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Common Market for Eastern and Southern Africa

**Case File No. CCC/MER/3/22/2022**

# Decision[1] of the Eighty-Fifth (85th) Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Sanlam Emerging Markets Proprietary Limited and aYo Holdings Limited

**ECONOMIC SECTOR**: Insurance

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

## 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 6 May 2022, the COMESA Competition Commission (the "**Commission**") received a notification involving Sanlam Emerging Markets Proprietary Limited ("**SEM**") as the acquiring firm and aYo Holdings Limited ("**aYo**") as the target firm, pursuant to Article 24(1) of 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

***SEM (the acquiring firm)***

4. SEM is a company established under the laws of South Africa, with its principal place of business at: 2 Strand Road, Bellville, Cape Town, 7530 South Africa. SEM is indirectly wholly owned by Sanlam Limited ("**Sanlam**"). The Sanlam Group (comprising Sanlam and its subsidiaries, including SEM) is a financial services company that provides, *inter alia*, life insurance, non-life insurance, reinsurance, investment management and other financial services in various emerging markets in Africa, India, the United Kingdom, the United States, Australia and South-East Asia.

5. The Sanlam Group has a presence and/or operations in the following Member States: Burundi, Eswatini, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Uganda, Zambia and Zimbabwe.

***aYo (the target firm)***

6. The parties submitted that aYo is a company incorporated in accordance with the laws of Mauritius, with its registered address at: 3rd Floor, Roger House, 5 President John Kennedy Street, Port Louis, Mauritius. aYo is a wholly owned subsidiary of MTN Group Limited (the "**MTN Group**"). aYo conducts the business of a micro insurance broker and, in partnership with an insurer that takes responsibility for the product development and underwriting of the products, aYo provides micro insurance services to MTN subscribers in various locations across Africa, including the handling of the administration and claims against these insurance products. aYo utilises the MTN brand, as well as certain MTN information technology services, in order to provide these micro insurance products and services to MTN subscribers.

7. While its holding company is domiciled in Mauritius, aYo is active through a number of national operating subsidiaries. In the Common Market, aYo is active as an insurance broker in Uganda and Zambia, with the intention of launching activities in both Rwanda and eSwatini in the medium-term. Specifically, in the Common Market, aYo controls the following firms:

   a. aYo Rwanda Limited ("**aYo Rwanda**"), a company incorporated in accordance with the laws of Rwanda, with its principal business address at: Kacyir, Gasabo, Umujyi wa Kigali, Rwanda.

   b. aYo Uganda Limited ("**aYo Uganda**"), a company incorporated in accordance with the laws of Uganda, with its principal business address at: Mukwano Complex, Plot 16-18 Wampewo Avenue, Nyonyi Gardens, Kololo, Kampala, Uganda. aYo Uganda commenced operations in 2018.

c. aYo Insurance Brokers Zambia Limited ("**aYo Zambia**"), a company incorporated in accordance with the laws of Zambia, with its principal business address at: 31 Manda Hill Road, Olympia, Lusaka, Zambia. aYo Zambia commenced operations in 2020.

8. As at 1 August 2022, of the entities listed above, only aYo Uganda and aYo Zambia have commenced operations, while aYo Rwanda is not yet trading/ operational.

## Jurisdiction of the Commission

9. 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.*

10. 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 held asset 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

11. The proposed transaction comprises the acquisition by SEM of 50% of the shares in aYo, from MTN Dubai. Pursuant to the implementation of the Proposed Transaction, SEM and MTN will each hold 50% of the shares in, and thus control, aYo.

12. The Proposed Transaction will see Sanlam, as an insurer with the requisite insurance licenses, fulfil the role of product development and underwriting, while

aYo will take responsibility for the marketing and distribution of the products, policy administration and claims processes.

