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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/12/34/2021

Decision[1] of the Eighty-Fourth (84th) Committee Responsible for Initial Determinations Regarding the Proposed Merger involving African Banking Corporation Zambia Limited T/A Atlas Mara Zambia and Access Bank Zambia Limited

ECONOMIC SECTOR: Banking and Finance

9 July 2022

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 9th February 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Access Bank Zambia Limited ("**ABZL**") as the acquiring undertaking and African Banking Corporation Zambia Limited T/A Atlas Mara Zambia ("**BancABC/Atlas Mara Zambia**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 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, referred to as the CID.

4. Pursuant to Article 25(2) of the Regulations, the CID at its 83rd meeting granted a sixty (60) days extension to the 120 days for reviewing the transaction for the Commission to further assess likely public interest concerns the transaction was likely to raise in the Common Market.

5. The decision of the CID is set out below.

The Parties

ABZL (the acquiring undertaking)

6. ABZL is a company incorporated in Zambia and registered under the Zambian Banking and Services Act, 2017 as a bank. ABZL is controlled by Access Bank Plc which is listed on the Nigerian Stock Exchange. Access Bank Plc is a public company registered in accordance with the laws of Nigeria under registration number 125384. ABZL and Access Bank Plc are referred to as the Acquiring Group.

7. The parties submitted that ABZL is mainly active in the provision of retail and corporate banking services. Within the Common Market, the Acquiring Group has operations in the Democratic Republic of Congo (the "**DRC**"), Kenya, Rwanda, and Zambia.

Atlas Mara Zambia (the target undertaking)

8. Atlas Mara Zambia is a private company incorporated under the laws of Zambia. Atlas Mara Zambia was created following the acquisition of Finance Bank Zambia Limited in 2016 and subsequent consolidation with Atlas Mara Limited's existing Zambian subsidiary, BancABC.

9. The parties further submitted that Atlas Mara is a full-service commercial bank mainly active in the provision of retail banking, corporate banking, treasury products, and public sector products. It was further submitted that, in the Common Market, Atlas Mara Zambia has operations in Zambia only.

Jurisdiction of the Commission

10. 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 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.*

11. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value 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.

Details of the Merger

12. The notified transaction involves the merger of Atlas Mara Zambia and ABZL to create an enlarged platform under the Access Bank brand. ABZL will acquire all the shares in Atlas Mara Zambia that are held by ABC Holdings Limited (69.8%) and Atlas Mara Limited (30.2%). Further, preference shares will be issued by ABZL to Atlas Mara Limited in the form of non-redeemable, non-voting preference shares. Following the acquisition of all ordinary shares in BancABC, ABZL and BancABC will amalgamate into a single banking entity.

Competitive Assessment

Relevant Markets

13. The CID considered the definition of the relevant product market as,

"***...all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use***"[2].

14. The CID noted that the standard approach to defining relevant product markets is to firstly consider the broad products and services that the merging parties provide on which a substitutability test was initially conducted before the test was extended to other products. Therefore, the CID applied the substitutability test on the products which the parties provide as follows.

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[2] Paragraph 3.1 of the COMESA Guidelines on Market Definition of 2019.

Provision of retail and corporate banking services

15. The CID noted that retail banking entails all banking services provided to private individuals and very small enterprises, such as deposit account services (i.e., current accounts, saving accounts, cash deposits, cheque collection etc.); payment services including ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques; lending (personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution)[3].

16. The CID further noted that corporate banking services entail tailor-made financial services offered to corporate clients. The CID also noted that there exist deposit products provided to corporate and retail customers which are similar in principle with the major difference being on the type of customers served and the manner the customers are served.

17. The CID observed that corporate customers unlike retailer customers often get a dedicated bank teller in view of the large sums of money they deposit. Further, corporate customers are likely to have bargaining power to negotiate favourable interest rates against their deposits and may also be offered access to loans linked to their corporate profile.

18. The CID considered that retail banking and corporate banking services were distinct markets based on the nature of the products/services. The CID noted that while retail banking products/services are standardised and customer-oriented, corporate banking are business-oriented and can be tailored according to the specific needs and requirements of the clients. It is also noted that the number of clients in retail banking with small-value accounts are more as compared to clients under corporate banking, hence retail banking tends to have an extensive client portfolio.

19. To the contrary, the CID noted that the number of clients in corporate banking, tend to be less than retail banking but the existing clients have significant balances and make high-value transactions. The CID observed that while retail banking is volumes driven, corporate banking tends to be value driven due to the high value transactions that corporate clients are associated with. The CID therefore noted that retail and corporate banking can be distinguished from a supply perspective.

