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Common Market for Eastern
and Southern Africa

CCC/MER/12/30/2021

**Decision¹ of the Eighty-Second (82nd) Committee Responsible
for Initial Determination Regarding the Proposed Merger
involving Grit Real Estate Income Group Limited and Gateway
Real Estate Africa Limited**

ECONOMIC SECTOR: Real Estate

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 14th January 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Grit Real Estate Income Group Limited ("**Grit**") as the acquirer and Gateway Real Estate Africa Limited ("**GREA**") as the target 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

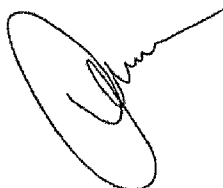
Grit (the acquiring undertaking)

4. The parties submitted that Grit is a public pan-African property investment business that invests in various real estate assets throughout Africa. Grit currently holds assets in the following African jurisdictions: Botswana, Ghana, Kenya, Mauritius, Morocco, Mozambique, Senegal and Zambia. Grit holds the following assets in the Common Market:

Table 1 – List of Grit's Assets in the Common Market

Member State	Property	Sector	Ownership
Kenya	Imperial Distribution Centre	Industrial	100%
Kenya	Mara Viwandani Land	Industrial	100%
Kenya	<i>Orbit</i> ²	<i>Industrial</i>	<i>100%*</i>
Kenya	Buffalo Mall	Retail	50%
Mauritius	Beachcomber Hospitality Investments Limited - Cannonier, Victoria, Mauricia Hotels	Hospitality	44%
Mauritius	MDML - Tamassa Resort	Hospitality	100%
Mauritius	ABSA House	Office	100%
Zambia	Mukuba Mall	Retail	75%
Zambia	Kafubu Mall	Retail	50%
Zambia	Cosmopolitan Mall	Retail	50%

² The Orbit Property is in the process of being acquired by Grit through a different transaction, which will entail Grit acquiring 100% shareholding in Stellar Warehousing and Logistics Limited (the "**Orbit Transaction**"). The Orbit Transaction has been notified to and assessed by the Commission under Case No. CCC/MER/02/11/2022.



GREA (the target undertaking)

5. The parties submitted that GREA is a private real estate development company domiciled in Mauritius. GREA's focus is on African property development across market segments such as office letting, accommodation, retail, industrial and healthcare. GREA currently holds assets in the following African jurisdictions: Ethiopia, Ghana, Kenya, Mali, Mauritius, Morocco, Mozambique, Nigeria and Uganda. GREA holds the following assets in the Common Market:

Table 2 – List of GREA's Assets in the Common Market

Member State	Property	Status of Property	Sector	Ownership
Ethiopia	DH1 Elevation	Leased out to tenants	Corporate Accommodation	50%
Kenya	DH3 Kenya	Property under construction ³	Corporate Accommodation	50%
Mauritius	St Helene	Property under construction ⁴	Healthcare	48.25%
Mauritius	Coromandel	Property under construction ⁵	Healthcare	48%
Mauritius	The Precinct	Property under construction ⁶	Office	100%
Uganda	Metroplex	Leased out to tenants	Retail	100%

Jurisdiction of the Commission

6. 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:

³ The parties submitted that construction of DH3 Kenya is expected to be completed in the third quarter of 2022, and the asset will be put on the market in the fourth quarter of 2022.

⁴ The parties submitted that construction of St Helene is expected to be completed in the first quarter of 2023, and the asset will be put on the market in the second quarter of 2023.

⁵ The parties submitted that construction of Coromandel is expected to be completed in the fourth quarter of 2023, and the asset will be put on the market in the first quarter of 2024.

⁶ The parties submitted that construction of The Precinct is expected to be completed in the fourth quarter of 2022, and the asset will be put on the market in the first quarter of 2023.



- 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 COM\$ 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 COM\$ 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.*
7. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve 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

8. Grit currently holds a minority stake in GREa. The proposed transaction envisages Grit acquiring additional shareholding in GREa, via various share purchase agreements, allowing Grit to own the majority shares in GREa. This will ultimately result in Grit obtaining a controlling stake in GREa by holding 53.72% of its shares.

Competitive Assessment

Relevant Markets

Relevant Product Market

9. The parties to the transaction are both involved in real estate investment and development. The products that they offer on the market are their completed property assets that they rent to third party tenants. Their activities are focused on investing in portfolios of income-generating properties and developing such properties in their portfolios as the ultimate owner or controller over properties in such portfolios. Grit and GREa retain primary competency in respect of the development, maintenance and management of each of their own portfolio properties. This includes the ability to make decisions in relation to commercial terms for tenants, re-development, improvement and ongoing management and maintenance of portfolio properties⁷.