## Competition Assessment

### *Relevant Product Market*

13. Both Sanlam and aYo are active in the insurance market, however providing different services. Sanlam operates as an insurer (underwriter of insurance products) and offers life and non-life insurance products. aYo operates as an insurance broker and sells micro-insurance products and services (which are developed by the insurers) to subscribers of mobile network operator (MNO), specifically MTN subscribers. This includes the marketing, sale, administration and claims management services related to micro-insurance products. More specifically:

    a. MTN subscribers can purchase micro-insurance products through mobile payment services, airtime or loyalty points.

    b. MTN subscribers can be awarded micro-insurance products for no consideration as a reward for acquiring or using another product or service of MTN (for example as a reward for purchasing more airtime or for using MTN mobile payment services).

    c. The micro-insurance product can be directly related to the use of mobile payment services (for example, an insurance product or service in terms of which, for a premium calculated on the value of certain payments made by the MTN subscriber to a third party using mobile payment services, the recipient of those payments will be paid out a certain amount in the event that the MTN subscriber is no longer able to pay, for example as a result of accidental death or disability).

14. The principal product lines supplied by aYo Uganda and aYo Zambia are "aYo Recharge with Care" and "aYo Send with Care", which are further described below.

15. Under "aYo Recharge with Care", insurance cover is provided through airtime deduction on a customer's mobile phone. By signing up with aYo, every time a customer recharges with MTN airtime, they receive life and/or hospital insurance cover valid for a minimum of 30 days. At the time of recharging, customers have a choice of cover (i.e. "MyLife" or "MyHospital"), which can be changed at any time. In addition to this, customers can elect to purchase further cover using "MyBoost", which is extra cover in addition to that which accumulates every time the customer loads MTN airtime.

16. In terms of the cover offered, MyLife cover is a form of life insurance which, in the unfortunate event of a customer's death, pays out the accumulated cover to

their family (or elected beneficiary). MyHospital cover relates to accidental hospitalisation, which necessitates admission to hospital for at least one night due to a traumatic event (either an accident, impact or injury). The customer's accumulated cover will be paid straight to their MTN Mobile Money account. All claims relating to the chosen cover (or both, as the case may be) can be lodged directly from the customer's mobile phone. It is also possible to nominate a beneficiary or trusted person to claim the cover on behalf of the customer, should the circumstances require.

17. "aYo Send with Care" allows MTN mobile money customers to purchase insurance cover valid for 120 days, every time they send money to a beneficiary (either an individual person or to a school for school fees). In terms of this cover, aYo will triple the amounts that the customer has sent over the last 4 months and pay it out to their beneficiaries (the recipients of the customer's payments) over a year. The life cover pays out to the customer's family in the unfortunate event of their death, and hospital fees pay straight into the customer's MTN Mobile Money account if they spend one night or more in hospital due to an accident.

18. The greater the amount of money sent, the greater the amount of cover. The minimum requirement being that money is sent at least once every 120 days to ensure that the customer's beneficiaries are always covered. In this way, customers have the opportunity to add cover each time the pay school fees, thus, should anything happen, the cover will be paid out directly to the school.

*Provision of Micro insurance products*

19. Micro insurance refers to the provision of insurance products specially targeted to individuals and households at the grassroots level of society[2]. Micro insurance does not refer to the size of the risk carrier, although some providers are small and even informal. Micro insurance also does not refer to the scope of the risk as perceived by the clients. The risks themselves are by no means "micro" to the households that experience them. Micro insurance could cover a variety of different risks, *albeit* the most common covers relate to life policies. The term 'micro' refers to the low-income clientele served and to the low premium, limited coverage and low claim incidence.

20. Micro insurance can thus be distinguished as a special line of insurance services.[3] The distribution systems of most traditional insurers are not designed to serve the low-income market. The system of brokers, agents and direct sales traditionally used by such insurers does not reach the poor[4]. In addition, the products generally available from traditional insurers are not designed to meet

[2] Global Risk Forum GRF Davos, Davos (2010). Microinsurance – An Innovative Tool for Risk and Disaster Management page 2.

[3] This is in line with the findings of the CID in the MTN / aYo Merger Decision dated 27 June 2021.

