe further purchased from third parties and traded urea volumes of [][7] KT. The large majority of its sales (>[80-100]%) relate to granular urea for fertilizer use. Other sales include urea-based solutions. For example, Fertiglobe has installed technologies for the production, and tested the production, of urea-based Diesel Exhaust Fluid (DEF also known as AdBlue, which is a 32.5% urea solution in deionized water), a de-NOx agent that can be used in Selective Catalytic Reduction systems to reduce harmful vehicle exhaust emissions from diesel engines, with the added advantage of improving vehicle fuel economy by approximately 5%. In 2022, Fertiglobe sold [][8] KT of DEF to OCI in the context of a trial shipment to Europe. Fertiglobe's production capacity for DEF is approximately [][9] KT.

Jurisdiction of the Commission

7. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

[3] Information claimed as confidential by the merging parties.
[4] One kiloton translates to one thousand tons
[5] Information claimed as confidential by the merging parties.
[6] Information claimed as confidential by the merging parties.
[7] Information claimed as confidential by the merging parties.
[8] Information claimed as confidential by the merging parties.
[9] Information claimed as confidential by the merging parties.

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the *target firm, operate in two or more Member States, shall be notifiable if:*

a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*

b) *the annual turnover or value of assets, whichever is higher, in the* Common Market of each of at least two of the parties to a merger equals *or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*

8. The undertakings concerned have operations in two or more Member States. The undertakings derived a combined annual turnover in excess of the threshold of USD 50 million in the Common Market and both parties derived turnover of more than USD 10 million in the Common Market. In addition, the parties did not derive at least two-thirds of their respective aggregate COMESA-wide turnover within one and the same Member State. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

9. The parties submitted that the proposed transaction relates to a change from joint to sole control, namely the proposed acquisition by ADNOC Fertilizers of OCI's entire equity interest in Fertiglobe. In terms of the Proposed Transaction, ADNOC Fertilizers will purchase OCI's approximately 50% plus one share interest in Fertiglobe, bringing ADNOC Fertilizers' shareholding in Fertiglobe from 36.2% to 86.2%.[10] As a result, ADNOC Fertilizers will acquire sole control over Fertiglobe.

10. The parties submitted the rationale for the proposed transaction from the perspective of the acquiring and target firm as follows:

a) **ADNOC**: the Proposed Transaction supports ADNOC's international chemicals strategy and its plans to establish a global growth platform for ammonia, a key lower carbon fuel and hydrogen carrier that is expected to play an important role in the energy transition. The Proposed Transaction is aimed to support ADNOC to deliver on its 2045 net zero strategy as well as the ambition of ADNOC to expand and strengthen its downstream portfolio.

b) **Fertiglobe**: the Proposed Transaction will support Fertiglobe's future growth plans, enabling it to accelerate the pursuit of new market and product opportunities, and expand its focus on clean ammonia as an emerging fuel and hydrogen carrier.

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[10] The Fertiglobe shares that are currently in public hands are outside of the scope of the Proposed Transaction and Fertiglobe will retain its Abu Dhabi Securities Exchange (ADX) listing following the Proposed Transaction.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

11. Paragraph 7 of the COMESA Guidelines on Market Definition (the "**Market Definition Guidelines**") provides that a ***"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use"***.

12. The ADNOC Group is involved, *inter alia*, in the supply of propane and butane, urea and nitrogen-based fertilizers, jet fuel, gasoline, diesel, gas oil, heavy fuel and lubricants in the Common Market. The acquiring firm is also active in the exploration, production and sale of crude oil and gas, outside the Common Market. Within the Common Market, the target produces and sells anhydrous ammonia and urea (including urea for production of fertilizer).

13. In respect of the product overlap, the parties have submitted that the acquirer is currently only active in the supply of ammonia and urea through its shareholding in Fertiglobe. Therefore, except for Fertiglobe, ADNOC does not sell any products or render any services which compete with the activities of Fertiglobe in COMESA (or elsewhere). There are, however, vertical overlaps between other products and services supplied by ADNOC to Fertiglobe outside the Common Market.

<u>Ammonia</u>

14. Ammonia is a colourless, pungent gas composed of nitrogen and hydrogen. It is the simplest stable compound of these elements and serves as a starting material for the production of many commercially important nitrogen compounds. Ammonia can be used in several ways: (i) as an input for the production of nitrogen-based fertilizers; (ii) as direct application ammonia; (iii) for a variety of industrial applications; and (iv) for the production of urea[11].

