



**COMESA Competition Commission**  
Kang'ombe House, 5<sup>th</sup> Floor  
P.O. Box 30742  
Lilongwe 3, Malawi  
Tel: +265 111 772 466  
Email- [compcom@comesacompetition.org](mailto:compcom@comesacompetition.org)



**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/02/05/2024**

**Decision<sup>1</sup> of the 107<sup>th</sup> Meeting of the Committee Responsible  
for Initial Determinations Regarding the merger involving  
Digital Centers for Data and Communications Company and  
CMC Investments I Limited and CMC SA Investments  
Proprietary Limited**

**ECONOMIC SECTOR: telecommunications**

**20 May 2024**



---

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

## 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 8 February 2024, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of the proposed acquisitions by Digital Centers for Data and Communications Company (“**Center3**”) of all the issued ordinary shares in CMC Investments I Limited (“**CMC Investments**”) and CMC SA Investments Proprietary Limited (“**CMC SA**”) (collectively the “**targets**”), 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.



## The Parties

### Center3

4. The parties submitted that Center3 owns and operates data centers and provides networking services mainly in Saudi Arabia. Its business activities involve the provision of carrier services, internet exchange services and enterprise services. Center3 is a wholly owned subsidiary of Saudi Telecom Company (“**STC**”), a telecommunications service provider principally in Saudi Arabia and Kuwait. Center3, STC together with companies controlled by STC are collectively referred to as the “**acquiring group**”. The parties submitted that Center3 does not control any entities incorporated in COMESA.
  
5. The parties submitted that the primary business operations of Center3 can be summarised as follows:
  - i. **Operation of data centres:** Its data centre offering includes (i) a white space service that provides clients with the flexibility to design their own customer infrastructure (such as racks or caging) or have their specific data centre solution designed, (ii) collation services, and (iii) technical assistance for clients who have their equipment hosted in Center3 data centres;
  
  - ii. **Carrier services,** including provision of networking services and the carriage of internet traffic via IP transit and terrestrial and subsea data connectivity;
  
  - iii. **Internet exchange services,** including providing options for exchanging internet traffic between network carriers and content providers, and providing peering services to establish network connections between customers and different content providers; and
  
  - iv. **Enterprise services,** including offering secure connections via direct internet access, ethernet connection, multi-protocol label switching (“MPLS”) Virtual Private Network Internet access and MPLS Virtual Private Network.
  
6. The parties submitted that within the Common Market, the Acquiring Group operates in Egypt, Eswatini, Kenya, Libya, Malawi, Mauritius, Tunisia, Zambia and Zimbabwe.



## CMC Investments and CMC SA (the “targets”)

7. The parties submitted that the targets are Pan-African providers of wholesale connectivity services, offering data connectivity services and managed connectivity solutions to businesses. The targets provide their interconnectivity services in several COMESA Member States and, in addition to Mauritius, have incorporated entities in Zambia and Egypt. The targets’ business activities mainly involve the provision of connectivity to offices, public or private cloud, connecting customers’ Wide Area Network (WAN) services across Africa, Middle East, the Americas, Europe, the United Kingdom and Asia Pacific and providing networking solutions to manage increased network traffic and deliver secure network connectivity (i.e., providing SD-WAN solutions). It was submitted that the targets are ultimately controlled by the Carlyle Group, a multi-national private equity fund based in the United States of America.
8. The parties submitted that the targets’ main business activities include the following:
  - i. providing connectivity and cloud solutions to global carriers who have customers requiring connectivity in the Middle East and Africa, or global enterprises that require services connectivity in the Middle East and Africa;
  - ii. connecting customers’ Wide Area Network (WAN) services across Africa, Middle East, the Americas, Europe, the United Kingdom and Asia Pacific; and
  - iii. providing networking solutions to manage increased network traffic and deliver secure network connectivity (i.e. providing SD-WAN solutions).
9. The targets have existing relationships with local network connectivity providers without owning infrastructure in any Country outside South Africa. Under the existing agreements with the local suppliers in Africa and the Middle East, the targets buy/lease the connectivity, consolidate and provide services, such as international capacity and local loop services, to meet their customers’ multi-country connectivity needs.
10. The targets also serve enterprise clients by providing managed services directly. The targets’ customers include (i) multinational conglomerate end users who need enterprise grade connectivity between their sites located in different countries across Africa and the Middle East; and (ii) African-based corporates who would like to establish global connectivity.



11. In the Common Market, the targets (through CMC Investments) are only active in relation to the wholesale supply of internet connectivity services. In this regard, the targets act as a wholesaler, sourcing data connectivity services in Member States for their global carrier customers - the targets do not have any infrastructure or assets to provide connectivity services in the Common Market.
12. The parties submitted that within the Common Market, the targets operate in Burundi, Comoros, the Democratic Republic of Congo (“**DRC**”), Djibouti, Egypt, eSwatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Seychelles, Sudan, Tunisia, Uganda, Zambia and Zimbabwe. The targets conduct their business in the Common Market through several operating entities incorporated in the Common Market, namely CMC Investments, CMC Investments Holdings Ltd, CMC Telecommunications Zambia Ltd, and CMC Telecommunications Egypt LLC (a newly incorporated entity which has not yet started trading).

### **Jurisdiction of the Commission**

13. 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.*
14. 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. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.



