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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/04/18/2024

Decision[1] of the 109th Meeting of the Committee Responsible for Initial Determinations regarding the Proposed Acquisition by Access Bank Plc of 100% of the issued share capital of National Bank of Kenya Limited

ECONOMIC SECTOR: Banking and Financial Services

22 August 2024

COMESA COMPETITION COMMISSION
22 AUG 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 5 July 2024, the the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Access Bank PLC ("**Access Bank**" or the "**Acquirer**") and National Bank of Kenya Limited ("**NBK**" or the "**Target**"), pursuant to Article 24(1) of the Regulations.

2. The proposed transaction involves the acquisition of 100% of the issued share capital of the Target by Access Bank. The Acquirer will also acquire indirect control of the Target's subsidiary, NBK Bancassurance Intermediary Limited ("**NBK Bancassurance**") (the "**Proposed Transaction**").

3. 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.

4. 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

Access Bank (the Acquirer)

5. Access Bank, a wholly owned subsidiary of Access Holdings Plc (**Access Corporation**), is a full-service commercial bank in Nigeria licensed and regulated by the Central Bank of Nigeria. It holds subsidiaries in sub-Saharan Africa and the United Kingdom, a branch in Dubai, UAE and representative offices in China, Lebanon and India. The parties submitted that in the Common Market, Access Bank has operations in the Democratic Republic of Congo ("**DRC**"), Kenya, Zambia and Rwanda.

6. It was noted that Access Bank is also currently in the process of acquiring 80.89% of the issued capital or shares of Finance Trust Bank Limited, a commercial bank based in Uganda. The CID approved the merger on 4 May 2024.

NBK (the Target)

7. The Target is a limited liability company incorporated in Kenya and which operates in the commercial banking industry in Kenya. The Target Firm has two wholly (100%) owned subsidiaries:

   a) NBK Bancassurance, a limited liability company incorporated in Kenya which engages in bancassurance in Kenya, and which will also move to the Acquirer as part of the Proposed Transaction; and

   b) KCB Asset Management Limited (formerly Natbank Trustee and Investment Services Limited), a limited liability company incorporated in Kenya which engages in fund management and investment advisory services in Kenya.

8. The parties submitted that KCB Group PLC ("**KCB**") is in the process of transferring the entire issued capital of KCB Asset Management Limited from the Target to itself. This reorganization will be finalized prior to completion of the Proposed Transaction. Accordingly, for purposes of the Proposed Transaction and this filing, KCB Asset Management Limited is not regarded a subsidiary of the Target.

9. The parties submitted that the Target offers a full spectrum of banking products in Kenya which include personal and business banking services, current accounts, saving accounts, fixed deposit accounts, term loans, letters of credit, guarantees, overdraft facilities, asset finance, trade finance, project finance and mortgages, while its subsidiary NBK Bancassurance engages in bancassurance within 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 undertakings concerned held a combined asset value in excess of the threshold of USD 50 million in the Common Market and they each held assets of more than USD 10 million in the Common Market. In addition, the parties do not hold assets of more than two-thirds of their respective aggregate COMESA-wide turnover or assets within one and the same Member State. The transaction was therefore notifiable to the Commission within the meaning of Article 23(5) (a) of the Regulations.

Referral to Kenya

12. Article 24(8) of the Regulations provides that a Member State may request the Commission to refer a merger to a competent authority of the Member State for consideration under the Member State's national competition law if such Member State is satisfied that the merger, if carried out, is likely to disproportionately reduce competition to a material extent in such Member State or any part of such Member State.

13. On 22 July 2024 and 1 August 2024, the Commission received a request for referral of the abovementioned transaction from the Competition Authority of Kenya ("**CAK**"), pursuant to Article 24(8) of the Regulations. CAK requested that the matter be referred to Kenya in order for the transaction to be assessed as a local notification. In particular, CAK submitted that the merging parties operate in the banking and bancassurance markets in Kenya and that the transaction will

primarily affect the Kenyan market. It is noted that CAK had previously considered a merger transaction involving the target, which was approved with conditions to address concerns on employment that were arising at the time.

