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**Common Market for Eastern
and Southern Africa**

CASE FILE No. CCC/MER/1121/2013

**Decision¹ of the Sixth Meeting of the Committee of
Initial Determination Regarding the Merger between
FedEX Corporation and Supaswift (Swaziland)
(Proprietary) Limited, Supaswift Zambia Limited and
Supaswift Limited (Malawi)**

ECONOMIC SECTOR: Courier Services

19th March 2014 – Lilongwe, Malawi

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6th December 2013, FedEx Corporation (“FedEX”) and Supaswift (Proprietary) Limited (“Supaswift”) through their lawyers, DLA Cliffe Dekker Hofmeyr filed a merger notification. The transaction involves the purchase by companies in the FedEx Group, the global courier delivery services provider, of the business operations and assets of its licensees in the Supaswift Group in a number of countries in Africa, including three COMESA Member States: Malawi, Swaziland and Zambia, with the exception of Supaswift Zimbabwe because it is not a licensee of FedEx. The transaction is structured as a single transaction.
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (‘the Regulations’). The Commission’s concern is primarily 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 as provided for under Article 26 of the Regulations.
3. The Committee of Initial Determination (the CID) observed that the parties operate in two or more COMESA Member States. This, therefore, means that the regional dimension requirements under Articles 23(3) and 23(5) are satisfied and ultimately asserts jurisdiction of the Commission to assess the transaction.

The Parties

FedEX Corporation (“FedEX”)

4. The acquiring firm is FedEx Corporation (“FedEx”). FedEx is listed on the New York Stock Exchange. FedEx provides a portfolio of transportation, e-commerce and business services under the FedEx brand in over 220 countries and territories worldwide. FedEx operates in four segments: FedEx Express, FedEx Ground, FedEx Freight and FedEx Services. FedEx's acquisitions in COMESA are through subsidiaries newly incorporated or to be incorporated in Malawi, Swaziland and Zambia.
5. FedEx does not own business operations or assets in the COMESA region. FedEx had previously licensed the Target Firms as its agents and points of contact in the respective countries. The Target Firms are the licensees of FedEx in Malawi, Swaziland and Zambia and they conduct their business under the FedEx brand. FedEx is the holding company for a number of operating companies globally which collectively provide transportation, e-commerce and business services under the FedEx brand. FedEx's four operating segments comprise FedEx Express, FedEx Ground, FedEx Freight and FedEx Services.

Supaswift (Pty) Ltd (“Supaswift”)

6. The primary target firms are Supaswift (Swaziland) (Proprietary) Limited (“**Supaswift Swaziland**”), Supaswift Zambia Limited (“**Supaswift Zambia**”) and Supaswift Limited (“**Supaswift Malawi**”) (collectively the “**Target Firms**”). The Target Firms are controlled by Supaswift (Pty) Ltd (“**Supaswift**”), a company incorporated in South Africa. Supaswift is controlled by Supaswift Express (Pty) Ltd, a company incorporated

in South Africa. The business conducted by the Target Firms entails a domestic, intra-regional and international package pick-up and delivery courier service in Swaziland, Malawi and Zambia respectively. The Target Firms offer small package and freight express delivery services (i.e. courier services) to consumers in Swaziland, Malawi and Zambia.

Competition Analysis

7. The CID noted that the relevant product market is the provision of Express Courier Services. The CID has observed that the merger is vertical in nature and that it is not likely to substantially prevent or lessen competition in the identified National markets of Malawi, Swaziland and Zambia. The Commission has further established that the transaction will not result in customer and service foreclosure effects and would therefore not have an effect on trade between Member States. Further; no customer and service foreclosure effects will arise from the merger, the transaction is not inimical to Article 2 of the Regulations in that it will not frustrate the efficient operations of the market and it will not erode the welfare of consumers in the three Member States.

Determination

8. The CID deliberated the issues presented by Management and agreed with its recommendations to authorise the transaction. The CID found that the transaction is compatible with the objectives of the Treaty Establishing the Common Market. This is because investigations and assessment show that the transaction is not likely to frustrate the single market objective.
9. This decision is adopted in application of Article 26 of the COMESA Competition Regulations.

Dated this 19th day of March, 2014.

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Commissioner Alexander J. Kububa (Chairman)

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Commissioner Chilufya Sampa

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Commissioner Thabisile Langa