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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/26/2023

**Decision¹ of the 107th Meeting of the Committee Responsible
for Initial Determinations regarding the creation of a Joint
Venture, Mawezi RDC S.A., by Airtel RDC S.A., and Orange
RDC S.A**

ECONOMIC SECTOR: Telecommunications

20 May 2024



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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 1 November 2023, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the proposed merger involving the creation of a Joint Venture, Mawezi RDC S.A. (“**Mawezi**” or the “**JVCo**”), by Airtel RDC S.A. (“**Airtel RDC**”) and Orange RDC S.A. (“**Orange RDC**”) (together, the “**Parent Companies**”), pursuant to Article 24(1) of 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.



4. During its 105th Meeting held from 10 – 11 March 2024, the Committee responsible for Initial Determinations (“**CID**”) granted an extension to the timeline for the assessment of the transaction for a period of sixty (60) days starting from 19 March 2024 until 23 May 2024.

The Parties

Airtel RDC

5. The parties submitted that Airtel RDC is a subsidiary of Airtel Africa Plc (“**Airtel Africa**”), a company registered and incorporated in accordance with the laws of England and Wales, which has its registered business address at 53/54 Grosvenor Street, London, W1K 3HU, United Kingdom. Airtel Africa is a provider of telecommunications and mobile money services and has a presence in fourteen (14) countries across Africa in East, Central and West Africa. Within the Common Market, Airtel Africa has activities in the following Member States: Democratic Republic of Congo (“**DRC**”), Kenya, Madagascar, Malawi, Rwanda, Seychelles, Uganda, and Zambia as follows:

Table 1: Airtel Africa entities in the Common Market

Member State	Name of Entity
DRC	Airtel Congo RDC S.A., Airtel Money RDC
Kenya	Airtel Networks Kenya Limited, Airtel Money Transfer Limited and Airtel Money Kenya Limited
Madagascar	Airtel Madagascar S.A., Airtel Mobile Commerce Madagascar S.A.
Malawi	Airtel Malawi Plc, Airtel Mobile Commerce Limited
Mauritius	Bharti Airtel Rwanda Holdings Limited, Celtel (Mauritius) Ltd and Montana International (registered as global business companies)
Rwanda	Airtel Rwanda Limited, Airtel Mobile Commerce (Rwanda) Limited
Seychelles	Airtel (Seychelles) Limited, Airtel Mobile Commerce (Seychelles) Limited
Uganda	Airtel Uganda Limited, Airtel Mobile Commerce Uganda Limited
Zambia	Airtel Networks Zambia Plc, Airtel Mobile Commerce Zambia Limited

6. The parties submitted that Airtel Africa offers a suite of telecommunication solutions to its subscribers, including mobile voice and data services as well as mobile money services both nationally and internationally. The voice services include pre- and post-paid wireless services, international roaming and fixed-line telephony services. The data services provide a suite of data communication services including second generation (2G), third generation (3G), and fourth generation (4G) data communication services. The mobile money services include digital wallet payment systems, microloans, savings and international money transfers.



Orange RDC

7. Orange RDC is a subsidiary of Orange S.A. ("**Orange**"), a multinational telecommunications service provider, which operates mobile and internet services.
8. The parties submitted that the Orange Group has the following activities in COMESA:

Table 3: Activities of the Orange Group in COMESA

Member State	Name of Entity	Activities
DRC	Orange RDC, Orange Money RDC S.A., Orange RDC Internet S.A.	Mobile voice; data/internet access; fixed telephony; and mobile money services
Egypt	Orange Egypt	Mobile voice; data/internet access; and fixed telephony
Madagascar	Orange Madagascar, Orange Money Madagascar	Mobile voice; data/internet access; fixed telephony; and mobile money services

The JVCo

9. The parties submitted that the JVCo, Mawezi, is a newly established "full-function" greenfield joint venture incorporated by Airtel RDC and Orange RDC which is intended to offer landing provider services to a Consortium² responsible for the construction, operation and maintenance of the 2Africa West Cable System (the "**2Africa cable**") in DRC. The JVCo has no operations, by way of deriving turnover or holding assets in the Common Market or elsewhere.
10. The parties submitted that the JVCo will provide space, facilities and services to the Consortium in terms of a Landing Provider Agreement. As the contracted landing party, the JVCo will build, operate and maintain an open-access cable landing station in Moanda, DRC. The JVCo will build and own the cable landing station, as well as other civil works such as duct lines and backup power systems. In addition, the JVCo will bear the responsibility of obtaining all permits, licenses and approvals necessary for the landing of the 2Africa cable in DRC.
11. The parties further submitted that the JVCo or the cable landing station will provide fair and open access to the following services in DRC:
 - a. **Co-location services**: Facilities where businesses can host their servers, storage and networking equipment. The JVCo will provide customers with

