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Common Market for Eastern  
and Southern Africa

Case File No. CCC/MER/04/03/2021

**Decision<sup>1</sup> of the Seventy-Sixth (76<sup>th</sup>) Committee Responsible for  
Initial Determination Regarding the Proposed Merger Involving  
Metier AMN Investments and Africa Mobile Networks**

**ECONOMIC SECTOR: Telecommunications**

28<sup>th</sup> June 2021

Case File No. CCC/MER/04/03/2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## Introduction and Relevant Background

1. On 16<sup>th</sup> April 2021, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger from Charles Russel Speechlys LLP on behalf of their clients Metier AMN Investments (“**Metier AMN**”) as the acquiring undertaking and Africa Mobile Networks Limited (“**Africa Mobile**”) as the Target Undertaking, pursuant to Article 24(1) of the 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. The decision of the CID is set out below.

### *The Parties*

#### *Metier AMN (the Acquiring undertaking)*

4. The acquiring undertaking, Metier AMN, is a wholly owned subsidiary of Metier AMN Partnership LP. Metier AMN Partnership LP is a limited partnership registered under the laws of Mauritius with registered address as 33 Edith Cavell Street, Port-Louis, Mauritius. Metier AMN Partnership LP comprises of a consortium of investors, made up of both institutional and private investors.
5. The Metier Group has a wide range of portfolio companies whose activities in the Common Market include fast-moving consumer goods (confectionary, snacks and beverages), financial services (insurance), consumer retail (clothing and apparel) and renewable energy generation sectors.
6. Table 1 below lists the activities of the Acquiring Group in the Common Market during Financial Year 2020.

*Table 1 – Activities of the Acquiring Group in the Common Market<sup>2</sup>*

Name of Entity	Member State	Description of the products and services offered in the Common Market
Kenafric Industries Ltd	DRC, Kenya, Uganda, Rwanda, Malawi and Zambia	Manufactures and distributes FMCG – Confectionary, snacks and beverages.
Imazi (Mauritius) Ltd	Financial Services - insurance	Mauritius
Retailability (Pty) Ltd	Consumer retailer selling clothing, apparel and footwear	Eswatini

<sup>2</sup> Information submitted in Form 12

Ndugutu Power Company Uganda Ltd	Renewable energy generation (hydro-electric power generator)	Uganda
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*Africa Mobile (the Target undertaking)*

7. Africa Mobile, the target undertaking, is a private company founded in 2013 and incorporated in England and Wales. The parties submitted that Africa Mobile's business activities comprise of building, owning, operating and maintaining mobile network infrastructure, specifically mobile network towers. Its customers are mobile network operators within Africa and Africa Mobile operates the mobile network towers on their behalf. The parties further submitted that Africa Mobile specifically focuses on rural areas for the construction, management and maintenance of its mobile telecommunication towers.
8. In the Common Market, the target group is active in DRC and Zambia. With regard to Sudan, the parties submitted that AMN Services Co. Ltd. was established as an operating entity when the company had planned to begin its tower roll-out in Sudan. However, due to delays in obtaining the relevant regulatory approvals, the target had decided to shift the towers intended for Sudan to other countries. Africa Mobile has opted to keep the Sudanese operating entity active as it plans to install towers in Sudan in the future. As at the time of filing the notification, the target did not have any towers installed in Sudan.

**Jurisdiction of the Commission**

9. 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.*
10. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover 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 turnover 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

11. The parties submitted that the issued share capital of Africa Mobile amounts to 8,885,280 shares. As a result of the transaction, Metier AMN, through its subscription of new issued shares and acquisition of shares from existing shareholders, will possess 2,814,694 shares (or 25%) of the shares in issue of Africa Mobile. This will represent the highest individual shareholding in Africa Mobile. However, on a fully diluted basis (including share options), Metier Africa will hold approximately 21% of Africa Mobile's shareholding.

## Relevant Markets

### *Relevant Product Market*

12. Africa Mobile operates a network-as-a-service model, where the company invests all the necessary capex in order to provide a full turnkey service for tier-1 mobile network operators (MNOs). A full turnkey service includes site selection, site preparation, the supply of necessary passive infrastructure (the towers themselves, the solar panels for energy, battery backup system and site monitoring system), active equipment (radio access network, satellite, backhaul) and full operations, security, power management and maintenance.

### *Passive infrastructure vs active infrastructure*

13. Africa Mobile is responsible for the provision of both passive infrastructure and active equipment infrastructure<sup>3</sup>. Passive telecommunication infrastructure refers to the physical supporting and non-electronic infrastructure at a cell site, such as towers, masts, power supply, air conditioning and management system and site support cabinets<sup>4</sup>. Active telecommunication infrastructure refers to the electronic infrastructure of the network including antennas, base transceiver station, backhaul networks and controllers<sup>5</sup>. In *Eaton Towers Holdings / ATC Heston B.V.*<sup>6</sup>, the CID considered that the telecommunication infrastructure market can be segmented into passive and active infrastructure<sup>7</sup>. While passive infrastructure only seeks to provide a platform where different MNOs can setup their various telecommunication equipment, active infrastructure is typically unique to a particular MNO and is key to ensuring that actual transmission of telecommunication services is possible. Passive and active infrastructure are thus not substitutable and do not