[4] International Labour Organisation (2006), 'Microinsurance: The social finance and social protection nexus'. Accessed at https://www.ilo.org/global/publications/world-of-work-magazine/issues/DWCMS_080474/lang--en/index.htm on 13 June 2022.

the specific characteristics of the low-income market. Key product design issues include inappropriate insured amounts, complex exclusions and legal policy language[5]. Within its suite of insurance products, the Sanlam Group has historically not provided micro insurance products/services to any customers in the Common Market, except since December 2021 when Sanlam commenced providing underwriting activities for aYo (separate from this transaction).

21. From a demand perspective, aYo's target customers can be distinguished from customers that procure insurance products from traditional insurers on the basis of, *inter alia*, (i) level of income, (ii) average spend on insurance and (iii) duration of the customer engagement. aYo's customers fall within the low-income bracket and spend on average less than USD 1 per month[6] on procuring insurance products, whereas customers of traditional insurance providers spend, on average, USD 5 per month on procuring insurance products. With respect to the duration of the engagement, while customers of traditional insurers typically procure insurance on an ongoing basis from the insurance carrier, customers of micro-insurance procure insurance on an *ad-hoc* basis. It is unlikely that a significant number of customers of micro-insurance services would be able to shift to traditional insurance products in the event of a small but significant increase in premiums for the micro-insurance services.

22. **In view of the foregoing, the CID considered that micro insurance constitutes a distinct product market.**

*Consideration of Segmentation by Distribution Channel*

23. In ***MTN/aYo***, the CID further segmented the market according to the distribution channel, finding a distinct market for mobile micro insurance. Mobile micro insurance is described as "*any type of micro-insurance product which leverages the mobile channel, regardless of the existence of a mobile money platform to improve a part of the insurance value chain which can include: product design, pricing, marketing and sales, policy administration and claims payment.*"[7] Partnering with an MNO enables an insurer to leverage the MNO's technology platforms and agent networks to provide insurance to the MNO's subscribers. In this regard, MNOs can provide insurers with access to a large customer base and an established network of distribution points to interact with these customers. In many developing countries, such as Uganda and Zambia, MNOs are highly visible and accessible to people of all income levels, with branded shops, corner stores selling prepaid airtime, and umbrella-cart service stops.[8]

[5] *Ibid.*

[6] Exhibit B of the Merger Filing.

[7] Camilo Téllez (2012) 'Emerging Practices in Mobile Microinsurance', quoting "M-Insurance: The Next Wave of Mobile Financial Services?" by Jeremy Leach. Accessed at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/07/MMU_m-insurance-Paper_Interactive-Final.pdf on 13 June 2022.

[8] "Mobile Phones and Microinsurance" by Pranav Prashad, David Saunders and Aparna Dalal, International Labour Office (November 2013).

24. The nature of the MNO set-up facilitates micro insurance operations such as enrolment, premium collection or renewals which can be through the mobile money app or airtime money. The CID noted that there are other payment systems through which micro insurance solutions can be delivered, such as local retailers which are popular among the lower income households or dedicated street agents employed by the insurer. However, these distribution channels require training of third-parties being retailers and street agents by the insurer in relation to the insurance solutions being marketed and would remove the ease of access to claims, payments, and renewals by the customers which are provided by the mobile application. From a supply side, the CID considered that micro insurance providers may not be able to easily (i.e., without incurring irreversible investments and significant risks) switch to offering mobile solutions as it requires identifying and partnering with an MNO with a sufficient customer base, which may be restricted if such MNOs have exclusive arrangements with other insurance providers.

25. The parties have submitted that it is more appropriate to identify a single relevant market for micro insurance, irrespective of the channel for distribution. The parties submitted that an alternative means of distribution which does not constitute a separate market on its own; for example, the sale of a soft drink in a large supermarket does not make that same soft drink part of a separate relevant market when sold at a small roadside kiosk.