² The parties submitted that a Consortium comprising China Mobile International, Meta Platforms (formerly, Facebook), MTN, Orange, Center3 (formerly STC), Telecom Egypt, Vodafone and the West Indian Ocean Cable Company partnered to build the 2Africa West Cable System – one of the world's largest subsea cable projects which interconnects Europe, Asia, and Africa.



rack space, power, cooling, bandwidth, and physical security for their servers and computing hardware.

- b. **Cross-connect services**: Physical connections that deliver a direct link between different networks located within a single cable landing station.
 - c. **Interconnection services**: Connection between either a carrier's network and a landing station/data centre, or a carrier or internet service providers (ISPs) and their customers, or between multiple carriers, landing stations / data centres, ISPs or businesses. Particularly, the interconnection services will be provided to customers who wish to connect their terrestrial fibre networks to the landing station.
 - d. **International capacity services**: Transmission of voice, data and other telecommunications services across international borders.
 - e. **Internet protocol transit services**: Provision of method or protocol which enables the transmission of ISPs' data traffic from one computer to another on the internet.
12. In this regard, open-access cable includes the obligation for the JVCo towards the Consortium to provide effective wholesale access to the international capacity, at fair and reasonable prices and on transparent and non-discriminatory terms. Furthermore, the contract provides a range of options to ensure compliance by JVCo with all open-access commitments.
13. The parties submitted that the Parent Companies will make funds available to the JVCo for, *inter alia*, the acquisition or leasing of real estate and construction of the cable landing station (and any additional *ad hoc* financial contributions that may be required from time to time). In addition to the initial funding, the Parent Companies will subscribe for shares in the JVCo and will each contribute limited human resources to ensure the successful set up of the JVCo's operations.
14. The parties further submitted the following details regarding the operation of the cable landing station and the 2Africa cable:

Overview of the cable landing stations

15. The parties submitted that the JVCo will build, operate and maintain a cable landing station responsible for the landing of the 2Africa cable in Moanda, DRC. It was submitted that a cable landing station is a facility which serves a critical purpose in a telecommunications network by providing a point for submarine cables to land.
16. The subsea or submarine cables are fibre optic cables that connect countries across the world via cables laid on the ocean floor. These cables which are often



thousands of kilometres in length, can transmit huge amounts of data rapidly from one point to another (i.e., the landing points). At each end, the cables reach land within a cable landing station from where the data is interconnected and/or routed to its final location.

Overview of the 2Africa West Cable System

17. The parties submitted that, on 14 May 2020, China Mobile International, Meta Platforms (formerly, Facebook), MTN, Orange, Center3 (formerly STC), Telecom Egypt, Vodafone and the West Indian Ocean Cable Company (“**the Consortium**”) partnered to build the 2Africa cable – one of the world’s largest subsea cable projects which interconnects Europe, Asia, and Africa. The system has capacity to deliver more than the total combined capacity of all subsea cables serving Africa today, with a design capacity of up to 180Tbps. Further, the 2Africa cable has the capacity to deliver much needed internet capacity and reliability across large parts of Africa, supplement the fast-growing capacity demand in the Middle East and underpin the further growth of 4G, 5G and fixed broadband access for billions of people.
18. The parties submitted that communities that rely on the internet for services including education, healthcare and business will experience the economic and social benefits that come from this increased connectivity. To encourage and support the development of a healthy internet ecosystem (facilitating greatly improved accessibility for businesses and consumers alike), capacity will be made available to service providers at carrier-neutral data centres or open-access cable landing stations on a fair and equitable basis.
19. The 2Africa cable has been designed to improve resilience and maximise performance, including the option of a seamless optical crossing between East Africa and Europe. The 2Africa cable will implement a new submarine cable design technology, SDM₁ from Alcatel Submarine Networks, allowing deployment of up to 16 fibre pairs instead of the 8 fibre pairs supported by older technologies, bringing much greater and more cost-effective capacity. The cable will incorporate optical switching technology to enable flexible management of bandwidth. Cable burial depth has also been increased by 50% compared to older systems, and cable routing will avoid locations of known subsea disturbance, all helping to ensure the highest levels of consistent availability.
20. The purpose of the submarine cable project is to significantly increase the capacity, quality and availability of internet connectivity between Africa and the rest of the world. This is of particular significance for a continent that has historically been behind the global average in internet penetration. In this regard, the level of broadband traffic is growing exponentially and consumer appetites for new



applications like cloud computing, on-demand video and social media appear limitless.

