



COMESA Competition Commission

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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/14/2022

**Decision¹ of the Eighty-Sixth (86th) Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition of 83.43% of the issued share capital of Sidian
Bank Limited by Access Bank Plc**

ECONOMIC SECTOR: Banking and Finance

27 September 2022

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 15 September 2022, the COMESA Competition Commission ("**Commission**") received a notification of merger involving Access Bank Plc ("**Access Bank**") as the acquiring undertaking and Sidian Bank Limited ("**Sidian Bank**") as the target undertaking, 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

Access Bank (the acquiring undertaking)

4. The acquiring undertaking, Access Bank, is a public limited liability company incorporated in Nigeria. It was converted into a public limited liability company on 24 March 1998 and thereafter its shares were listed on the Nigerian Exchange Limited ("**NGX**") on 18 November 1998 and subsequently delisted on 24 March 2022 followed by the NGX listing of its parent company, Access Holdings Plc, on 28 March 2022. Access Bank Plc was issued a universal banking licence by the Central Bank of Nigeria on 5 February 2001 and is a full-service commercial bank.
5. Access Bank is involved in the provision of lending and deposit services in the Democratic Republic of Congo (the "**DRC**"), Kenya, Rwanda and Zambia.

Sidian Bank (the target undertaking)

6. Sidian Bank has been incorporated in accordance with the laws of Kenya as a private company limited by shares.
7. Sidian Bank is engaged in the provision of lending, deposit and bancassurance services in Kenya.

Jurisdiction of the Commission

8. 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:

- 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 USD 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 USD 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.

9. The undertakings concerned have operations in two or more Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold assets of more than USD 10 million



in the Common Market. In addition, the merging parties do not hold 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

10. Access Bank has entered into an agreement with Centum Investment Company Plc ("**Centum**") and Centum's wholly owned subsidiary, Bakki Holdco Limited, where Access Bank will acquire 83.43% of the issued share capital of Sidian Bank with a view to acquire the remainder of the minority shares in Sidian Bank and thereafter amalgamate the business of Sidian Bank with that of Access Bank's existing bank subsidiary in Kenya namely, Access Bank Kenya Plc.
11. The Proposed Transaction will enable Access Bank Plc to scale up its operations within the East African market and to promote regional trade finance and other cross-border banking services, by leveraging its presence in key global trade corridors in the broader East African and COMESA regions. Further, through the subsequent amalgamation of Sidian Bank with Access Bank Kenya Plc which is proposed to be undertaken within approximately 6 months following completion of the Proposed Transaction, the amalgamated bank will become a Tier 2 bank contender in the Kenyan market with enhanced capacity to play a more impactful role in the growth of the Kenyan economy and deliver increased profitability to the amalgamated bank's shareholders.

Competition Assessment

Relevant Product Markets

12. The CID observed that there is an overlap between the parties' activities in relation to the banking sector in Kenya. Specifically, both the acquiring group and the target undertaking provide deposit and lending services in Kenya. The CID further noted that the target also provides bancassurance services, through Sidian Bancassurance Intermediary Limited in Kenya.

Provision of bancassurance services

13. The CID noted that the provision of bancassurance services involve a bank using its banking systems as a distribution channel for insurance services. The bank providing bancassurance service is itself not a provider of the insurance product nor does it pay out insurance claims against the insured products. Therefore, the CID considered that bancassurance services were distinct from insurance services in view of the mode in which the two are provided.
14. **The CID determined that the provision of bancassurance services as a distinct relevant product market.**