26. In this regard, the parties made the following submissions in support of a broad market for micro insurance:

   a. Even in the mobile channel, training must be given to third parties – employees of MNOs do not have ingrained knowledge of micro insurance products. The mobile channel therefore has no inherent advantage over other channels in this respect. Accordingly, the training requirement should not be enough to create a separate relevant market.

   b. While the mobile channel may present some advantages or benefits over other channels, this is often subjective and does not apply to all potential customers. For example, certain customer groups (for example, the elderly) are less comfortable with digital channels and for these customers a more manual process may be preferable, alternatively, they may not trust the mobile channel. In this context, other channels will have a number of advantages over the mobile channel. These channels include banks, micro lenders, retailers, funeral service providers, burial societies, savings clubs (stokvels), churches, physical distribution like agents and call centres.

   c. Several micro insurance providers have experienced success using distribution channels other than MNOs. For example, embedding accident cover in bus or train tickets, including travel insurance in payments made for travel expenses, embedding insurance cover in remittances made via remittance providers or embedding crop insurance cover in fertilizer sales. Further examples include using churches, supermarkets or pawnshops as effective channels to market and distribute their micro insurance products. In Zimbabwe, Zingsure has established a strong partnership with the Apostolic Council of Churches of Zimbabwe[9]. Another example is Lumkani, a social enterprise with a mission to mitigate the loss of life and property caused by fires in informal settlements in South Africa[10]. To accomplish this, Lumkani developed and distributed networked early warning fire detection systems to homes in informal settlements across South Africa. Each fire alarm system comes with household insurance against fire, which the customers can choose to add on.

d. As these examples illustrates, there are many different channels that enable insurers to get closer to the everyday lives of their clients, thereby enabling them to reach scale and provide cost effective micro insurance.

27. The CID noted that training of MNO employees may not be as critical as for other modes of distribution as the automated nature of the mobile platform would reasonably imply that consumers are able to pay and make claims through the platform, thereby limiting the need for interaction with employees unlike for the alternative modes of distribution. Further, the MNO is likely to have more financial capacity to offer such training to its staff, and typically, with the roll-out of such programmes, the MNO would engage in advertising and advocacy campaigns.

28. The CID considered that the examples of alternative micro insurance solutions providers referred to by the merging parties were likely to be complementary sources, rather than competing sources. The distribution channels for micro insurance are designed in a manner to reach the poor and therefore targets forums which they are likely to access. The manner in which the mobile micro insurance works is that in addition to making direct payments for the micro insurance product, the consumer is also rewarded for their purchase of airtime or usage of mobile money services. In such an instance, in the event of a small but significant non-transitory increase in premium payable to aYo, it is unlikely that consumers would switch altogether to other distribution channels as they will still benefit through their continued usage of the MNO's mobile platform and further the other platforms do not offer similar insurance products (e.g., funeral cover or insurance against fire versus hospital coverage). In Africa, mobile money payment services represent a key payment platform for consumers and traders who do not have access to traditional banking products. "*Access to even basic traditional banking services across Africa is limited, with little infrastructure and a strong preference for cash. Mobile money services like MTN's, which*

[9] See https://scbf.ch/wp-content/uploads/2020/06/SCBF_2016-02_Final-Report-Zingsure-1.pdf.
[10] See https://lumkani.com/.

*enable people to access financial products from their phones, have had far greater success*"[11]. Zambia's National Financial Inclusion Strategy 2017-2022 specifically highlighted the role of MNOs in offering new opportunities for the insurance market, noting that the number of micro insurance policies grew from 200,000 in 2011 to more than 3 million in 2015, a result of a new product from an MNO[12], and the withdrawal of the mobile product led to a sharp drop in micro insurance policies. This confirms the strong impact of mobile platforms in the provision of micro insurance policies compared to other distribution channels.

29. It is common to distinguish distinct markets based on distribution channels. Outside the continent, it has been recognised that mobile payments and other types of payment may belong to different product markets[13], potentially due to limited supply side substitutability in view of the infrastructure required to support mobile payments would be a significant part of those investments. By extension, it is, therefore, not peculiar to identify a distinct market for services offered on mobile platforms separate from the other forms of distribution channel for that service.

30. For the purpose of this assessment, the CID considered that the product market should be construed as the provision of mobile micro insurance products. Further, since the parties are only active in this submarket, their presence in any potentially wider market (such as the provision of micro insurance products irrespective of the distribution channel) would be weaker.

