



COMESA Competition Commission

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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/06/29/2022

**Decision¹ of the Eighty-Sixth (86th) Committee Responsible for
Initial Determinations Regarding the Proposed Transaction
between SMBC Aviation Capital Limited and Goshawk
Management Limited**

ECONOMIC SECTOR: Aviation

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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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 21 July 2022, the COMESA Competition Commission ("**Commission**") received a notification of a merger involving SMBC Aviation Capital Limited ("**SMBC AC**") as the acquiring undertaking and Goshawk Management Limited ("**Goshawk**") and certain assets relating to the operation of Goshawk and its subsidiaries,) 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

SMBC AC (the acquiring undertaking)

4. The acquiring undertaking, SMBC AC, is an Irish limited company with its global headquarters located in Ireland. It is the aircraft leasing business of the Sumitomo Mitsui Finance and Leasing Company Limited ("SMFL"), which is in turn owned and controlled by a Japanese financial institution, Sumitomo Mitsui Financial Group ("SMFG"), and a Japanese trading company, Sumitomo Corporation ("SC"). Each of SMFG and SC own 50% of SMFL, which owns 68% of SMBC AC (the other 32% being held by Sumitomo Mitsui Banking Corporation ("SMBC"), a wholly owned subsidiary of SMFG). SMFL, SMFG and SC are together referred to as the Acquiring Group. The Acquiring Group is active in several sectors such as aviation, financial services, trading and investment.
5. SMBC AC is mainly active in the leasing of fixed-wing commercial aircraft to airlines under dry-leasing arrangements. SMBC AC also sells used aircraft (also known as aircraft trading) to airlines, other leasing companies, and financial investors. Further, it provides lease management services that are an incidental part of its aircraft trading activity to some of its customers (aircraft owners/lessors), including asset management and remarketing services.
6. Within the Common Market, the Acquiring Group operates in Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, and Tunisia.

Goshawk (the target undertaking)

7. Goshawk is a limited liability company incorporated in Ireland and is wholly owned by Goshawk Aviation Limited, which in turn is indirectly owned and controlled by Chow Tai Fook Enterprises Limited.
8. Goshawk is an aircraft lessor which acquires aircraft and leases them to airlines on a worldwide basis and manages those leases. As part of the management of its aircraft fleet, Goshawk also sells (trades) used aircraft, and provides lease/asset management services post-sale when needed.
9. Within the Common Market, the target offers operating dry leasing services in Ethiopia and Kenya.

Jurisdiction of the Commission

10. 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.

11. 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

12. The parties submitted that on 16 May 2022, SMBC AC entered into an agreement with Goshawk Aviation Limited under which SMBC AC will acquire: (i) 100% of the shareholding of Goshawk; and (ii) certain assets relating to the operation of Goshawk and its subsidiaries.
13. The parties submitted that the Proposed Transaction brings together two strategically aligned and complementary businesses, which combined will benefit from a best-in-class portfolio focused on new technology narrow-body aircraft to better serve customers while accelerating growth, and accelerates growth in line with SMBC AC's strategic focus on young narrow-body aircraft.

Competition Assessment

Relevant Product Markets

14. The CID noted that according to the COMESA Guidelines on Market Definition (the "Market Definition Guidelines"), a relevant product market is defined as

"...all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use".

15. The Acquiring Group is active in several sectors such as aviation, financial services, trading and investment. Within the aviation sector, the Acquiring Group is active in



aircraft leasing business, leasing of aircraft engines and sale/trading of used aircraft including asset management and remarketing services. The Acquiring Group leases fixed wing commercial aircraft to airlines under dry leasing arrangements. Within the Common Market, the Acquiring Group through SMBC AC leases aircraft under operating dry lease in Ethiopia only at the time of assessment of the transaction.

16. The target is active in the aviation sector and provides aircraft leasing services. It acquires aircraft which it leases to airlines on a worldwide basis. The target also sells/trades used aircraft and provides lease/asset management services post-sale where needed. Within the Common Market, the target leases aircraft under operating dry leases in Kenya and Ethiopia at the time of assessment of the transaction.
17. Within the Common Market, the parties are both active in the leasing of fixed-wing, commercial aircraft to airlines, without a crew, maintenance or insurance i.e., operating dry leasing.
18. In view of the activities of the parties, the CID considered the relevant product markets as follows.

