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Common Market for Eastern  
and Southern Africa

Case File No. CCC/MER/03/07/2019

**Decision<sup>1</sup> of the Sixty-First (61<sup>st</sup>) Committee Responsible for Initial  
Determination Regarding the Proposed Acquisition by Airtel  
Networks Kenya Limited of the Mobile Operations, Enterprise and  
Carrier Services Business of Telkom Kenya Limited**

**ECONOMIC SECTOR: Telecommunications**

**16<sup>th</sup> August 2019**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

*[Handwritten signatures]* T.P.D

### **Information and Relevant Background**

1. On 15<sup>th</sup> March 2019, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger involving Airtel Networks Kenya Limited (“**Airtel**”) and Telkom Kenya Limited (“**Telkom**”).
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**

#### *Airtel (the Acquirer)*

4. It was submitted that the acquiring firm Airtel is a private limited liability company licensed to provide mobile telecommunications services and other services by the Communications Authority of Kenya in accordance with the Kenya Information and Communications Act 998. In the Common Market, the Airtel group of companies has operations in the Democratic Republic of Congo, Kenya, Madagascar, Malawi, Rwanda, Seychelles, Uganda, and Zambia.

#### *Telkom (the Target)*

5. It was submitted that Telkom is a limited liability company licensed to provide mobile telecommunications services and other services by the Communications Authority of Kenya. In the Common Market, Telkom is only active in Kenya.

### **Nature of the Transaction**

6. The parties have submitted that Airtel and Telkom have entered into an agreement that will see the shareholders of the two companies integrate their respective mobile, enterprise and carrier mobile financial services business in Kenya to operate under Airtel, which on closing of the proposed transaction will be renamed Airtel-Telkom. Under the Proposed Transaction, Telkom may at closing hold up to 49% of the shareholding in Airtel Telkom.

### **Competition Analysis**

7. The CID defined the relevant markets as follows:
  - a) the provision of retail fixed-lined voice services in Kenya;

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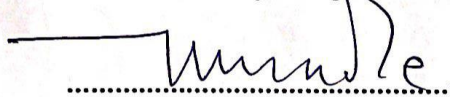
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- b) the provision of retail fixed-lined broadband services in Kenya;
  - c) the provision of retail mobile telecommunications services in Kenya; and
  - d) the provision of mobile money services in Kenya.
8. The CID observed that the transaction is not likely to raise significant competition concerns due to the relatively low market shares of the merging parties in the relevant markets. The CID also observed that the relevant markets are characterised by presence of strong competitors which will continue to give competitive pressure to the merging parties.

#### **Determination**

9. The CID determined that the merger is not likely to substantially lessen and prevent competition in the Common Market or any substantial part of it. Consequently, the transaction is not likely to negatively affect trade between Member States. The CID therefore approved the transaction.
10. This decision does not relieve the merging parties from their obligation to comply with other applicable laws.
11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 16<sup>th</sup> day of August, 2019



**Commissioner Patrick Okilangole (Chairperson)**



**Commissioner Brian M. Lingela**



**Commissioner Thembelihle Precious Dube nee Dlamini**