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Common Market for Eastern
and Southern Africa

Date: 26th August 2021

RFV- Decision/31/2019

Request for Views on Implementation of the Decision of the Sixty-Seventh (67th) Committee Responsible for Initial Determination Regarding the Acquisition of 100% Shareholding in Eaton Towers Holdings Limited by ATC Heston B.V.

On 22nd December 2019, the Committee Responsible for Initial Determination (“CID”) at its Sixty-Seventh (67th) meeting granted conditional approval of a merger regarding the acquisition of 100% shareholding in Eaton Towers Holdings Limited (“ETHL”) by ATC Heston B.V. (the “**acquirer**”), pursuant to Article 26 of the COMESA Competition Regulations (the “**Regulations**”) (see [CID Decision](#)):

In its decision, the CID defined the relevant market as the market for the leasing of antenna space on towers and the provision of ancillary services in Kenya and Uganda. The CID observed that the transaction would result in a change in the market structure in Kenya and Uganda due to an increase in the market concentration in the relevant markets. Further, the CID observed that competition concerns were more likely in Uganda market as opposed to Kenya since the merged entity would hold a dominant position with a market share of 80%. The CID observed that the merged entity would potentially foreclose the relevant market through unilateral conduct. In this respect, the CID determined that the merger was likely to substantially prevent or lessen competition in the relevant markets in Uganda.

In order to address the competition concerns identified in the assessment of the merger, the CID approved the merger on the basis of undertakings submitted by the merging parties which included the following:

- a. ATC shall procure that upon closing of the Transaction, its operating entities in Uganda, including ATC Uganda Limited and Eaton Towers Uganda Limited (together, the “Uganda Operations Entities”) shall continue to honour the terms of existing agreements in Uganda with customers for their duration, unless otherwise terminated for reasons not related to the Transaction;
- b. ATC shall procure that the Uganda Operating Entities shall not discriminate among mobile network operators (MNOs) in Uganda in the provision of leasing space on its telecommunication towers and roof tops or related services. The Uganda Operating Entities should develop an objective criterion to use when determining the MNOs, it leases space to. The criteria should be submitted to the

Commission for consideration within one (1) month from the date of approval of the Transaction;

- c. ATC shall procure that the Uganda Operating Entities shall ensure that the pricing for the provision of leasing space on its telecommunication towers and roof tops or related services are based on the existing indexation formula agreed upon by the parties to those agreements;
- d. ATC shall procure that each of the Uganda Operating Entities shall comply with all relevant laws in Uganda including remedies imposed by the Uganda Communications Commission in authorizing the transaction, (collectively, the “**Undertakings**”).

As part of its assessment of the parties’ compliance with the CID Decision, the Commission hereby invites all interested stakeholders, including competitors, suppliers and customers of the merging parties to submit written or oral representations to the Commission with regard to the Undertakings in the CID Decision by email to: akamanga@comesa.int or via phone on +265 1 772 466. All representations should be submitted to the Commission not later than **9th August, 2021**. We wish to assure all stakeholders that any submissions made to the Commission shall be treated with the strictest confidentiality and shall be used for the sole purpose of the instant matter.

If you wish to seek further details and/or clarifications on any aspect in this matter or need assistance you may get in touch with **Mr. Ali Kamanga, Senior Analyst - Mergers and Acquisitions on Tel: +265 (0) 1 772 466 or E-mail akamanga@comesa.int**.

All representations submitted to the Commission will be treated with the strictest confidentiality and will only be used for the purpose of this inquiry.