



**COMESA Competition Commission**  
Kang'ombe House, 5th Floor-West Wing  
P.O.Box30742  
Lilongwe 3, Malawi  
Tel: +265 1 772 466  
Email- compcom@comesa.int



**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/02/04/2021**

**Decision<sup>1</sup> of the Seventy-Sixth (76<sup>th</sup>) Committee Responsible for Initial Determination Regarding the Proposed Acquisition by Kuramo Africa Opportunity Kenyan Vehicle IV Ltd of 15% of the issued Share Capital of Platcorp Holdings Limited**

**ECONOMIC SECTOR:** Automotive; and Banking and Financial Services

**27<sup>th</sup> June 2021**

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## **Introduction and Relevant Background**

1. On 11<sup>th</sup> March 2021, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of the proposed merger involving the acquisition by Kuramo Africa Opportunity Kenyan Vehicle IV Ltd (“**Kuramo Africa**” or the “**Acquirer**”) of 15% of the issued share capital of Platcorp Holdings Limited (“**Platcorp Holdings**” or 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***

#### ***Kuramo Africa (the acquirer)***

4. The acquiring undertaking, Kuramo Africa, is a newly incorporated company set up in Cayman Islands in October 2020. It is wholly owned by Kuramo Africa Opportunity Master Co-Investment Vehicle III LLP, which is part of the Kuramo Group, a private investment fund. The acquiring undertaking offers various financial products and services such as stock brokerage and pension fund management. The affiliates also offer other services such as agribusiness; works and construction; infrastructure; supply, manufacture and maintenance of industrial and domestic weighing scales; and supply of transformers and switchgear.
5. The parties submitted that the affiliates of the acquiring undertaking operate in the Democratic Republic of Congo, Ethiopia, Kenya, Mauritius, Uganda, Zambia and Zimbabwe.

#### ***Platcorp Holdings (the target)***

6. The target undertaking, Platcorp Holdings, is a private company incorporated in the British Virgin Islands with incorporation No. 1063259 and later registered by continuation in the Republic of Mauritius on 6<sup>th</sup> December 2012 with registration No. 113777. The target undertaking is a holding company and does not therefore have any operations in the Common Market. It was submitted that the subsidiaries of the target undertaking operate in Kenya and Uganda by offering various products and services which include microfinance services, insurance services and the sale of motor vehicle parts and accessories such as motor vehicle tracking devices.

### **Jurisdiction of the Commission**

7. 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:

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*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:*

- 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.*
8. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover 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 turnover 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**

9. The parties submitted that Nguvu Holdings, Platcorp Management Ltd and Chapelside Investment Holdings Ltd (together the "Sellers"), the Target and the Acquirer entered into a Share Purchase Agreement dated 6<sup>th</sup> November 2020 in relation to the sale and purchase of shares in the Target (the "Share Purchase Agreement").
10. Pursuant to the Share Purchase Agreement, the Acquirer purchased shares equivalent to fifteen percent (15%) of the issued share capital in the Target from the Sellers, whose shareholding in the Target at the time of the acquisition was:
- a. Nguvu Holdings: 13%;
  - b. Platcorp Management Ltd: 13.25%; and
  - c. Chapelside Investment Holdings Ltd: 27.70% (the "Proposed Transaction").
11. In addition, as part of the Proposed Transaction, the shareholders of the Target will, upon fulfilment of certain conditions, enter into a revised Shareholders Agreement (the "Revised SHA") which amends and replaces the existing Shareholders Agreement in its entirety. Pursuant to the Revised SHA, the Acquirer will be entitled to board appointment rights and certain shareholder and board reserved matters.

### **Relevant Markets**

#### ***Relevant Product Market***

12. Kuramo Africa through its affiliates in the Common Market provides stock brokerage and investment banking services consisting of equity and bond trading; and pension fund management.

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13. Platcorp Holdings through its affiliates in the Common Market provides microfinance services such as loans to small and medium enterprises; and personal loans to salaried individuals; insurance services particularly insurance brokerage services<sup>2</sup> and motor vehicle tracking, valuation, repossession, storage and auctioneering solutions to the financial, leasing and insurance industries<sup>3</sup>.
14. The Acquirer and its affiliates are not active in microfinance, insurance brokerage nor are they active in motor vehicle tracking, valuation, repossession, storage and auctioneering solutions which are the activities of the Target. Thus, for purposes of the competitive assessment of the current transaction and without prejudice to the CID's approach in similar future cases, the CID focused on the activities of the target in the Common Market, as these are the markets where any competitive impact of the merger is likely to be felt.

