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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/11/40/2018

Decision[1] of the Fifty-Fifth (55th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Brenntag (Holding) B.V., Desbro (Kenya) Limited and Desbro (U) Limited

ECONOMIC SECTOR: Industrial Chemicals

2nd May 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 22nd November 2018, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving Brenntag (Holding) B.V. ("**BHBV**") as the acquirer and the chemical distribution businesses and assets of Desbro (Kenya) Limited ("**Desbro Kenya**") and Desbro (U) Limited ("**Desbro Uganda**"), together as the target undertakings.

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 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 (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

BHBV (the Acquiring Undertaking)

4. BHBV is a private limited liability company incorporated in the Netherlands. BHBV is an indirect subsidiary of Brenntag AG, a publicly listed German chemical distribution company founded in 1874 in Berlin and headquartered in Essen, Germany. Brenntag AG has various subsidiaries around the world which form the Brenntag Group. The Brenntag Group is a world leader in the distribution of chemical raw materials, and food additives.

5. The Brenntag Group has operations in the following COMESA Member States: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

Desbro Kenya (target undertaking)

6. The target undertaking is the chemical distribution business and assets of Desbro Kenya. Desbro Kenya, is a private limited liability company incorporated on 13th November, 1967 under the laws of Kenya. Desbro Kenya undertakes the business of distributing industrial chemicals and raw materials in Kenya and exports products to Uganda, Rwanda, Burundi and Ethiopia. The products distributed by Desbro Kenya include chemical products such as plastics, coatings & construction, textiles, water treatment and increasing Life Sciences.

7. Desbro Kenya has operations in the following COMESA Member States: Burundi, Ethiopia, Kenya, Rwanda, and Uganda.

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Desbro Uganda (target undertaking)

8. The other target undertaking is the chemical distribution business and assets of Desbro Uganda. Desbro Uganda is a private limited liability company incorporated in Uganda. Desbro Uganda undertakes the business of distributing industrial chemicals and raw materials in Uganda and exports products to Kenya, Rwanda, Burundi and the Democratic Republic of Congo. The products distributed by Desbro Uganda include plastics, coatings & construction, textiles, water treatment and increasing Life Sciences.

9. Desbro Uganda has operations in the following COMESA Member States: Burundi, Democratic Republic of Congo, Kenya, Rwanda and Uganda.

Nature of the Transaction

10. The proposed transaction entails the acquisition of the chemical distribution businesses and assets of Desbro Kenya and Desbro Uganda by BHBV.

Competition Analysis

11. The CID defined the relevant market as the market for the distribution of industrial chemicals in the Common Market. The CID observed that the combined market shares of the parties, post-merger, is diminutive and that such a position would not afford the merger entity the ability to engage in sustainable anti-competitive conduct. The CID further observed that the foregoing is buttressed by the presence of several competitors in the relevant market.

Determination

12. The CID determined that the merger is not likely to substantially lessen and prevent competition in the Common Market or any substantial part of it. It was also determined that the merger transaction does not affect a substantial part of the Common Market. Consequently, the transaction is not likely to negatively affect trade between Member States. The CID therefore approved the transaction.

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

Dated this 2nd day of May, 2019

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Commissioner Patrick Okilangole (Chairperson)

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Commissioner Brian Lingela

(Member)

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Commissioner Thembelihle Dube Nee Dlamini

(Member)