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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/8/41/2022

Decision[1] of the Eighty-Eighth (88th) Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by KCB Group Plc of Trust Merchant Bank S.A.

ECONOMIC SECTOR: Banking and Finance

18 November 2022

[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 8 September 2022, the COMESA Competition Commission ("**Commission**") received a notification of merger involving KCB Group Plc ("**KCB**") as the acquiring undertaking and Trust Merchant Bank S.A. ("**TMB**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the "**Regulations**").

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

KCB (the acquiring undertaking)

4. The acquiring undertaking, KCB, is a listed non-operating holding company incorporated under the laws of Kenya. KCB is listed on the Nairobi Securities Exchange and cross listed on the Dar es Salaam Stock Exchange, Uganda Securities Exchange, and Rwanda Stock Exchange.

5. KCB was previously incorporated under the laws of Kenya as Kenya Commercial Bank Limited on 12 November 1970. Pursuant to a restructuring in 2016, KCB became a listed non-operating holding company and transferred its banking business to KCB Bank Kenya Limited which is also incorporated under the laws of Kenya.

6. KCB's subsidiaries are active in the provision of commercial banking products and financial services to retail and corporate clients, primarily banking products which include personal and business banking services, current accounts, saving accounts, fixed deposit accounts, term loans, letters of credit, guarantees, overdraft facilities, asset finance, trade finance, project finance and mortgages. KCB provides dealership, insurance agents and broker services in Kenya.

7. Within the Common Market, the KCB Group operates through the following directly or indirectly controlled subsidiaries:

Table 1: List of KCB's directly/indirectly controlled entities in COMESA

Member State	Name of Subsidiary
Burundi	KCB Bank Burundi Limited
Kenya[2]	KCB Group Plc
	KCB Bank Kenya Limited[3]
	National Bank of Kenya Limited
	KCB Capital Limited
	KCB Foundation
	Kenya Commercial Bank Nominees Limited
	Kencom House Limited
	KCB Bancassurance Intermediary Limited
Rwanda	BPR Bank Rwanda Plc
Uganda	KCB Bank Uganda Limited

2 The parties submitted that Kenya Commercial Finance Company Limited, and Savings & Loan Kenya Limited are currently dormant companies.
3 KCB Bank Kenya Limited has a representative office in Ethiopia, whose role is to generate leads for KCB Bank Kenya Limited, which then has to follow up on the leads and close the business. Accordingly, the parties submitted that the Ethiopia representative office does not generate any turnover nor hold assets in Ethiopia

TMB (the target undertaking)

8. TMB is a commercial bank incorporated under the laws of the Democratic Republic of Congo ("**DRC**") and it offers commercial banking services. TMB controls Afrissur, a public company incorporated under the laws of the DRC.

9. Afrissur is a newly formed company, incorporated on 14 June 2019, which only began trading in 2021. Afrissur offers life insurance services.

10. Within the Common Market, TMB and Afrissur have operations in one COMESA Member State, namely the DRC.

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:

    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.

12. The undertakings concerned have operations in two or more Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold assets of more than USD 10 million in the Common Market. In addition, the merging parties do not hold more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is, therefore, notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

13. In terms of the proposed transaction, KCB will initially acquire 85% of the entire issued share capital in TMB. The remaining shareholders of TMB will continue to hold the balance of the shares for a period of not less than two (2) years, after which KCB may acquire their shares.

14. The proposed transaction will enable the KCB Group to expand its reach within the region and enable it to achieve and maintain sustainable long-term success in the DRC. Further, it will help the KCB Group to enhance financial inclusivity and diversification in the region as well as increase competition through efficient offerings and the availability of various banking products and opportunities to its customers.

15. As a result of the proposed transaction, TMB will enhance its ability to provide banking services to a wider section of the population in the DRC. Additionally, TMB will benefit from the privileged access to various capital markets to more effectively support the structuring needs of the local economy, and customers will benefit from advanced digital solutions and broader support in trade finance.