21. The demand for new connectivity is driven by a business environment in which ultra-broadband access is essential for sustainable growth and development. By directly connecting numerous countries around the entire coast of Africa to Europe and the Middle East region, businesses and consumers will benefit from enhanced capacity and reliability for services such as telecommuting, high-definition television broadcasting, internet services, video conferencing, advanced multimedia and mobile video applications. The project will also underpin future mobile and fixed broadband access
22. The parties submitted that currently, DRC only has one submarine cable landing – the West Africa Cable System (“**WACS**”). The Societe Congolaise des Postes et Telecommunications (“**SCPT**”), as the owner of this landing station, has held an effective monopoly and enjoyed a market share of 100% in this sector in DRC. In 2020, the Autorité de Régulation de Poste et de Télécommunication (“**ARPTC**”) granted Liquid Telecom a licence to build a second submarine cable landing station. However, even though the requisite licenses and approvals have been obtained by Liquid Telecom, the landing station is yet to be constructed in DRC.
23. The parties submitted that the 2Africa cable is yet to land in the DRC meaning the country remains unconnected to the world’s largest subsea cable system. By landing the 2Africa cable in DRC, the proposed transaction will significantly increase the capacity, quality and availability of internet connectivity in the country and hopefully reduce the substantial digital gap which currently prevails in this country.
24. The parties submitted that, once fully operational, the JVCo will, as a new entrant in the market for cable landing services in DRC be the second provider of cable landing services in the DRC, which will result in increased competition and will inadvertently put an end to the SCPT’s monopoly in this sector. Furthermore, since Liquid Telecom intends to enter the market by building its own cable landing station in the DRC, SCPT’s and the JVCo’s (once operational) market shares will be further diluted by the entrance of an additional competitor in this sector.

Jurisdiction of the Commission

25. 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.*
26. The undertakings concerned have operations in two or more Member States. The undertakings concerned held a combined value of assets in excess of the threshold of USD 50 million in the Common Market and each of the parties held an asset value of more than USD 10 million in the Common Market. In addition, both of the parties did not hold more than two-thirds of their aggregate COMESA-wide value of assets from one and the same Member State.
27. The Commission was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

28. The parties submitted that the Parent Companies and the JVCo have agreed to jointly provide space, facilities and services to the Consortium responsible for the construction, operation and maintenance of the 2Africa cable in DRC, in accordance with open access principles. To provide the required services jointly, the Parent Companies have entered into a Shareholders' Agreement dated 26 April 2023 to incorporate a joint venture, the JVCo, which will offer landing provider services to the Consortium³ under a Landing Provider Agreement.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

29. Paragraph 7 of the Commission's Guidelines on Market Definition states that a

³ The Consortium includes the following companies which partners to building the 2Africa cable: China Mobile International, Meta Platforms (formerly Facebook), MTN, Orange, Center3 (formerly STC), Telecom Egypt, Vodafone and the West Indian Ocean Cable Company



“relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products’ characteristics, their prices and their intended use”.

30. The CID noted that the JVCo is newly created with no operations, however, once operational, it will provide cable landing station services for subsea or submarine cables which will facilitate international connectivity between mobile network providers and internet service providers to/from DRC.
31. It is observed that the transaction does not raise horizontal overlaps given that the JVCo is newly created and its intended activity is not similar to the activities of the Parent Companies. However, the services of the JVCo are a critical input to services by the Parent Companies, namely provision of telecommunication services (voice, data/internet services at both wholesale and retail level) and mobile money services given that they will rely on the JVCo’s services to link their services to/from DRC with international markets. Therefore, the transaction raises vertical overlaps between the activities of the Parent Companies and the future activities of the JVCo.
32. The CID has focussed its assessment of the relevant product market on the activities of the Parent Companies and the future activities of the JVCo given that any likely concerns, such as foreclosure of Parent Companies’ competitors in accessing the cable landing station, that may arise from the transaction may be due to the vertical integration of the Parent Companies with the JVCo.