***Relevant Geographic Market***

31. The relevant geographic market consists of all areas where the conditions of competition are appreciably similar for all traders.

32. In line with its decision in MTN/aYo, the CID considered that the relevant market would not be wider than national, given that the insurance regulator would issue licenses for operations within the national border and in view of the type of clientele targeted by micro insurance products and the need for simple payment collection mechanisms which would not be achieved under cross-border transactions. The CID further considered that the market was unlikely to be narrower than national given that the distribution channels are organised at national level and that the customers are able to access the products via their phones.

33. For purposes of the current case, the relevant geographic markets for the provision of mobile microinsurance services are the national markets for Zambia

[11] Reuters, 'African giants MTN, Sanlam partner to sell insurance on continent'. Accessed at https://www.reuters.com/article/mtn-group-sanlam-insurance-idAFL8N2PJ3D1 on 15 June 2022.
[12] Zambia National Financial Inclusion Strategy 2017-2022, page 25 (footnotes 22 and 23). Accessed at https://www.boz.zm/National-Financial-Inclusion-Strategy-2017-2022.pdf, on 17 June 2022.
[13] European Commission decision of 4 September 2012 in case M.6314 – Telefónica UK / Vodafone UK / Everything Everywhere, paragraph 135; M.6956 – Telefonica / Caixabank / Banco Santander / JV, paragraphs 30-37.

and Uganda where the target undertakings currently operate. The CID is nonetheless mindful that the transaction is also intended to facilitate further market entry to other MTN territories where aYo is not yet active and to territories where Sanlam has a presence but MTN does not, and potentially to territories where neither business currently has a presence. This prospect does not however alter the conclusion that the relevant geographic markets are national given the foregoing assessment.

***Market shares and Concentration***

34. The parties submitted that the relative infancy of the micro insurance markets in Uganda and Zambia, combined with aYo's relevantly recent entry into such markets mean that the parties do not have in their possession any reliable estimates of the various participants' share of supply. Similarly, there are presently no third-party sources from which the parties can draw to provide details of estimated market shares to the Commission.

35. Notwithstanding the above, Sanlam provided its estimated market shares and those of its main competitors in the market for life and general insurance as per Tables 1 and 2 below. The parties submitted that all of these insurers, to the extent that they do not already offer micro insurance products, could enter the micro insurance segment, either on their own or in partnership with various other businesses.

***Table 1 – Estimated Market Shares for Life Insurance and General Insurance in Uganda***

| Insurance Category | Company | Estimated Market Share (2018) |
|---|---|---|
| Life Insurance | UAP Old Mutual Life Assurance | 23.50% |
| | Liberty Life Assurance | 16.10% |
| | **Sanlam Life Insurance** | **15.90%** |
| | ICEA Life Assurance | 15.00% |
| | The Jubilee Life Insurance | 12.50% |
| General Insurance | The Jubilee Insurance | 25.80% |
| | UAP Old Mutual Insurance | 19.70% |
| | ***Sanlam General Insurance*** | ***12.50%*** |
| | Britam Insurance | 10.00% |
| | GoldStar Insurance | 4.30% |

*Table 2 – Estimated Market Shares for Life Insurance and General Insurance in Zambia*

| Insurance Category | Company | Estimated Market Share (2018) |
|---|---|---|
| Life Insurance | ***Sanlam Life Insurance*** | ***30.00%*** |
| | ZSIC Life Ltd. | 14.00% |
| | Prudential Life Assurance | 14.00% |
| | Madison Life Insurance | 13.00% |
| | Speciality Emergency Services Limited | 8.00% |
| General Insurance | Professional Insurance | 24.00% |
| | Madison General Insurance | 15.00% |
| | ZSIC General Insurance Ltd | 13.00% |
| | ***Nico Insurance Zambia Ltd.*** | ***10.00%*** |
| | Mayfair Insurance | 9.00% |