Competition Assessment

Relevant Product Markets

16. The CID observed that both parties are active in the provision of commercial banking and insurance services. Specifically, the CID noted that KCB is active in the provision of commercial banking products and financial services to retail and corporate clients in Burundi, Kenya, Rwanda, and Uganda. Further, the KCB Group is active in dealership, insurance agents and broker services in Kenya. The CID also noted that TMB is active in the provision of retail and corporate banking services in the DRC. The TMB Group also offers life insurance services in the DRC through TMB's subsidiary, Afrissur. The CID focus its relevant market assessment on these areas where the parties are active.

Provision of retail and corporate banking services

17. Retail banking entails all banking services provided to private individuals and very small enterprises, such as deposit account services (i.e., current accounts, saving accounts, cash deposits, cheque collection etc.); payment services including ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques; lending (personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution)[4]. To the contrary, corporate banking (or business banking) entails provision of banking services to a diverse clientele, ranging from small- to mid-sized local businesses with a few million in revenues to large conglomerates with billions in sales and offices across the country.

18. The banking services provided to corporate and retail customers can be seen as similar with a key distinguishing feature being the manner in which the services

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

are provided which may depend on the needs of a retail or corporate customer. For instance, corporate customers unlike retailer customers often get a dedicated bank teller in view of the large sums of money they deposit. Further, corporate customers are able to negotiate favourable interest rates against their deposits as they possess bargaining power as such may easily access loans.

19. In its decisional practices[5], the CID has considered retail and corporate banking services as distinct markets on account of the differences in the manner the services are provided and the different customers the services are intended to serve. For instance, the CID noted that retail banking services are standardised, and customer-oriented while corporate banking services are business-oriented and can be tailored or customized according to the specific needs and requirements of the clients. The CID further noted that in retail banking, the number of clients with small-value accounts tend to be more than in corporate banking. Thus, retail banking has an extensive client portfolio i.e., retail banking is volumes driven.

20. On the other hand, the clientele under corporate banking is much less but the clients tend to have significant balances and often make high-value transactions i.e., corporate banking is value driven. Thus, corporate banking is said to have a small client portfolio with high-value transactions. Thus, from a supply perspective retail and corporate banking services can be differentiated.

21. The CID further noted that there exists a strong relationship between the bank and its corporate clients, implying that the provision of corporate banking services requires professionals with high standard customer relationship expertise. Due to these transactional and existing distinctive requirements, and complex product nature in corporate banking services, it is highly unlikely that in response to a small but significant non-transitory increase in the cost of accessing retail banking services, a significant number of retail customers would switch swiftly to corporate banking services. Therefore, from a customer perspective the CID concluded that corporate and retail market segments are distinct.

22. In view of the above, the CID concluded that corporate banking and retail banking comprised separate markets.

Provision of retail deposit, lending and payment services v. provision of corporate deposit, lending and payment services

23. The CID further considered that retail and corporate banking services can generally be segmented into narrower markets such as loan, deposit and payment

[5] Para 11 of Case File No. CCC/MER/02/03/2021 - the Acquisition by Arab Bank Corporation (B.S.C) of 99.42% of the share capital of Blom Bank Egypt S.A.E; Para 29 of Case File No. CCC/MER/12/34/2022 - African Banking Corporation Zambia Limited T/A Atlas Mara Zambia by Access Bank Zambia Limited; and Para 28 of Case File No. CCC/MER/09/26/2021 - Standard Bank Group Limited and Liberty Holdings Limited.

services. These services can be considered as distinct due to their unique characteristics and intended use. For instance, a deposit can be seen as an investment made by a customer in a bank for safe keeping or for purposes of gaining interest for the future benefit of a customer. To the contrary, a loan is meant to meet financial gaps but which the customer repays the bank in full plus any applicable interest. Further, banks may require collateral from a customer before a loan is issued as a measure to mitigate any risks of default. Payment services on the other hand entail services that complement cash deposit or withdrawal through electronic payment, and which comprise either direct debit, standing order, credit transfer, debit card or credit card transaction or mobile banking payment solutions.