Provision of retail and corporate banking services

15. Retail banking entails all banking services provided to private individuals and very small enterprises, such as deposit account services (i.e., current accounts, saving accounts, cash deposits and cheque collection); payment services including ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques; lending (personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution)².
16. Corporate banking services, on the other hand, entail tailor-made financial services that financial institutions offer to their corporate clients in the context of corporate financing and raising capital – including cash management, working capital finance, term loans, asset finance, trade and specialised finance, pre- and post-shipment finance, structured finance, treasury services and commodity finance. For instance, corporate customers require working capital to fund their payments when expected receipts are late, and banks normally provide the type of working capital necessary to meet the needs of such customers whose transaction accounts go into deficit.
17. The CID noted that there exist deposit products provided to corporate and retail customers which are similar in principle with the major difference being the type of customers served and the way the customers are served. For instance, corporate customers unlike retailer customers often get a dedicated bank teller in view of the large sums of money they deposit. Further, corporate customers are likely to have bargaining power to negotiate favourable interest rates against their deposits and may also be offered access to loans linked to their corporate profile.
18. Additionally, the eligibility requirements in terms of minimum deposits, loan ceilings, maximum daily payment services tend to be different for the respective customers in the retail and corporate banking space. Further, individual customers attach more importance to the prices and friendliness of a bank while corporate customers would value more the range of products being offered and the reputation of the bank.
19. The CID observed that while there exists supply-side substitutability between the retail and corporate products that banks offer, considering that commercial banks cater for both categories of customers, on the demand side, the criteria for eligibility and the specific characteristics and use of the products in each of retail and corporate category, make retail and corporate banking distinct, such that an individual customer will not be eligible for corporate banking. Thus, a 5 -10% increase in the price of retail banking services will not induce retail customers to

² See case No M.8414 – DNB / Nordea / Luminor Group, paragraph 15, dated 14/09/2017



switch to corporate banking as they do not have the capability of meeting the corporate criteria within a reasonable timeframe. While retail banking products/services are standardised and customer-oriented, corporate banking is business-oriented and can be tailored or customized according to the specific needs and requirements of the clients.

20. The CID further noted that in retail banking, the number of clients with small-value accounts are significantly higher than in corporate banking. Thus, retail banking has an extensive clientele portfolio. To the contrary, in corporate banking, the number of clients is significantly less but the existing clients have significant balances and make high-value transactions. Thus, corporate banking tends to have a small clientele portfolio with high-value transactions. It is further noted that retail banking is characterised by customers with smaller transaction values as such volumes driven, while the higher values of transactions under corporate banking makes it transaction value driven. Thus, from a supply perspective the two can be differentiated.
21. The CID also noted that there exists a strong relationship between the bank and its corporate clients, implying that the provision of corporate banking services requires professionals with high standard customer relationship expertise. Due to these transactional and existing distinctive requirements, and complex product nature in corporate banking services, it is highly unlikely that in response to a small but significant non-transitory increase in the interest rates of retail banking charges on the retail service, a significant number of retail customers would swiftly switch to corporate services. In view of the foregoing, from a customer perspective, it can be concluded that the corporate and retail market segments are distinct.
22. In view of the above, the CID considered that retail banking and corporate banking services belong to separate market segments based on the nature of the products/services.

Provision of retail deposit, lending and payment services v. provision of corporate deposit, lending and payment services

23. The CID further considered that there exist distinct products offered to different customers under the retail and corporate banking segments. The CID observed that both parties provide loan, deposit and payment services which can be considered as distinct. For instance, a deposit is an investment made by an account holder in a bank for security and/or gaining interests that will benefit the individual in future while a loan is provided by the bank to customers that need financial assistance which they will repay in the future as principal plus interest computed on simple or compound interest. On the other hand, a loan would require a collateral from a customer to a bank in view of the risks of default associated with loans. Further, payment services entail cash deposit or withdrawal through



electronic payment system which comprises either direct debit, standing order, credit transfer, debit card or credit card transaction or mobile banking payment solutions. Such transactions are often carried out through online platforms. Payment services can be considered as distinct from deposit services or loan services on the basis that payment services play the role of transferring deposit balances held in banks across other banks, from bank to customers or from customers to banks (i.e., mobile money to bank account transfer). In this respect, banks may be seen to act as financial intermediaries facilitating the movement of funds between other financial institutions and private individuals.