20. Further to the above, the CID observed that there exists strong level of relationship between a bank and its corporate clients which can call for the need a bank to

[3] See case No M.8414 – DNB / Nordea / Luminor Group, paragraph 15, dated 14/09/2017

have professionals with high standard customer relationship expertise serving corporate customers. The CID considered that due to transactional and existing distinctive requirements, and complex product nature in corporate banking services, it was highly unlikely that in response to a small but significant non-transitory increase in the interest rates of retail banking charges on the retail services that a significant number of retail customers would swiftly switch to corporate services. The CID further considered that substitution between the two would make no practical sense given that the intended use and characteristics of the two product categories are significantly varied. It was therefore considered that, from both the customer perspective and supply point of view, corporate and retail market segments comprised distinct markets.

21. The CID further considered that there exist distinct products that are offered to different customers under the retail and corporate banking segments. It was noted that a distinction can be drawn between loans, deposits and payment services provided to clients. The CID noted that deposit entails an investment a client makes by depositing money in a bank for security or in anticipation of earning future interest that will benefit the client. On the other hand, a loan is provided by a bank to a client which they repay in full plus interest computed on simple or compound interest. The CID noted that a client would require to present a collateral to the bank to mitigate any risks of default associated with loans. Such a requirement is not needed from the client when accessing deposit services.

22. The CID considered that there is no direct demand substitutability between loan and deposit services given that the two have distinct intended purposes. The CID observed that loan and deposit services are available to both corporate and retail customers with the key distinction being how the services are provided to each customer category.

23. In view of the foregoing, the CID considered that a distinction should be made between the provision of loan and deposit services to retail and the provision of loan and deposit services corporate customers.

Payment services

24. The CID noted that payment services entail the use of electronic platforms to withdraw from, or deposit cash to a bank. It comprises either direct debit, standing order, credit transfer, debit card or credit card transaction or mobile banking payment solutions. These transactions are often carried out through online platforms. The CID considered that payment services as distinct from deposit services or loan services on the basis that payment services play the role of facilitating the transfer of deposits across banks, from bank to customers or from customers to banks (i.e., mobile money to bank account transfer). In this respect,

banks may be seen to act as financial intermediaries facilitating the movement of funds between other financial institutions and private individuals.

25. The CID noted that since payments services are available to both corporate and retail customers, a distinction can be drawn based on customer categories. Thus, payment services available to corporate customers often entail transfer of large sums of funds wherein priority may be attached as compared with a retail customer. A further distinction between payment services for corporate and retail customers may be made based on the type of debit/credit cards given to each. For instance, debit cards for corporate customers allow large amounts of daily withdrawals compared to the limits applied on debit cards for retail customers. The CID noted that the larger limits for corporate customers come at a cost as corporate customers pay transaction fees to get such premium services. Therefore, even though there is similarity in the payment services offered to retail and corporate customers by way of intended use, the costs linked to payments that corporate customers are likely to limit the extent of substitution with a retail customer.

26. The CID considered that deposits, loans, and payment services were distinct based on the different purposes and their distinctive features as such they should be categorised into distinct product markets.

27. The CID noted that these different product categories can each be further segmented into narrower markets. For instance, there may exist different types of deposits, such as savings accounts (primarily used by households, medium and long term), current accounts and time deposits (interest from deposit determined on time agreement between the customer and the bank). The same may apply to payment services which can be categorised by the mode of payment being used i.e., credit card, debit card or bank transfer. However, the CID noted that there is a high degree of supply-side substitutability and possibly some demand-side substitutability between the various types of deposits. The CID noted that customers swiftly switch to short term deposit in response to a change in certain conditions of the long-term deposit service, given that their core objective is deposit service. The CID therefore considered that a further segmentation into narrower markets was not necessary since the transaction is unlikely to raise concerns.

28. The CID noted that banking services can generally be categorized as retail and corporate banking in view of the two broad customer categories that banks serve. The CID further noted the need to categorise the banking services by product categories given that banking products/services are unique as such substitution at narrower product markets is not likely. The CID therefore considered loan, deposit, and payment services categorized as retail and corporate services as distinct

markets. This approach was in conformity with previous Decisions of the CID[4], which arrived at a similar conclusion.

29. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as follows:

   a) **Provision of corporate deposit services;**
   b) **Provision of retail deposit services;**
   c) **Provision of corporate lending services;**
   d) **Provision of retail lending services;**
   e) **Provision of corporate payment services; and**
   f) **Provision of retail payment services.**

Relevant Geographic Market

30. The CID noted that a relevant geographic market is defined as,

   "…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…".

31. With respect to the provision of deposits, loans, payments, services, the CID recalled that both the acquirer and target provide their services at national level in Zambia. The CID noted that by virtue of the licences they are given, banking services tend to be regulated under the relevant laws in a country where the services are provided such that different requirements for operation are likely to apply in different countries. The CID further observed that corporate banking services tend to be predominantly national in scope since they usually require a close relationship between a bank and its clients in order to best tailor the funding to the particular needs of the clients.[5]

32. The CID considered that it was unlikely that, as a result of more favourable conditions in other countries, the merging parties would timely switch to set up operations or branches in such countries as they would need to obtain the relevant licenses in these jurisdictions, as contemplated under the SSNIP test.

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[4] See Case File No. CCC/MER/02/03/2021 - Bank ABC and Blom Bank Egypt, paragraph 12

[5] See Case No IV/M.596 - Mitsubishi Bank/Bank of Tokyo, paragraph 8.

33. The CID further considered that due to limitations related to local language preferences and the fact that individual customers make use local branch of a bank, the territorial boundaries of the relevant products are likely to be limited to national boundaries. The CID observed that while transfer of payment balances between accounts held at different banks located in different countries can be made through interbank transfers arrangements using variety of payment instruments, these generally carry a cost which may not be competitive over a significant period of time.

34. The CID further observed that from a demand perspective, it is unlikely that a significant number of individuals or corporate customers located in Zambia would be able or willing to substitute purchase of banking products/services from Zambia to another country in response to a small but significant deterioration of the terms and conditions offered by banks in Zambia. For instance, the CID noted that the advent of digital banking has made it possible for individuals to own bank accounts in the countries outside their country of residence. Thus, an expatriate working in Malawi can hold foreign bank accounts outside Malawi but still manage to meet their expenditure needs in Malawi. This may imply that the market is broader than national. However, the CID noted that this was likely to be limited to an affluent class of individuals which may not comprise a substantial number on which basis to broaden the market.

35. The CID considered that the geographic scope for the relevant markets is likely to be national given the limited possibility of timely substitution of the products/services. The CID concluded that in an event of a SSNIP, a bank operating at national level is unlikely to swiftly shift its operations to another country in order to take advantage of prospect of profits in that country.

36. In view of the above and given that the parties' activities in the provision of banking products/services only overlap in one geographic market, being Zambia, the CID considered that the relevant geographic market was national and pertained to Zambia.

Conclusion of Relevant Market Definition

37. For purposes of assessing the Proposed Transaction, and without prejudice to the CID's approach in future similar cases, the CID identified the following relevant markets:

   a) **Provision of corporate deposit services in Zambia,**
   b) **Provision of retail deposit services in Zambia,**
   c) **Provision of corporate lending services in Zambia,**
   d) **Provision of retail lending services in Zambia,**

e) **Provision of corporate payment services in Zambia, and**

f) **Provision of retail payment services in Zambia.**

Market Shares and Concentration

38. The parties provided their estimated market shares and the market shares for their competitors in the broad market for the provision of deposit and loans services are per table 1 below.

Table 1: Estimated Market Shares in the provision of deposit services in Zambia

Name of Company	Product/Service	Estimated Market Share (%)	
		Pre-merger	Post-merger
Stanbic	Deposit	19.49	19.49
Zanaco	Deposit	14.54	14.54
Absa-BBZ	Deposit	12.48	12.48
Bank of China	Deposit	11.95	11.95
StanChart	Deposit	10.22	10.22
FNB	Deposit	6.97	6.97
Indo Zambia	Deposit	6.42	6.42
Atlas Mara	**Deposit**	**5.25**	**8.26 (Access Bank)**
Access Bank	**Deposit**	**3.01**	
Ecobank	Deposit	2.45	2.45
UBA	Deposit	1.92	1.92
First Capital Bank	Deposit	1.72	1.72
Citibank	Deposit	1.68	1.68
First Alliance	Deposit	0.92	0.92
ZICB	Deposit	0.79	0.79
AB Bank	Deposit	0.20	0.20
Total		**100.1**	**100.1**

