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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/12/28/2020

Decision[1] of the Seventy-Sixth (76th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of Sole Control of aYo Holdings Limited by MTN (Dubai) Limited

ECONOMIC SECTOR: Banking and Financial Services

27th June 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 28th January 2021, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving MTN (Dubai) Limited ("**MTN Dubai**") and aYo Holdings Limited ("**aYo**"), pursuant to Article 24(1) of the COMESA Competition Regulations, 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

MTN Dubai (the acquiring firm)

4. The acquiring firm, MTN Dubai, is a company incorporated in accordance with the laws of Dubai, United Arab Emirates, with its principal business address at Unit 01, Level 23, Al Fattan Currency House, Tower 2, Dubai International Financial Centre, Dubai, 506735.

5. MTN Dubai forms part of the MTN group of companies (the "**MTN Group**"). The MTN Group is a mobile network operator which offers consumer, digital and business services. It operates in three regions: South and East Africa, West and Central Africa and Middle East and North Africa. The MTN Group offers voice, data, and digital services to consumers. Its business services include unified communications, security as a service, managed networks, cloud services, software as a service and enterprise mobility to various sectors including micro, small and medium-sized enterprises and public sectors. The MTN Group also provides web security and mail security services. Through its digital services, it enables consumers to make financial transactions using their cell phones.

6. The MTN Group is active in the following Member States: Ethiopia, Kenya, Mauritius, Rwanda, Sudan, Uganda and Zambia.

aYo (the target firm)

7. aYo is a micro insurance joint venture partnership that was established by MTN Dubai and Momentum Metropolitan Strategic Investments Proprietary Limited ("**MomMet**") in 2016. aYo is incorporated in accordance with the laws of Mauritius, with its principal business address at 1st Floor, Anglo-Mauritius House, Intendance Street, Port Louis, Mauritius.

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8. MomMet is a holding company, ultimately controlled by Momentum Metropolitan Holdings Limited ("**MMH**"). MMH is a financial services company that offers life and non-life insurance, employee benefits cover, asset management, investments and savings, healthcare administration, and health risk management.

9. In terms of the joint venture agreement between MTN Dubai, MomMet and aYo, the latter, through its operating subsidiaries, is, *inter alia*, able to access and provide micro-insurance services to MTN subscribers, utilise the MTN brand as well as certain MTN information technology services in order to provide micro-insurance products and services. The MMH Group provides the operating subsidiaries with, *inter alia*, access to the relevant insurance licenses in the jurisdictions in which these operating subsidiaries are active and where the MMH Group already has available the relevant insurance license as well as the full management of all insurance operations and systems.

10. aYo is a holding company and does not itself provide any services or products in Mauritius or any other Member State. Its activities are limited to that of a holding company and it provides management services on an intragroup basis to its operating subsidiaries, which include the following in the Common Market:

    a. aYo Uganda Limited ("**aYo Uganda**"), a company incorporated in accordance with the laws of Uganda, with its principal business address at Plot 16-18 Wampewo Avenue, Nyonyi Gardens Kololo, P.O. Box 25375, Kampala, Uganda.

    b. aYo Zambia Limited ("**aYo Zambia**"), a company incorporated in accordance with the laws of Zambia, with its principal business address at Ground Floor, Meru House, Zambezi Road, Roma, Lusaka, Zambia.

11. aYo Zambia commenced operations in 2020, while aYo Uganda has been active since 2017. The principal product lines supplied by aYo Uganda and aYo Zambia are:

    a. "aYo Recharge with Care", which provides pre-paid MTN customers with free life or hospital cover every time they load MTN airtime plus a paid top up option; and

    b. "aYo Send with Care", which 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).

12. aYo is thus present in the following Member States: Mauritius (holding company), Uganda (operating subsidiary) and Zambia (operating subsidiary).

Jurisdiction of the Commission

13. 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.

14. The merging parties have operations in more than two Member States. The parties' combined 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 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.

15. It is noted that Article 25(1) of the Regulations provides that the Commission shall examine a merger within 120 days. In the present case, the initial 120-days period for reviewing the transaction expired on 30th May 2021. Article 25(2) of the Regulations provides that if prior to the expiry of the 120-day period, the Commission has decided that a longer time period is necessary, it shall so inform the parties and seek an extension from the Board. In line with the foregoing, on 6th April 2021, the Commission informed the parties of its intention to seek an extension of the period of assessment. On 16th April 2021, pursuant to Article 25(2) of the Regulations, the CID granted an extension of the time period for reviewing the instant merger transaction by 30 days until 30th June 2021.

Nature of the Transaction

16. In terms of the notified transaction, MTN Dubai intends to acquire sole control of aYo (the "**Proposed Transaction**"). Pre-merger, aYo was jointly controlled by MTN Dubai and MomMet. The Proposed Transaction concerns the dilution of MomMet's shareholding in aYo from 50% to 25% and an increase of MTN Dubai's shareholding from 50% to 75% of the issued share capital of aYo.