14. CAK submitted that the Regulations provides for certain aspects of public interest, such as employment as part of competition issues as illustrated in the definition of the term 'competition' in the Regulations. In view of the parties' intent to merge the operations of the acquirer and target in Kenya, CAK was concerned that the proposed transaction may raise competition concerns in the form of loss of employment opportunities being a horizontal merger in Kenya.

15. The Commission reviewed the request made by CAK as well as the submissions by the merging parties and resolved that the referral request was justifiable having regard to the significant operations of the merging parties in Kenya and the national character of potentially affected markets and thus the likely disproportionate effect on competition, as defined in the Regulations, in Kenya.

16. In view of the foregoing, on 13 August 2023, the Commission referred the part of the transaction relating to the Kenyan market to CAK. The Commission retained jurisdiction over the parts of the transaction relating to markets outside Kenya.

Details of the Merger

17. By a share purchase agreement entered into on 20 March 2024 between the Acquirer and KCB (the current sole shareholder of the Target), the Acquirer agreed to purchase 100% of the issued share capital of the Target from KCB. As such, the Acquirer will also acquire indirect control of the Target's remaining subsidiary, NBK Bancassurance. Upon completion of the Proposed Transaction:

    (a) the Target will become a subsidiary of the Acquirer; and

    (b) in order to streamline its business in Kenya, the Acquirer intends (subject to applicable regulatory approval) to merge the business of the Target with the business of Access Bank (Kenya) Plc ("**Access Bank Kenya**"), a commercial bank in Kenya which is controlled by the Acquirer.

18. The parties submitted the Proposed Transaction will primarily impact the Kenyan market. The Proposed Transaction represents a significant milestone for the Acquirer that moves it closer to achieving its strategic plan by scaling up its position in the Kenyan market. The parties submitted that the Acquirer is building a strong and sustainable brand to support economic prosperity, encourage African trade, advance financial inclusion thereby empowering many people to achieve their financial dreams. With Kenya being a key player in the region, the Acquirer aims to expand and deploy its best-in-class financial solutions and position itself

strategically to deliver sustainable value for its stakeholders. Its expansion in Kenya will support the Acquirer's aspiration to be 'Africa's Payment Gateway to the World'. Following completion of the Proposed Transaction, the Target would be merged with Access Bank Kenya to create an enlarged franchise in pursuit of the Acquirer's strategic objective for the Kenyan and East African markets.

19. On its part, KCB considers the Proposed Transaction as one that will maximize value for its shareholders while strengthening the competitive position for its group operations. KCB acquired the Target in 2019 and has consequently, in addition to its then already existing subsidiary, KCB Bank Kenya Limited, owned two commercial banks in Kenya. It was submitted that upon review and assessment of its group operations and business (particularly in Kenya) and based on the steps taken since 2019 to ensure the sustainability of the Target, KCB considered the opportunity as one that would strengthen the competitive position of its remaining group operations in Kenya.

20. The parties submitted that the Proposed Transaction would not have any negative effects in the regional market and locally since it involves two banks that have an existing presence and market knowledge. The synergies were anticipated to lead to a more competitive and value-driven banking sector.

21. The parties estimated that the market share of the merging entities in Kenya upon completion of the Proposed Transaction would not exceed approximately 2.29%[2]. Consequently, according to the parties, since there would be no significant market share accretion in Kenya and in COMESA as a result of the merger, there would be no harm to competition in the market or any adverse effects to the economy.

22. In addition, the Acquirer anticipates that the Proposed Transaction would result in more competition in the banking sector for the benefit of the customers.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

23. The definition of the relevant market assists to identify and define the boundaries of competition between firms. It is comprised of both the product and the geographical markets, which assist to identify the actual/potential competitors of the parties involved in the merger and that are capable of constraining those firms' behavior and of preventing them from behaving independently of effective competitive pressure. Relevant markets define the substitutes for the products or services under assessment and regions of interest which provide significant competitive constraints for the parties concerned.