36. The parties further submitted that several niche players have recently emerged in the micro insurance space. Companies like MicroEnsure, Trustco, Inclusivity Solutions and Bima have been instrumental in building some of the innovative propositions. From publicly available information, the parties provided the following details of microinsurance partnerships in existence:

*Table 3 – List of Microinsurance Partnerships*

| Name | Offered by | Partners | Product Description | Channel |
|---|---|---|---|---|
| Kilmo Salama | Safaricom and UAP Insurance | Syngenta Foundation for Sustainable Agriculture | Weather index insurance product designed to insure maize and wheat farmers against drought and excess rain | Safaricom |
| CIC M-Simo | All MNOs offering mobile money services in Kenya | CIC Insurance Group | 12-year endowment product providing a savings element with a life and disability cover. The client is encouraged to save money: they receive savings interest and an immediate insurance cover. | MNOs: Premium collection through mobile money platforms (MPESA, Airtel Money, Yu-Cash etc.) and weekly SMS reminders for premium collection. |
| Akiba Sure | Safaricom | MicroEnsure, FrontlinesSMS, Credit ChildFund | Combined life insurance and savings product to benefit | Safaricom: Uses FrontlinesSMS: Credit's PaymentView software to monitor |

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| | | | children in the event that a guardian passes away. The twoyear term product is based on savings contribution levels ranging from 10-60 KES /day (USD0.10), with a savings payout at the end of the life of the policy in the event a claim has not made. | incoming M=PESA payments via SMS, track customer progress towards savings requirements and prompt targeted SMS messages and reminders. |
| Changamka | Safaricom and GA Insurance Limited | | Flexible savings and health m-insurance product designed to support families save towards the cost of childbirth. | Safaricom: Top-up smart cards via M-PESA |
| Safari Bima | Kenya Oriental Insurance Limited | Changamka, Microhealth Limited | Personal accident cover | Subscription with a scratch card via SMS |
| Ingoboka cash | Airtel / Tigo Rwanda | Inclusivity Solutions | Hospital cover | Airtel |
| ZingSure | ZingSure | | Life cover | Apostolic Church of Zimbabwe |
| Blue Wave insurance | | | | MNOs, banks, micro finance institutions |
| MyLife | Liberty Life Uganda and MobiCash | | Life cover | Via M-Cash |

37. The CID noted that in Zambia, the low-income insurance market is increasingly recognised as commercially viable. As of 2016, it was estimated that out of the 33 registered insurance companies, 9, predominantly the large life insurers, are engaged in micro insurance[14]. Currently, on the basis of available information, there are no direct competing suppliers of micro insurance through mobile operators in Zambia other than the partnership between Absa Life Zambia Limited and Airtel Money for funeral cover which was launched in 2022. aYo

[14] fsdAfrica, (2016), 'The Growth of Inclusive Insurance in Zambia: Catalysing the Market through Industry Leadership'. Accessed at https://www.fsdafrica.org/wp-content/uploads/2019/08/Zambia-Microinsurance-2.pdf on 14 June 2022.

Zambia was reported to have passed the one-million customer mark (out of a total population of approximately 18 million) in early 2021[15]; and as at January 2022, less than two years after launching in Zambia, aYo is reported to have passed the 2.85 million customer enrolment mark[16].

38. In Uganda, though the country was among the first to introduce a formal micro insurance product (in 1997), micro insurance has not developed to the extent that it has in other countries within the region. Only 6 of the 21 licensed insurers currently offer policies designed to target the low-income and informal segment of the population. The following companies offer policies designed to target the low-income and informal segment: AIG (mainly credit-life); UAP (mainly credit-life); National (credit-life and school-fee protection; Lion (credit-life, agriculture); Liberty Life (PA and hospital cash); ICEA (savings-linked life and PA) [17]. In the mobile micro insurance segment, it is estimated that as at December 2020, aYo Uganda had approximately 10 million customers (out of a total population of approximately 45 million).

39. The transaction will not result in any market share accretion given that the acquirer was not active in the provision of micro-insurance services pre-merger (except recently through aYo). The transaction will therefore not result in a change in market structure. The CID however noted the inclusion of exclusivity provisions in the joint venture agreement which could raise, among others, foreclosure concerns.