24. The CID therefore considered that there is no likely demand substitutability among loans, deposits and payment services given the differences in the intended purpose under each product/service. Thus, a customer who requests for a loan for investment purpose will not be affected by the rates on deposit accounts as he/she cannot substitute with the latter to fulfil the intended needs. Each product has its own a distinct purpose and separate preconditions and requirements to be fulfilled by the customer.
25. The CID further noted that deposits, loans and payment services can be further segmented into narrower markets. For instance, different types of deposits exist, such as savings accounts (primarily used by households, medium and long term), current accounts and time deposits (interest from deposit determined on time agreement between the customer and the bank). However, there is a high degree of supply-side substitutability and possibly some demand-side substitutability between the various types of deposits. For instance, customers can swiftly switch to short term deposit in response to a change in certain conditions of the long-term deposit service, given that their core objective is deposit service.
26. Similarly, the CID observed that a further segmentation of the market may apply to payment services which can be categorised by the mode of payment being used i.e., credit card, debit card or bank transfer. Substitution amongst the various modes of payment may also be possible according to which mode is convenient to a customer.
27. However, the CID's assessment did not consider a further segmentation into narrower markets since the transaction is unlikely to raise concerns under these narrower markets.
28. Given that bank services are available to both corporate and retail customers, a distinction can be drawn amongst the various bank services based on the customer categories. For example, payment services available to corporate customers often entail provision for transfer of large sums of funds including being given priority as compared to a retail customer. Further, payments services products such as debit/credit cards tend to be differentiated, with cards for

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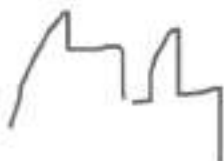
corporate customers allowing large amounts of daily withdrawals or credit card limits compared to the limits on cards for retail customers. However, these differences come at a cost as corporate customers are charged transaction fees for such premium services. Thus, even though there is similarity in the payment services offered to retail and corporate customers by way of intended use, the costs linked to payment services offered to a corporate customer is likely to limit the extent of substitution with a retail customer.

29. In view of the foregoing, the CID concluded that banking services can generally be categorized as retail and corporate banking services in view of the two broad customer categories that banks serve. Further, the CID deemed it necessary to categorise banking services by product categories given that banking products/services are unique as such substitution at narrower product markets is not likely. The assessment has therefore considered loan, deposit, and payment services categorized as retail and corporate services as distinct markets. This approach is consistent with previous decisions of the CID³, which arrived at a similar conclusion.
30. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as the:
- a) **Provision of bancassurance services**
 - b) **Provision of corporate deposit services,**
 - c) **Provision of corporate lending services,**
 - d) **Provision of corporate payment services,**
 - e) **Provision of retail deposit services,**
 - f) **Provision of retail lending services, and**
 - g) **Provision of retail payment services.**

Relevant Geographic Market

31. The CID observed that that the parties have a horizontal overlap in Kenya in respect of the provision of deposits, loans, and payments services. The CID noted that by virtue of bank licencing, banking services tend to be regulated under the relevant laws in a country where the services are provided such that different requirements for operation are likely to apply in different countries.
32. However, the CID noted that payment services provided by banks may not be strictly restricted to national boundaries. For instance, a Visa or Mastercard payment card can be used beyond national boundaries where the issuing bank

³ See Case File No. CCC/MER/02/03/2021 - Bank ABC and Blom Bank Egypt, paragraph 12



can honour the payment by debiting the account of the cardholder irrespective of the jurisdiction where the payment has been effected. However, the CID considered that while payment systems may be used anywhere in the world, its use is restricted to national level because the users usually access payment systems services in their countries. It is unlikely that a sufficient number of customers travel in masses abroad to access these services such that it may not make sense to broaden the market on this basis. The CID therefore reached the view that even though payment services may be provided beyond national boundaries, the geographic scope was limited to national given that any alternative market does not alter the disposition of the case.