## Details of the Merger

15. The transaction involves the proposed acquisitions by Center3 of all the ordinary shares in CMC Investments and CMC SA.

## Competition Assessment

### Consideration of the Relevant Markets

#### *Relevant Product Market*

16. Paragraph 7 of the Commission's Guidelines on Market Definition states that a "*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*".
17. Center3 is active in several sectors including the operation of data centers in Saudi Arabia, carrier services, Internet exchange services and enterprise services. Center3 has no physical presence in the Common Market, despite providing its services herein. The targets are only active in the wholesale supply of internet connectivity services, in terms of which they act as a wholesaler, sourcing data connectivity services in COMESA Member States for global carriers who have customers requiring connectivity, or global enterprises that require connectivity services in the relevant Member States. For purposes of analysis of the competitive effects of the proposed transaction, the focus is limited to the activities of the target undertaking in the Common Market.

#### *Wholesale supply of internet connectivity services*

18. Wholesale supply of internet is where a provider purchases capacity from submarine cable, satellite, or backbone fiber optic cable for a further reselling to businesses or other end users which is priced accordingly.
19. Competition Authorities have considered the wholesale internet connectivity services as a distinct market from retail internet connectivity (i.e., end user buying internet directly from a wholesaler or from a reseller). In *MTN/Verizon*<sup>2</sup>, the South African Competition Tribunal, considered that under the internet services value chain, there exists a distinct market for wholesale and retail. The two markets were considered distinct on the basis of the distinct competitive settings where wholesale compete on an infrastructure basis as opposed to resellers who compete on a marketing basis. The CID noted that the European Commission has also considered the wholesale supply of internet connectivity services as a distinct market. Among the factors for distinguishing the wholesale supply of internet

---

<sup>2</sup> South African Competition Tribunal consideration of the Mobile Telephone Networks Holdings (Pty) Ltd / Verizon South Africa (Pty) Ltd 84/LM/Jul08, see summary of decision on available on <https://www.saflii.org/za/cases/ZACT/2009/17.html>



connectivity with the retail market is the price at which the respective service is offered and the end use. While wholesale internet is meant for reselling, retail internet is meant for final use.

20. Given the target is active in the provision of wholesale internet connectivity services in the Common Market and noting the absence of a horizontal overlap in the activities of the parties, it is considered that the relevant market is the wholesale supply of internet connectivity services.

### ***Relevant Geographic Market***

21. 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"*<sup>3</sup>.

22. It is observed from the merger filing that the target sources data connectivity services in the Common Market for global customers which require connectivity to and from the Common Market. The competition constraints on the target in this respect are more likely to be on a wider scale than national, emanating from competitors with the capacity to supply similar services beyond a single Member State.
23. It can be confirmed from the parties' submission that the targets' provision of wholesale internet connectivity services in the Common Market are in several Member States despite them not being physically present. This is considered as further proof that the wholesale supply of internet connectivity services is cross-border. In *MTN/Verizon*<sup>4</sup>, it was acknowledged that the provision of wholesale internet connectivity services could be regional, given the ability to provide such services cross-border and the possibility of a broader geographic market perspective was not discounted.
24. In view of the above, it is considered that for the purposes of assessing the current transaction, a COMESA-wide market is adopted.

---

<sup>3</sup> Paragraph 8

<sup>4</sup> Ibid



### **Conclusion of Relevant Market Definition**

25. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID has identified the relevant markets as the **wholesale supply of internet connectivity services in COMESA**.

### **Market Shares and Concentration**

26. The parties submitted their markets shares in the wholesale supply of internet connectivity services in the Common Market as follows:

**Table 1: Market shares for the wholesale supply of internet connectivity services in COMESA**

<b>Country</b>	<b>Estimated market share</b>
Burundi	[0 – 5]%
Comoros	[0 – 5]%
Democratic Republic of Congo	[0 – 5]%
Djibouti	[0 – 5]%
Egypt	[0 – 5]%
Ethiopia	[0 – 5]%
Eritrea	[0 – 5]%
Kenya	[0 – 5]%
Libya	[0 – 5]%
Madagascar	[0 – 5]%
Malawi	[0 – 5]%
Mauritius	[0 – 5]%
Rwanda	[0 – 5]%
Seychelles	[0 – 5]%
Somalia	[0 – 5]%
Sudan	[0 – 5]%
Swaziland	[0 – 5]%
Tunisia	[0 – 5]%
Uganda	[0 – 5]%
Zambia	[0 – 5]%
Zimbabwe	[0 – 5]%

27. It is observed that the targets' market shares within the Common Market are not significant. It should also be noted that merged entity is likely to continue facing competition from players other players who are also active in the wholesale internet connectivity service market such as MTN, Safaricom, Liquid Telecoms, Vodafone, Bharti Airtel, Orange and Smartnet. These players hold significant market shares in this market.
28. In light of the above and given the absence of market share accretion, the transaction is not likely to raise any competition concerns in the Common Market.





## **Consideration of Third-Party Views**

29. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Eswatini, Kenya and Seychelles which confirmed the absence of competition and public interest concerns.

## **Determination**

30. 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.
31. The CID, therefore, approved the transaction.
32. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 20<sup>th</sup> day of May 2024

**Commissioner Dr Mahmoud Momtaz (Chairperson)**

**Commissioner Lloyds Vincent Nkhoma**

**Commissioner Islam Tagelsir Ahmed Alhasan**

