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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/04/13/2023

**Decision¹ of the 105th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed Merger
involving Kuramo Africa Opportunity Kenyan Vehicle Ltd and
Trans-Century PLC**

ECONOMIC SECTOR: Construction and Energy



11 March 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 17 November 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Kuramo Africa Opportunity Kenyan Vehicle Ltd (“**KAOKV**” or the “**acquiring undertaking**”) and Trans-Century PLC (“**Trans-Century**” or the “**target**”), 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

KAOKV

4. KAOKV is a company incorporated under the laws of Mauritius and is part of Kuramo, an institutional private equity fund whose purpose is to invest in several countries and sectors in sub-Saharan Africa. KAOKV through its affiliates has portfolio investments in the following sectors in the Common Market: business services, financial services, fast moving consumer goods, agriculture and infrastructure. In the Common Market, KAOKV is active in the Democratic Republic of Congo (“DRC”), Ethiopia, Kenya, Mauritius, Uganda, Zambia and Zimbabwe.

Trans-Century

5. Trans-Century is a public company limited by shares incorporated in Kenya. Trans-Century is an African focused private equity investor that invests in companies and projects within the infrastructure sector, providing engineering solutions and the manufacturing of electrical equipment and components. In the Common Market, the target is active in Kenya, Mauritius, Uganda, and Zambia.

Jurisdiction of the Commission

6. 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.*
7. The undertakings concerned have operations in two or more Member States. The undertakings concerned hold assets of more than the threshold of USD 50 million in the Common Market and they each hold assets of more than USD 10 million in



the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate assets in 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

8. The proposed transaction entails KAOKV increasing its shareholding in the target to approximately 74%. The parties have submitted that the proposed transaction will enable the target to use the capital raised to settle part of its debt obligations and to unlock additional working capital financing for itself and its subsidiaries. This is in line with its recovery and growth strategy.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

9. Paragraph 7 of the Commission's Guidelines on Market Definition states that a *"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use"*.
10. It is recalled that KAOKV's investments are in the following sectors in the Common Market: business services, financial services, fast moving consumer goods, agriculture and infrastructure. Specifically, the acquiring undertaking has investment in the following entities:
 - a) Leon, which provides call centre services in Zimbabwe;
 - b) NAS Foods which is a fast-moving consumer goods provider in Ethiopia;
 - c) Platcorp Holdings Limited which is a finance investment management holding company that primarily invests in non-banking lending subsidiaries and has operations in Kenya, Mauritius, Uganda and Zambia²;
 - d) Plantations et Huileries du Congo SA, which is a producer of edible palm oil in DRC³;
 - e) GenAfrica Asset Managers, which is a fund manager, specialising in the management of institutional and retail funds in Kenya⁴;

² <https://www.platcorpgroup.com/about-us/company-history/> Accessed on 3 February 2024

³ <https://phc-congo.com/> Accessed 2 February 2024

⁴ <https://genafrika.com/> Accessed 2 February 2024



- f) Sterling Capital Limited, which is an investment bank in Kenya for equities and fixed income trading in the Nairobi Securities Exchange⁵; and
 - g) Trans-Century which is the Target and it is an Infrastructure Holding Company and activities of the target are detailed below.
11. The target, Trans-Century, provides the following products/services within the infrastructure sector in the Common Market:
- a) Manufacture of electrical equipment and components;
 - b) Distribution and power transformer refurbishment and repair services;
 - c) Engineering; and
 - d) Infrastructure Projects – Energy & Transportation Logistics.
12. The activities of the parties do not raise any vertical overlap. Further, it may be argued that there is a horizontal overlapping relation between the parties given the existing shareholding of KAOKV in the target. The CID noted that the parties have confirmed that KAOKV does not have any other investments in the infrastructure sector other than through TransCentury within the Common Market.
13. Given that the only likely overlap in the activities of the acquirer and the target is because of the current shareholding held by the acquirer in the target, for the purposes of defining the relevant market, the CID focussed its assessment on the activities of the target.