33. The CID noted that with regards to deposit and loan services, retail customers are likely to access these services from banks within their territory as this would be the most convenient means of accessing their bank. Further, the regulatory policy governing deposit and lending services may not allow a customer to access these services beyond their country.
34. The CID observed that from a demand perspective, it is unlikely that a significant number of retail customers located in Kenya would substitute access to lending and deposit services from Kenya to another country in response to a small but significant deterioration of the terms and conditions offered by banks in Kenya. Additionally, on the supply side, it is unlikely that due to more favourable conditions in retail banking in other countries, the merging parties would timely switch to set up operations or branches in such countries. This is because the banking business is highly regulated and the licensing requirements, including minimum capital requirements, working capital requirements, compliance with laws in relation to anti-money laundering and terrorism financing can be onerous. Before being licensed by the Central Bank to carry business in a jurisdiction in which there is a 5 – 10% increase in banking prices, the merging parties would have to comply with all the regulatory requirements, and this may render the entry unattractive or untimely.
35. With regards to corporate banking, the CID observed that certain categories of corporate customers with global operations often open bank accounts in the various countries of their operations which is meant to support their local operations. Further, corporate clients may opt to hold their bank accounts outside the Common Market as a strategy to circumvent prevailing high costs (including interest rates and banks charges) and factors that lead to higher costs of doing business and perceived better quality of the service for banks beyond the Common Market. The CID therefore considered that the geographic scope for corporate banking is likely to be broader than national and likely to be global.
36. The CID considered that the geographic scope for retail banking is likely to be national given the limited possibility of timely substitution of the products/services.



The CID concluded that in an event of a SSNIP, a bank operating at national level is unlikely to swiftly shift its operations to another country to take advantage of the prospect of profits.

37. The CID concluded that, given the parties' activities in the provision of retail banking products/services only overlap in Kenya, the relevant geographic markets are national and pertain to Kenya.
38. In relation to corporate banking, the CID considered that the market is likely to be global in view of demand side substitutability, especially for large corporate customers. Corporate customers may in fact engage bankers beyond their national boundaries. For the purposes of the assessment, given that the precise geographic delimitation of the relevant sub-markets will not alter the disposition of the case, the CID considered that the geographic dimension of the relevant sub-markets is global.
39. With regards to bancassurance services, the CID considered that customers demand this service at a national level and the supply of the service is also limited with the geographic boundaries of a country. The CID noted that purchase of bancassurance service may require the physical presence of the customer at the provider's office and the provider may also require a physical verification of assets or property being insured as a means of facilitate the determination of applicable risk premiums. Therefore, it is not likely for a customer or a provider to seeks bancassurance services beyond they country of resident as this may prove costly. To this end, the CID determined the geographic scope of bancassurance as national and as pertaining to Kenya.
40. For the purposes of assessing the proposed transaction, and without prejudice to the Commission's approach in future similar cases, the CID has identified the following relevant markets:
 - a) **Provision of bancassurance services in Kenya**
 - b) **Provision of retail deposit services in Kenya,**
 - c) **Provision of retail lending services in Kenya,**
 - d) **Provision of retail payment services in Kenya,**
 - e) **Global provision of corporate deposit services,**
 - f) **Global provision of corporate lending services, and**
 - g) **Global provision of corporate payment services.**

Market Shares and Concentration

41. The parties have submitted the estimated market shares for the respective players in the lending and deposit services in Kenya as per Table 1 below.