39. The CID noted that pre-merger, the parties' market shares in the broad market for deposits are not significant i.e., Atlas Mara (**5.25%**) and Access Bank (**3.01%**). Further, it was noted that the merged entity's market share in deposit services will be **8.25%.** The CID considered the CR3 for the broader market for deposits in Zambia and noted that the CR3 pre- and post-merger was 34.65%. The CID considered that this would be an indication that the market is not concentrated and hence subject to competition. The CID also noted that the merging parties are not among the firms whose market shares contribute to the CR3 in this product category. Therefore, the CID resolved that the merger's impact on CR3 is superfluous and any further consideration of CR3 was not necessary as this would be academic. The CID observed that transaction will lead to a minimal change in

the market structure which was unlikely to raise competition concerns given the presence of alternative providers of deposit services. The CID concluded that the transaction was not likely to raise competition concerns in the Zambia.

40. The CID considered that given the broad market for deposit services is not concentrated in Zambia, it was likely that the market concentration in the corporate and retail deposit services would fall within similar ranges. The CID therefore concluded that the transaction was not likely to negatively affect competition in the market for corporate and retail deposit services in Zambia.

41. With regards to loans, the ÇID noted that the parties' submission that the estimated market shares and their competitors' market shares as per table 2 below.

Table 2: Estimated Market Shares the parties' and their competitors in the provision of loan services in Zambia

Name of Company	Product/Service	Estimated Market Share (%)	
		Pre-merger	Post-merger
Zanaco	Loan	21.92	21.92
Stanbic	Loan	17.42	17.42
Absa-BBZ	Loan	15.99	15.99
Atlas Mara	**Loan**	**11.26**	**Absorbed**
Indo Zambia	Loan	6.92	6.92
FNB	Loan	6.05	6.05
StanChart	Loan	4.11	4.11
Bank of China	Loan	3.83	3.83
Ecobank	Loan	2.94	2.94
First Capital Bank	Loan	2.47	2.47
Access Bank	**Loan**	**2.02**	**13.28**
UBA	Loan	1.61	1.61
First Alliance	Loan	1.20	1.20
Citibank	Loan	1.12	1.12
ZICB	Loan	0.67	0.67
AB Bank	Loan	0.48	0.48
Total		**100.1**	**100.1**

42. The CID noted that the pre-merger market shares for the parties in the provision of loan services were not significant i.e., Atlas Mara (of 11.26%) and Access Bank (2.02%). It was noted that the merged entity's market share will be 13.28%. The CID noted that while the transaction will result in market share accretion, the change in the market structure will be insignificant. The CID further noted that the merged entity will continue to face competition from other players in the provision of loans. The CID observed that even though the market structure will change

competition concerns are unlikely given the insignificant change in the structure and the presence of competitors who will command 86.72% of the market.

43. The CID further considered the parties' market shares and their competitors' market shares by assets as per table 3 below.

Table 3: Estimated Market Shares the parties' and their competitors by asset value in Zambia

Name of Company	Product/Service	Estimated Market Share (%)	
		Pre-merger (%)	Post-merger (%)
Stanbic	Total Asset	18.21	18.21
Zanaco	Total Asset	15.29	15.29
Absa-BBZ	Total Asset	11.69	11.69
Bank of China	Total Asset	9.61	9.61
Stanchart	Total Asset	8.75	8.75
Atlas Mara	**Total Asset**	**8.50**	**Absorbed**
Indo Zambia	Total Asset	7.20	7.20
FNB	Total Asset	6.55	6.55
Access Bank	**Total Asset**	**3.44**	**11.94**
Ecobank	Total Asset	3.16	3.16
UBA	Total Asset	2.17	2.17
Citibank	Total Asset	1.73	1.73
First Capital Bank	Total Asset	1.70	1.70
First Alliance	Total Asset	0.89	0.89
ZICB	Total Asset	0.84	0.84
AB Bank	Total Asset	0.27	0.27
Total		**100**	**100**

44. The CID noted that banks' assets may also be considered when assessing the size of players in the banking sector. To this end, the CID noted that Access Bank shall emerge as one of the key players with a market share by asset value of 11.94%. However, the CID noted that the merged entity will still face competition from other players such as Zanaco with 15.29% market share and Stanbic with 18.21% market share. The CID noted that competition concerns are not likely despite the market share accretion and that the market structure will not significantly change since the parties are not significant players.

45. With respect to corporate and retail payment services, the CID noted that payment services essentially support the bank's provision of core services such as loan and deposit services. Therefore, the size of the parties' activities in the core services are likely to reflect those of the corporate and retail payment services. It is therefore

considered that the market shares for corporate and payment services are similarly likely to be insignificant post-merger and would not raise any competition concerns.