Relevant Markets

Relevant Product Market

17. The target undertakings (aYo Uganda and aYo Zambia) provide micro-insurance products and services to mobile network operator (MNO) subscribers, specifically MTN

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subscribers, in Uganda and Zambia, which includes the marketing, sale, administration and claims management services related to micro-insurance products

18. More specifically:

a. MTN subscribers can purchase micro-insurance products from aYo Uganda or aYo Zambia through mobile payment services, airtime or loyalty points. The micro-insurance products relate to life insurance products.

b. MTN subscribers can be awarded micro-insurance products 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).

19. Microinsurance refers to the provision of insurance products specially targeted to individuals and households at the grassroots level of society[2]. Microinsurance does not refer to the size of the risk carrier, although some providers are small and even informal. Microinsurance 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. Microinsurance 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. Microinsurance can thus be distinguished as a special line of insurance services. 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[3]. In addition, the products generally available from traditional insurers are not designed to meet the specific characteristics of the low-income market. Key product design issues include inappropriate insured amounts, complex exclusions and legal policy language[4].

21. From a demand perspective, customers of aYo Uganda and aYo Zambia 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)

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[2] Global Risk Forum GRF Davos, Davos (2010). Microinsurance – An Innovative Tool for Risk and Disaster Management page 2.
[3] 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 13th May 2021.
[4] *Ibid.*

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duration of the customer engagement. The customers of aYo Uganda and aYo Zambia fall within the low-income bracket and spend on average less than USD 1 per month on procuring insurance products, whereas customers of traditional insurance providers spend, on average, USD 5 per month on procuring insurance products[5]. 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 willing or 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 microinsurance constitutes a distinct product market.**

23. The CID next considered whether microinsurance can be further segmented by distribution channel. Mobile microinsurance has been 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.*"[6] 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.[7]

24. The nature of the MNO set-up facilitates microinsurance operations such as enrolment, premium collection or renewals which can be through the mobile money app, airtime money or agents in the street. The CID considered that there are other payment systems through which microinsurance 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 microinsurance providers may not be able to easily switch i.e., without incurring irreversible investments and significant risks to offering mobile solutions as it

[5] Exhibit B of the Merger Filing.

[6] 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 13th May 2021.

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

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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. In view of the foregoing, the CID considered that there are sufficient grounds for the identification of a distinct market for mobile microinsurance services.

Relevant Geographic Market

26. The relevant geographic market consists of all areas where the conditions of competition are significantly similar for all traders. 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 microinsurance 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 mobile phones within the country.

27. For purposes of the current case, the relevant geographic markets are the national markets for Zambia and Uganda where the target undertakings operate.

Conclusion on Relevant Markets

28. For purposes of this competitive assessment and without prejudice to the CID's approach in future cases, the relevant markets are defined as follows:

a. **mobile microinsurance services in Uganda; and**

b. **mobile microinsurance services in Zambia.**

Competitive Assessment

29. 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 microinsurance[8]. Currently there are no direct competing suppliers of microinsurance through mobile platforms. As stated in paragraph 24, mobile microinsurance services and microinsurance services provided by traditional insurance companies are distinct. In 2021, aYo Zambia is estimated to have passed the one-million customer mark (out of a total population of approximately 18 million) and is expected to double its market shares in the same year[9].

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[8] 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 14th May 2021.

[9] https://ventureburn.com/2021/05/microinsurer-ayo-zambia-flourishes-through-pandemic/, accessed on 14th May 2021.

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30. In Uganda, though the country was among the first to introduce a formal microinsurance product (in 1997), microinsurance 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 (personal accident and hospital cash); ICEA (savings-linked life and personal accident) [10]. In the mobile microinsurance 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)[11].

31. In the current transaction, it is noted that pre-merger the target undertakings were under joint control of the acquirer and MomMet. The transaction will not result in any market share accretion given that the acquirer's activities in the relevant market pre-merger were conducted through its joint ownership of the target undertakings. The transaction will therefore not result in a change in market structure in the short run. The CID however noted the presence of exclusivity provisions in the joint venture agreement which could affect the market structure in the long run. These are assessed further below.

32. In view of the involvement of MTN in the exclusivity provisions and the relevant market as the provider of the mobile platform, the CID further noted that the MTN Group is the third largest mobile operator in Zambia[12]. In Uganda, MTN is reportedly the largest mobile operator, having held a market share of over 50% consistently since 2016[13]. Four other MNOs also provide mobile money services, including Smart telecom, Airtel, UTL, and Africell.

33. The CID considered that the main barriers to entry in the relevant markets are the distribution channels for accessing low-income customers to achieve a significant volume of low value transactions. Sustaining profitable operations in this industry appear problematic in view of past exits from the market. The CID considered that the barriers to entry are significant in view of the very limited number of players active on the market for mobile microinsurance.