[2] As at 31st December 2022.

COMESA COMPETITION COMMISSION * 22 AUG 2024

24. Access Bank is active mainly in the provision of retail and corporate banking services such as lending and deposit services to its customers in DRC, Kenya, Rwanda, and Zambia. In addition, Access Bank is also currently in the process of acquiring Finance Trust Bank Limited, a commercial bank based in Uganda.

25. The Target supplies the following products within the Relevant Market (Kenya):

Table 1 - Target's Product Offerings

Category	Broad product offering	Sub-products
Banking	**Retail banking**	Current accounts Savings accounts Lending (short term and long term) Fixed and call deposits Credit cards
	Corporate banking	Government Deposits Current accounts Fixed Deposits/Call accounts Lending Credit Cards
	Islamic banking	Current accounts Savings accounts Lending (short term and long term) Fixed and call deposits Credit cards
	Treasury	Foreign currency trading Trading Asset & Liability Management
Non-banking (through NBK Bancassurance)	**Bancassurance**	Motor insurance (third party and comprehensive insurance) Home insurance Education policies Travel insurance Health insurance Annuity and personal pension plans

26. The merger therefore gives rise to horizontal overlaps in the banking market and to vertical links in respect of the bancassurance market.

Relevant Product Market

27. According to the Market Definition Guidelines, ***"a relevant product market comprises 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".***[3]

28. The provision of banking services entails a wide range of banking and financial services across various types of customers. In view of their distinct characteristics,

[3] Paragraph 3.1 of the Guidelines

COMESA COMPETITION COMMISSION
22 AUG 2024

a segmentation can be made by type of customers, and type of products as highlighted below.

29. Retail banking entails all banking services provided to private individuals and very small enterprises, such as deposit account services (i.e., current accounts, saving accounts, cash deposits, cheque collection etc.); payment services including ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques; lending (personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution[4].

30. To the contrary, corporate banking services entail tailor-made financial services that financial institutions offer to their corporate clients in the context of corporate financing and raising capital - including working capital finance, term loans, asset finance, trade and specialised finance, pre-and post-shipment finance, structured finance, and commodity finance. For instance, corporate customers require working capital to fund their payments when expected receipts are late, and banks normally provide the type of working capital necessary to meet the needs of such customers whose transaction accounts go into deficit. There exist deposit products provided to corporate and retail customers which are similar in principle with the major difference being the type of customers served and the manner in which the customers are served. For instance, corporate customers unlike retailer customers often get a dedicated bank teller in view of the large sums of money typically involved. Further, corporate customers are likely to have bargaining power to negotiate favourable interest rates against their deposits and may also be offered access to loans linked to their corporate profile.

31. In view of the above, it can be said that retail banking and corporate banking services belong to separate market segments based on the nature of the products/services. While retail banking products/services are standardised and customer-oriented, corporate banking are business-oriented and can be tailored or customized according to the specific needs and requirements of the clients. It is also noted that, in retail banking, the number of clients with small-value accounts are much more than corporate banking; thus, the bank has an extensive clientele portfolio. Retail customers are characterised by their smaller transaction values and therefore retail banking is volumes driven. In corporate banking, the number of clients is much lesser than retail banking, but the existing clients have significant balances and make high-value transactions. Therefore, corporate banking is mainly transaction value driven. Thus, from a supply perspective the two can be differentiated.

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[4] See case No M.8414 – DNB / Nordea / Luminor Group, paragraph 15, dated 14/09/2017

32. Further to the above, there exists a strong level of relationship between the bank and its corporate clients, implying that the provision of corporate banking services requires professionals with a higher standard of customer relationship expertise. Due to these transactional and existing distinctive requirements, and complex product nature in corporate banking services, it is highly unlikely that in response to a small but significant non-transitory increase in the interest rates of retail banking charges on the retail service, a significant number of retail customers would swiftly switch to corporate services. In view of the foregoing, from the customer perspective, it can be concluded that the corporate and retail market segments are distinct.