15. Ammonia can be distinguished as either anhydrous or aqueous ammonia. ammonia is a gaseous material at ambient temperature that is refrigerated or compressed and stored as a liquid. It is manufactured by reacting nitrogen from the air with hydrogen in the presence of a catalyst at high temperature and high pressure. Aqueous ammonia is anhydrous ammonia dissolved in demineralised water, typically 25% of ammonia and 75% of water.[12] The European Commission has previously distinguished between anhydrous and aqueous ammonia, noting limited demand and supply-side substitutability, in particular due to anhydrous ammonia requiring

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[11] <u>Ammonia | Definition & Uses | Britannica</u>
[12] <u>m7784_205_3.pdf (europa.eu)</u>

additional transportation and storage precautions because of its hazardous nature[13]. Within anhydrous ammonia, the European Commission has also considered that a further distinction could be made between ammonia for fertilizer use and ammonia for industrial purposes.[14] Anhydrous ammonia is mainly used in the production of nitrogen-based fertilizers through the Haber-Bosch process, a method developed over 100 years ago to create ammonia by heating and pressurizing nitrogen from the air over a hydrogen source (typically from natural gas or coal). The resultant ammonia is further processed to create nitrogen fertilizers in solid and liquid forms.[15] Urea is the most produced and consumed nitrogen fertilizer globally with about 54 percent of the world market and represents the major sectoral growth in the nitrogen industry.[16]

16. The parties submitted that Fertiglobe produces anhydrous ammonia and uses most of its ammonia production captively for the production nitrogen-based fertilizers, namely urea.

17. Urea is a colourless crystalline compound which is the main nitrogenous breakdown product of protein metabolism in mammals and is excreted in urine. It has important uses as a fertilizer and feed supplement, as well as a starting material for the manufacture of plastics and drugs[17]. Urea as a nitrogen-based fertilizer is known for its high nitrogen content and is used to promote vegetative growth in plants. Most fertilizers provide three primary nutrients, namely nitrogen, phosphorous and potassium. While nitrogen facilitates green leafy growth in plants, phosphorous fertilizers improve roots and flowering while potassium strengthens resistance to shock such as extremes in temperature or pest infestation. Therefore, from a demand perspective, urea is not likely substitutable with other forms of fertilizers which carry different nutritional composition.

18. The urea sold by Fertiglobe is granular urea. Its major customers of granular urea are [redacted] in the Common Market. Granular urea is a solid nitrogen fertilizer product produced from ammonia and carbon dioxide; it has the highest nitrogen content of any solid nitrogen fertilizer[18].

19. Granular urea can be applied by itself, or it can be easily mixed with phosphate and/or potash fertilizers, often as part of a total NPK (nitrogen, phosphate, and potash) plant food mix. As a granular product, urea can be applied directly to the soil using conventional spreading equipment. It is the most common form of nitrogen fertilizer used around the world[19]. "*[U]rea is the most popular and economical of the nitrogen*

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[13] See Case M.4730 – Yara / Kemira GrowHow (2007), paras. 74-75. See too Case M.7784 – CF Industries Holdings / OCI Business (2015), para. 18 m4730_20070921_20212_en.doc (europa.eu)

[14] See Case M.7784 – CF Industries Holdings / OCI Business (2015), para. 18; m7784_205_3.pdf (europa.eu) and Case M.4730 – Yara / Kemira GrowHow (2007), paras. 69.

[15] http://elixirfertilizers.com/

[16] http://elixirfertilizers.com/

[17] Urea Fertilizer - an overview | ScienceDirect Topics

[18] Granular Urea | CF Industries

[19] Granular Urea | CF Industries

fertilizers. It has a higher concentration of nitrogen than any other solid fertilizer – 46%. Urea is very versatile, ideal for use in a wide range of environmental conditions on crops including wheat, barley, rice and maize. It can either be sprayed or used for fertigation and is normally applied at least three times during the growing season"[20]. As a fertilizer, urea[21] is blended into other fertilizer mixes e.g., with other raw fertilizer material inputs ('straight' fertilizers or with complex fertilizers).