24. The CID observed that the above demonstrates that loans, deposits and payment services are distinct by virtue for their characteristics and intended usage thus they are not likely to be substitutes. A customer wishing to save money for future consumption is likely to opt for savings/deposit services and not a loan service or payment services. Further, in an event of a rise in the cost of borrowing/loan, a customer is not likely to switch to deposit services or payment services. Such a customer would rather opt for other credit facilities outside the banking system such as family, micro-finance institutions or loan shacks which can offer similar services to bank loans, although on different contract terms. The CID further noted that payment services can also be considered as distinct from deposit or loan services since payment services play the complementary role of facilitating deposit transfer across banks or from bank to customers or from customers to banks (i.e., mobile money to bank account transfer) which may be carried out through online platforms. In this respect, banks may be seen to act as financial intermediaries facilitating the movement of funds between other financial institutions and private individuals.

25. The CID noted that retail and corporate customers both access deposit, loan and payment services. Demand and supply of these distinct services can therefore be distinguished depending on the type of customer. For instance, payment services to corporate and retail customers can be distinguished by the large amount of funds' transfer associated with corporate customers than retail customers. Corporate customers further tend to receive priority treatment from bank compared to retail customers.

26. In light of the different purposes and the distinctive features of deposits, loans, and payment services offered to corporate and retail customers, the CID considered that narrow markets comprising deposit, loan and payment services distinguished on the basis of retail and corporate customers can be construed.

27. In view of the foregoing, the CID determined that the following relevant product markets:

a) **provision of corporate deposit services.**

b) **provision of retail deposit services.**

c) **provision of corporate lending services.**

d) **provision of retail lending services.**

e) **provision of corporate payment services; and**

f) **provision of retail payment services.**

The provision of insurance services

28. The CID noted that within the insurance industry, clients may cover their risk directly with an insurer or through an insurance broker. In the latter scenario, the broker only distributes insurance cover issued by an insurer and does not issue the insurance cover itself.

29. From a supply perspective the activities of a broker are different from the activities of an insurer since an insurer offers its own insurance product contrary to a broker which plays a mediation role between insurers and clients and levies a commission for brokering. This distinction was acknowledged in ***Aon/Willis Towers***[6] where the CID concluded that distribution of insurance by brokers and provision of insurance services by insurers constituted distinct markets.

30. The CID recalled that the target is not active in the insurance brokerage services while the acquirer operates. Given the two services are distinct, the focus of the assessment is limited to the provision of insurance services where the target is active.

31. Insurance services can be distinguished as life insurance, non-life insurance, and re-insurance.[7] Life insurance entails the coverage against the risk of death whether in the form of assurance on survival to stipulated age; death; or insurance against personal injury and disability resulting from accident or sickness[8]. Non-life insurance entail coverage against risks of accidents, fire, damage to property, motor vehicle liability, aircraft liability, miscellaneous financial loss and legal expenses. Re-insurance entails a situation where an insurance company with policyholders, transfers some of the risks incurred to other insurance enterprises. In this regard, life insurance, non-life insurance and re-insurance services can be categorised as distinct services that are not substitutable based on the product characteristics and intended usage.

32. Life insurance is paid upon the death of a policyholder in favour of the beneficiaries while non-life insurance covers for loss or damage of property and includes motor

[6] CCC/MER/3/10/2020, 10 November 2020.
[7] https://www.oecdilibrary.org/docserver/9789264220676en.pdf?expires=1631523522&id=id&accname=guest&checksum=25678AABDD51E5EE80826328A6628702 Page 400, accessed on 25 September 2022.
[8] https://www.acko.com/general-info/non-life-insurance/ accessed on 6th December 2021

insurance, home insurance and medical insurance. On the other hand, re-insurance can be distinguished from life and non-life insurance given that the customers that demand each of the categories will have different needs. Further, it is likely that there will be a significant difference in the premiums that would apply in reinsurance as opposed to life or non-life insurance. On this basis, the CID concluded that life insurance, non-insurance and reinsurance can be distinguished given that the intended purpose under these three general categories is different.

