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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/02/05/2021

Decision[1] of the Seventy-Sixth (76th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving IVY 2 Investments VCC and PIL Holdings Pte. Ltd

ECONOMIC SECTOR: Transport and Logistics

27th June 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Introduction and Relevant Background

1. On 8th March 2021, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving IVY 2 Investments VCC ("**IVY**") and PIL Pte. Ltd, 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. The decision of the CID is set out below.

The Parties

IVY

4. The acquiring firm, IVY, is a company incorporated in accordance with the laws of Singapore with Registration Number T20VC0087E and registered address as 9 Temasek Boulevard, #24-03, Suntec Tower Two, Singapore 038989. IVY is managed by Heliconia Capital Management Pte Ltd. ("**Heliconia**") which is indirectly wholly-owned by Temasek Holdings (Private) Limited ("**Temasek**"), a company with its principal business address at 60B Orchard Road #06-18 Tower 2, The Atrium@Orchard, Singapore 238891. Heliconia's principal activity is reported as providing fund management services and it was issued a Capital Markets Services License by the Monetary Authority of Singapore on 11th May 2016.

5. Temasek is an investment company headquartered in Singapore. Temasek's global portfolio covers a broad spectrum of industries including financial services; telecommunications, media and technology; transportation and industrials; consumer and real estate; life sciences and agri-business, as well as energy and resources. In the Common Market, Temasek holds interests in companies operating in Burundi, the Democratic Republic of Congo ("**DRC**"), Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Libya, Malawi, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia, Zimbabwe.

6. Temasek and all firms deemed to be controlled, directly or indirectly, by Temasek are collectively referred to as the "**Acquiring Group**".

PIL Pte. Ltd.

7. PIL Pte. Ltd. (the "**Target**") is a newly formed company for the purposes of the transaction incorporated under the laws of Singapore, having its registered address at 140, Cecil Street, #03-00, PIL Building, Singapore 069540. Following a reorganisation, the Target owns Pacific International Lines (Private) Limited ("**PIL**"). PIL is part of a Singaporean group

that operates a range of businesses spanning from shipping to container manufacturing and other logistics related services, with its core business in container shipping.

8. The Target and all firms under its control are collectively referred to as the "**Target Group**".

9. The parties have submitted that the activities of the Target Group in the Common Market can be classified as per Table 1 below[2]:

Table 1 – Activities of the Target Group in the Common Market

Description	**Member State**
Container lining shipping services	Burundi, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Sudan, Uganda, Zambia and Zimbabwe
Logistic services, including establishment, operation and management of warehouses and count, inventory of goods, handling of containers, trucking services to transport containers	Egypt, Kenya, Madagascar, Mauritius and Sudan
Container depot services	Egypt
Investment holdings: provision of office space rental	Egypt

10. The parties submitted the trade routes and the COMESA Member States in which the Target carries out its container lining shipping services as presented in Table 2 below. It was also submitted that the activities in container lining shipping services denotes physical presence and/or sales made in, into or from a particular Member State.[3]

Table 2 – Trade Routes of the Target Group in the Common Market

Trade Route	**Sub-Category**	**Member State**
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang > Nansha> Qingdao	East Africa Service	Burundi
Port Klang > Singapore > Colombo > Mombasa > Dar Es Salaam > Colombo > Port Klang > Singapore	East Africa Service 2	
Port Klang > Singapore > Colombo > Mombasa > Dar Es Salaam > Colombo > Port Klang > Singapore	East Africa Service 2	DRC

[2] As at 2019/2020.

[3] The parties submitted that as of 2019/2020, the Target was undergoing a services rationalisation process, and therefore these routes might have changed since.