Provision of aircraft leasing services

19. The CID noted that aircraft leasing may be considered as part of the broad market for aircraft financing which entail the sourcing of aircraft by airlines through several options such as: purchase of new aircraft from Original Equipment Manufacturers (OEMs); finance leasing, operating leasing or sale-and-lease back. Airlines engage in aircraft financing to source aircrafts to support their commercial operations. The various forms of aircraft financing can be considered as distinct depending on the how they are structured as further discussed below.
20. The CID noted that a lease is “a contract, or part of a contract, that conveys the right to use an asset for a period of time in exchange for consideration²”. Leases can be categorised into two types, operating lease and finance lease which are distinguished based on how fully the risks and rewards attached to the ownership of the asset have been transferred to the lessee from the lessor. These concepts have similar application in aircraft leasing wherein an owner or a lessor of an aircraft (the asset), leases their aircraft to a lessee either through an operating lease or a finance lease which may be distinguished as follows.


- *Operating lease*

21. The CID noted that an aircraft operating lease is a short-term lease for the use and possession of an aircraft by the lessee for a specified time, typically less than the full life of the aircraft. Under operating lease, the lessee has no expectation of acquiring

² <https://www.accaglobal.com/an/en/student/exam-support-resources/fundamentals-exams-study-resources/f7/technical-articles/ifrs16.html>, accessed on 23 August 2022 at 14:44hrs

legal ownership of the aircraft once the scheduled lease payments are made and has no interest in having a residual value interest at the end of the lease agreement. The lessor keeps hold of the risks and rewards of ownership.

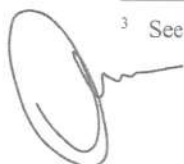
22. Operating leases can be categorised into three different types namely: wet lease, dry lease and damp lease. Wet lease entails the leasing of the aircraft with a pilot, cabin crew and maintenance and insurance services. Dry lease entails the leasing of an aircraft without any crew, maintenance personal and insurance but instead the airline uses its own crew and maintenance to operate the aircraft while a damp lease has a mixture of both dry and wet leases whereby an airline has a cabin crew but has no aircraft and no maintenance personnel. An airline may enter a damp lease and thus obtain an aircraft with a pilot, maintenance and insurance as part of the lease except for the cabin crew.
23. The CID considered that from a demand perspective, the three forms of operating leases are distinguishable and can be categorised as separate markets depending on airlines' different needs. For instance, an airline with excess crew and maintenance capacity is not likely to opt for a wet lease and bear the additional cost of crew and maintenance. The airline is therefore more likely to opt for a dry lease and use its own crew and maintenance on the leased aircraft. Operating lease therefore comprises narrower markets namely wet leasing, dry leasing and damp leasing. The CID observed that the parties' operations relate to the provision of operating dry leasing and given that it can be distinguished from wet and damp lease arrangements, it was considered as the relevant market for the competitive assessment of the transaction.
 - *Finance lease*
24. The CID noted that a finance lease is distinguished from an operating lease since it is a long-term lease which gives the lessee an option to purchase the aircraft at the end of the lease agreement. Under finance lease, the lessee will assume the risks and benefits of ownership, but the lessor retains the legal title. Upon the final lease payment, the lessor will transfer the ownership to the lessee, leaving the lessee with the residual value interest of the aircraft. Therefore, finance lease can be said to be distinct and separate from operating dry leasing.
25. Finance leasing carries a risk of repossession by the lender if the airline defaults on payments under the lease.
 - *Sale-and-lease back*
26. The CID noted that sale and lease-back arrangements entail an airline opting to sale its aircraft and lease back the same aircraft for its commercial operation. An airline may opt for a sale and lease-back arrangement as a strategy to avoid costs and risks associated with aircraft ownership while simultaneously ensuring that it frees up capital to support its continued commercial operation.