Provision of cable landing station services

33. A cable landing station is a physical facility that serves as a landing point for submarine cables that connect continents and countries. Submarine cables are made of fiber-optic strands which carry massive amounts of data between countries. A cable landing station provides the necessary infrastructure required to connect these submarine cables to land-based networks i.e., mobile telecommunication services or internet-based networks. Cable landing stations may be positioned on the coast and they act as gateways for data to enter or exit a country.
34. A cable landing station provides several functions including cable termination, cable protection, power supply and monitoring. With regards to cable termination, the landing station is responsible for terminating a submarine cable and providing the necessary infrastructure for connectivity. On cable protection, the landing station deploys concrete barriers, buoy systems and shark resistant cables which safeguard the submarine cables against damage. On power supply, the landing station is equipped with power generators and backup systems which ensures uninterrupted power supply to the submarine cables. Another role of the cable



landing station is to monitor the status, performance and signal quality of submarine cables.

35. From the above, a cable landing station provides several distinct services which, for purposes of competition assessment can constitute separate markets. It is also observed from the parties' submission that among the services the JVCo will provide shall include co-location services, cross-connect services, interconnection services, international capacity services and internet protocol transit services which are distinguished as follows:

- **Co-location services:** this entails facilities where businesses can host their servers, storage and networking equipment. Further, co-location services may come along with providing customers with rack space, power, cooling, bandwidth, and physical security for their servers and computing hardware.
- **Cross-connect services:** this entails physical connections that deliver a direct link between different networks located within a single cable landing station.
- **Interconnection services:** Connection between either a carrier's network (such as a mobile network provider) and a landing station/data centre, or a carrier or internet service providers (ISPs) and their customers, or between multiple carriers, landing stations/data centres, ISPs or businesses. The interconnection services would be provided to customers who wish to connect their terrestrial fibre networks to the landing station.
- **International capacity services:** Transmission of voice, data and other telecommunications services across international borders.
- **Internet protocol transit services:** Provision of method or protocol which enables the transmission of ISPs' data traffic from one computer to another on the internet.

36. A cable landing station may not be limited to serving a country that hosts the cable landing station i.e., a country on the coast where a cable landing station is built, but can also serve inland countries who wish to channel their international connectivity through fiber optic cables using the cable landing station. For instance, a landlocked country may opt to use a dedicated backbone optic fiber cable connecting their country to submarine fiber cables⁴. Alternatively, a landlocked country may access submarine cables via telephone lines of the neighbouring countries (at cost) which have direct access to the undersea submarine cables. The access to submarine fiber cables by landlocked countries comes with costs

⁴ <https://www.atulhost.com/how-do-landlocked-countries-get-access-to-the-internet>, access on 3 April 2024



given the distance to assess the coast and it also carries a risk of loss of connectivity in cases of damage to backbone fiber optic cables.

37. For the above reason, landlocked countries tend to have multiple ways to connect to the internet or alternative backbone fiber from all the possible sides to mitigate any risks of disconnection. The argument for alternative access to submarine cables is supported by noting that around the coast of the African continent, there are submarine cables providing several landings which may be available to landlocked countries as depicted in the preceding sections of this report⁵. The question of whether a cable landing station may service countries beyond the coast countries is further dealt with under relevant geographic assessment.
38. It is observed that the proposed transaction does not raise any horizontal overlap given the parent companies do not provide similar services to the services the JVCo is intended to provide. For purposes of assessing any likely competition concerns, it is worth considering the extent to which the JVCo will be accessible to service providers other than the parent companies. For these purposes, it suffices to consider a broad market for the provision of cable landing station services as a relevant market.
39. **In view of the foregoing, the CID identified the provision of cable landing station services as a relevant market.**

Provision of telecommunication services

40. The telecommunication services are communication services such as voice telephony services; internet services; and value-added services that mobile network operators provide to their customers (i.e., end users)⁶. These services may be categorised as fixed telecommunication services to include voice and broadband services that use a copper cable or optical fibre line; or mobile telecommunication services to include voice, text and internet services accessed through a mobile phone or other electronic device connected to a mobile network using technology such as 2G, 3G or 4G. Asymmetric substitution exist from fixed telecommunication services to mobile telecommunication services given the mobility element the latter affords to users as opposed to fixed telecommunication infrastructure which end-user have to access from a designated physical location⁷. Thus, given a small but significant non-transitory increase in the price of fixed telecommunication services a user is likely to switch to mobile telecommunication services. The substitution from mobile to fixed is likely to be limited given the

⁵ <https://manypossibilities.net/african-undersea-cables/>, accessed on 3 April 2024

⁶ <https://macra.mw/licensing-telecommunications/>, accessed on 13 February 2024

⁷ See CCC/MER/03/07/2019 - Airtel Networks/Telkom Kenya where the Commission distinguished fixed telecommunication services and mobile telecommunication services on account of limited substitution



absence of mobility and therefore because of this aspect the two can be taken as distinct market.