Barriers to Entry

46. The CID noted that in assessing barriers to entry consideration should be given on whether entry by new competitors or expansion by existing competitors may be timely, sufficient and likely to deter any attempts by the parties to exploit the reduction in rivalry flowing from the transaction, whether through coordinated or non-coordinated strategies.

47. The CID observed that barriers to entry in the banking sector may include minimum capital and licensing requirements. The CID considered that entry barriers were insignificant as such entry was likely to occur as confirmed from the current presence of approximately 15 banks operating in Zambia. Further, the CID observed that entry in the sector was timely as witnessed from three previous merger transactions that saw entry into the banking sector in Zambia as follows: Access Bank/Cavmont Bank in 2020, Arise B.V./DFCU/Zanaco merger in 2017 and the Atlas Mara/Finance Bank in 2016[6].

Consideration of Dominance/Unilateral effects

48. The CID noted that dominance entails the ability of an undertaking to influence unilaterally price or output in the Common Market or part of it. It was noted that an undertaking is seen to hold a dominant position in a market if by itself or together with an interconnected company, it occupies a position of economic strength to operate in the market without effective constraints from its actual or potential competitors.

49. The CID considered that the parties' pre- and post-merger market shares are not significant as such the merged entity will not hold a dominant position in Zambia. The CID concluded that unilateral effects were unlikely to arise post-merger.

Consideration of Effect on Trade between Member States

50. The CID observed that the transaction will result in market share accretion in the provision of banking services in Zambia. However, the CID considered that change in the market structure is not likely to raise foreclosure concerns given that the relevant markets are characterized by the presence of countervailing power from

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[6] See CID Decision on ABZL/CBL merger available on https://www.comesacompetition.org/wp-content/uploads/2020/12/CID-Decision-ABZL_CBL.pdf; CID Decision on Arise/DFCU/Zanaco available on https://www.comesacompetition.org/wp-content/uploads/2014/10/Decision-Arise_DFCU_Zanaco-Merger-Transaction.pdf; CID Decision on Atlas Mara/Finance Bank available on https://www.comesacompetition.org/wp-content/uploads/2014/10/Decision-Atlas-Mara-Finance-Bank_24.03.2016-1.pdf

numerous competitors who will continue to offer credible competition to the merged entity.

51. The CID therefore concluded that the transaction is not likely to affect trade between Member States.

Consideration of Public Interest

52. The CID noted that Article 26(4) of the Regulations provides that, in considering public interest the Commission shall have regard to the extent a transaction promotes the interests of consumers, purchasers and other users in the region regarding prices, quality and variety of such commodities and services. The CID considered that in the current transaction, safeguarding public interest entail that the prices, quality and variety of services that the target, Atlas Mara Zambia, provides to its customers should be safeguarded post-merger.

53. The CID considered that in order to address the likely public interest concerns, it would be necessary for the parties to ensure that the portfolio of services for Atlas Mara Zambia are maintained or improved post-merger. Further, the parties should ensure that assets and deposits of the customers should be maintained or improve post-merger and that the Access Bank should maintain their presence in rural areas which would ensure continue of access to banking services.

54. The CID considered that the parties' undertaking to address these areas would safeguard the interests of consumers in terms of ensuring that a variety of services are available to consumers including that the quality of services is not negatively affected. Therefore, it was observed that Article 26(4) of the Regulations can apply in the current transaction. The CID further observed that the definition of competition under Article 1 of the Regulations provides that:

> "*Competition means the striving or potential striving of two or more persons or organisations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficiency, high economic growth, increasing employment opportunities, lower prices and improved choices for consumers*".

55. From the foregoing definition of the term 'competition' under the Regulations, the CID observed that any transaction that results or is likely to result in significant job losses and the reduction of product portfolio without justifiable reasons may not be considered reasonably. The CID noted that some stakeholders in Zambia including CCPC have raised fears that the merged entity is likely to close some branches in Zambia. The CID therefore considered that such a scenario would result in loss of employment and reduced choices for consumers.

Consideration of Third-Party Views

56. Submissions were received from the Competition Authority of Kenya (CAK) and the Competition and Consumer Protection Commission (CCPC) in Zambia which buttressed the Commission's conclusion that the transaction was not likely to result in a substantial prevention or lessening of competition.