Manufacture and supply of electrical equipment and components

14. The target manufactures the following items within the broad category of electrical equipment and components: transformers, power transformers, electric switchgears, metering units, line materials and accessories.
15. Electrical equipment are those products which generate, distribute and use electrical power and are made up of components that are supplied individually or integrated into a system⁶. Each electrical equipment is used for one specific purpose at one specific level of the electricity supply chain, namely generation, transmission and distribution which comprise separate markets.
16. The target manufactures high voltage electrical equipment⁷. Electrical equipment can be categorised according to the voltage pressure they can handle⁸. Electrical equipment can thus be categorised into low, medium and high voltage products.

⁵ <https://sterlingib.com/> Accessed 2 February 2024

⁶ European Commission's decision Case M.8678 – ABB / General Electric Industrial Solutions

⁷ www.transcentury.co.ke/Business_Division/Power_Infrastructure_Products accessed 25 January 2024

⁸ European Commission's decision Case M.8678 – ABB / General Electric Industrial Solutions



The different voltages determine the use of the electrical equipment. Low and medium voltage equipment are used in households and for industrial purposes and high voltage equipment are used in the upstream stages of electricity generation. Given that each voltage range product has its technical characteristics and intended use, this limits its substitutability on the demand side.

17. A power transformer is an equipment which is used in the electricity distribution stage which moves electricity from one circuit to another and has the ability to either increase or decrease the voltage of the electricity during the transmission of the electricity to the device. A transformer is therefore required to make a device requiring electricity function properly by having the voltage of electricity adjusted from the source. A transformer is thus essential to conduct electricity which is generated at very high voltages and consumption which was done at very low voltages. Transformers can be of different types, namely, step down, step up and isolation transformer. A step-down transformer converts the electricity into a lower voltage while a step-up transformer does the reverse. An isolation transformer has the same voltage level on each side and is used for safety purposes to keep the two sources of power separate. The target manufactures and supplies both power transformers and distribution transformers⁹. A power transformer is used for the transmission of power at very high voltages and this power cannot be distributed directly to the end user irrespective of the use. A distribution transformer is required to step-down the power from the transmission network.
18. Electric switchgears are comprised of switches and fuses are used at both the electricity transmission and distribution stages to protect the electrical circuit from any overload of electricity.
19. The CID considered that the broad market for the electrical equipment and components did not require further segmentation according to the intended use of each product as this would not change the competition assessment of this transaction.

Supply of after-sales services for transformers

20. After-sales services include the repair and upgrade of the transformer by the manufacturer. After-sales services typically involve both regular maintenance, ad-hoc repairs and the refurbishment of the transformer whereby the provider supplies additional features to an existing transformer and/or upgrade it to allow its second-hand sales. Such services are usually provided by the manufacturer because it is the manufacturer which is likely to have genuine spare parts for the products, considering the nature of a transformer which is sensitive and

⁹ www.transcentury.co.ke/Business_Division/Power_Infrastructure_Products accessed 25 January 2024



occupational hazards should be minimised. Additionally, a manufacturer is likely to have the required specific tools to work on such equipment. For this reason, the customers are likely to purchase after-sales services on the transformers from the manufacturer.

21. For purposes of this transaction, the CID considered that a broad market for the supply of after-sales services could be adopted.

Supply of engineering services

22. The target provides the following services through its engineering division: civil, mechanical engineering, cramage & erection and logistics, weigh bridges, generators, bearings and sub-stations.
23. Civil engineering services are required for the successful completion of construction projects, irrespective of the type of construction being completed. For instance, civil engineering services are required for the construction of roads, bridges, dams as well as for the construction of buildings (residential or non-residential), sewage systems and town planning. Such services span from design, supervision to consultancy.
24. Civil engineering can be distinguished from mechanical engineering or electrical engineering whereby each type of engineering has a specific intended use. Electrical engineering services for instance are used for the design, construction, and use of electrical equipment such as generators and sub-stations. Mechanical engineering services are used for the design, construction, and use of machines.
25. On the demand side therefore, the different types of engineering are not substitutable as each is used for one specific purpose. Each type of engineering can be further segmented according to the type of work (design, installation or maintenance) and type of customer (public or private).
26. For the purposes of this assessment, the CID, however, considered that the broad market for the supply of engineering services need not be segmented according to the type of engineering service as the competitive assessment of this transaction would not change under any alternative market definition.