Busan > Xingang > Qingdao > Shanghai > Ningbo > Nansha > Singapore > Cape Town > Pointe Noire > Luanda > Cape Town > Port Klang > Singapore > Busan	South West Africa 3	
Dalian > Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Nansha > Qingdao	East Africa Service	
Shanghai > Ningbo > Taipei > Xiamen > Shekou > Singapore > Djibouti > Jeddah > Sokhna > Aqaba > Djibouti > Singapore > Shanghai	Red Sea	Djibouti
Mundra > Karachi > Jebel Ali > Djibouti > Jeddah > Mundra	Redsea Gulf Service	
Djibouti > Aden > Djibouti	Intra-Redsea Feeder 3	
Shanghai > Ningbo > Taipei > Xiamen > Shekou > Singpaore > Djibouti > Jeddah > Sokhna > Aqaba > Djibouti > Singapore > Shanghai	Red Sea Service	Egypt
Xingang > Qingdao > Ningbo > Nansha > Shekou > Singapore > Jeddah > Sokhna > Aqaba > Jeddah > West Port > Ningbo > Xingang	Redsea Express Service	
Jeddah > Sudan > Massawa > Jeddah	Intra-Redsea Feeder	Eritrea
Shanghai > Ningbo > Taipei > Xiamen > Shekou > Singpaore > Djibouti > Jeddah > Sokhna > Aqaba > Djibouti > Singapore > Shanghai	Red Sea Service	Ethiopia
Mundra > Karachi > Jebel Ali > Djibouti > Jeddah > Mundra	Redsea Gulf Service	
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang> Nanshan > Qingdao	East Africa Service	Kenya
Port Klang > Singapore > Colombo > Mombasa > Dar Es Salaam > Colombo > Port Klang > Singapore	East Africa Service 2	
Port Klang > Singapore > Port Louis > Reunion > Tamatave > Maputo > Beira > Nacala (fortnight) > Port Klang	Mozambique Service	Madagascar
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang> Nansha > Qingdao	East Africa Service	Malawi

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Port Klang > Singapore > Port Louis > Reunion > Tamatave > Maputo > Beira > Nacala (fortnight) > Port Klang	Mozambique Service	
Port Klang > Singapore > Port Louis > Reunion > Tamatave > Maputo > Beira > Nacala (fortnight) > Port Klang	Mozambique Service	Mauritius
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang> Nanshan > Qingdao	East Africa Service	Rwanda
Port Klang > Singapore > Colombo > Mombasa > Dar Es Salaam > Colombo > Port Klang > Singapore	East Africa Service 2	
Jeddah > Sudan > Jeddah	Intra-Redsea Feeder 5	Sudan
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang> Nanshan > Qingdao	East Africa Service	Uganda
Port Klang > Singapore > Colombo > Mombasa > Dar Es Salaam > Colombo > Port Klang > Singapore	East Africa Service 2	
Qingdao > Shanghai > Ningbo > Nansha > Singapore > Mombasa > Dar Es Salaam > Singapore > Penang> Nanshan > Qingdao	East Africa Service	Zambia
Port Klang > Singapore > Port Louis > Reunion > Tamatave > Maputo > Beira > Nacala (fortnight) > Port Klang	Mozambique Service	
Port Klang > Singapore > Port Louis > Reunion > Tamatave > Maputo > Beira > Nacala (fortnight) > Port Klang	Mozambique Service	Zimbabwe

Jurisdiction of the Commission

11. 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:

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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.*

12. 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

13. The parties submitted that prior to the proposed transaction, 100% of the shares in PIL, PIL Marine Pte. Ltd. ("PIL Marine") and PIL Enterprises Pte. Ltd. ("PIL Enterprises") respectively, have been transferred from PIL Holdings Pte. Ltd. to the Target. The parties submitted that the proposed transaction concerns the acquisition by way of subscription of convertible preference shares ("CPS") by IVY. The CPS has given IVY an interest of more than 75% of the voting shares in the Target which in turn holds 100% of the shares of PIL, PIL Marine and PIL Enterprises.

Relevant Markets

Relevant Product Market

14. The Target group is active in the provision of container lining shipping services, container manufacturing, logistic services and container depot in the Common Market.

15. The acquiring group's portfolio of activities comprise of financial services; telecommunications, media and technology; transportation and industrials; consumer and real estate; life sciences and agribusiness, as well as energy and resources. In the transportation sector, the acquiring group has investment in Keppel Corporation Limited, which provides specialised vessels such as trailing suction hopper dredgers, dual-fuel tugboats, pipelay vessels, icebreakers and ice-class support vessels. The acquiring group also has investment in PSA International Pte Ltd, which offers transhipment services, that is the transfer of containers from one vessel to another vessel bound. The CID noted that these companies do not offer these services within the Common Market.

