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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/6/15/2020

Decision[1] of the Seventy-Second (72nd) Committee Responsible for Initial Determination Regarding the Proposed Merger involving IPS Cable Systems Limited and SEACOM Holdings Ltd (Mauritius)

ECONOMIC SECTOR: Telecommunications

4th September 2020

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 7th July 2020, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of the proposed merger involving IPS Cable Systems Limited ("**IPS Cable**") and SEACOM Holdings Ltd ("Mauritius") ("**SEACOM**").

2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the "**Regulations**"). 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. The Committee Responsible for Initial Determination (the "**CID**") established that the parties operate in more than one COMESA Member State and they meet the prescribed notification thresholds. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

IPS Cable (the Acquirer)

4. It was submitted that IPS Cable, is incorporated in Mauritius and it wholly owns IPS Cable Holdings Limited, an investment holding company which owns shares in SEACOM Capital Ltd (Mauritius). IPS Cable Holdings Ltd is further owned by Industrial Promotion Services (Kenya) Limited ("IPS Kenya") and Jubilee Holdings Limited ("Jubilee"). IPS Kenya is an investment company set up to provide venture capital, technical assistance and management support to encourage and expand private enterprise in the developing world, particularly countries in sub-Saharan Africa and Central Asia. Through its equity investment and partnerships in both the public and private sectors. IPS Kenya promotes new industrial and infrastructure projects that are financially viable and fit within the overall economic planning framework of each country in which IPS Kenya operates. IPS Kenya has investments in the following sectors: agro and food processing; pharmaceuticals; power; telecommunication infrastructure; leather; printing and packaging; and textiles.

5. It was submitted that Jubilee is an investment holding company with a primary listing on the Nairobi Securities Exchange and cross-listings on the Uganda Securities Exchange and Dar es Salaam Stock Exchange. Jubilee, through its subsidiaries, provides a wide range of property, liability, health and life insurance, and retirement products, and related services to customers in Kenya, Uganda, Burundi and Mauritius. It also owns investment companies in Kenya, Uganda, and Burundi. The parties have submitted that the acquiring undertaking operates in the following COMESA Member States: Burundi, Kenya, Mauritius and Uganda.

SEACOM (the Target Undertaking)

6. It was submitted that SEACOM is incorporated in Mauritius and is wholly owned by Seacom Caymans, L.P., ("Seacom Caymans"). It has been submitted that following an internal restructuring of a shareholder of the SEACOM Group companies involving the transfer of 25% voting rights and 10% economic rights in SEACOM Capital Ltd (Mauritius)

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to the target, the target will through SEACOM Capital Mauritius, own the SEACOM group companies. SEACOM is a telecommunication service provider which launched Africa's first broadband submarine cable system along the continent's Eastern and Southern coasts. Through its ownership of extensive ICT data information in Africa, including multiple sub-sea cables and a resilient continent-wide IP-MPLS network, SEACOM provides a full suite of flexibility, scalable and high quality communications and cloud solutions that enable the growth of the continent's economy. SEACOM has operations in the following COMESA Member States: Kenya, Mauritius and Uganda.

Nature of the Transaction

7. It was submitted that the proposed transaction involves the acquisition of 100% shareholding in the target by IPS Cable resulting in IPS Cable indirectly owning 25% voting rights and 10% economic rights in SEACOM Capital Ltd (Mauritius). The proposed transaction will further grow and enhance the business of the target and assist steering the target on a sustainable growth trajectory into the future in a diverse range of African markets.

Competition Analysis

8. The CID defined the relevant product market as the provision of broadband services. The CID further defined the relevant geographic market as the national markets of Kenya, Mauritius and Uganda.

9. The CID observed that the proposed transaction will not lead to a change in the market structure since the parties' activities do not overlap in the Common Market. The CID also observed that the relevant market is competitive given the presence of other providers of broadband services. Further, the market is characterised by countervailing power from the presence of large customers for broadband services.

Determination

10. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID therefore approved the transaction.

11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 4th of September 2020

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Commissioner Brian M. Lingela (Chairperson)

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Commissioner Islam Tagelsir Ahmed Alhasan **Commissioner Thembelihle P. Dube née Dlamini**