20. In view of the foregoing and noting that Fertiglobe primarily produces anhydrous ammonia for its own use in the production of urea fertilizers, the CID has focused its assessment on **the production and supply of urea fertilizers.**

21. As noted above, there exist potential vertical linkages between the merging parties in the provision of nitrogen and natural gas. In particular, the ADNOC Group produces natural gas and nitrogen, which are inputs in the production of anhydrous ammonia. The ADNOC Group supplies natural gas and nitrogen to Fertiglobe production plants based in the UAE. Considering that nitrogen and natural gas are inputs into the manufacture of anhydrous ammonia which feeds into the production of fertilizers being the main product sold by the target in the Common Market, the CID has considered in its assessment further below whether the existing arrangement between the parties in the supply of these raw materials may affect the relevant market for the production and supply of urea fertilizers.

Relevant Geographical Market

22. The Commission's Guidelines on Market Definition define the relevant geographic market as follows:

    "...the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas..."[22].

23. Urea is a major source of nitrogen and is traded worldwide on a large scale. Its shipping is extremely cost efficient, also as a consequence of its production costs which are the lowest compared to the other straight nitrogen fertilizers[23]. The CID has generally considered the market(s) for supply of fertilizers as global in nature[24] given that most of the producers and suppliers operate on a global level with major exports emanating from countries such as South Africa, Russia, Belarus, China Saudi Arabia,

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[20] https://www.sabic.com/assets/en/Images/BRO_AGRI_Agri-Nutrients_A5_070618_low-Res_tcm1010-13919.pdf
[21] Whilst urea has traditional been a low-cost fertilizer, its price has significantly increased as a result of the Ukraine-Russia war.
[22] Paragraph 8.
[23] https://trendeconomy.com/data/commodity_h2/310210
[24] See Cases CCC/MER/04/12/2019 – Saudi Arabian Mining Company and Meridian Consolidated Investment Limited, para 7; Merger Involving Yara, Greenbelt Zambia & Greenbelt Malawi - onhttps://comesacompetition.org/wp-content/uploads/2023/05/Yara-Green-Belt-CID-Order.pdf accessed on 15 April 2024

United Arab Emirates and United States of America[25]. Further, within the Common Market, the market for the supply of fertilizers faces competitive constraints from imports from major fertilizer producing countries. The importation and consumption patterns for a sample of the Member States confirms that majority of the fertilizer consumed within the Common Market is imported[26].

24. The parties' submissions also showed that there are no factors that limit the transport of urea over long distances. Urea is transported seaborne in dry bulk vessels over long distances and there is a significant degree of trade across continents and regions. The parties submitted that Member States of the Common Market imported urea from a large number of export countries, namely France, Germany, United Kingdom, Spain, the Netherlands, Belgium, Italy, Hungary, Latvia, Lithuania, Bosnia, Portugal, Czech Republic, China, India, Tanzania, Jordan, Iran, Saudi Arabia, UAE, Kenya, Egypt, Africa, Iraq, Qatar, Singapore, Turkey, South Korea, South Africa, and Mozambique. The parties estimate that the main competitors producing urea in COMESA are: Misr Fertilizers Production Company (MOPCO) with production facilities in Egypt; Abu Qir Ferts & Chemicals with production facilities in Egypt; and Helwan Fertilizers Company with production facilities in Egypt. In addition, producers in Iran and Qatar export significantly to the Common Market. Additional supplies come in particular from China, Netherlands, Indonesia, Qatar, Russia, South Africa, and the UAE.

25. The CID thus considers that the relevant geographic market is likely to be at least COMESA-wide as there are no restrictions on the trade of fertilizer within the Common Market. In line with past decisions[27], the CID further considers that the geographic market could potentially be global. Fertilizers are largely traded at global level, and COMESA's imports of fertilizers are primarily from the Middle East, Russia, Jordan, Ukraine, and China (as can be seen in Figure 1 below[28]).