*Microfinance services*

15. Microfinance services encompass financial services which principally entail the acceptance of deposits and employing such deposits wholly or partly by lending or extending short-term loans to small or micro enterprises and low-income households on the basis of collateral substitutes such as group guarantees or compulsory savings<sup>4</sup>. The principle entrenched in microfinance is the focus on the low-income end of the market given the economic standing of the target beneficiaries.
16. It can be argued that as much as there are registered institutions setup to provide microfinance (i.e., Microfinance Institutions), other financial institutions such as banks can also reach the low-income segment of the market with specialized programs that seek to ensure financial inclusion of the low-income earners or the self/informally-employed. However, a distinguishing feature of microfinance from credit offered by other financial institutions such as banks is seen in the cost of accessing credit and information requirements. For instance, credit accessed through microfinance institutions would not require the client to have collateral. Further, there is limited supporting documentation required under microfinance as compared to accessing credit from a commercial bank. Thus, microfinance can be distinguished into a separate market from credit accessed through commercial banks.
17. The provision of microfinance may further be segmented according to whether the loans are provided formally or informally or on condition that the customer makes a deposit prior to accessing credit. The formal channel of providing microfinance is through registered microfinance institutions which are regulated while the informal channel entails access to microfinance through unregulated means such as money lenders, deposit collectors, stores providing credit, pawnshops, and friends and family. Notwithstanding this difference the ultimate targeted customers under formal and informal channels are the same. With respect to

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<sup>2</sup> See <https://viva-365.com/about-us/> accessible on 17<sup>th</sup> May 2021 at 16:00hrs (Viva 365 Insurance Brokers Ltd is the target's subsidiary operating in Kenya)

<sup>3</sup> <https://eezygroup.net/about-us/> accessed on 17<sup>th</sup> May 2021 at 17:20hrs (Eezy Group is a subsidiary of the target operating in Kenya)

<sup>4</sup> See the Micro Finance Deposit-Taking Institutions Act, 2003 of Uganda

access to loan based on deposit making, the distinguishing feature on the one hand is that customers are required to make deposits in order to access credit while in other instances customers cannot access credit without making prior deposit.

18. The CID noted that the provision of microfinance is a separate market from other form of credit provided by commercial banks given the intended beneficiaries are small and medium enterprises and low-income earners and in view of the differences in the terms of providing the credit. It was also observed that the market can further be narrowed based on the formal or informal channel through which the microfinance is provided or based on whether deposit making is a requirement. However, the CID resolved not to segment the market further given the absence of horizontal overlap between the activities of the acquirer and target in the Common Market such that competition concerns are not likely to arise under any narrower definition of the market.
19. **In view of the foregoing, the CID construed the relevant product market as the provision of microfinance services.**

*Provision of insurance brokerage services*

20. A plethora of authorities have defined the term ‘insurance brokerage’, among them the Insurance Act of Kenya. An ‘insurance broker’ therein has been defined as “...*an intermediary concerned with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage, commission, for or on behalf of an insurer, policy-holder or proposer for insurance or reinsurance and includes a health management organisation; but does not include a person who canvasses and secures reinsurance business from or to an insurer or broker in Kenya so long as that person does not undertake direct insurance business and does not have a place of business, or a resident representative, in Kenya...*”<sup>5</sup>. Further, the Act defines insurance business as “...*the business of undertaking liability by way of insurance (including reinsurance) in respect of any loss of life and personal injury and any loss or damage, including liability to pay damage or compensation, contingent upon the happening of a specified event...*”.
21. Insurance and insurance brokerage services are two distinct services. While an insurance provider undertakes to guarantee compensation for specified loss, damage, illness, or death in return for payment of a specified premium, an insurance broker only acts as a mediator between a client and an insurance provider in order to facilitate access to insurance services for a fee or commission. In *Aon/Willis Towers*, it was noted that the activities of brokers differ from activities of insurers since the former offer their own insurance products to clients while the latter mediate between insurers and clients in exchange for a fee/commission<sup>6</sup>. Further, in *Marsh/JLT*, the European Commission differentiated distribution of insurance services by