33. From demand perspective, a person looking for a life insurance cover is not likely to substitute a product under non-life insurance category such as motor insurance, home insurance or medical given that in the unfortunate event of death, the person's beneficiaries may not be compensated by using a motor, home or medical insurance policy. From a supply perspective, substitution may be possible across the various forms of insurance given that the expertise needed to offer such insurance services are applicable across life-insurance, non-life insurance and re-insurance services.

34. The CID, in its previous decisional practices[9], observed that distinct markets exist between life insurance, general insurance and re-insurance due to the different nature of the services which are demanded differently by difference customers. In these cases, the CID noted that while life insurance entails a contract that offers financial compensation in case of death or disability, non-life insurance relates to coverage of risk and financial compensation on any loss other than death while re-insurance entails an insurance company assuming the risk of another insurance company's portfolio.

35. In view of the above and in line with its decisional practice[10], the CID considered that life insurance, non-life insurance and re-insurance are distinct markets. Further, given that the target undertaking provides life insurance services **the relevant market for purposes of the competitive assessment is determined as the provision of life insurance**.

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

    a) **provision of corporate deposit services,**
    b) **provision of retail deposit services,**
    c) **provision of corporate lending services,**
    d) **provision of retail lending services,**

[9] See para 13, Case File No. CCC/MER/12/33/2020 - *Allianz Africa/Jubilee,* decision dated 16th April 2021; and Para 22-23 of Case File No. CCC/MER/09/26/2021 - Standard Bank Group Limited and Liberty Holdings Limited, decision dated 20th February 2022.
[10] Ibid.

e) **provision of corporate payment services,**

f) **provision of retail payment services, and**

g) **the provision of life insurance services.**

Relevant Geographic Market

37. With respect to retail deposits, loans, payments services, the geographic scope of the market is often limited to national. The CID recalled from the parties' submission that the acquiring group is providing its deposit, loan and payment services in Burundi, Kenya, Rwanda and Uganda while the target provides its services in the DRC only. By virtue of the licences they are given, banking services tend to be regulated under the relevant laws in a country where the services are provided such that different requirements for operation are likely to apply in different countries. The CID noted that banking is a heavily regulated sector for the purpose of maintaining the stability and soundness of the financial system. Prudential rules and standards are set by national governments and regulators as well as international financial standard-setting bodies.[11]

38. The CID noted from a supplier's perspective that banks are closely regulated by respective central banks of the countries where they operate such that extending their operations beyond one country would first require relevant approvals[12]. The CID noted that, as much as banks may switch their operations beyond one country, such switching is not likely to occur in a timely manner in response to a 5% to 10% increase in expected profits. Thus, the geographic scope is likely to be limited to national.

39. The CID further noted from a demand perspective that customers may switch their services from banks across countries in response to an increase in the charges levied by banks in one country. For instance, expatriates working away from their home countries are often faced with a choice of operating a local account in their country of work or maintain bank accounts in their home country but still meet daily expenditure needs by using ATMs or online banking platforms. This may indicate that the geographic scope for banking services could be broader than national. However, this may not be sustainable and may only apply to a small sample of clients which may not be representative of how the majority ordinary customers may respond to such a scenario. In view of the above and since the target provides banking services only in the DRC, the CID considered the relevant geographic market as national, pertaining to this Member State.

[11] https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-fsbnk.pdf, accessed on 12 October 2022.

[12] Para 44 of Case File No. CCC/MER/09/26/2021 - Standard Bank Group Limited and Liberty Holdings Limited, decision dated 20 February 2022.

40. With respect to corporate deposits, loans, payments services, the CID considered that the geographic scope is likely to be global given that corporate customers can engage their banking service providers beyond their national boundaries to effect their request. The CID considered that certain categories of corporate customers may opt to hold their bank accounts outside their countries of operations to avoid higher costs of operations (i.e., high interest rates, banks charges and foreign exchange restrictions) and to have flexibility/ better access to quality service from bank beyond their country of operations. This may broaden the geographic scope of the market.

