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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/02/11/2022

**Decision¹ of the Eighty-Third (83rd) Committee Responsible for
Initial Determinations Regarding the Proposed Merger
involving Grit Real Estate Income Group Limited and Stellar
Warehousing and Logistics Limited**

ECONOMIC SECTOR: Real Estate

31 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 22nd February 2022, the COMESA Competition Commission (the “**Commission**”) received a notification involving Grit Real Estate Income Group Limited (“**Grit**”) as the acquirer and Stellar Warehousing and Logistics Limited (“**SWL**”) 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

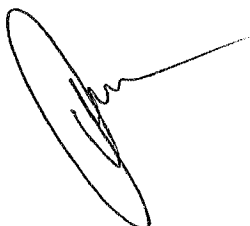
Grit (the acquiring undertaking)

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 ²	Industrial	100%
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 parties have submitted that Mara Viwandani Land consists of vacant land which is located next to the Imperial Distribution Centre and is still in the development phase and not operational.



SWL (the target undertaking)

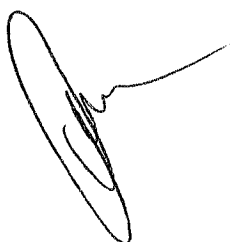
5. SWL is a special purpose vehicle established for the purposes of the transaction. SWL is a wholly owned subsidiary of Orbit Chemical Industries Limited (“OCIL”). SWL owns the target property (L.R. No. 14817) (“**Target Property**”), which is a property located at Mombasa Road (A104), Mlolongo, Nairobi, Kenya on which stands a chemical manufacturing warehouse. The Target Property, pre-merger, is merely being held by SWL and has never been brought to market to be let to others.
6. The parties have submitted that the chemical manufacturing warehouse located on the target property is leased to a sister company firm with the same ultimate controller as OCIL, namely Orbit Products Africa Limited (“OPAL”). OPAL is part of the Stellar group which operates a Fast-Moving Consumer Goods manufacturing business in Kenya. The parties have submitted that Grit will not control the chemical manufacturing business which operates from the manufacturing facility of the Target Property.

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:

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 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.



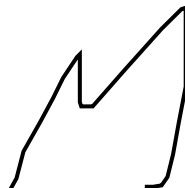
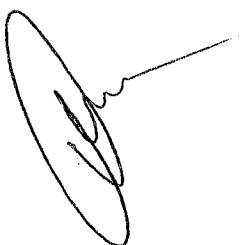
Details of the Merger

9. The proposed transaction entails GRIT purchasing 100% of the shares in SWL (together with the Target Property) from OCIL. OCIL will transfer the Target Property to SWL as a condition precedent to the transaction. Post the transaction, SWL is to lease the property to OPAL for a 25-year period, with an option for OCIL to buy the Target Property back at the end of the lease term.


Competitive Assessment

Relevant Markets

10. The merging parties are active in the real estate development space. They lease their assets, which are their products, to tenants.
11. Grit is involved in real estate investment and development. The products that it offers on the market are the completed property assets that it rents to third party tenants. Its 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 retains primary competency in respect of the development, maintenance and management of its 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 properties.
12. The CID notes that Grit is active in the following property sectors: hospitality, retail, office, and industrial. The Target Property has never been brought to the market for rent. Nonetheless, it is noted that the Target Property is located in the node of Mlolongo Nairobi, which is prime for industrial property.
13. The CID therefore focused its assessment on the provision of industrial property. 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 needs of clients in the respective sectors. 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,



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building safety, access requirements, and other factors become significantly more important compared to private residential properties³.

14. 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 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 stations⁴.
15. 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. 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 area⁵.
16. Based on the foregoing and given that the target is only active in the industrial property segment, the CID considers that the **industrial property market** constitutes a distinct product market.

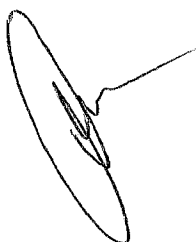
Relevant Geographical Market

17. The parties submitted that in the real estate property markets, competition is localised, confined to geographic nodes. 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, investors will seek out industrial properties in the specific region where important facilities such as airports or ports are located, and will face competition from properties typically located within a limited radius. From a supply perspective, the

³ Commercial Zoning in Commercial Real Estate, published on 11 April 2019. Accessed at <https://www.commercialrealestate.loans/commercial-real-estate-glossary/commercial-zoning>, on 27 March 2022

⁴ 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 27th March 2022.