Container Liner Shipping Services

16. The container shipping industry comprises of shipping companies transporting containerized goods overseas via regular liner services as their core activity. A liner service is a fleet of ships, with common ownership or management, which provide a fixed service, at regular intervals, between designated ports, and offer transport to any goods in the hinterland served by those ports and ready for transit by their sailing dates[4]. Container liner shipping services operate with a fixed port rotation with published dates of operations at the advertised ports.

17. The CID has in past cases found a relevant product market for container liner shipping consisting of the provision of regular, scheduled services for the carriage of cargo by container[5]. The CID considered that container liner shipping was distinct from the markets of (i) non-liner shipping such as tramp or specialised transport; (ii) non-containerised transport such as bulk cargo; and (iii) roll-on/ roll-off shipping.

18. Container liner service can be distinguished from non-liner shipping services (i.e. charter, tramp, specialised transport) based on the regularity and frequency of the service. A tramp service is a ship that has no fixed routing or itinerary or schedule and is available at short notice to load any cargo from port to port[6]. Customers demand scheduled transport in order to meet production runs and delivery deadlines, which makes demand substitution less effective between liner and non-liner services.

19. Furthermore, the use of containerised transportation is separate from other non-containerised transport such as transport by bulk vessel. The non-container / bulk cargo services (sometimes also referred to as general cargo or break-bulk cargo) includes all types of break-bulk goods (i.e., goods that must be loaded individually and not in containers). Container-liner shipping are said to have a low degree of substitutability with non-containerised cargo / bulk cargo because the type of transported cargo and of vessels used are generally different[7]. For example, goods such as vehicles, and forest products such as paper and board - can be carried on bulk vessels especially designed for such cargoes. While it is possible that in exceptional circumstances some substitution may occur between bulk cargo and container transport, the CID's observations based on the practical situation

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[4] Martin Stopford, "Maritime Economics" (1997) Psychology Press

[5] Decision of the Twenty Seventh Committee for Initial Determination on the Application for Authorisation of the Proposed Merger between Hapag-Lloyd Aktiengesellschaft and United Arab Shipping Company, available at www.comesacompetition.org/wp-content/uploads/2014/10/Decision-on-HLAG-UASC.pdf accessed 5th May 2021; and Decision of the Sixty-Seventh CID Regarding the Proposed Merger involving Marinvest S.r.l., Ignazio Messina & C. S.p.A. and RORO Italia S.r.l., available at []. This approach is consistent with the findings of the European Commission who has similarly found distinct product market for container liner shipping in past cases, including Case No COMP/M.7268 ***CSAV/ HGV/ Kühne Maritime/ Hapag-Lloyd AG***, available at https://ec.europa.eu/competition/mergers/cases/decisions/m7268_1503_2.pdf accessed 5th May 2021

[6] http://shippingandfreightresource.com/liner-and-tramp-service/ accessed 5th May 2021

[7] See for example the European Commission decisions in case No COMP/M.5066 - EUROGATE/APMM; and Case No IV/M.831 - P&O/Royal Nedlloyd

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on the ground concluded that there is no evidence that there is in fact any lasting substitution from container towards bulk for the vast majority of cases.

20. The CID also differentiated the container liner services from roll-on / roll-off cargo services. The latter services are provided using roll-on / roll-off ("Ro-Ro") vessels, which are designed to carry exclusively wheeled cargo such as cars, trucks and trailers. On containerised vessels, on the other hand, the cargo is loaded and unloaded by crane. From a demand side, Ro-Ro vessels "*aim at different cargo flows as some goods such as steel, pipes, cars, timber, food-stuff (if in bulk) or paper products can only be transported by RoRo because they cannot be containerised*"[8]. From a supply perspective, container transport vessels present different characteristics than the Ro-Ro vessels which are provided with facilities for trailers to drive on the vessels. Moreover, terminal facilities are different; container transport vessels need a terminal with container cranes hence a large investment, while Ro-Ro can be worked on a quayside without this investment due to the built-in ramp of a Ro-Ro vessel[9].

21. On the basis of the facts at hand and in line with its previous decisional practice in similar cases presenting similar characteristics, the CID considered that the relevant market is the "**market for the provision of container liner shipping services**". It was noted that a possible narrower product market could be identified in terms of transport of refrigerated goods, which could be limited to refrigerated (reefer) containers only or could include transport in conventional reefer (refrigerated vessels). The CID however considered that the adoption of a narrower market definition would not materially affect the competitive assessment, given that the merging parties do not have any overlapping activity pre-merger.

