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Common Market for Eastern and Southern Africa

Case File No. CCC/ MER/12/32/2020

Decision[1] of the Seventy-Fifth (75th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving KCB Group Plc and Banque Populaire du Rwanda Plc

ECONOMIC SECTOR: Banking and Financial Services

16th April 2021

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 14th January 2021, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving KCB Group Plc ("**KCB Group**") and Banque Populaire du Rwanda ("**BPR**"), pursuant to Article 24(1) of the COMESA Competition Regulations, 2004 (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 (hereinafter referred to as the "CID"). The Commission submitted its assessment report to the CID on 6th April 2021. The decision of the CID is set out below.

The Parties

KCB Group (the acquiring firm)

4. The acquiring firm, KCB Group, is a public company incorporated in Kenya and listed on the Nairobi Securities Exchange and cross listed on the Dar es Salaam Stock Exchange, Uganda Securities Exchange and Rwanda Stock Exchange. KCB Group holds several banking and other financial services subsidiaries in the region. It offers a full range of banking products and services which include the following: personal and business banking services; current accounts, saving accounts, fixed deposit accounts; term loans; letters of credit, guarantees, overdraft facilities; asset finance; trade finance; project finance; and mortgages.

5. KCB Group is active in the following COMESA[2] Member States: Burundi, Kenya, Rwanda and Uganda.

BPR (the target firm)

6. BPR is a public limited company incorporated in Rwanda and licensed by the National Bank of Rwanda to provide banking services in the Republic of Rwanda. It is currently controlled by Atlas Mara Mauritius Limited ("AMM"), the legal and beneficial owner of 26,975,175 ordinary shares in BPR which represents 62.06% of issued share capital of BPR. AMM is wholly owned by Atlas Mara Limited, a public company listed on the London Stock Exchange. BPR offers banking products and services which include: retail loans and deposit savings; and corporate loans and deposit services.

7. BPR is active in one COMESA Member State namely Rwanda.

[2] In this decision, COMESA is used synonymously with the term Common Market.

Jurisdiction of the Commission

8. 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:

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 COM$ 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 COM$ 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.

9. The merging parties have operations in more than two COMESA Member States. The parties' combined asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Nature of the Transaction

10. The proposed transaction relates to a Share Purchase Agreement entered into on 25th November 2020 between *inter alia*, KCB Group, ATMA and AMM, wherein KCB Group agreed to purchase from AMM 62.06% of the issued share capital of BPR. In addition, KCB Group made an offer to the remaining shareholders of BPR to acquire additional shares from the remaining shareholders and, in this regard, entered into a share purchase agreement with Arise B.V on 26 February 2021 for the purchase of 6,351,269 (14.61%) shares in BPR.

Relevant Markets

Relevant Product Market

11. The acquirer and target are both active in the provision of banking services within the Common Market. The acquirer provides personal and business banking services which include current accounts, saving accounts, fixed deposit accounts; term loans; letters of credit, overdraft facilities; asset finance; trade finance; project finance; and mortgages.

12. The target provides retail and corporate banking products which include loan and deposit services, among other products.

Provision of Banking Services

13. Banking services comprise various segments such as retail banking, corporate banking, and financial market services[3]. These may be considered as separate markets on account of the nature of the services and the targeted customers.

Retail Banking Services

14. Retail banking services comprise services provided to private individuals or very small enterprises and include deposit services, payment services (i.e. ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques); investment products (i.e. mutual funds, pension funds and securities brokerage); lending (i.e. personal loans, consumer credit, overdraft facilities, mortgages etc.); and custody services (management of custody accounts and processing of corporate actions such as dividend distribution).

15. Retail banking services may be seen to comprise narrow markets due to the uniqueness of the products which limits substitution from a customer's point of view. For instance, deposit services are meant to give a customer an opportunity to save funds thereby postponing present consumption to the future and earn interest in the process. On the other hand, a loan/credit is provided to a customer to meet present expenditure needs but a customer is expected to re-pay the money in future with interest.