Generation and wholesale supply of electricity

27. The target is involved in the generation and wholesale supply of electricity via a 35MW Geothermal Power Generation Plant in Menengai in Kenya¹⁰.

¹⁰ https://www.transcentury.co.ke/Business_Division/Transport_Infrastructure_Overview accessed 25 January 2024



28. The CID previously held that the market for generation and wholesale supply of electricity, on the other hand, comprises electricity generated in power stations, traded on the wholesale market (through bilateral agreements, regulated marketplaces, and power exchanges) as well as electricity physically imported via interconnectors for the purpose of resale to retailers, traders and to a lesser extent to large industrial end-users¹¹. On the supply side, market players are electricity producers, importers, and traders.
29. The CID also previously considered that the generation and wholesale supply of electricity as one single relevant product market because the generation of electricity does not constitute a market activity as long as the electricity is not sold. Generation and wholesale supply of electricity can be distinguished from other markets in the electricity sector, such as retail supply (which involves sale of electricity to the final customer), having regard to the difference in types of contracts, and customers served¹².
30. The CID further considered that electricity can be generated from different sources, and this could be grounds for possible further segmentation of the market according to mode of generation¹³. For purposes of the present case, the CID considered that it was not necessary to delve into further possible segmentation of the markets according to the type of energy given that the transaction would not raise concern under any alternative market definition.

Provision of road construction services

31. The target offers road construction services¹⁴. Road construction services fall within the broad market of construction. The market for construction can be segmented into the type of final construction, that is, a building, a bridge or a road. Each type of construction requires specific raw materials and expertise, such that each type of construction is not likely to be substitutable from the demand or supply side. For instance, the construction of a road requires specific ingredient, including tarmac and special machinery, which will not be used in the construction of a building. For this reason, the provision of road construction services can be construed as distinct from the provision of the other construction services.

¹¹ Decision of the 98th Meeting of the CID Regarding the Proposed Merger involving G.D.F. International S.A., Meridiam Infrastructure Africa Fund II SLP and Meridiam Infrastructure Africa Parallel Fund II SLP and Okavango Kenya Mauritius Limited

¹² Ibid

¹³ Decision of the 98th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving G.D.F. International S.A., Meridiam Infrastructure Africa Fund II SLP and Meridiam Infrastructure Africa Parallel Fund II SLP and Okavango Kenya Mauritius Limited

¹⁴ https://www.transcentury.co.ke/Business_Division/Transport_Infrastructure_Overview accessed 25 January 2024



32. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets are considered as the:
- a) manufacture and supply of electrical equipment and components;
 - b) supply of after-sales services for transformers;
 - c) supply of engineering services;
 - d) generation and wholesale supply of electricity; and
 - e) provision of road construction services.

Relevant Geographic Market

33. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising:

"...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"¹⁵.

34. The target supplies its electrical equipment and components across several Member States namely DRC, Kenya, Malawi, Rwanda, Uganda and Zambia. Further, the target manufactures electrical equipment and components in Kenya, Uganda and Zambia. Despite the manufacturing facilities of electrical equipment and components not being located in all Member States, intra-COMESA imports and imports from beyond the Common Market are possible. For instance, the target itself only supplies electrical equipment in Malawi but does not have a manufacturing facility of electrical equipment in Malawi.
35. The CID observed that imports into Member States may be limited by lack of capital and high transportation costs. However, for countries which do not manufacture the electrical equipment, their only option is to source the required products from outside the country. For this reason, while importation barriers may exist, they are not likely to be significantly prohibitive as may be witnessed by current imports to Malawi, and other Member States where the target does not manufacture these products. The CID was also cognisant that electrical equipment supplied to end customers in the Common Market originate from, *inter alia*, South Africa, India or China which is further justification for wider geographic scope market.