57. With regards to public interest concerns, the CID noted that Zambia raised the following public interest concerns from the transaction on the basis that the transaction may result in the closure of certain branches of Atlas Mara across Zambia particularly where the two entities have banks existing in the same location:

   i. Maintain or improve customer assets and deposits;

   ii. Maintain their presence in rural areas; and

   iii. Improve current portfolio of services.

58. Further, the CID considered the submissions by the parties regarding the likely public interest concerns. To this end, the CID noted that the parties' commitment to ensure that the transaction does not raise concerns in regard to customer assets and deposit, portfolio of services and employment.

59. With regards to customer assets and deposits, the CID takes note of the parties' submission that they are committed to retain existing assets and deposits for customers of both Atlas Mara and Access Bank. The CID further noted that the products, channels and services that customers of Atlas Mara currently enjoy will be mapped and migrated to the Access Bank platform.

60. The CID observed that it was highly unlikely for customer assets and deposits to be negatively affected because of the merger. To contrary, the CID noted that customer assets and deposits are likely to be positively affected as it would be in the interest of a bank to grow assets and deposits since this will have a direct positive effect on profits and growth of the bank.

61. With regards to the likely effects on portfolio of services, the CID noted from the parties' submission that the Access Bank aims to achieve 100% customer retention following the merger. To this end, the CID noted that Access Bank will engage customers and update them on the existing banking products with the aim to, *inter alia*, prevent deposit flight. Further, discontinuing of banking products will be upon detailed assessment and where there is low customer uptake.

62. With regard to the employment, the CID noted that such matters are governed by the Zambia Employment Code Act No. 3 of 2019 with which the parties are committed to complying. The CID noted that Section 28 (1) and (2) of the Zambian

Employment Code Act No. 3 of 2019 guides on the steps to be undertaken before instituting a transfer of employees to a new employer. To this end, the CID noted from the parties' submission that Atlas Mara shall obtain prior written consent from the employees to transfer their contracts to the new employer, Access Bank Zambia.

63. The CID further noted the parties' commitment to honor the terms of the employment contracts which shall include ensuring that employees not consenting to work under the merged entity are entitled to terminal benefits in accordance with the employment contract and the relevant employment law provisions.

64. The CID noted the commitment by the parties to ensure that public interest concerns do not materialize due to the merger. the CID further noted that relevant labor laws applicable in Zambia shall govern matters related to treatment of employees of Atlas Mara post-merger.

Determination

65. 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. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. However, the CID was concerned that the transaction may raise public interest concerns particularly in Zambia. Some of the CID's concerns were consistent with the concerns raised by Zambia.

66. The CID therefore approved this transaction based on the following undertakings submitted by the parties:

   a. Access Bank Zambia shall not negatively and/or deliberately interfere with the customer assets and deposits and shall ensure compliance with all regulations in respect thereof. As such, Access Bank shall maintain the offering of services in respect of assets and deposits and strive for product and service growth to the extent that it is attainable, taking into consideration economic and other factors that may arise. In the event that it is impracticable to fulfil such an undertaking, Access Bank shall submit a report to the Commission explaining such impediment for the Commission's review;

   b. Access Bank shall maintain the Bank's presence in rural areas;

   c. Access Bank shall honor all existing obligations with Atlas Mara customers;

   d. Access Bank shall expeditiously attend to customer queries and complaints during and after the transaction;

e. Access Bank shall maintain or improve customer experience through various initiatives such as automation of processes that will improve transaction processes;

f. Access Bank shall periodically inform its customers of the asset and deposit products available in the merged entity;

g. Access Bank shall inform its customers of the timelines for integration and of any available data post-integration;

h. Access Bank shall not terminate any employment contract as a direct result of the merger except for very high senior management positions where it would not make sense to duplicate such positions. Nevertheless, where there is such separation, Access Bank shall honour the employment contracts consistent with Zambian labor laws;

i. After five (5) years, the Commission shall review the relevance of the continuation of the undertaking in (h) above;

j. These undertakings shall be effective for a period of five (5) years from the date of approval of the transaction by the Committee Responsible for Initial Determinations; unless a significant deterioration in the market conditions occur, which makes it impossible for the continuation of the undertakings before the expiration of five (5) years; and

k. Access Bank commits to submit, within thirty (30) days of each anniversary of the approval of the transaction, for the next five (5) years, a comprehensive report detailing compliance with the above undertakings. This does not however prevent the Commission from undertaking periodic reviews of the market to assess compliance.

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

Dated this 9th day of July 2022

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Vincent Nkhoma

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Commissioner Islam Tagelsir Ahmed Alhasan