16. However, from a supply perspective, retail banking products may be provided as a package. A bank's ability to provide individual retail banking products/services may depend on other retail banking products which influence customer demand patterns. For instance, a personal current account may be linked to other retail banking services which may influence a customer's choice of which bank to approach. Thus, a personal current account may be linked to a better mortgage, credit facilities, ATM card services which encourages banks to diversify their product portfolio from the traditional products and leverage new products in order to attract new customers.

17. The CID observed that while the individual retail banking products may be categorised as separate product markets based on product characteristics, intended use and prices, there is a strong possibility for supply side substitution whereby a bank is able to provide retail banking services as a package. This suggests that the relevant product market can be categorised as broad as retail banking.

18. On the basis of the above, the relevant product market was construed as the broad market for the **provision of retail banking services**.

Corporate Banking Services

[3] See Case No COMP/M.1910 - Meritanordbanken/Unidanmark

19. Corporate banking services (or business banking services) are intended for small, medium-sized customers and large corporate customers and consists of deposit lending, international payments, letters of credit and other financial advisory services (i.e., on mergers and acquisitions). They entail the provision of banking services to small/medium enterprises and large corporate customers[4] as opposed to private individuals or very small enterprises which fall under retail banking services. Therefore, retail banking and corporate banking should be distinguished as belonging to separate markets.

20. The CID observed that the core products under corporate banking are similar to those under retail banking with the major difference being the type of customers served. Corporate and retail banking services are distinguishable on account of the type of customer served and the differences in the manner the products are provided. While no threshold exists to demarcate retail banking and corporate banking, there is a distinguishing feature separating the two through the value of transactions involved which tend to be low in retail banking as compared to higher transaction values in corporate banking. Another distinguishing feature is the handling charges which tends to be low in retail banking as compared to corporate banking. Further, while retail banking seeks to support day-to-day banking services to private individuals, corporate banking is mostly intended to support the development of customers' businesses and projects. Therefore, on account of these differences, there is bound to be limited substitution between retail and corporate banking. Switching from retail banking services to corporate banking service would entail incurring additional expenses for the customer.

21. In its previous Decision involving the *I&M Holdings/Orient Bank*[5] merger, the CID observed that while demand substitution may exist between retail banking and corporate banking, limitations may arise given that for a retail banking customer to access corporate banking services, he/she would have to incur higher costs. Therefore, substitution will only be possible to the extent that a retail customer is willing to pay more for tailor made corporate banking services. The cost to a retail banking customer is likely to be high and would discourage switching.

22. In the current transaction, the CID observed that from a supply perspective, banks tend to consider corporate banking customers as low risk customers compared to retail banking customers who are considered high risk. Thus, a bank is more flexible to tailor banking products and offer credit/loans on flexible/favourable terms to corporate customers as opposed to retail customers that access standard credit facilities on standard terms and conditions. Further, banks tend to prioritise the handling of transaction by a corporate customer as opposed to retail customer transactions.

23. On the basis of the foregoing, the CID established the **provision of corporate banking services as a distinct market.**

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[4] https://www.myaccountingcourse.com/accounting-dictionary/corporate-banking, accessed on 16th April 2021.
[5] Case File No. CCC/MER/9/24/2020 **- I&M Holding Plc/Orient Bank Limited, Decision issued on 26th February 2021**

Relevant Geographic Market

24. The relevant geographic market comprises all the areas where the conditions of competition are similar for all traders. The CID observed that the geographic market for banking services tend to be national in scope due to the strict regulatory requirements for operating banking activities such as licence requirements, minimum capital requirement, regulations on access to foreign exchange, among others. As a result, the conditions of competition will not be significantly homogenous in the different Member States. These regulatory requirements shape the national markets to be unique areas with each country's market emerging as different and hence presenting unique competition dynamics.

25. In its consideration of the geographic market, the CID observed that it is not uncommon to see some banks operating in multiple jurisdictions within the Common Market. This may suggest that the geographic scope of banking services could be beyond national i.e., COMESA-wide. However, from a demand perspective the CID observed that the probability of substitution across national borders is significantly still low. The costs that a customer would have to incur to access banking services beyond his/her national border are likely to be high. For instance, a retail or corporate banking customer shifting banks across borders would entail having to travel to that country to open a bank account and provide biometric data to the banks which is a requirement in most banks nowadays. As for the supply side, a bank may opt to relocate and start operating in other countries due to expected profits. However, this would be dependent on the extent of which supply side substitution is likely and timely. Though supply side substitution may be possible, it is unlikely to occur in a timely manner and at reasonable costs.