41. Since the Parent Companies both operate mobile telecommunication networks, the assessment of the relevant product market is focused on the provision of mobile telecommunication services. Mobile telecommunication services can be segmented into voice communication and data internet services which are transmitted on 2G, 3G, or 4G networks. Data services have been defined to include text messaging, access to email and general internet services⁸. From a user perspective, voice communication, text messaging, and access to email can be used interchangeably considering the intended use.
42. Mobile telecommunication services may be delineated based on technology (2G, 3G, or 4G), customer segments (private or business), and the type of service (voice, text or data). However, it is observed that in the current transaction a horizontal theory of harm is unlikely to arise given the absence of overlap in the activities of the parties i.e., the JVCo will provide cable landing services while the parent companies will provide telecommunication services. However, given that the parent companies are both active in providing mobile telecommunication services, the JVCo may raise the risk of foreclosure of the JV parents' competitors in the downstream market of telecommunication services. Further, the JV may act as a platform for sharing of sensitive market information of the various telecommunication and internet service providers accessing the cable landing station.
43. **Therefore, for purposes of assessing the likely competition concerns the CID identified the provision of mobile telecommunication services (including internet services) as a relevant product market.**

Provision of mobile money services

44. It is recalled that the Parent Companies are also active in the provision of mobile money services. Mobile money is a payments platform or digital wallet accessible on mobile phone which facilitates the transfer of funds between users from one mobile phone to another, payment of bills and transfer of funds from digital wallet to a bank account.
45. It is noted that to access mobile money services, a user requires to interface with mobile telecommunication services through internet access or using USSD code.
46. Similar to the provision of mobile telecommunication services, foreclosure concerns may arise in the market for provision of mobile money given that its

⁸ Case No COMP/M.5650 – T-Mobile/Orange



provision is facilitated by the providers' accessibility to fast and reliable internet which service the JVCo intends to facilitate.

47. **Therefore, the CID identified the provision of mobile money services as a relevant product market.**

Relevant Geographic Market

48. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising:

"...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"⁹.

Provision of cable landing services

49. The CID observed that the JVCo's cable landing station will be built at a place called Moanda in DRC at which point the 2Africa cable will land. The parties submitted that the cable landing station once built will ensure high speed telecommunication and internet connectivity is provided to customers in DRC. Customers of the cable landing station such as mobile network providers or internet service providers access the landing station by, *inter alia*, hosting their servers, storage and network equipment on the landing station where the submarine cables also terminate, thus providing an avenue for international interconnectivity.
50. The geographic scope of the market for provision of cable landing station services is likely to be broader than national and at least regional given that once built, the landing station would not only serve the host country i.e., DRC, but may also be a gateway of internet access for surrounding landlocked countries.
51. The broader geographic scope of the cable landing station can be justified from a demand perspective in that access to cable landing station to ultimately access submarine fiber optic cables is substitutable with access of fiber from other means outside a host country such as DRC. For instance, the Commission's investigations revealed that MNOs and ISPs in DRC have access to alternative means to fiber. For example, Africell submitted that it does not access fiber from DRC yet it is able to provide internet services. The Commission's research further revealed that providers in DRC can opt to access fiber from Congo Brazzaville and

⁹ Paragraph 8



from Zambia by using backbone fiber which is interconnecting with other submarine cables.