Table 1 – Market Shares for the lending and deposit services

Relevant Market	Entity	Approximate Market Shares (%)
Lending service	NCBA Bank Kenya Plc	72.27
	KCB Kenya Ltd	9.38
	Co-operative Bank of Kenya Ltd	6.86
	Equity Bank Kenya Ltd	5.59
	Absa Bank Kenya Plc	2.01
	Family Bank Ltd	1.40
	Stanbic Bank Kenya Ltd	0.47
	Standard Chartered Bank Ltd	0.38
	National Bank of Kenya Ltd	0.31
	Gulf African Bank	0.17
	Sidian Bank	0.15
	I&M Bank Limited	0.15
	SBM Kenya Ltd	0.14
	Diamond Trust Bank Kenya Ltd	0.11
	Kingdom Bank Limited	0.11
	HFC Ltd	0.09
	Ecobank Kenya Ltd	0.07
	Access Bank (Kenya) Plc	0.03
	Bank of Baroda Ltd	0.03
	Prime Bank Ltd	0.03
	Consolidated Bank of Kenya Limited	0.03
	Spire Bank Limited	0.03
	Paramount Bank Ltd	0.02
	First Community Bank Ltd	0.02
	UBA Kenya Bank Ltd	0.01
	Development Bank of Kenya Ltd	0.01
	Guardian Bank Limited	0.01
	Credit Bank Ltd	0.01
	African Banking Corporation Ltd	0.01
	Victoria Commercial Bank Ltd	0.01

	Guaranty Trust Bank	0.01
	Citibank N.A Kenya	0.00
	Bank of India	0.00
	Habib Bank AG Zurich	0.00
	Mayfair CIB Bank Limited	0.00
	M-Oriental Commercial Bank	0.00
	Middle East Bank (K) Ltd	0.00
Deposit Service	Equity Bank Kenya Ltd	14.30
	KCB Kenya Ltd	13.90
	NCBA Bank Kenya Plc	9.73
	Co-operative Bank of Kenya Ltd	8.76
	Absa Bank Kenya Plc	6.04
	Standard Chartered Bank Ltd	5.83
	Stanbic Bank Kenya Ltd	5.31
	Diamond Trust Bank Kenya Ltd	5.21
	I&M Bank Limited	5.16
	Bank of Baroda Ltd	3.29
	National Bank of Kenya Ltd	2.72
	Citibank N.A Kenya	2.26
	Prime Bank Ltd	2.13
	Ecobank Kenya Ltd	2.07
	Family Bank Ltd	1.86
	Bank of India	1.44
	SBM Kenya Ltd	1.35
	HFC Ltd	0.84
	Victoria Commercial Bank Ltd	0.75
	African Banking Corporation Ltd	0.69
	Gulf African Bank	0.64
	Bank of Africa Ltd	0.61
	Sidian Bank Ltd	0.60
	Habib Bank AG Zurich	0.54
	First Community Bank Ltd	0.47
	Credit Bank Ltd	0.45
	Guardian Bank Limited	0.31

	UBA Kenya Bank Ltd	0.27
	DIB Bank Kenya Ltd	0.26
	Consolidated Bank of Kenya Limited	0.25
	Access Bank	0.24
	M-Oriental Commercial Bank	0.23
	Paramount Bank Ltd	0.22
	Middle East Bank (K) Ltd	0.21
	Mayfair CIB Bank Limited	0.20
	Development Bank of Kenya Ltd	0.20
	Spire Bank Limited	0.04

42. The CID noted that the proposed transaction will result in a change in the market structure, by way of market share accretion, in Kenya given the parties' overlapping activities. However, the CID is of the view that the market share accretion will be insignificant given that the merging parties are relatively small players in the broad markets for lending and deposit services in Kenya as presented in Table 1 above. The CID further noted that the lending and deposit services markets in Kenya are characterized by the presence of numerous competitors who are relatively big and are likely to continue providing strong competition to the merged entity. Additionally, the CID noted that the relevant sub-markets in the corporate banking have been defined as global, which is characterised by a high number of players with fragmented market shares. The existence of these players will provide competitive discipline which will overrule any potential competition concerns likely to arise from the transaction within Kenya.
43. With respect to the market for bancassurance services, the CID considered that competition concerns were not likely to arise in this market since the target's market shares in the banking services were not significant. Therefore, it is unlikely for the merged entity to have an incentive to foreclose the access of bancassurance services by leveraging its presence in the banking sector given that its market shares in this market will remain insignificant.

Determination

44. 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.






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

Dated this 27th day of September 2022



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Commissioner Mahmoud Momtaz (Chairperson)



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Commissioner Lloyds Vincent Nkhoma



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Commissioner Islam Tagelsir Ahmed Alhasan