26. For purposes of this competitive assessment, the CID determined the **relevant geographic market for provision of retail banking services and corporate banking services as national and it pertains to Rwanda.**

Competitive Assessment

27. The estimated market shares for the parties and their competitors in the Common Market in Rwanda were submitted as follows:

Table 1: Pre-merger market shares of the Parties and Their Competitors in Rwanda by Assets

Entity	Estimated Market Shares
Bank of Kigali	32.4%
Banque Populaire du Rwanda	**11.1%**
I&M Bank Rwanda	10.3%
Equity Bank Rwanda	8.9%
Development Bank of Rwanda Plc	8.5%
COGEBANQUE	7.4%
KCB Bank Rwanda Limited	**6.4%**

EcoBank	5.3%
Others	9.7%

28. The CID noted that the transaction will lead to an accretion of market shares in Rwanda where both parties are active. The CID observed that the combined market share of the merged entity will be **17.5%** (i.e., acquirer [6.4%] + target [11.1%] = 17.5%). It is also noted that there are a number of alternative providers of banking services in Rwanda. The CID further considered the pre- and post-merger level of market concentration in the relevant markets by using the CR3 as follows:

Pre-Merger CR3: Bank of Kigali (32.4%) + BPR (11.1%) + I&M Bank Rwanda (10.3%) = 53.8%.

Post-merger CR3: Bank of Kigali (32.4%) + Merged Entity (17.5%) + I&M Bank Rwanda (10.3%) = 60.2%.

29. According to the COMESA Merger Assessment Guidelines, competition concerns in horizontal mergers are unlikely to arise where the post-merger market of the merged entity is below 15% and the sum of the market shares of the top three firms is less than 70%[6].

30. The CID noted that in the current transaction, the merged entity will have a market share of 17.5% and the market share for the top three firms will be less than 70% (i.e., 60.2%). The CID noted that the market was moderately concentrated pre-merger and will remain moderately concentrated post-merger given the increase in the CR3 from 53.8% to 60.2%. The CID observed that the change in the market concentration will not be significant, as such the status quo in the market is likely to remain given the minor change in the market share and the presence of other players offering banking services in Rwanda which include the Bank of Kigali that holds the largest market share of 32.4%.

31. The CID observed that barriers to entry which include regulatory requirements are insignificant and not likely to limit entry of new players. The CID observed that there has been past entry in the banking sector in Rwanda such as the entry of Crane Bank through the acquisition of the Commercial Bank of Africa in 2017. The CID further noted that prior to 2017, AMM entered the Rwanda banking sector through the acquisition of 45% shareholding in Banque Populaire du Rwanda[7]. As a result, the CID concluded that competition will continue to thrive in the relevant markets since barriers to entry are insignificant and the merged entity will not hold a dominant position in Rwanda.

Third-Party Views

32. Submissions were received from the Competition Authority of Kenya and the Rwanda Inspectorate, Competition and Consumer Protection Authority who confirmed that the

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[6] See Section 8 of the COMESA Merger Assessment Guidelines

[7] Case File No. CCC/MER/12/18/2015 **- Atlas Mara Mauritius Limited / Banque Populaire du Rwanda**, Decision issued on 23rd June 2016

transaction was unlikely to raise any competition concerns. The submissions from the two competition authorities were consistent with the Commission's assessment of the transaction.

Conclusion

33. Based on the foregoing reasons, 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 be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

34. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

35. The CID further determined that the parties should inform the Commission when the offer by KCB Group to acquire the remaining shareholding in BPR is accepted for the Commission to determine whether this transaction would require notification.

Dated this 16th of April 2021

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Commissioner Brian M. Lingela (Chairperson)

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Commissioner Justice Charlotte Wezi Malonda **Commissioner Ellen Ruparanganda**