⁵ Wick & Trautwein, LLC, 'Difference between Commercial And Industrial Zoning', published on 14 May 2015. Accessed at <https://www.wicklax.com/2015/05/14/what-is-the-difference-between-commercial-and-industrial-zoning/>, on 27th March 2022.



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.

19. The properties of the merging parties are located in Nairobi, Kenya, which is where most industrial zones are established. For purposes of this competitive assessment, the CID therefore considered the relevant geographical market for the industrial property market to be Nairobi.

Market Shares and Concentration

20. The parties have submitted that the Target Property was never put for lease on the market and is, therefore, not operational in the relevant market. SWL is also not active in the relevant market as it is a special purpose vehicle set up to hold the Target Property.
21. The parties submitted that in the 5 years preceding 2021 there has been the development of over 170,000m² of speculative warehousing space within Nairobi alone. Of this square meterage, Grit owns 13,702m² of industrial property within Nairobi (that being the Imperial Distribution Centre in the Mlolongo node). If the 170,000 m² were to be construed as the total market size for Nairobi⁶, Grit's market share in the Nairobi region would amount to less than 10%.
22. The parties further submitted the list of large players operating in industrial property market in Kenya, as below:
- SMEC;
 - Africa Logistics Properties;
 - Improvon;
 - AMS Properties; and
 - Fairdeal Properties.
23. Notwithstanding the absence of exact market shares, it is noted that there exist numerous industrial properties situated within a 10 km radius from the Target Property (as listed in Table 2 below), confirming the presence of competition in the relevant market. Considering the fact that neither the Target Property nor SWL operate in the industrial property market in Nairobi, and that the Target Property will be leased back to OPAL which already operates the manufacturing plant located on the Target Property, the transaction will not result in a foreseeable alteration to the market structure in the identified market.

⁶ This would however not take into account existing industrial property which preceded the 5 year examination period and does not take into account warehouses which are owned and developed by the firms themselves and not subject to a lease.

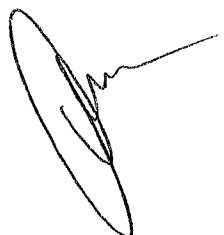


Table 2: Industrial Properties within a 10 km radius from the Target Property

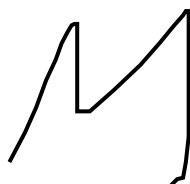
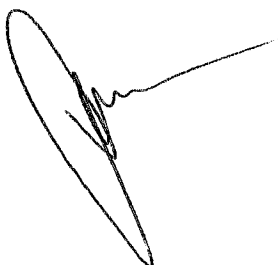
Name of Player	Approximate Distance from Target Property (km)
Inland Container Depot	9.6
Twiga Foods Packhouse	7.2
Maruti Mining Ltd	8.6
Katko Complex Grade A Warehousing	6.9
VATAN Plastics Africa Ltd	6.8
Emerald Business Park	6.5
African Cotton Industries	6.5
Platinum Packaging Limited	6.4
Blowplast Limited	6.2
Acceler Global Logistics- Warehouses	5.8
Allpack Ind Ltd	5.7
Victoria Juice Company	5.7
Shipping Containers Sale and Fabrication	5.7
Pili Trade Centre	5
Sarin Industrial Park	4.2
Fortis Industrial Park	3.2
Bellway Business Park	3
Semco Industrial Park	3
Eens Industrial Park	2.8
Vishva Business Park	2.7
Norda Industrial Park	1.6
Dinlas Pharma EPZ Limited	1.1
Megvel Cartons Limited	0.85

Consideration of Third-Party Views


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

Determination

25. 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.



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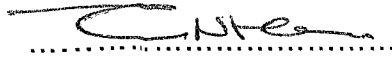


26. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 31st day of May 2022



Commissioner Mahmoud Momtaz (Chairperson)



Commissioner Vincent Nkhoma



Commissioner Islam Tagelsir Ahmed Alhasan