<sup>5</sup> See Insurance Act of Kenya accessible at [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Insurance\\_Act\\_Cap\\_487.PDF](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Insurance_Act_Cap_487.PDF)

<sup>6</sup> See the Decision of the CID of 12<sup>th</sup> November 2020 in *Aon Plc/Willis Towers Watson Public Limited Company*, Case No. CCC/MER/6/19/2020.

brokers from the provision of insurance services by insurance companies<sup>7</sup>. Insurance is broadly categorised into two distinct segments namely, non-life insurance and life insurance. Life insurance covers life-changing events in a person's life, such as death, retirement and disability while non-life insurance entails all types of insurance policies other than life insurance.

22. The insurance brokerage services provided by the target undertaking can be segmented according to the type of insurance service the client intends to purchase. Thus, clients may either wish to access brokerage services in order to either access life insurance or non-life insurance. These broad categories are distinct since they ultimately serve different purposes. However, the CID resolved that a further segmentation of the market depending on whether the brokerage services are for non-life or life insurance brokerage is not necessary given the absence of a horizontal overlap in the activities of the parties.

23. **In view of the foregoing, the CID construed the relevant product market as the provision of insurance brokerage services.**

*Motor vehicle tracking, valuation, repossession, storage and auctioneering solutions*

24. Motor vehicle tracking services entail the use of digital solutions to track the movement of motor vehicles with the purpose of tracing the location of the vehicle, among others, in the event of theft and fleet management. Repossession services entail the recovery of stolen motor vehicles by vehicle recovery teams following identification using the vehicle tracking system.

25. Motor vehicle valuation entails the establishment of monetary value of a motor vehicle for insurance purposes. Valuation is important to vehicle owners as it provides the basis that the vehicle is not being under-insured which may result in the inability by the insurance company to replace it in case of total loss. Further, knowing the true value of a vehicle may also ensure that the owner is not over-insuring a motor vehicle whose value has deteriorated by paying high premiums.

26. Motor vehicle auctioneering solutions entails the offer for sale of motor vehicles through an auction where potential buyers submit bids for vehicles they are interested in. Motor vehicle auctioneering is provided hand-in-hand with storage facilities given that the motor vehicles have to be kept at the auction site before the commencement of the auction.

27. The CID observed that these are distinct since they are intended to achieve different end results. For instance, motor vehicle valuation cannot be a substitute for motor vehicle tracking services under any conceivable circumstances. Similarly, motor vehicle auctioneering cannot be a substitute of either vehicle tracking, valuation or storage services since all these have different end uses.

28. **In view of the foregoing, the CID construed the relevant market as the provision of tracking, valuation, repossession, storage and auctioneering for motor vehicles.**

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<sup>7</sup> See EC Case No. COMP/M.9196 at para. 14.

### ***Relevant Geographic Market***

29. The target undertaking provides its services in Kenya and Uganda. Specifically, the target's microfinance services are provided in Kenya and Uganda; insurance brokerage services are provided in Kenya while motor vehicle tracking, valuation, repossession, storage and auctioneering services are provided in Kenya and Uganda.
30. The CID considered that the geographic market for the provision of microfinance services is national given that the services are provided under relevant national laws which implies the prevalence of a homogenous environment at national level within which competition occurs. It was considered that from a supply perspective, microfinance providers are unlikely to easily shift and target clients located beyond the boundaries of a country as this would imply incurring other costs of registration and the high risk of default. Therefore, supply substitution is unlikely to occur in a timely manner and at reasonable costs. From a demand perspective, it was considered that SMEs or low-income earners seeking to access microfinance expect access to such credit in the shortest term possible to cover urgent income gaps in their small-scale businesses or daily lives. Therefore, it is unlikely that an SME looking for credit would opt to access such credit from a microfinance provider located beyond its country as such attempts would not address their immediate needs. In this respect, the CID construed the relevant geographic market as national and pertaining to Kenya and Uganda given the Target's operations.
31. The CID considered that the geographic scope of insurance brokerage is beyond national. It was observed that an insurance broker does not issue insurance but only advises policy holders on the various insurance options available such that the policy holder may not be limited to providers only present in their countries. In *Aon/Willis Towers* merger, it was similarly concluded that the relevant geographic market for the provision of insurance brokerage services is beyond national and is global. In the merger, it was observed that the relevant market tends to be characterised by global players who provide their services at a global level hence competition in the market tends to be global. In this respect, the CID construed the relevant geographic market for the provision of insurance brokerage services as a global market.
32. The CID observed that the geographic market for the provision of motor vehicle valuation, repossession, storage and auctioneering services is national. It was noted that these services require the physical presence of the motor vehicle for the service to be provided. In the case of motor vehicle evaluation, it is unlikely for a customer to opt for driving their vehicle outside a country for valuation purposes given that such valuation results have to be accepted and usable in the customer's country of origin. It was similarly considered that a substantial cost is likely to be incurred by a customer if they opt to bring their vehicle for auction outside their country of residence. In this respect, the CID observed that the costs for switching are not likely to be negligible, hence substitution across borders is unlikely to occur in the provision of motor vehicle valuation, repossession, storage and auctioneering services. With respect to motor vehicle tracking, it was observed that the services may be provided beyond the national borders