22. In light of the above, the CID determined that the relevant product market is the "**market for the provision of container liner shipping services**".

Contract Logistics Services

23. The logistics services offered are linked to the Target Group's shipping offerings and include (i) establishing, operating and managing warehouses and reservoirs (excluding those containing hazardous chemicals); (ii) facilitating inventory counts and handling of containers; and (iii) trucking services whereby goods and containers are transported using flatbeds and grain trailers. These services fall under the umbrella of contract logistics services. There are indications that the contract logistics services market could be further segmented into different sub-markets considering the type of service. For instance, the good being transported determine the logistics required, where the transportation of perishable and fragile items require different logistics such as refrigerated trucks. Similarly, the transportation of hazardous items requires special logistics, for instance, due to specific legislation, need for specialised infrastructure including storage facilities and tankers, investment in staff training and equipment, specialised knowledge and experience. The

[8] European Commission decision in Case No COMP/M.5756 - DFDS/ NORFOLK, paragraph 13.
[9] Ibid, paragraph 14.

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above notwithstanding, the CID noted in general that "*logistics services suppliers are generally able to serve all type of customers, without distinguishing according to the types of goods transported*"[10]. Suppliers are able to provide and adapt to various logistical set-up even if they do not own the required assets (such as refrigerated trucks) which can be leased from other third parties on a need's basis[11]. The CID considered that no segmentation of the contract logistics services market is required depending on the demand of the customer, as the particular needs of the customers do not act as any constraint on suppliers, and the logistical requirements/equipment being easily available, are also not a significant barrier for suppliers.

24. Given that the transaction will not lead to any overlap and without prejudice to the CID's approach to future cases, the CID has defined the relevant products markets generally in relation to the services provided by the target as follows:

    a. **provision of container liner shipping services; and**

    b. **provision of contract logistics services (including warehousing).**

Relevant Geographic Market

Container Liner Shipping Services

25. The CID has traditionally defined the geographic scope of container liner shipping services been on the basis of the legs of trade[12], defined by the range of ports that are served at each end of the service. Each trading route can have specific characteristics depending on the volumes shipped, the types of cargo transported, the ports served and the length of the journey from the point of origin to the point of destination[13]. From a demand perspective, a trading route is unlikely to be viewed as interchangeable with a different route. Moreover, market conditions on the two directions (legs) of a trade can be different, in particular in case of trade imbalances or different characteristics of the products shipped, a distinction can thus be made between the two directions (legs) of a trade.

26. In line with its past decisional practice, the CID considered that the relevant geographic markets are therefore the legs on which container liner shipping services are provided. The Target Group offers container liner shipping services on trade routes, namely (i) Far East Asia to the Red Sea; (ii) The Red Sea to Far East Asia; (iii) Far East Asia to East Africa; and (iv) East Africa to Far East Asia.

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[10] Case No COMP/M.1895 - Ocean Group / Exel (NFC), paragraph 9.

[11] A similar reasoning was observed in the European Commission's case involving Ocean Group / Exel (NFC) where the authority noted that contract logistics are often awarded after bidding process and that competitors are able to easily adapt to the requirements of the tenders.

[12] Decision of the Seventy-Third (73rd) Committee Responsible for Initial Determination dated 12th November 2020 Regarding the Joint Venture involving Bollore Africa Logistics, Nippon Yusen Kabushiki Kaisha, Toyota Tsusho Corporation, CCC/MER/06/17/2020

[13] See the European Commission decision in Case No COMP/M.7268 - CSAV/ HGV/ KÜHNE MARITIME/ HAPAG-LLOYD AG, paragraph 23.

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Market for Contract Logistics services

27. In respect of the market for the provision of contract logistics services (including warehousing), the CID considered that the geographic scope is likely to be the Common Market. This is because the competition dynamics surrounding the provision of contract logistics services go beyond the boundaries of a single country since the players compete with other international providers. Providers of this service are mainly global players with local offices or registered agents in a number of countries, including in Member States. The presence of such a selection of providers gives customers varying options of providers that can facilitate movement of their goods within the Common Market and beyond. Therefore, from a demand perspective, substitution is likely between sourcing contract logistics (warehousing) services locally and sourcing from the global market. However, for the sake of convenience, customers in the Common Market are likely to prefer benefitting from the advantage of geographic proximity and opt for locally registered providers and will prefer engaging the services of regional providers as opposed to those operating outside the region.