40. Further, in view of the involvement of MTN in these exclusivity provisions and as well as its involvement in the relevant market as the provider of the mobile platform, the CID also considered the market shares of MTN in the broad market for mobile communications services:

   a. The parties submitted that in Zambia, MTN is a leading mobile network and telecommunications provider, with operations across all 10 provinces. MTN provides communication solutions in various forms, including the offering of data, fixed and wireless internet, mobile financial services, as well as voice and short message systems. MTN's operations across Zambia ensure that each province is covered by 4G, 3G, EDGE and 2G networks. The parties submitted that MTN's estimated share of the MNO market in Zambia is approximately [redacted][18] [redacted]. However, the CID noted that Vodafone and UZI were not operational in the market. In this regard, the CID considered that the

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[15] https://ventureburn.com/2021/05/microinsurer-ayo-zambia-flourishes-through-pandemic/, accessed on 14 June 2022.

[16] https://www.africa.com/ayo-zambia-wins-the-hearts-and-minds-of-consumers-industry/, accessed on 16 June 2022.

[17] https://a2ii.org/sites/default/files/reports/microinsurance_in_uganda_country_diagnostic_report_on_market_and_regulations.pdf, accessed on 14 June 2022.

[18] Confidential information claimed by the merging parties.

submissions by the parties were incorrect and misleading. The CID observed that the COMESA Competition Rules (Form 12 Notice of Merger) imposes an obligation on parties to provide correct and complete information. To this effect, submission of incorrect and misleading information is a breach of the Regulations and parties may be liable to a fine or such other penalty as may be assessed. The CID has therefore cautioned the parties and that a repeat of this conduct may attract a fine.

b. In Uganda, the CID noted from public sources that MTN is reportedly the largest mobile operator, having held a market share of over 50% consistently since 2016[19]. Four other MNOs also provide mobile money services, including Smart telecom, Airtel, UTL, and Africell.

c. The parties submitted that MTN established operations in Uganda in 1998, becoming the second national operator of a telecommunications network in the country. With a 22-year legacy of investment in Uganda, MTN is regarded as a strong developmental partner with the government of Uganda, having invested significantly in infrastructure development to provide a robust foundation for growth in the country. Today, MTN is one of Uganda's leading MNOs in the telecommunications sector, with a presence in all 134 districts, providing services to approximately 15 million customers. MTN's estimated share of the MNO market in Uganda is approximately [redacted][20], [redacted][21], [redacted][22] [redacted][23].

41. In view of the significant market position of MTN as a mobile operator, the CID has assessed whether the transaction could give rise to foreclosure concerns.

42. The CID further noted that barriers to entry in the relevant markets prevail in terms of the distribution channels for accessing low-income customers to achieve a significant volume of low value transactions. The CID notes that sustaining profitable operations in this industry appear problematic in view of past exits from the market, for instance, in Uganda, two specialised players exited the micro insurance market: MicroCare (a specialised health insurer) and MicroEnsure (formerly Micro Insurance Agency, a specialised micro insurance broker). MicroCare ceased trading on becoming insolvent in 2009 and MicroEnsure withdrew from the market in 2010.[24] In Zambia, there are examples of MNOs having previously partnered with insurers to provide mobile micro-insurance,

[19] 'Wireless subscriber share in Uganda by carrier from 2015 to 2020'. Accessed at https://www.statista.com/statistics/671666/mobile-subscription-share-in-uganda-by-operator/#:~:text=In%20the%20first%20quarter%20of,in%20Uganda%20with%2051%20percent, on 14 June 2022.
[20] Confidential information claimed by the merging parties.
[21] Confidential information claimed by the merging parties.
[22] Confidential information claimed by the merging parties.
[23] Confidential information claimed by the merging parties.
[24] https://a2ii.org/sites/default/files/reports/microinsurance_in_uganda_country_diagnostic_report_on_market_and_regulations.pdf, accessed on 14th May 2021.

notably Airtel Zambia's arrangement with MicroEnsure, and African Life Assurance; however, these partnerships did not survive. The CID considered that the barriers to entry are significant in view of the high investment costs and low-revenue nature of the products.