⁷ The responsibility for these commercial elements in the context of Grit and GREa's property businesses are, at times, placed in the hands of tenants who may, along a spectrum, bear day-to-day responsibility in respect of maintenance and property management in respect of the property occupied by that tenant. Nonetheless, Grit and GREa continue to stand as owner controllers in relation to these properties and engage



10. Both parties serve different types of customers across various sectors. Grit is active in the following sectors: hospitality (through four hotels in Mauritius), retail, office, and industrial. GREA is active in the corporate accommodation, and retail sectors⁸.
11. Within the real estate market, segmentations can be made according to the nature of the asset. From a demand perspective, the assets are sufficiently differentiated to fulfil the particular needs of clients in the respective sectors. An example being an industrial property, such as a factory, cannot be regarded as comparable to a retail property such as a mall.
12. From a supply perspective, zoning regulations, safety regulations, town planning and building characteristics differ across sectors. Zoning is the process of segmenting land into zones, each of which permits and prohibits specific land uses. Zoning also regulates elements like the height, density, and design of buildings in certain areas. Commercial zoning ordinances regulate commercial structures, such as apartment buildings, shopping centres, office parks, and industrial facilities. Due to this, factors such as parking, building safety, access requirements, and other factors become significantly more important compared to private residential properties⁹.
13. Further distinction can be made between properties for commercial use and properties for industrial use. Commercially zoned areas are generally reserved for businesses that have some kind of interaction with the public. These may be offices, retail stores, restaurants or bars. Commercial zoning can also include hotels and apartment complexes being leased out. For instance, the Physical and Land Use Planning Act, 2019 of Kenya defines 'commercial use' as including shops, offices, hotels, restaurants, bars, kiosks and similar business enterprises but does not include petroleum filling stations¹⁰.
14. On the other hand, areas zoned for industrial use are typically more segregated, and further away from urban areas. According to the Physical and Land Use Planning Act, 2019 of Kenya, industrial use includes manufacturing, processing, distilling, brewing, warehousing and storage, workshops and garages, mining and quarrying, power generation and similar industrial activities including petroleum filling stations.

in strategic management of their own portfolios consisting of these properties. It is noteworthy that certain long-term lessees can contractually acquire the property from Grit/GREA at the end of the lease term (e.g., Share purchase, lease back agreements and a buy-back option agreement).

⁸ As noted under footnote 1, St Helene, Coromandel and The Precinct are assets still being under construction at the date of filing. As such, these properties have not been considered under the competitive assessment as they do not have current nor short-term market presence.

⁹ Commercial Zoning in Commercial Real Estate, published on 11 April 2019. Accessed at <https://www.commercialrealestate.loans/commercial-real-estate-glossary/commercial-zoning>, on 21st December 2021.

¹⁰ Physical and Land Use Planning Act, 2019 of Kenya, Part 1, Article 2. Accessed at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/PhysicalandLandUsePlanningAct_No13of2019.pdf, on 21st December 2021.

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Regulations relating to heavy industrial activities specifically take into account factors like noise pollution, smoke, smell, waste, and other similar elements that could raise environmental concerns for the surrounding area¹¹.

15. Based on the foregoing and having regard to the sectors in which the merging parties operate, the relevant product markets have been identified as follows¹²:
- i. **commercial retail property market;**
 - ii. **hospitality property market;**
 - iii. **office property market;**
 - iv. **corporate accommodation property market; and**
 - v. **industrial property market.**


Relevant Geographical Market

16. For the purposes of defining the geographic market, account must be taken of a number of factors, such as the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, the existence of appreciable differences in the market share of undertakings in the area concerned as compared with neighbouring areas, or price differences¹³.
17. The parties submitted that in many of the identified markets competition is localised. This is due to the geographic location of the asset being an important characteristic when determining substitutability of competing properties as the location is very often linked to the profitability, target market and the products or services to be rendered to its customers.
18. The CID concurred with the parties' submissions, noting that from a demand side, the clients will seek out properties in the specific region where their customers or potential customers are based, and will face competitors from properties typically located within a limited radius. For instance, a retail space in Mombasa is unlikely to be constrained by retail offerings in Nairobi.
19. In **HAMMERSON / IRISH LIFE / ILAC SHOPPING CENTRE**, the European Commission considered a 50 km radius for the rental of retail space in shopping

¹¹ Wick & Trautwein, LLC, 'Difference between Commercial And Industrial Zoning', published on 14 May 2015. Accessed at <https://www.wicklawn.com/2015/05/14/what-is-the-difference-between-commercial-and-industrial-zoning/>, on 21st December 2021.