41. With respect to the provision of life insurance services, the CID recalled that the target provides its services in the DRC only where it is regulated under the relevant laws in the country such that different requirements for operation are likely to apply in different countries. Similarly, the CID noted that the EC, in ***Canada Life/Irish Life***[13], considered the geographic scope of life insurance services as national on the basis of the existence of national distribution channels, different regulatory framework and fiscal regimes. Among the reasoning for limiting the geographic market to national was that customers' search for life insurance products tended to be limited to local providers and that competition amongst providers tended to be limited with the geographic boundaries of a single country. Further, in terms of clients' convenience in lodging claims, it is likely that clients would prefer to lodge claims within their country of residence as opposed to logging a claim beyond a country of residence which may be time consuming and costly to a client.

42. In view of the above and given that the target is providing life insurance services in one geographic market, being the DRC, the CID determined the relevant geographic market as national and pertains to the DRC.

43. For purposes of assessing the proposed transaction, and without prejudice to the its approach in future similar cases, the CID has identified the following relevant markets:

    a) **provision of retail deposit services in the DRC.**
    b) **provision of retail lending services in the DRC.**
    c) **provision of retail payment services in the DRC.**
    d) **global provision of corporate deposit services.**
    e) **global provision of corporate lending services.**
    f) **global provision of corporate payment services; and**
    g) **the provision of life insurance service in the DRC.**

[13] Case COMP/M.6883 Canada Life/Irish Life, para 19.

Market Shares and Concentration

44. The parties submitted that the target undertaking's and its top competitors' market shares in the broader commercial banking sector and life insurance sector in the DRC as follows.

Table 2: Estimated Market Shares in terms of revenue derived from the provision of commercial banking services in the DRC

Name of Company	Estimated Market Share (%)	
	Pre-merger	Post-merger
Rawbank	[28 -31]	[28 -31]
Equity Banque Commerciale du Congo	[20 – 24]	[20 – 24]
TMB	**[7-10]**	**[7-10]**
Ecobank	[4-7]	[4-7]
FBN Bank DR Congo	[4-7]	[4-7]
Sofibanque	[2-4]	[2-4]
Others	[14-16]	[14-16]

45. From table 2 above, the CID noted that pre-merger, the TMB's market share in the broad market for the commercial banking services is not significant. The CID further noted that the post-merger, the merged entity's market share in the same category will remain same, given that the merging parties are operating in different Member States in the Common Market. The transaction will not lead to any change in the market structure and the market concentration level will not be affected hence competition will continue to thrive. Therefore, the CID considered that the transaction is not likely to negatively affect competition in the market for the commercial banking services in the DRC market. The CID further observed that the banking sector in the DRC is likely to remain competitive since it is fragmented with fourteen (14) commercial banks currently in operation.

46. With regards to life insurance services, the parties submitted Afrissur's (TMB's subsidiary) estimated market share and its competitors' market shares in the DRC, as follows.

Table 3: Estimated Market Shares of Afrissur's and its competitors in the provision of life insurance services in the DRC

Name of Company	Estimated Market Share (%)	
	Pre-merger	Post-merger
Rawsur Life	[70-75]	[70-75]
Afrissur	**[12-17]**	**[12-17]**
Activa Vie	[10-15]	[10-15]

47. The CID noted that pre-merger, Afrissur's market share in the provision of life insurance services is not significant and it will continue to face competition from other players namely Rawsur Life and Activa Vie. The CID further observed that post-merger, the market structure in life insurance will remain the same as such

the market concentration level will not be affected hence competition will continue to thrive Therefore, the CID considered that the transaction is not likely to negatively affect competition in the market for the life insurance services in the DRC.

48. In view of the foregoing, the CID concluded that the proposed transaction is not likely to raise any competition concerns in the relevant markets.

Consideration of Public Interests

49. proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are not significant. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers who will still have access to alternative suppliers.

Consideration of Third-Party Views

50. Submissions were received from national competition authorities of Kenya which submitted that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

51. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

52. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 18th day of November 2022

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Lloyds Vincent Nkhoma

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Commissioner Islam Tagelsir Ahmed Alhasan