52. Therefore, the broader geographic scope of the market may be seen in that submarine cables landing on the coast such as the DRC may not necessary only serve DRC operators but may extend to operators beyond DRC to countries in the vicinity, thus facilitating the access to submarine cables such as the 2Africa West Cable System.
53. The CID observed that since DRC is located in the Central African region and is bordered by Angola, Central African Republic, Congo Brazzaville, and Zambia. Given that among these countries there are landlocked countries, it can be assumed that accessible to the cable landing station may extend beyond DRC to its neighbour. **Therefore, the CID considered that the geographic scope for cable landing station service is likely to be at least Central African region.**

Mobile telecommunication services and mobile money services

54. With regards to mobile telecommunication services and mobile money services, a national market limited to DRC can be identified given the regulatory requirements peculiar to each country where providers operate which have implications on the pricing. For example, one of the important requirements to provide telecommunication services in a country is access to and usage of spectrum which is allocated and managed by a local telecommunications regulator i.e., the Autorité de Régulation de la Poste et des Télécommunications du Congo (ARPTC) in the case of DRC. Spectrum is a national resource which cannot be used outside of the borders of the country in question. Although subscribers on a mobile network may roam when they are abroad, this is achieved through separate bilateral agreements between MNOs. This further supports the argument that the geographic scope of telecommunication services is national and for the current case DRC. It should also be noted that from a demand perspective, users are unlikely to timely switch to a service provider outside DRC in event of a SSNIP as they would be limited by registration requirements for subscribing and it may also prove costly to use a mobile service provider other than those registered in ones country of residence. Similarly, these restrictions would apply in the case of mobile money services whose **geographic scope is also considered as national.**

Conclusion of Relevant Market Definition

55. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant markets as the:
- **the provision of cable landing station services in Central African region;**
 - **the provision of mobile telecommunication services in DRC; and**



- the provision of mobile money services in DRC.

Market Shares and Concentration

56. The CID considered that the determination of market shares and concentration provides a first indication of whether a change in market structure could create or facilitate the exercise of market power. Market power is defined as the ability of firms to increase the price of a products or reduce product quality from those at competitive levels.

Provision of cable landing services

57. The CID observed that the JVCo is newly created, not yet operational and has no market shares attributable to it in the market for the provision of cable landing station services in DRC. The CID also observed that there is currently only one provider of cable landing station services in DRC, the Societe Congolaise des Postes et Telecommunications ("SCPT"), which effectively holds 100% market share. The proposed establishment of the JVCo is therefore expected to offer competition to the only provider of cable landing station services in the DRC in that MNOs and internet service providers will be able to switch to an alternative supplier.
58. The proposed transaction will not result in market share accretion in the market for the provision of cable landing station services given that the JVCo is not yet operational. However, once operational the JVCo will compete with the current provider SCPT, effectively breaking the monopoly held by the incumbent. The proposed transaction will therefore spur competition within the market for cable landing station.

Mobile telecommunication services and mobile money services

59. With regards to the provision of mobile telecommunication services and mobile money services, it is observed that the market structure will remain unchanged given the proposed transaction envisages the creation of a joint venture which will operate the cable landing station. The proposed transaction does not envisage Airtel RDC and Orange RDC merging their telecommunication or mobile money businesses and for this reason the market structure in telecommunications will remain unchanged post-merger.
60. The key players in the telecommunication market include Vodacom, which is a market leader, Airtel RDC, Orange RDC and Africell¹⁰. The Commission's research, engagement with stakeholders and submissions from CONAC indicated that with respect to provision of mobile telecommunication services the key players

¹⁰ <https://www.globaldata.com/store/report/drc-telecom-operators-market-analysis/> accessed on 15 Feb 2024.



are ranked in descending order as follows: Vodacom, Airtel, Orange and Africell. The CID also considered market share submissions by CONAC which indicated that with regards to the provision of internet service, the market share rankings for 2021 were as follows:

Table 4: Market share for internet service providers in 2021

Name of Company	Q1-2021	Q2-2021	Q3-2021	Q4-2021	AVERAGE
Africell	9,79	9,02	9,28	9,54	9,40
Orange	25,90	27,69	25,87	27,30	26,69
Airtel	26,54	27,35	27,92	27,98	27,45
Vodacom	35,76	33,95	34,93	33,18	34,46
Others	2,00	2,00	2,00	2,00	2,00
TOTAL	100	100	100	100	100

61. The CID considered that since the Parent Companies will co-own the JVCo there is a potential risk of the Parent Companies shares confidential information pertaining to their businesses through their representatives sitting on the Board of the JVCo. Further, given that the activities of the JVCo are a critical input into the operations of the Parent Companies in the provision of telecommunication services including internet services, the transaction has the potential to foreclose access to the JVCo by the competitors of the Parent Companies in telecommunication services including internet services. These likely concerns are further assessed below.