<sup>3</sup> [www.telecomsinfrastructure.com/2020/05/passive-and-active-infrastructure.html#:~:text=Active%20infrastructure%20sharing%20is%20sharing,servers%20and%20core%20network%20functionalities](http://www.telecomsinfrastructure.com/2020/05/passive-and-active-infrastructure.html#:~:text=Active%20infrastructure%20sharing%20is%20sharing,servers%20and%20core%20network%20functionalities)). Accessed 25<sup>th</sup> May 2021

<sup>4</sup> Geradin, Damien and Karanikioti, Theano, Network Sharing and EU Competition Law in the 5G Era: A Case of Policy Mismatch (June 16, 2020). TILEC Discussion Paper No. DP2020-037

<sup>5</sup> Ibid

<sup>6</sup> Case File No. CCC/MER/06/24/2019

<sup>7</sup> <https://www.technomag.co.zw/2015/08/06/what-is-passive-and-active-sharing/>

belong to the same product market. From the parties' description of activities, their services relate to both passive and active infrastructures in the provision of towers infrastructure services.

*Provision of passive infrastructure*

14. An important part of the passive infrastructure market are the communication towers, on which MNOs and other network operators place active equipment which is used to transmit data to enable mobile and other network services<sup>8</sup>. Telecom towers are referred to as cell sites or cell towers that are built for providing services within a specified region<sup>9</sup>. MNOs require towers and masts at cell sites on which they place their respective radio antennae enabling them to provide their services to end users. Such towers may be owned by the mobile operator or may be leased from suppliers. While there exists in theory a number of properties (other than towers) that can be converted to accommodate digital communication transmission equipment, in practice the suitability of these properties depends on several factors, including the planning regulations, environmental considerations, or space constraints, coverage territory according to capacity needs. In particular, in rural areas where the target principally operates, it is unlikely that there would be suitable alternatives for the towers such as high-rise buildings.
15. For purposes of this transaction, the relevant product market is construed as the provision of passive infrastructure (including the towers) for mobile network communication. It is further noted that Africa Mobile offers tower solutions that are 2G and 3G compatible, to MNO's which enable the latter to service remote rural areas. The CID noted from the European Commission's findings that 2G and 3G sites are normally interchangeable, though "the density of a 3G network is greater and requires up to twice as many sites as a 2G network"<sup>10</sup>. Given that the target provides towers for both 2G and 3G networks, the CID considered that a further segmentation was not necessary and would not affect the assessment of the transaction.

*Provision of active equipment*

16. The parties submitted that due of the target's business model, the MNOs do not want to get involved in the provision of active equipment and instead the fee agreed between the MNOs and Africa Mobile allows for Africa Mobile to provide all the equipment and manage the towers on the MNOs behalf. The MNOs therefore have little to no input into which active infrastructure is included in the tower. It was submitted that Africa Mobile targets areas are difficult to deploy in, with low average revenue per user that are typically not attractive to MNOs and bigger tower players. The parties submitted that there have not been requests for MNOs to use their own active equipment on towers supplied by the

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<sup>8</sup> CASE M.7758-HUTCHISON 3G ITALY/ WIND / JV, paragraph 106.

<sup>10</sup> European Commission Decision of 30 April 2003 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement – Case COMP/ 38.370 — O2 UK Limited / T-Mobile UK Limited, paragraph 47.

target, because MNOs are used to towers that operate in urban areas. The parties further submitted that Africa Mobile is responsible for the procurement of all active infrastructure used in its towers in the rural areas and it does not currently have any towers in urban areas. The parties have explained that the active infrastructure in the mobile towers is identical in both urban and rural markets in terms of function, with two differences. The main difference relates to the sizing of the tower. The operating specifications of the various components in the urban towers are more aligned to handle higher mobile traffic due to the higher population counts covered in urban areas. The parties further submitted that the other difference that could arise is that the backhaul that each tower uses can also be different – the urban market could use fibre or microwave for backhaul whereas the rural market is more likely to use satellite or microwave as a backhaul medium. The parties submitted that Africa Mobile and its competitor, Nuran Wireless Inc offer a model where the MNO pays a revenue-share or a fixed fee to the tower company in return for the tower company providing and managing all equipment.

17. It was submitted that theoretically, if an MNO wanted to procure and install a piece of active equipment that met Africa Mobile's tower criteria, they would be able to do this, and it would be reflected in a change to the pricing model. The parties contended that practically, this has not happened previously and is unlikely to happen going forward. The CID considered that while theoretically in an event of a small, non-transitory increase in the fee charged by the infrastructure provider for active equipment, the MNOs would be able to procure and install their own active equipment on the passive infrastructure, the realities of the market would suggest that such substitution is unlikely to arise swiftly.
18. In view of the foregoing, and notwithstanding the distinct characteristics of passive infrastructure and active infrastructure, the CID considered that in rural and remote areas, the provision of active equipment and the provision of the passive infrastructure for mobile network communication constitute one single market.