**Exclusivity Provisions under the Shareholders' Agreement**

43. The parties submitted that for aYo to be effective, and in order to ensure that the parties receive an adequate return on their investment (including the significant financial and resource contributions), it is anticipated that some measure of exclusivity will be attached to the Sanlam's investment.

44. The parties submitted that this exclusivity is necessary to ensure, first the success of the business, and second, that the parties achieve a return on their investment. In relation to the success of the business, as noted in the rationale for the Proposed Transaction, the vast majority of the population on the African continent is underinsured, and potentially exposed to significant and often crippling financial risk. The Proposed Transaction will enable Sanlam and MTN, through aYo, to develop new products designed specifically to cater to the needs of this underserved and exposed section of the population. The Proposed Transaction is therefore pro-competitive in that it is driving competition and innovation as it forges a new line of products to a new customer base. However, the extent of Sanlam and MTN's investment in aYo is large, and therefore, in order to achieve an adequate return on that investment, both parties must be fully committed to the venture and direct all of their efforts towards it, particularly when regard is had to the low margins achieved on the products and the need to achieve minimum critical volumes. As mentioned above, micro insurance by its very nature is a low value business. It is thus important to attain critical volumes of activity to ensure the long-term sustainability of the business.

45. As regards exclusivity, the parties submitted that competition law should not be applied in a manner that may discourage firms from carrying out innovative activities that enhance the competitiveness of an industry. Such an approach will negatively affect consumers since they would not be able to benefit from new, improved and cheaper products that could otherwise satisfy their needs. In these circumstances, the parties submitted that the Commission should seek to foster innovation, by encouraging innovative businesses (such as the aYo-Sanlam arrangement presented in this filing), and to create a regulatory environment which will incentivise such innovation and will balance for the necessary commercial imperatives associated with such innovation.

46. Against the above background, the CID has assessed the exclusivity provisions [redacted][25].

[25] Confidential information claimed by merging parties.

47. [redacted]

48. [redacted]

49. [redacted]

50. [redacted]

51. [redacted]

[redacted]

52. [redacted]

[redacted]

53. [redacted]

54. [redacted]

55. Monitoring of compliance with the above undertakings shall take place through the submission of a revised Shareholders' Agreement by the parties. Further, the Commission shall undertake the necessary monitoring of the market to ensure that the parties are complying with the terms of the revised clauses in practice, as it deems fit.

## Third-Party Views

56. Submissions were received from the national competition authorities of Eswatini, Kenya, and Mauritius which did not raise any concerns from the transaction due to the absence of overlaps between the activities of the merging parties' pre-merger. The national competition authority of Zambia raised concerns about exclusive dealing in relation to the vertical relationship between the parties in relation. The CID considered that the undertakings provided by the parties addressed the concerns raised by Zambia.

## Determination

57. Based on the evidence, facts and law, the CID concluded that the proposed transaction is likely to raise foreclosure concerns in the relevant markets, arising from the exclusivity provisions contained in the Shareholders' Agreement. [redacted]

58. The CID, therefore, approved this transaction, subject to the parties' compliance with the undertakings relating to the following amendments to be made to the Shareholders' Agreement in relation to the parties' operations in the Common Market:

a. [redacted]

[redacted]

b. [redacted]

[redacted]

c. [redacted]

[redacted]

d. [redacted]

[redacted]

59. The parties shall submit to the Commission the revised Shareholder's Agreement on or before the implementation date of the transaction.

60. The Commission reserves the right to monitor the parties' compliance with the provisions of the revised clauses, at any time as it deems fits.

61. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 2nd day of August 2022

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**Commissioner Brian Muletambo Lingela (Chairperson)**

..................................... **Commissioner Lloyds Vincent Nkhoma**

..................................... **Commissioner Islam Tagelsir Ahmed Alhasan**