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DECISION/MER/27/2021

PRESS RELEASE

THE COMESA COMPETITION COMMISSION IMPOSES A FINE ON ATC HESTON B.V. FOR FAILING TO COMPLY WITH THEIR COMMITMENT WITH REGARD TO THE APPROVAL GRANTED IN THE MERGER CONCERNING THE ACQUISITION OF 100% SHAREHOLDING IN EATON TOWERS HOLDINGS LIMITED BY ATC HESTON B.V.

The COMESA Competition Commission (the “**Commission**”) wishes to inform the general public and its stakeholders that its Committee Responsible for Initial Determination (the “**CID**”) at its Meeting held on 6th December 2021 imposed a fine on ATC Heston B.V. (“**ATC**”) for failure to comply with a commitment contained in the Decision issued in the merger concerning the Acquisition of 100% Shareholding in Eaton Towers Holding Limited (“**ETHL**”) by ATC.

At its Meeting held on 22nd December 2019, the CID approved the merger between ATC and ETHL on the basis of several undertakings to address identified competition concerns likely to result from the merger. The undertakings included a commitment that:

“ATC shall procure that the Uganda Operating Entities¹ shall not discriminate among mobile network operators (MNOs) in the 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 Criterion should be submitted to the Commission for consideration within one (1) month from the date of approval of the Transaction.” (Emphasis added)

The Commission’s Compliance Monitoring revealed that ATC failed to submit the Objective Criterion within the required one (1) month from the CID Decision. ATC was expected to submit the Objective Criterion on 22nd January 2020. However, the Objective Criterion was submitted on 29th October 2020, ten (10) months after the required timeline provided under the CID Decision and only upon the Commission’s follow-up on the matter.

¹ Uganda Operating Entities refer to Eaton Towers Uganda Limited and ATC Uganda Limited

The Commission considered that the late submission, whilst not directly resulting in an anti-competitive effect on the market, constituted a breach of an order made under the COMESA Competition Regulations (the “**Regulations**”). This was confirmed by the CID who further determined that ATC was liable to a fine for breaching the Regulations, in accordance with Article 8(5) of the Regulations.

The CID however considered that a fine of **USD 96,614.252** recommended by the Commission had not sufficiently taken into account mitigating factors. The CID therefore imposed a lower fine of **USD 67,629.98** representing a **30% reduction on the recommended fine**.



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