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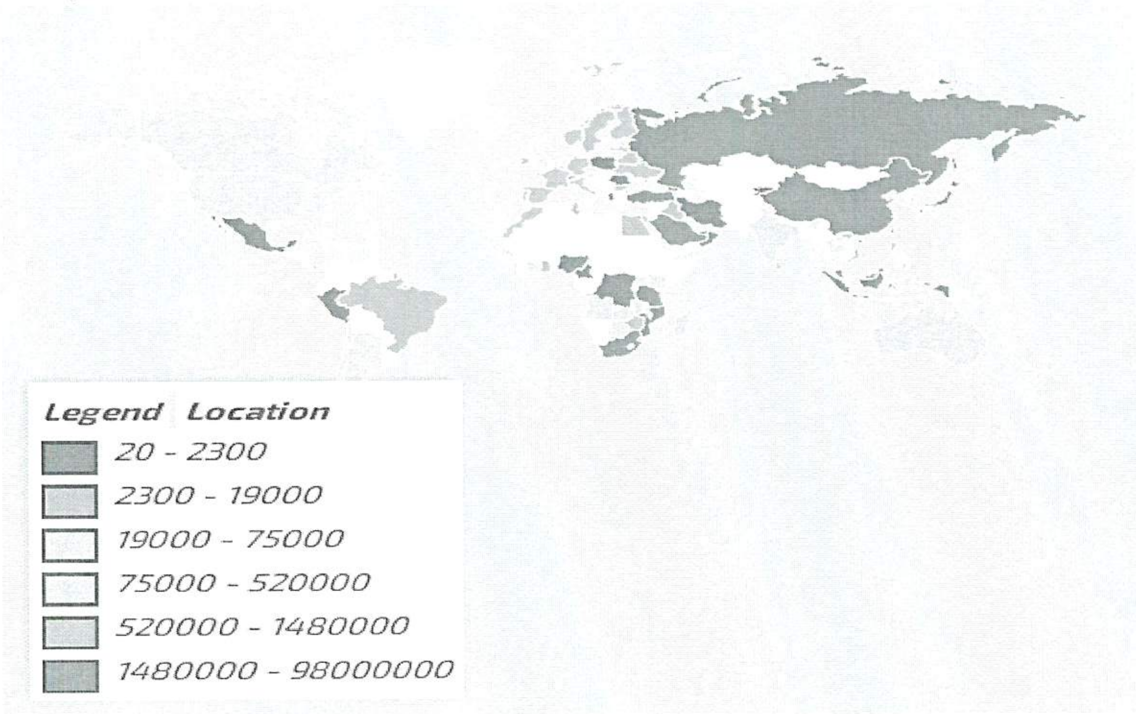
[25] See, https://www.ers.usda.gov/amber-waves/2023/september/global-fertilizer-market-challenged-by-russia-s-invasion-of-ukraine/ accessed on 15 April 2024

[26] See https://api.hub.ifdc.org/server/api/core/bitstreams/bd138bbd-13e5-4aec-9bc4-f4f738a756a3/content, accessed on 15 April2023

[27] See Commission's decisions in OFD Holdings/Yara (2014); and Yara/Greenbelt (2016).

[28] Accessed at: https://comesa.opendataforafrica.org/pcwsrbe

Figure 1 – COMESA's imports of Fertilizers from 2016 to 2020 by Country of Origin (values USD)



26. This shows that competitive conditions in the Common Market are affected by imports from outside the region. This trend is supported at national level. Top trading partners of Malawi for the import of fertilizers in 2020 were United Arab Emirates with a share of 30% (70 million USD), China with a share of 23% (54 million USD), Saudi Arabia with a share of 11.7% (27 million USD), Bahrain with a share of 4.42% (10.4 million USD). In 2020, Egypt exported USD 1.17B in nitrogenous fertilizers, making it the 5th largest exporter of nitrogenous fertilizers in the world. The main destination of nitrogenous fertilizers exports from Egypt were Argentina, Turkey, India, Italy and France[29]. The fastest growing exports markets for Egypt between 2019 and 2020 were Argentina, Ethiopia, and Italy. Therefore, the CID considers that the relevant geographic market for the supply of urea is likely to be global.

Conclusion on Relevant Markets

27. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant market has been identified as **the global market for the production and supply of urea fertilizers.**

Market Shares and Concentration

28. The table below reflects the estimated market shares of the merging parties as well as their competitors in relation to the market for the supply of urea in the Common

[29] https://oec.world/en/profile/bilateral-product/nitrogenous-fertilizers/reporter/egy

Market. The CID notes that there will be no market share accretion in relation to the supply of urea in the Common Market; as a result, the structure of the market post-merger will not change. The merged entity will continue to face robust competition from several established competitors including, inter alia, MOPCO and Abu Qir Ferts & Chemicals.