¹² This is consistent with the Commission's previous approach in **Paxton Investments Limited/ Zambia Property Holdings Limited** where a distinct market was identified for commercial retail space (CID Decision CCC/MER/04/11/2019). This also accords with the practice of the European Commission who has considered in previous cases, but ultimately left open, various further distinctions with regard to the commercial real estate in the following segments: (i) office properties; (ii) retail properties; and (iii) industrial properties (See for instance Case M.8229 - **HAMMERSON / IRISH LIFE / ILAC SHOPPING CENTRE**, paragraph 15).

¹³ Case T-151/05, JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber) of 7 May 2009, *Nederlandse Vakbond Varkenshouders (NVV), v European Commission*, paragraph 52.



centres but ultimately left the market definition open as the transaction did not raise competition concerns¹⁴. From a supply perspective, the immovable nature of the assets makes switching to different areas in response to a small but significant increase in rentals without incurring significant costs and risks unlikely.

Retail Property market

20. GREA's retail centre Metroplex is located in Kampala (Uganda); Grit's Zambian retail centres are in Lusaka (Cosmopolitan Mall), Kitwe (Mukuba Mall) and Ndola (Kafubu Mall); and in Kenya, Grit's Buffalo Mall is located in Naivasha¹⁵.
21. What primarily matters when considering the geographic extent of retail markets is consumers' shopping behaviour. In this respect, it is how far consumers are prepared to travel when considering the set of retailers from which they will select or shop around to make their purchases. For tenants that supply daily consumer goods (such as supermarkets or bakeries), the geographic market will likely be constrained to an area much smaller than a radius of 50 km noted above. Indeed, in **Tesco/Carrefour**, the European Commission defined the geographic market for retail of daily consumer goods as a radius of 20 minutes driving time¹⁶ while in **Carrefour/Billa Romania**, the European Commission considered a distance of radii of between 10- and 30-minutes driving time¹⁷. On the same grounds, in **Groupe Bernard Hayot/ Vindémia Group SAS**, the Commission identified the geographic market for retail supply of daily consumer goods within a radius of 20 minutes driving time in Mauritius and Madagascar¹⁸.
22. For tenants that supply other types of services or products (e.g., entertainment), consumers may be willing to travel further. Given that retail centres consist of a mix of tenants, and in view of established case precedence, the geographic scope of the retail market has been defined to a radius of 30- 40 minutes driving time from the retail centres operated by the merging parties in Kenya (Naivasha), Uganda (Kampala), and Zambia (Ndola, Kitwe, and Lusaka) respectively. Reference to time gives an indication of the ease of access of the retail market, and that a radius of 30- 40 minutes driving time would be both reasonable and sufficiently wide to cover properties located in adjacent areas that could be reasonably viewed as effective substitutes by the clients.

¹⁴ https://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf, paragraphs 20-21.

¹⁵ Naivasha is located 76 km from Nairobi. Buffalo Mall is marketed as the first modern, formal retail development in Naivasha and caters to a catchment market of shoppers traveling to the town on weekends, and those traveling to further towns in the Rift Valley and Western Kenya, as well as capitalising on Naivasha's increasing popularity as a conference tourism destination (<https://grit.group/kenya/buffalo-mall/>).

¹⁶ Tesco/Carrefour, COMP/M.3905, paragraph 21.

¹⁷ Carrefour/Billa Romania, Case M.7933, paragraph 18.

¹⁸ CCC/MER/12/45/2019, Decision of the 69th CID, paragraph 10.



Hospitality Property market

23. The three hotels under the Beachcomber group are located in the North/ North-West of the island. Guests are able to interchange between Victoria Beachcomber and Mauricia Beachcomber hotels¹⁹. Guests also have full access to the facilities of sister hotel Canonnier Beachcomber²⁰. The fourth hotel, Tamassa, is located in the Southwest of the island of Mauritius, approximately 70km away. Having regard to the relatively small size of the island, properties in the hospitality sector face competition from similar properties across the island, irrespective of the locality, as tourists would be able to move within the island with relative ease. As a result, the whole island of Mauritius constitutes a single relevant market with respect to hospitality property.