¹⁵ Paragraph 8



36. The CID also observed that COMESA has established a Regional Technical Secretariat for adopting standards relating to Electrical Energy Standards (electrical generation, transmission and distribution). The objective of having harmonized standards is to create a fully integrated and internationally competitive and unified region in which goods and services can move freely to facilitate trade in energy services. While electrical equipment and components may be imported from countries outside the Common Market, considering that transportation costs are not prohibitive and the harmonised standards, the relevant geographic market may be broader than the Common Market. This notwithstanding, any further broadening of the geographic scope of the market will not change the competitive assessment of the transaction and thus, for the purposes of this transaction, the geographic market is likely to be the Common Market.
37. For the same reasons given above, the geographic market for after-sales services on transformers is at least the Common Market.
38. Engineering and road construction services are usually provided by companies on a global scale. This is mainly because such services are usually purchased through a procurement process, which is usually open to foreign companies. The CID observed that roads in some Member States are built by companies which are based in China or India. For this reason, the respective geographic market for engineering and road construction services should be global.
39. The CID previously held¹⁶ that the geographic market for the generation and wholesale supply of electricity is national while considering that there are indications that the relevant geographic market for the wholesale supply of electricity could be broader than national for countries with sufficient export capacity¹⁷. For purposes of this transaction, any alternative market definition will not affect the outcome of the competitive assessment and the relevant geographic market for the generation and wholesale supply of electricity was construed as Kenya.

Conclusion of Relevant Market Definition

40. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant markets as the:
- a) **manufacture and supply of electrical equipment and components in the Common Market;**

¹⁶ Decision of the 98th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving G.D.F. International S.A., Meridiam Infrastructure Africa Fund II SLP and Meridiam Infrastructure Africa Parallel Fund II SLP and Okavango Kenya Mauritius Limited

¹⁷ Decision of the 94th Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Serengeti Energy Limited and Rwaza Hydropower Limited



- b) supply of after-sales services for transformers in the Common Market;
- c) global supply of engineering services;
- d) generation and wholesale supply of electricity in Kenya; and
- e) global provision of road construction services.

Market Shares and Concentration

41. The parties submitted the market shares of the target and its competitors for the Manufacture of electrical equipment and components per Table 1 below.

Table 1: Approximate Market Shares of the target and its competitors for the Manufacture of electrical equipment and components¹⁸

Manufacturer	Market Shares (%)
Metsec Cables Ltd	[35 – 40]
CABLE Connect Limited	[20 – 25]
Target	[20 – 25]
Coast Cable	[10 – 15]
Taifa Cables	[0 – 5]

42. The parties submitted that the target’s market shares for the distribution and power transformer refurbishment and repair services is [0 –10]%¹⁹.
43. The parties submitted the market shares of the target and its competitors for the engineering services in Kenya as per Table 2 below.

Table 2: Approximate Market Shares of the target and its competitors for engineering services in Kenya²⁰

Manufacturer	Market Shares (%)
Target	[80 – 85]
Scales and Software Limited	[20 – 25]
Papyrus Africa Limited	[15 – 20]
Servo Balance	[0 -10]

44. The parties submitted that the target’s market shares in the broad market for energy is [0-10]%.
45. The parties submitted the market shares of the target and its competitors for the broad market for infrastructure as shown in Table 3 below.

¹⁸ Information claimed as confidential by the merging parties.

¹⁹ Information claimed as confidential by the merging parties.

²⁰ Information claimed as confidential by the merging parties.



Table 3: Approximate Market Shares of the target and its competitors for infrastructure²¹

Manufacturer	Market Shares (%)
Shenyang Huawei Construction Engineering Service Co Ltd	[20 – 25]
China State Construction	[20 – 25]
CSI Energy Group	[15 – 20]
H Young	[15 – 20]
Target	[0 -10]
Tai Enterprises Ltd	[0 – 5]

46. The CID noted that the acquirer did not operate in the relevant markets pre-merger. Hence, this transaction would not result in a change in the market structure by way of market share accretion in the defined markets. It was further observed that the transaction would not raise any competition concerns given that the transaction entailed the acquirer increasing its shareholding in the target and there was no competitor exiting the relevant markets.
47. Further, given the absence of overlap in the activities of the parties in the relevant markets, the state of competition pre- and post-merger is expected to be the same, and therefore it is not likely that the transaction would result in coordinated effects in any of the relevant markets.

Consideration of Third-Party Views

48. In arriving at its determination, the CID also considered submissions from the national competition authorities of DRC, Kenya, Malawi and Mauritius which did not raise any concerns in relation to the transaction.

Determination

49. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
50. The CID, therefore, approved the transaction.

²¹ Information claimed as confidential by the merging parties.



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

Dated this 11th day of March 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