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[10] https://a2ii.org/sites/default/files/reports/microinsurance_in_uganda_country_diagnostic_report_on_market_and_regulations.pdf, accessed on 14th May 2021.
[11] https://www.news24.com/fin24/companies/ict/mtn-and-momentums-unlikely-collaboration-ayo-is-quietly-changing-the-face-of-insurance-in-africa-20210125, accessed on 14th May 2021.
[12] Based on submissions made by the Competition and Consumer Protection Commission of Zambia.
[13] https://www.statista.com/statistics/671666/mobile-subscription-share-in-uganda-by-operator/#:~:text=In%20the%20first%20quarter%20of,in%20Uganda%20with%2051%20percent, accessed on 14th May 2021.

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34. [redacted]

(a) [redacted]

(b) [redacted]

35. [redacted]"

36. [redacted]"

37. The CID observed and appreciated that significant investments were made by the parties to the joint venture agreement in order to offer their mobile microinsurance services on the market. The CID further identified the need for businesses to attract a significant customer base in view of the low value of transactions in order to remain viable. In this regard, the CID considered that it is a justifiable restriction for the parties not to engage with competing providers of microinsurance or mobile services, as the case may be, for a certain period of time in order to recoup their investments. The CID however raised concerns that the exclusivity provisions will apply indefinitely for as long as MTN and

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MMH retain equity shares in the joint venture. The CID was of the view that it is important for the growth of the mobile microinsurance market that insurance companies offering microinsurance services have access to effective distribution channels. Foreclosing access of potential or actual competing providers engaged in mobile microinsurance services to MTN's platform, who is a significant player in the mobile money platform, for an indefinite period of time, would impose restrictions which are beyond what is necessary for the parties to recoup their investments. Having regard to the parties' operations on the market, the CID considered that a duration limited to ten **(10)** years would be reasonable as it provides sufficient time for the parties to recoup their investments, and it would allow other microinsurance providers the ability to access an important distribution channel.

38. While the CID noted the parties' submissions that the other telecommunication providers and insurance providers could enter into arrangements to provide competing services, the CID considered that if such exclusive agreements are also adopted by the competing telecommunications operators with significant customer base, there would be limited alternatives for the providers of microinsurance and in turn limited choice for the consumers.

39. In relation to clauses 22.6.3 and 22.7.3 of the agreement, it is the CID's reasoned view that the restriction on MTN or MomMet from procuring the network centric insurance products from third parties in instances where aYo has indicated that it is not capable of providing such services makes no commercial sense and would be clearly to the detriment of consumers. Indeed, the merging parties have themselves acknowledged that such prohibitions would not be commercially feasible. The merging parties have not illustrated scenarios under which such prohibitions would be necessary to protect the investments made by MTN and MomMet under the joint venture. Further, the fact that the shareholders need to reach an agreement to implement the prohibition does not lessen the overly restrictive nature of such a provision. Where the target is unable to provide the services on a given territory, the parties should have the commercial freedom to engage third parties. The CID thus considered that clauses 22.6.3 and 22.7.3 are disproportionately restrictive and not necessary to achieve the objective of the joint venture nor to protect the investments.

40. In order to remedy the above concerns, the CID considered that the exclusivity provision under Clause 22.3.2 of the Amended and Restated Joint Venture Agreement restricting the MTN Group from conducting, either alone or with any other person, any Telcosurance business or any component thereof shall be limited to a period of ten **(10)** years starting from the date of operations of aYo and its operating subsidiaries in a COMESA Member State.

41. The CID further considered that clauses 22.6.3 and 22.7.3 of the Amended and Restated Joint Venture Agreement should be declared null and void in respect of their application (current or future) in any COMESA Member State.

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Third-Party Views

42. Submissions were received from the Competition Authority of Kenya and the Competition Commission of Mauritius that submitted that the transaction was unlikely to result in competition concerns due to the absence of overlaps between the activities of the merging parties pre-merger. The Competition and Consumer Protection Commission of Zambia (the CCPC) raised concerns relating to the potential impact of exclusive arrangements between the parents to the joint venture and the joint venture company. The CID considered the concerns raised by the CCPC and identified remedies as provided in paragraphs 40 and 41.

Determination

43. Based on the foregoing analysis, the CID determined that the merger is not likely to substantially prevent or lessen competition in the relevant markets in the short term. The CID was however concerned that certain exclusivity provisions contained in the Amended and Restated Joint Venture Agreement were likely to negatively affect the structure of the relevant markets in the long run through foreclosure effects.

44. The CID thus **approved the merger on condition** that the merging parties comply with the following:

    (a) that the exclusivity provision under Clause 22.3.2 of the Amended and Restated Joint Venture Agreement restricting the MTN Group from conducting, either alone or with any other person, any Telcosurance business or any component thereof shall be limited to a period of ten **(10)** years starting from the date of operations of aYo and its operating subsidiaries in a COMESA Member State.

    (b) that the exclusivity provisions under Clauses 22.6.3 and 22.7.3 of the Amended and Restated Joint Venture Agreement are null and void in respect of its current or future application in any COMESA Member State.

45. This decision was adopted in accordance with Article 26 of the Regulations.

Dated this 27th day of June 2021

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Commissioner Justice Charlotte Wezi Malonda (Chairperson)

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Commissioner Brian M. Lingela

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Commissioner Ellen Ruparanganda