Office Property market

24. Grit's office property is located in Ebene in Mauritius. It is noted that GREA is not currently active in the office property market. However, if the Precinct project is considered, GREA would also be operational in Mauritius, although in a different location, namely Pamplemousses. The parties submitted that in the market for office property in Mauritius, competition is more localised than the entire island and can be categorised in various economic zones, including: Port Louis, Ebene, Moka District, Pamplemousses District, Grand Baie and others. Thus, according to the parties, the office assets of Grit and GREA would be in different markets as the Precinct (Target asset) will be located in the Pamplemousses District whereas ABSA House (Acquiring asset) would be approximately 23km away in Ebene.
25. The conditions of competition in certain areas within Mauritius for office space may indeed be different from others. The traditional central business district is centred around the Waterfront, Edith Cavell, Pope Hennessy, Chaussée and Royal Streets in Port Louis²¹. Mauritius' second major office location is the Cyber City business park at Ebene, about 10 km to the southeast of Port Louis. These two regions exert significant competitive pressures on each other and rental per square feet is likely to be higher compared to office space in other locations including Pamplemousses. For the purpose of this transaction, the relevant geographic market is limited to Ebene and Port-Louis.

¹⁹ <https://grit.group/mauritius/canonniere-beachcomber-resort-spa/>

²⁰ <https://grit.group/mauritius/mauricia-beachcomber-resort-spa/>

²¹ Knight Frank, The Africa Report – Real Estate Market Update 2020/21, page 27. Accessed at <https://knightfrank.digital-hub.global/knight-frank-the-africa-report-2020/p/27>, on 22nd December 2021.



Corporate Accommodation Property market

26. In line with the reasoning set out in the previous paragraphs, with regard to the corporate accommodation property market, the relevant geographic market is limited to Addis Ababa, where DH1 Elevation Residences are located, and Nairobi where DH3 residences are located. While it is noted that DH3 property is still under construction, the asset is expected to be on the market in the fourth quarter of 2022. This asset has thus been considered in the competitive assessment.

Industrial Property market

27. In line with the reasoning set out in the previous paragraphs, the relevant geographical market for industrial property market is limited to Nairobi where Grit's assets are located and where most industrial zones are established.

Conclusion on relevant market

28. Having regard to the areas where the parties' assets are located, the following relevant markets were identified:
- i. **commercial retail property markets within a radius of 30 to 40 minutes driving time from the retail centres operated by the merging parties in Kenya (Naivasha), Uganda (Kampala), and Zambia (Ndola, Kitwe, and Lusaka) respectively;**
 - ii. **hospitality property market in Mauritius;**
 - iii. **office property market in Ebene and Port-Louis;**
 - iv. **corporate accommodation property market in Addis Ababa (Ethiopia), and Nairobi (Kenya); and**
 - v. **industrial property market in Nairobi.**

Market Shares and Concentration

29. The list of large real estate investment players operating in the relevant markets at national level is presented in Table 3 below:

Table 3 – Large Real Estate Investment Players at National Level

Product Market	Member State	Player
Retail Property	Kenya	• Icea Lion Asset Management Ltd Fahari Centum
	Uganda	• Riverstone Africa Limited
	Zambia	• Real Estates Zambia PLC
Industrial Property	Kenya	• SMEC
Office Property	Mauritius	• Bloomage Property Fund • Espitalier Noël Limited

		<ul style="list-style-type: none"> • Lava Stone Properties
Corporate Accommodation	Ethiopia	<ul style="list-style-type: none"> • Verdant Ventures • Noah Real Estate • Tsehay Real Estate
	Kenya	<ul style="list-style-type: none"> • Verdant Ventures • Centum
Hospitality Property	Mauritius	<ul style="list-style-type: none"> • Semaris Property Development • Espitalier Noël Limited • Lava Stone Properties

30. The parties further submitted the list of competitors with properties within the narrower geographic markets identified, as per Table 4 below:

Table 4 – Competing Properties within the Relevant Markets

Product Market	Geographic Area	Competitor/ Property
Retail Property	Naivasha (Kenya)	<ul style="list-style-type: none"> • Jubilee Mall • Naivasha Business Center
	Kampala (Uganda)	<ul style="list-style-type: none"> • Stanlib Africa Direct Property²² • Bugolobi Village Mall • Acacia Plaza Limited²³ • Oasis Mall • Kingsgate Mall
	Ndola (Zambia)	<ul style="list-style-type: none"> • Urban Africa Capital²⁴ • Pamodzi Shopping Mall • Z-Mart Shopping Mall • Villa Mall • Napoli Property²⁵
	Kitwe (Zambia)	<ul style="list-style-type: none"> • China Mall • ECL Mall • ACM Products Limited - Copper Hill Mall • Mega Shopping Center • Akraši properties – Nkana Mall • 722 Shopping Center • Ontario Shopping Mall
	Lusaka (Zambia)	<ul style="list-style-type: none"> • Atterbury (Manda Hill Shopping Mall)²⁶ • Napoli Property – East Park Mall²⁷ • Liberty Properties - Levy Junction Mall

²² <https://www.broll.ug/results/new-development/commercial/kampala-city/kyadondo/2/arena-mall/>

²³ <https://www.theacacimall.com/>

²⁴ <https://urbanafriacapital.com/investments>

²⁵ <https://www.napoliproperty.com/jacaranda-mall-ndola>

²⁶ <https://www.atterbury.co.za/wp-content/uploads/2014/10/Atterbury-Africa.pdf>

²⁷ <https://www.napoliproperty.com/east-park-mall>

		<ul style="list-style-type: none"> • Real Estate Investment Zambia Plc – Arca²⁸ • Pylos²⁹
Industrial Property	Kenya	<ul style="list-style-type: none"> • SMEC³⁰ • Africa Logistics Properties³¹ • Improvon³² • AMS Properties³³ • Fairdeal Properties³⁴
Office Property	Ebene and Mauritius	<ul style="list-style-type: none"> • Seef³⁵ • Maxcity³⁶ • United Docks³⁷ • Landscape³⁸ • Sugar Investment Trust³⁹ • Accura⁴⁰
Corporate Accommodation	Addis Ababa	<ul style="list-style-type: none"> • Rockstone Real Estate⁴¹ • Eagle Hills⁴² • MDM Developers⁴³ • Good Life Real Estate⁴⁴

31. Notwithstanding the absence of market shares, it is noted that the parties did not operate in the same geographic markets pre-merger, and the nature of the transaction will not result in a foreseeable alteration to the market structure in any of the identified markets. No market share accretion is expected in any of the relevant markets. The transaction is not expected to lead to the creation or strengthening of any market power for either of the merging parties. Further, the markets are characterised by the presence of numerous firms who have developed property to service the relevant markets.

²⁸ <https://realinvestzambia.com/portfolio-items/arcades-shopping-centre/>

²⁹ <http://www.pylos.be/projects/detail/centro-kabulonga>

³⁰ https://www.smec.com/en_ke

³¹ <https://africawarehouses.com/>

³² <https://improvon.co.za/project/nairobi-gate-2/>

³³ <https://amsproperties.com/fortis-industrial-park-kenya/>

³⁴ <http://properties.fairdeal.co.ke/completed-commercial.php>

³⁵ <https://mauritius.seeff.com/results/new-development/commercial/ebene/ebene/62/>

³⁶ <https://maxcity.mu/properties/>

³⁷ <https://udlbusinesspark.com/>

³⁸ <https://landscopemauritius.com/our-properties-business-parks/ebene-cybercity/>

³⁹ <http://www.sit.mu/the-core.56.html>

⁴⁰ <https://www.accura.realestate/our-projects/ebene-junction>

⁴¹ <https://kefita.com/>

⁴² <https://www.lagare.com/project/la-gare/>

⁴³ <https://www.grandviewaddis.com/>

⁴⁴ <https://www.goodlifeaddis.com/gm-apartment/>

32. In addition, the characteristics of the various property markets are unlikely to favour implicit coordination as they differ in design, size, facilities, and rent. Further, the merger itself would not create any incentive for the merging parties to act in a coordinated fashion (whether actively or passively) with the remaining players on the markets.

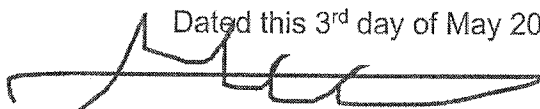
Third-Party Views

33. Submissions were received from Kenya, Mauritius, and Zambia which confirmed the absence of competition concern arising or likely to arise from the proposed transaction, as the transaction will not affect the market structure.

Determination

34. 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.
35. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 3rd day of May 2022



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Commissioner Mahmoud Momtaz (Chairperson)



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Commissioner Vincent Nkhoma



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Commissioner Islam Tagelsir Ahmed Alhasan