Conclusion of Relevant Market Definition

28. For purposes of assessing the Proposed Transaction only, and without prejudice to future cases, the CID identified the following relevant markets:

   a. provision of container liner shipping services:
   - **from Far East Asia to the Red Sea;**
   - **from the Red Sea to Far East Asia;**
   - **from Far East Asia to East Africa; and**
   - **from East Africa to Far East Asia.**

   b. provision of contract logistics services in the Common Market.

Competitive Assessment

29. Table 3 below presents the market shares of the parties and competitors in the market for the provision of container liner shipping services from Far East Asia to the Red Sea and from the Red Sea to Far East Asia, as submitted by the parties. The parties estimate the market shares of the target to be [20-30]% on the Far East Asia and Red Sea trade routes and of [20-30]% on the Far East Asia and East Africa trade route. It is noted from the table that there are other competing firms in these two relevant markets, including strong players such as COSCO with an estimated market share of [20-30]%, CMA CGM [10-20]%, and Evergreen [10-20]%.

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Table 3 – Estimated Market Shares[14] of Players in the Market for Container Liner Shipping Services from Far East Asia to the Red Sea and from the Red Sea to Far East Asia

Market Player	**Non-confidential market share ranges**
Target Group	[20-30]%
COSCO	[20-30]%
CMA CGM	[10-20]%
Evergreen	[10-20]%
Yang Ming	[0-10]%
Hapag Llyod	[0-10]%
Others	[0-10]%
Total Market Size	100%

30. Table 4 below presents the market shares of the parties and competitors in the market for the provision of container liner shipping services from Far East Asia to East Africa and from East Africa to Far East Asia, as submitted by the parties. It is noted from the table that the target faces strong competitors from operators such as Maersk Line who is the market leader with an estimated market share of [30-40]%. 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 Common Market.

Table 4 – Estimated Market Shares[15] of Players in the Market for Container Far East Asia to East Africa and from East Africa to Far East Asia[16]

Market Player	**Non-confidential market share ranges**
Target Group	[20-30]%
Maersk Line	[30-40]%
CMA CGM	[10-20]%
COSCO	[10-20]%
MSC	[0-10]%
Evergreen	[0-10]%
Others	[0-10]%
Total Market Size	100%

31. The transaction is also not capable of leading to any market share accretion in the relevant market for provision of contract logistics services in the Common Market in view of the

[14] Source: Alphaliner and information collated from local agents and competitor's website. The Target Group's market share ranges are derived from volume figures calculated by multiplying its weekly figure by the number of weeks in 2019 (i.e. approximately 52 weeks). Nonetheless, the provided figures are estimates (to the best of the Target Group's knowledge). The Target Group's actual capacity for the entire 2019 may differ from the estimates because, *inter alia*, capacity could have been adjusted (by withdrawing vessels or putting in vessels) based on market demands.

[15] See fn 14.

[16] The estimated market shares for the container line shipping services from East Asia to East Africa is on the basis that it is equivalent to the market share for the container line shipping services from East Africa to Far East Asia.

absence of overlap between the activities of the merging parties in the Common Market pre-merger.

32. With regards to barriers to entry in the relevant markets, the CID established that they were likely to manifest through high capital investment required to start operations, customer loyalty arising out of a customer's contractual obligations and port capacity. The CID considered that barriers to entry are not prohibitive in the relevant markets, having regard to the presence of a vast number of players, including global players, in the relevant markets and evidence of new entrants over the last three years.

33. Having regard to the above assessment, the CID considered that the proposed transaction would not stifle trade between Member States in view of the absence of any foreclosure concern in the Common Market.

Third Party Views

34. Submissions were received from the Competition Authority of Kenya, the Competition Commission (Mauritius), the Competition and Consumer Protection Commission (Zambia), the Fair Trading Commission (Seychelles), the Conseil de la Concurrence de Madagascar, Competition and Tariff Commission (Zimbabwe), Egyptian Competition Authority, Competition and Fair Trading Commission (Malawi) and the Trade Competition and Consumer Protection Authority (Ethiopia). 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

35. 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.

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

Dated this 27th 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