Barriers to Entry

62. The CID considered the entry requirements in the market for provision of cable landing stations which included financial costs for the construction of the landing station, the human expertise to oversee the operations and licensing/regulatory requirement to operate in the sector. Further, the CID noted that regulatory approvals for the construction of the cable landing station may limit the timely entry into this market. The CID observed that currently, there is only a single provider of cable landing station services in DRC despite the DRC telecommunications regulator having given approval to Liquid Telecom in 2020 to construct another cable landing station¹¹.
63. The CID considered that barriers to entry in the cable landing station market are prohibitive and this may give the JVCo incentives to foreclose access to the JVCo

¹¹ Parties' submission under para 6.2 of Exhibit B



by the Parent Companies and/or discriminate against competitors of the Parent Companies in the downstream market for mobile telephony services.

Consideration of Dominance/ Unilateral Effects

64. The CID noted that the activities of the parties do not raise horizontal overlaps both in the mobile telecommunications market or cable landing station services. The JVCO is a new entrant in the cable landing station market, which is currently served by only one operator, SCPT, who commands a market share of 100%. Therefore, the merged entity is unlikely to unilaterally affect the market.
65. With regards to the market for mobile telecommunication services and mobile money services, the CID noted that the market structure in this market will not be altered because of the proposed transaction given the absence of a horizontal overlap in the activities of the parties. Therefore, the CID did not further assess unilateral effects in this market.

Assessment of vertical effects

66. The CID observed that proposed transaction raises vertical overlaps given the Parent Companies, Airtel RDC and Orange RDC, require cable landing station services to provide telecommunication services. Similarly, the competitors of the Parent Companies Airtel RDC and Orange RDC in the telecommunication markets including internet service providers (such as Vodacom, Africell and internet service providers) require the cable landing station services as one avenue to provide internet services. Cable landing station services are an input into the mobile telecommunication services since they facilitate international connectivity.
67. Therefore, the proposed transaction may potentially raise input foreclosure concerns, if the JVCo elects to foreclose the Parent Companies' competitors in the market for telecommunication services access to the cable landing station services by completely denying access or raising the costs of access to internet services. The JVCo may offer favourable terms to its Parent Companies as opposed to the Parent Companies' competitors which may increase the operational costs of the competitors in the related market of mobile telephony services.
68. The CID considered that foreclosure may be likely where the parties (the JVCo and the JVCo Parent) have the incentive to do so. This may be possible where the JVCo and/or its parent companies hold considerable market power in any of the relevant markets. Foreclosure may also be possible where the parties are able to raise rival's costs by increasing their input prices or where the JVCo can stop supplying rivals in the downstream markets in favour of its vertically integrated parent companies.



69. The CID observed that the JVCo does not hold a dominant position in the market for cable landing station given the present of the incumbent SCPT which holds a monopoly position, pre-merger. The incumbent could therefore still provide an alternative viable option to the competitors of JV Parent companies as far as internet access is concerned. However, the CID observed that relevant stakeholders in the DRC confirmed that despite being the only provider, SCPT's quality of services may not be superior when compared to the services the JVCo intends to provide.
70. For instance, the CID considered that in terms of capacity and according to the merger filing, the JVCo is intended to connect the 2Africa cable which boasts to be "...one of the world's largest subsea cable projects interconnecting Europe, Asia, and Africa. The system will deliver more than the total combined capacity of all subsea cables serving Africa today, with a design capacity of up to 180Tbps...". On the hand it was noted from the Commission investigation that SCPT is connected to the West Africa Cable System¹² whose capacity is small when compared to the 2Africa Cable System that the JVCo will connect to.
71. Therefore, the CID considered that the JVCo may have the incentive to foreclosure or limit access to the JVCo cable landing station given the larger capacity than the current cable landing station. As a result, a foreclosure strategy could result in a distortion of market in the long run, where the merging parties would have exclusive access to better cable landing station, which would in turn serve to improve their services to their customers, to the detriment of their competitors. For this reason, SCPT may not be seem like a viable alternative once the JVCo start operating.
72. The CID, however, observed that the parties confirmed that the JVCo will provide fair and open access to all its landing provider services¹³. An open access network is one where there are several service providers which sell retail services over the same access network infrastructure simultaneously, allowing subscribers to decide from which service provider they will purchase their services. Open access encourages market entry from smaller, local companies and seeks to ensure that no one entity has market power. The CID considered that compliance by the merging parties with the fair and open access would alleviate the risks of foreclosure concerns.
73. The CID noted that investigations observed that the 2Africa West Cable System Consortium members which include Orange, Meta, China Mobile International Limited, Bayobab, Saudi Telecom Group, Telecom Egypt, Vodafone, WIOCC is

¹² The West Africa Cable System is a 14,530 km submarine cable system that connects 15 countries starting from South African to London, see <https://www.submarinenetworks.com/en/systems/euro-africa/wacs/wacs-overview>

¹³ Paragraph 3.3.3. of the Exhibit B – Joint Competitiveness Report submitted by the Parties



unlikely to accept restriction of access to the cable landing station and thereafter the 2Africa Cable System since more accessibility benefits the partners.