- *Purchase of new aircraft*

27. The CID noted that the purchase of new aircraft entails buying aircraft from OEMs such as Airbus and Boeing. This involves substantial amount of funds with the OEMs' average prices of aircraft averaging over US\$ 100 million for a single aircraft depending on the aircraft model, engine choice, and extent of customisation³. Such purchases do not result in the immediate sourcing of aircraft but may take up to 2 – 3 years for the aircraft to be built and delivered. New aircraft purchases may also require airlines to honour pre-delivery payments to the OEMs while the airline continues to operate its commercial business, which may be financially demanding on the airlines.
28. The CID considered that the above various forms of aircraft financing can be seen as substitutable depending on the financial constraints faced by an airline. For instance, an airline may shift towards aircraft leasing if it is unable to acquire its own aircraft by outright purchase using its own funds. It may therefore opt for an operating lease (wet, dry or damp) or a finance lease as alternative solutions to sourcing aircraft. Further, an airline which is financial distress from operating and maintaining an aircraft, but which still seeks to continue its commercial operations may look to a sale and lease-back arrangement as a solution.
29. However, the CID noted that each type of aircraft financing comprises a separate market since in an event of a SSNIP, it is unlikely that a customer may swiftly shift to another category given the unique and different characteristics that each entail including the risks that are involved under each category. For instance, the purchase of new aircraft from OEMs is capital intensive and costly to an airline which may lock in a lot of capital for an airline and negatively impact the airline's commercial operations. Thus, other options for financing such as sale and lease-back, finance lease or operating lease may be preferred especially for airlines with insufficient funds.
30. An operating dry lease is likely to be preferred by those airlines having insufficient funds for aircraft purchase and those urgently looking for an aircraft to immediately increase operational capacity; take advantage of a seasonal surge in demand or to avoid disruption in operations occasioned by strikes. Operating dry leases present unique features which may not be addressed by other forms of aircraft financing such as purchase of new aircraft which tends to be costly and may not address immediate airline needs. Therefore, airlines experiencing increased operational costs may not immediately shift from operating dry lease arrangements to purchase of new airlines or other forms of aircraft finance.
31. The CID noted that a distinction can also be drawn between operating dry lease and sale and lease-back arrangement where an airline is able to free-up capital by selling its aircraft and still ensure continued operation by leasing back the same aircraft it sold. Further, finance leasing may also be seen as unique given the risks that it entails

³ See <https://www.boeing.com/company/about-bca/#/prices>

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through the debt that the airline incurs in order to ensure continued commercial operation. Therefore, limited substitution is likely to exist among the separate sub-markets under aircraft financing on account of the different characteristics, the swiftness to switch and the financial risk that each option entails.

32. In view of the foregoing, the CID concluded that there exists a broad market for aircraft financing which can be delineated into narrower markets for the purchase of new aircraft, operating leasing (wet, dry and damp), finance leasing and sale and lease-back. These alternative options are considered separate on account of the different characteristics which are likely to limit the extent of substitution. Further, the aircraft financing through operating lease can be narrowed into wet, dry and damp lease which can be considered are separate given their unique characteristics.
33. In view of the above, the CID concluded that the various forms of aircraft financing comprise separate markets and given that the parties are active in the provision of operating dry lease, which is distinct, the relevant product market for purposes of the competitive assessment was construed as **the provision of aircraft financing through operating dry lease.**

Sale of aircraft/aircraft trading

34. The CID observed that the sale of aircraft by leasing companies is part of aircraft fleet management which seeks to ensure that aircraft fleet retains the age and profile fit for their commercial strategies. Aircraft trading happens from the existing fleet of aircraft of leasing companies which were acquired either from OEMs or from airlines through sale and lease-back arrangements. Aircraft trading enables leasing companies to raise funds which can be re-invested into the leasing business by supporting purchases of new aircraft. Thus, aircraft trading principally complements the various forms of aircraft financing such as operating lease.
35. The CID considered that aircraft trading may be construed as a separate market from the above identified market of aircraft financing through operating lease on the basis on the nature of the activities and the intended usage. For instance, under aircraft trading a leasing company seeks to dispose aircraft while under aircraft finance a company seeks to support the acquisition of aircraft to support the commercial operation of airlines.
36. **In view of the foregoing, the CID construed aircraft trading as a separate market.**

Aircraft lease management services

37. The CID noted that aircraft lease management services seek to support and protect an aircraft owner's asset and its value by ensuring careful technical management at commercial and technical level. It entails the provider supporting the owner of an aircraft to monitor the systems and components of the aircraft which ensures that the operator of the aircraft complies with its maintenance obligations and that the asset



maintains its value. Further, it is noted from the parties submission that the lease management services are provided in instances where a sale of an aircraft is made to a buyer who wants to act as a lessor but does not have an aircraft management platform and thus cannot service the lease. Further, the parties may offer their expertise and provide lease management services as part of the aircraft sale transaction. To this end, the CID noted that lease management service may be categorised as ancillary services to aircraft trade. However, the CID considered assessed lease management services as a stand-alone market.