of a country. However, the CID observed that any broader definition of the market is not likely to alter the conclusion of the assessment given that the market structure is likely to remain the same post-merger. The CID therefore construed the relevant markets as national and pertain to Kenya and Uganda.

33. Thus, for the purpose of assessing the proposed transaction, and without prejudice to future cases, the CID identified the following relevant markets:

- a) **Provision of microfinance services in Kenya and Uganda;**
- b) **The global provision of insurance brokerage services; and**
- c) **The provision of motor vehicle tracking, valuation, repossession, storage and auctioneering services in Kenya and Uganda.**

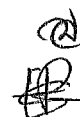
### **Competitive Assessment**

34. The parties submitted the estimated market shares for the Target and its competitors in Kenya and Uganda as per the table below:

**Estimated Market Shares for the Target and Competitors in COMESA**

<b>Member State</b>	<b>Name of Company</b>	<b>Product/Service</b>	<b>Estimated Market Share (%) (by Assets)</b>
Kenya	Platinum Credit Limited	Personal loans for salaried individuals	8%
	Momentum Credit Limited		1.3%
	Others		80.7%
	Premier Credit Ltd	SME Loans to Small & Micro Enterprises / Entrepreneurs	6%
Uganda	Platinum Credit (U) Ltd	Personal Loans to Salaried individuals	10%
	Others		90%
	Premier Credit Limited	SME Loans to Small & Micro Enterprises /Entrepreneurs	4%
	Others		96%
Kenya	Viva 365 Insurance Brokers Ltd	Insurance brokerage	0.05%
	Others		99.95%
Kenya	Eezy Track Limited	Motor vehicle tracking, valuation, repossession, storage and auctioneering services	0.03%
	Others		99.97%
Uganda	TrackNav SMC Ltd	Motor vehicle tracking, valuation, repossession, storage and auctioneering services	0.0006%
	Others		99.994%

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- 35. The CID observed that the Target does not hold a dominant position in the relevant markets. It was further noted that post-merger, the market structure will not change. It was also noted that the Acquirer and Target do not have a vertical relationship in the relevant markets given that their activities are not complements.
- 36. The CID noted that the proposed transaction would not result in the merged entity attaining a dominant position given the absence of a change in the market structure. Thus, the proposed transaction is unlikely to raise competition concerns as a result of unilateral conduct by the merged entity.
- 37. In view of the foregoing, it was concluded that the transaction will not stifle trade between Member States.

**Third-Party Views**

- 38. Submissions were received from the Trade Competition and Consumer Protection Authority (Ethiopia), the Competition Authority of Kenya, the Competition Commission (Mauritius), the Competition and Consumer Protection Commission (Zambia). The third party submissions were consistent with the CID’s conclusion that the transaction was unlikely to raise competition concerns in the relevant markets.

**Determination**

- 39. 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.
- 40. The CID therefore **approved** this transaction. This decision was adopted in accordance with Article 26 of the Regulations.

Dated this 27<sup>th</sup> day of June 2021



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**Commissioner Justice Charlotte Wezi Malonda (Chairperson)**



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**Commissioner Brian M. Lingela**



**Commissioner Ellen Ruparanganda**