74. With regards to the likelihood of the JVCo raising costs as a foreclosure strategy, the observed that currently except for Vodacom and Liquid Telecom¹⁴, access to fiber through SCPT does not allow direct access by internet service providers or mobile network providers to the WACS but through an SCPT connection which then directly connects to the WACS landing station. This connection is provided at a fee. The CID further observed that the current cable landing access through SCPT are not reliable since the fiber cable were built with old technology and is often cut which disrupts service provision. On the other hand, the CID observed that the JVCo will allow a direct access to the cable landing station by the providers that own capacity on the 2Africa Cable System and for providers who do not have capacity, they will be allowed to access fiber by leasing capacity from providers with capacity.
75. The CID observed that the JVCo is not likely to have the incentive to increase costs of access since it requires more providers to access the submarine cables for the cable landing station to be viable. For the same reasoning, it is unlikely for the JVCo to stop supplying competitors of the JV Parent companies since this will be counterproductive to the sustainability of the JVCo business.

Consideration of Coordinated Effects

76. The CID considered that the removal of a firm through a merger may facilitate coordination, express or tacit, among the remaining firms in the industry, leading to reduced output, increased prices, or diminished innovation. Stable or successful coordination requires an ability to detect and punish deviations that would undermine the coordinated interaction.
77. The CID observed that the JVCo will be jointly owned by the Parent Companies, thus its board shall comprise representatives from both companies. It is considered that there is a risk of coordination effects arising in the form of collusion relating to the mobile telecommunications services and mobile money markets where both Parent Companies are active.
78. The Parent Companies may use the Joint Venture platform to access and exchange with each other sensitive data or information related to the mobile telecommunication services and mobile money markets.
79. Further, the Parent Companies may also use the joint venture platform to access sensitive information belonging to their competitors who may wish to access the

¹⁴ Vodacom and Liquid Telecom have capacity on WACS as such they are able to connect directly to the SCPT cable landing station



joint venture. However, the CID considered that a cable landing station is not likely to act as a conduit for sharing of sensitive business information. The cable landing station does not access business information but only ensures the maintenance of operation of a cable landing station. Each provider accessing a cable landing station connects its backbone fiber to its equipment contained in the cable landing station.

80. In view of the above, the CID considered that the risk of sharing of sensitive information is unlikely to arise given that cable landing station does not access such information.

Consideration of Effect on Trade between Member States

81. The CID considered that competition concerns in the form of foreclosure are unlikely to arise. Further, the transaction is not likely to have negative effect on trade between Member States through the restricting of access to the JVCo to only the Parent Companies. The Commission observed that JVCo will be operate on an open access basis and it is in the interest of the 2Africa Consortium members to ensure more accessibility to the 2Africa cable system through the JVCo. Therefore, restriction of the access to the JVCo is not likely.
82. The CID concluded that the JVCo, as a new entrant, is not in a dominant position and further, alternative means to access fiber optic are available including through the incumbent provider, SCPT and from providers outside DRC. Therefore, the incentive to restrict access to the JVCo is not likely given the availability of alternative fiber optic access to MNOs and ISPs.

Consideration of Third-Party Views

83. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of DRC, Malawi, Mauritius and Seychelles which confirmed the absence of competition and public interest concerns.
84. The Commission considered the submissions from DRC that the transaction raises vertical integration and there is risk of foreclosure and restriction of market access since the JVCo is intended to supply services to its parent companies.
85. The Commission assessed submissions from relevant stakeholders which included Vodacom, Africell, Microcom, SCPT, ARPTC, Orioncom, and Group Vivendi Africa.
86. The CID assessed submissions from stakeholders which concluded that the proposed transaction is likely to be beneficial to consumers by increasing internet access. Further, the JVCo is not likely to limits its provision of services to only the Parent Companies given that it will operate on an open access principle.



Determination

87. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
88. The CID, therefore, approved the transaction.
89. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 20th day of May 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