38. The CID observed that lease management services were different from the aircraft financing and aircraft trading which the parties also provide. Therefore, the CID concluded that substitution is not likely to occur amongst these services given the differences in the intended purposes.
39. **In view of the foregoing, the CID construed aircraft lease management services as a separate market for the purposes of the competitive assessment of this merger.**
40. In view of the foregoing and consistent with its previous decision in *AerCap/GECAS*⁴, the CID identified the relevant product markets:
- **The market for aircraft financing through operating dry lease.**
 - **The market for aircraft trading; and**
 - **The market for aircraft lease management services.**

Relevant Geographic Market

41. The CID noted that according to the Market Definition Guidelines defines the relevant geographic market as,

“...the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas...”

Aircraft financing through operating dry lease

42. The CID observed that aircraft financing through operating dry lease is provided on a global basis and competition in this market takes place globally. The CID noted that the key players offer aircraft financing solutions and compete at a global level. The CID noted that key global players in 2021 included AerCap Holdings N.V. GE Capital Aviation Services, Avolon, BBAM, Nordic Aviation Capital; and SMBC Aviation Capital

⁴ See Case No. CCC/MER/03/09/2021



who provide aircraft leasing services on a global level⁵. The CID further noted that the customers for aircraft leasing services include airlines whose operations are global. For instance, the customers of the merging parties include major airlines such as Lufthansa, Scandinavian Airlines (SAS), Ryanair, American Airlines, Delta Airlines, United Airlines, Air China, LATAM and All Nippon Airways which operate at a global level.

43. The CID considered that the market for aircraft finance through operating dry lease is not likely to be limited by geographic boundaries given the nature of aircraft which can easily be transported across borders, making demand and supply substitution possible across borders. Therefore, airlines looking to source aircrafts are likely to do so by engaging global aircraft financing companies such as the merging parties.
44. The CID also considered that the market is further not likely to be limited by geographic boundaries given that aircraft can be easily sourced without requiring major costly modifications since aircraft are a homogenous product which are generally standardised to allow common operation and maintenance across jurisdictions.
45. **In view of the above, the CID concluded that the relevant geographic market for aircraft financing through operating dry lease is global.**

Aircraft trading and aircraft lease management services

46. The CID considered that the geographic scope of the markets for aircraft trading and aircraft lease management services are similarly global. The CID noted that the customers for aircraft trading and aircraft lease management services comprise commercial airline operators who operate at a global level and whose demand for these services is at a global level. Further, the providers of aircraft trading and aircraft lease management services are global players. It is therefore expected that competition in these markets will take place on a global scale. **Thus, for purposes of the competitive assessment of this transaction, the CID considered that the geographic scope of the market for aircraft trading and aircraft lease management services as global.**

Conclusion of relevant market

47. In view of the foregoing and without prejudice to future cases, the CID determined the following relevant markets:



- **The global market for aircraft financing through operating dry lease.**
- **The global market for aircraft trading; and**
- **The global market for aircraft lease management services.**

⁵ See Victoria Tozer-Pennington (2021). "The Aviation Industry Leaders Report 2021: Route to Recovery", published by Aviation News Ltd, page 35



Market Shares and Concentration

48. Market shares and market concentration help to give a first indication of whether a merger transaction will create or strengthen the market power of the merged entity through the attainment of a dominant position on the market. According to the COMESA Merger Assessment Guidelines (the "**Merger Assessment Guidelines**"), the Commission is unlikely to find concern in horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share post-merger of the new entity concerned is below 15% and the sum of the market shares of the top three firms is less than 70%.⁶

i. Aircraft financing through operating dry lease

49. The CID noted the following estimated market shares and the market shares of their competitors in the market for aircraft financing through operating dry lease.