Table 2: Estimated market shares for the Supply of Urea[30]

Competitors	Estimated market share (%)[31]
MOPCO	20 – 30
Abu Qir Ferts & Chemicals	20 – 30
Fertiglobe	***20 – 30***
Iranian Producers	10 – 20
Helwan Fertilizer Company	0 – 10
Qatar / QP	0 – 10
Others	10 – 20

29. The parties submitted that barriers to entry in the fertilizer industry are not especially onerous and do not serve to dissuade the entry of new competitors. The CID observes that barriers for agri-inputs can manifest in terms of:

a) Understanding of the market: A successful entrant should have the requisite knowledge of market needs and be able to tailor solutions to the soil needs of each client operating within a particular jurisdiction.

b) Distribution network and storage capacity: Given the rural make-up of most of any fertilizer business's clientele, a wide-reaching distribution network is a priority for any new entrant.

c) Investment in local blending: smaller-scale fertilizer producers known as localized bulk blenders can procure from the larger players and then customize products for a niche geographic area. A new entrant wishing to attain wider reach may need to invest in building relationships with local blenders; and

d) Having a strong brand: Due to the delicate nature of the chemical balances required for effective fertilizer application, most customers will tend to choose strong, trusted brands.

30. The CID has previously found that a potential large scale commercial entrant (+/- 5% market share) will likely require an initial capital outlay of approximately USD 50 million. Such operations will require at least 3 to 4 years to establish.

31. The CID further observes that access to an effective distribution channel appear to be the main obstacle for timely and sufficient entry, as inefficiencies in the distribution channel will likely reduce competitiveness. Further, new entrants will require

[30] Owing to the absence of independent market share statistics, the market shares provided constitute the best estimates of the merging parties based on consumption data, the parties' knowledge of and experience in the relevant industry.
[31] Confidentiality claimed by the parties.

significant capital outlay to rival the established companies. This notwithstanding, the transaction will not contribute to heightening entry or expansion barriers as pre-merger, the acquiring group was already engaged in the supply of urea fertilizers in the Common Market through Fertiglobe.

32. The CID considers that the proposed transaction will not result in the merged entity having market power, taking into account the absence of horizonal or vertical relationships between the merging parties in the Common Market. The activities of the merged entity will continue to be constrained both through existing competition in the Common Market as well as existing competition from the global markets.

33. The CID notes that the ADNOC Group has been involved in a number of mergers in the past as highlighted below:

    i. Acquisition of OMV Aktiengesellschaft (2023) – in this transaction, the affected markets were: the global exploration of oil and gas; the global wholesale supply of crude oil; the global production and supply of propane and butane; the supply of diesel in Egypt; the supply of polypropylene and polyethylene, whose geographic scope was left open; and the global supply of urea. The assessment on this transaction concluded that the proposed transaction was not likely to raise any competition concerns in the relevant markets identified.

    ii. Creation of a Full Function Joint Venture involving Abu Dhabi National Oil Company, Abu Dhabi Developmental Holding Company PJSC and Reliance Industries Limited (2022)- in this transaction, the affected markets were, the global supply of caustic soda; the global supply of ethylene dichloride; and the global supply of polyvinyl chloride (PVC). The assessment on this transaction concluded that the proposed transaction was not likely to raise any competition concerns in the relevant markets identified.

34. While the ***ADNOC/OMV*** merger equally concerned the relevant market for the supply of urea, no competition issues arose from the previous merger as the market structures did not change post-merger and the transaction did not present any overlaps. The CID is thus satisfied that the previous transactions involving the ADNOC Group would not have contributed to an adverse effect on the relevant market for the production and supply of urea fertilizers.

35. With regard to the vertical overlaps between the merging parties outside the Common Market, the CID considers that competition concerns are not likely to occur because the ADNOC Group is not a major supplier of nitrogen and natural gas (ADNOC estimates its global market shares to be less than [redacted]% respectively). Therefore, any firm competing with Fertiglobe in the production of urea would have access to other suppliers for their inputs such as nitrogen or natural gas.

20 MAY 2024

36. In view of the foregoing, it is unlikely that the parties would have either the ability or the incentive to engage in any input foreclosure strategy in relation to the procurement of nitrogen or natural gas in the ultimate production of urea fertilizers.

37. Further, while the CID observes that the fertilizer industry has generally been prone to collusion as a result of its economic characteristics (high concentration, barriers to entry, homogeneity of the products and relatively inelastic demand), in the current transaction, there will be no removal of an effective competitor. As such, the transaction is not likely to create nor facilitate conditions for competitors to engage in collusive behaviour.

Consideration of Third-Party Views

38. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Zimbabwe, Mauritius, Seychelles, DRC, Egypt, Zambia, Rwanda, Madagascar, Kenya and Malawi which confirmed the absence of competition and public interest concerns.

Determination

39. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

40. The CID, therefore, approved the transaction.

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

Dated this 20th day of May 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**