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**Common Market for Eastern  
and Southern Africa**

**Staff Paper No. 2016/11/LV/08**

**Decision<sup>1</sup> of the Twenty Eighth Committee Responsible for Initial Determination on the Application for Authorisation of the Proposed Acquisition of Lusaka Cosmopolitan Investments Limited by Delta International Mauritius Limited**

**ECONOMIC SECTOR: COMMERCIAL PROPERTY**

**23<sup>rd</sup> November, 2016 – Livingstone, Zambia**

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<sup>1</sup> 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 12<sup>th</sup> September, 2016, the COMESA Competition Commission (hereinafter referred to as "the Commission") received an application for approval of a merger between Delta International Mauritius Limited (hereinafter referred to as "Delta") and Lusaka Cosmopolitan Investments Limited (hereinafter referred to as "Lusaka Cosmopolitan").
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations (hereinafter referred to as the "Regulations"). Under this provision 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 pursuant to Article 26 of the Regulations.
3. The Committee Responsible for Initial Determination (hereinafter referred to as the "CID") noted that the parties operate in more than one COMESA Member State. This, therefore, means that the regional dimension requirement under Articles 23(3) is satisfied and asserts jurisdiction on the Commission to assess the transaction.

## **The Parties**

### **Delta**

4. The purchaser in the proposed transaction, Delta, is a pan African property income fund focusing on African real estate assets (excluding South Africa). Delta is 100% owned by Mara Delta Property Holdings Limited ("Mara Delta"), which is listed on the Johannesburg Stock Exchange and the Stock Exchange of Mauritius. Through various property holding structures, Delta is active in Kenya, Mauritius and Zambia.

### **Lusaka Cosmopolitan**

5. The target undertaking, Lusaka Cosmopolitan, is an investment holding company incorporated in Mauritius and owns 50% shares in Cosmopolitan Mall in Zambia.

## **Nature of the Transaction**

6. Delta will acquire 100% of the ordinary share capital held by Rockcastle Global Real Estate Limited in Lusaka Cosmopolitan as set out in the parties' Sale of Shares and Claims Agreement.

## **Competition Analysis**

7. The CID defined the relevant market as the provision of Commercial Retail Space in the Common Market. The CID established that the transaction would not frustrate the single market objective of the Treaty in that it does not have an appreciable effect on trade between Member States.

## Determination

8. The CID noted that the Competition and Consumer Protection Commission of Zambia had requested for a referral of the merger from the Commission under Article 24(8) of the Regulations which states that:

*"A member State having attained knowledge of a merger notification submitted to the Commission may request the Commission to refer the merger for consideration under the Member State's national competition law if the Member State is satisfied that the merger, if carried out, is likely to disproportionately reduce competition to a material extent in the Member State or any part of the Member State".*

In this regard the CID endorsed the decision of the Secretariat to refer part of the transaction affecting the Zambian market to the Competition and Consumer Protection Commission.

9. The CID determined that the merger does not raise competition concerns and is compatible with the Treaty Establishing the Common Market. The CID therefore approves the transaction in the Common Market except for Zambia.
10. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 23<sup>rd</sup> day of November, 2016.



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**Commissioner Matthews Chikankheni (Chairman)**



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**Commissioner Thabisile Langa (Member)**



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**Commissioner Chilufya Sampa (Member)**