#### *Relevant Geographic Market*

19. The CID considered that the provision of passive and active infrastructure for mobile network communication tends to serve the MNOs in a particular locality within a country. From a demand side perspective, it is unlikely that an MNO will be able to switch and immediately rent space on towers outside a country of its operation. The regulatory framework surrounding accessing to passive and active infrastructure may limit the extent to which substitutability across countries is possible. It is therefore likely that conditions of competition are heterogeneous across countries on account of different tariffs and exchange rate variations, the degree of coverage required, and access to suitable sites. Therefore, the differences in the structure of the telecommunication markets across countries is bound to make a national market unique to a country. The CID considered that even at national level, there may be possibilities of sub-regional markets, account taken of the fact that the target activities are geared towards rural and remote areas, for the purposes of facilitating provision of voice and data connectivity to communities which had

previously lacked network connection. Such geographic locations where Africa Mobile conducts its activities can constitute a market in itself where in the event of a 5% increase in the rent obtained in urban areas, may not induce Africa Mobile to shift its tower business to the urban area given its business model – Africa Mobile is a provider of the necessary infrastructure for rural mobile telecommunications and its target areas are difficult to deploy in, with low ARPUs that are typically not attractive to MNOs and bigger tower players. The significant differences in the cost of construction of a typical mobile tower in an urban site as compared to a rural site is suggestive that urban and rural areas are two distinct geographic markets.

20. In view of the above, the relevant geographic scope for the provision of passive and active infrastructure mobile network communication is limited to the rural areas and pertains only to the Member States where the target has operations, namely DRC and Zambia.
21. For the purpose of assessing the proposed transaction, and without prejudice to the CID's approach in similar future cases, **the relevant markets were construed as the provision of passive and active infrastructure for mobile network communication in rural and remote areas in DRC and Zambia.**

### Competitive Assessment

22. As mentioned earlier, Africa Mobile presently operates only in rural areas. It submitted its tower count in each of DRC and Zambia per Table 2 below.

*Table 2 – Tower Count of Africa Mobile in DRC and Zambia*

Member State	31 Dec 2018	31 Dec 2019	31 Dec 2020	31 Mar 2021	31 Dec 2021
DRC	98	235	508	517	518
Zambia	95	125	125	124	125

23. The estimated market shares of the target were submitted as 10.7% in DRC and 3.9% in Zambia. It is noted that there are other competing firms in these two Member States, namely strong players such as Helios Towers in DRC and IHS Towers and Infratel in Zambia. The following players also operate in the same market as Africa Mobile: Nuran Wireless Inc, Vanu Inc, and Paralell Wireless.
24. There are an estimated 4812 towers in the DRC<sup>11</sup>. The target has an estimated 517 towers in DRC. Helios Towers reported in its 2020 annual report that it constructed 7,356 towers in five markets with 2,471 of those (around 33%) in rural sites in DRC. According to a press release, NuRan is engaged in a contract for 2,000 towers with Orange in the DRC<sup>12</sup>.

<sup>11</sup> Parties submissions dated 4<sup>th</sup> June 2021, estimates taken from an industry report by TowerXchange.

<sup>12</sup> 'NURAN ANNOUNCES MAJOR NETWORK AS A SERVICE AGREEMENT WITH ORANGE DRC - NuRAN Wireless', Accessed at <https://nuranwireless.com/investors/nuran-announces-major-network-as-a-service-agreement-with-orange-drc>, on 4<sup>th</sup> June 2021.

25. In Zambia, according to an industry report by TowerXchange, there is an estimated 3,181 towers installed. The target has an estimated tower count of 125, while IHS Towers has an estimated tower count of 1757 and Infratel has an estimated tower count of 1,300.
26. The transaction is not capable of leading to any market share accretion in the relevant markets in view of the absence of overlap between the activities of the merging parties in the defined geographic market pre-merger. Additionally, the target is a small player with a relatively small market share at national level as compared to its competitors in the relevant markets. Even in the narrower market targeting rural areas, the transaction will still not lead to a change in market concentration.
27. With regards to the barriers to entry, the CID considered that while in the rural areas the cost of acquisition of land and construction of towers and related infrastructure may not be prohibitive, other barriers to entry might manifest in terms of securing relationships with MNOs and coverage required to access to sufficient base of end-users.

### **Third-Party Views**

28. Submissions were received from the Competition Commission (Mauritius), Competition Authority of Kenya, the Eswatini Competition Commission, and the Competition and Consumer Protection Commission of Zambia. The third party submissions were consistent with the CID's conclusion that the transaction was unlikely to raise competition concerns in the relevant markets.

### **Determination**

29. 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.
30. The CID therefore **approved** this transaction. This decision was adopted in accordance with Article 26 of the Regulations.

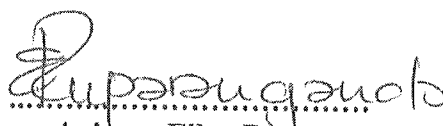
Dated this 28<sup>th</sup> day of June 2021



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**Commissioner Justice Charlotte Wezi Malonda (Chairperson)**



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**Commissioner Brian M. Lingela**



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**Commissioner Ellen Ruparanganda**