Table 1: Estimated Global Market Shares of the Parties and Top 5 Competitors in Aircraft dry leasing as at May 2022

Name of Company	Market share by volume (%)	Market share by value (%)
SMBC AC	[0-5]%	[5 – 10]%
Goshawk	[0 – 5]%	[0 – 5]%
AerCap	[10 – 15]%	[10 – 15]%
Avolon	[0 – 5]%	[5 – 10]%
Air Lease Corporation	[0 – 5]%	[5 – 10]%
ICBC Leasing	[0 – 5]%	[0 – 5]%
Nordic Aviation Capital	[0 – 5]%	n/a
BOC Aviation	n/a	[0 – 5]%

Source: Curium database

50. The CID noted that the merged entity will hold a combined market share in operating dry lease of [5 – 10]% (i.e., **SMBC AC - [0 – 5]% + Goshawk - [0 – 5]%**) by volume and a total of [5 – 10]% (**SMBC AC - [5 – 10]% + Goshawk - [0 – 5]%**) by value. Further, the combined market share for the top three firms will be [20 - 25]% (i.e., **AerCap - [0-5]% + Merged Entity - [5-10]% + Avolon - [0-5]%**), by volume and a total of [25-30]% (i.e., **AerCap - [10-15]% + Merged Entity – [5-10]% + Air Lease Corporation - [5-10]%**), by value. The CID considered that in accordance with the Merger Assessment Guidelines, the transaction is not likely to raise competition concerns in the market for aircraft operating dry leasing given that the merged entity will hold a market share of less than 15% and the top three firm will hold a market share of less than 70%. The CID further noted that the market for aircraft operating

⁶ The COMESA Merger Assessment Guidelines paragraph 8.10.

dry leasing is fragmented and characterised by a presence of global players who will continue to compete with the merged entity.

ii. Market for aircraft trading

51. The CID noted that parties' market shares for aircraft trading were insignificant at less than 5%. The CID also noted that the market for aircraft trading is an ancillary market to the market of aircraft financing through operating dry lease such that the parties' operations therein are not likely to be significant. The CID considered that the market is likely to remain competitive given the presence of competing players who are also active in aircraft trading which include other aircraft lessors, airlines wishing to dispose of aircraft and financial investors holding aircraft assets.
52. The CID observed that these players are likely to continue exerting competitive pressure on the merged entity. Further, the CID noted that the market for aircraft trading has been affected by an oversupply of aircraft emanating from the effect of the COVID-19 pandemic on the aviation industry. The CID noted that the rates of new aircraft leases were much lower due to the oversupply of aircraft with lease rates for widebody aircraft falling by around 35 percent in 2020 from the previous year's level⁷. Therefore, the CID considered that the oversupply of the aircraft is likely to continue as the global economy recovers from the COVID-19 pandemic and this will continue to exert a downward pressure on aircraft prices.

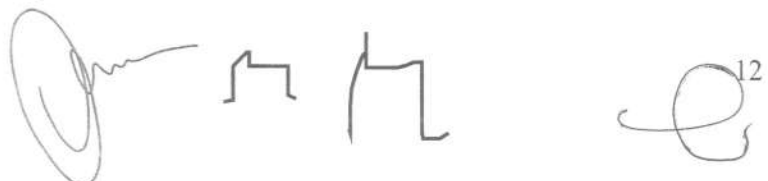
iii. Aircraft lease management services

53. The CID noted that SMBC AC's and Goshawk's estimated market shares for lease management services would be [<5] %⁸ and [<5] %⁹, respectively as of May, 2022 such that the merged entity would command a market share of [<5] %. Therefore, the CID considered that the merger is not likely to lead to high market concentration given the parties' insignificant market shares. The CID further noted that this market is characterised by numerous competing global players among which include strong aircraft leasing companies such as AerCap and Avolon.
54. In view of the foregoing, the CID concluded that the merger is not likely to raise any competition concerns in the relevant markets due to the presence of competition from other global players.

⁷ <https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/taking-stock-of-the-pandemics-impact-on-global-aviation>, accessed on 21 September 2022 at 8:00 am

⁸ Confidentiality claimed by the parties

⁹ Confidentiality claimed by the parties

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Third-Party Views

55. Submission from received submission from the National Competition Authorities of Egypt, Mauritius, Malawi and Kenya which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

56. 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.
57. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

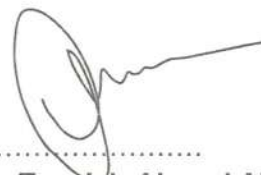
Dated this 27th day of September 2022



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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