33. The CID further considered that there exist distinct products that are offered to different customers under both the retail and corporate banking segments. It is noted that the parties both provide loan, deposit and payment services to their customers which can be considered as distinct, for the reasons discussed below.

34. A deposit is an investment made by an account holder in a bank for security and/or gaining interests that will benefit an individual in future. On the other hand, loan services are provided by the bank to customers that need financial assistance which they repay in the future as principal plus interest computed on simple or compound interest. Further, with regards to loans, banks require collateral from a customer given the risks of default associated with loans. There is thus no direct demand substitutability between loan and deposit services given that each segment is intended for a distinct purpose. For example, a customer who requests a loan for investment purposes will not be affected by the rates on deposit accounts as he/she cannot substitute with the latter to fulfill the intended needs. Each product has its own distinct purpose and separate preconditions and requirements to be fulfilled by the customer.

35. Payment services entail cash deposit or withdrawal through electronic payment and this comprises either direct debit, standing order, credit transfer, debit card or credit card transaction or mobile banking payment solutions. Such transactions are often carried out through online platforms. Payment services can be considered as distinct from deposit services or loan services on the basis that payment services play the role of transferring deposit balances held in banks across other banks, from bank to customers or from customers to banks (i.e., mobile money to bank account transfer). Given that payments services are available to both corporate and retail customers, there is not much of a distinction between corporate and retail customers as relates to payment services as the advancement in technology has greatly enhanced the ease with which payments can be made by both corporate and retail customers. It is noted that the core function of payment services is to facilitate the safe and efficient transfer of money between a buyer and seller. It

does this by providing a range of services to a merchant, including a payment gateway, payment processing, and merchant accounts.

36. In light of the different purposes and the distinctive features of deposits, loans, and payment services, it was considered that they should be categorized as distinct product markets.

37. The CID further noted that these different product categories can each be further segmented into narrower markets. For instance, there may exist different types of deposits, such as savings accounts, current accounts and time deposits (interest from deposit determined on time agreement between the customer and the bank). Similarly, payment services could be categorized by the mode of payment being used i.e., credit card, debit card, bank transfer or mobile to bank transfer. While there was clear differentiation among some of the products offered within each category product, there existed nonetheless some degree of demand substitutability across other products[5]. Further, it was noted from a supply perspective that the various products are extensively linked due to the fact that they are distributed through the same branch offices, mobile and internet banking facilities[6]. Most banks offered all or at least a wide range of products under a given category to offer a one-stop shopping experience for customers who would save on information costs.

38. In view of the foregoing, and in line with its previous decisions[7], the CID considered that for purposes of this transaction, the respective markets for loans, deposits and payment services do not require further segmentation.

Bancassurance

39. The Target is also active in the provision of bancassurance. Bancassurance can be described as the offer of life and non-life insurance products to customers through the bank distribution channel. Insurers can supply their products using direct channels (through e-commerce, internet, telesales, etc., and own sales force) or intermediary channels such as agents, brokers, banks, retailers, broker networks, aggregators, peer-to-peer channels. The CID observed that the various types of distribution channels were likely to constrain each other, such that they can be considered within the same market.

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[5] A similar argument was made in European Commission Case No COMP/M.4844-Fortis/ ABN AMRO Assets, dated 03/10/2007, paragraphs 24 and 25.

[6] A similar finding was established by the European Commission in its approval of the merger between Nordbanken and Postgirot who were also active in the banking sector (Case No COMP/M.2567, decision dated 08/11/2001, paragraph 38).

[7] See for instance the Decision of the 76th CID Regarding the Merger involving Transnational Bank Plc and Access Bank Plc dated 14 November 2019; Decision of the 76th CID Regarding the Proposed Acquisition by Arab Bank Corporation (B.S.C) of 99.42 % of the share capital of Blom Bank Egypt S.A.E dated 27 June 2021; and Decision of the 106th CID Regarding the Proposed Acquisition of initially 69.67% and up to 80.89% of the issued shares in Finance Trust Bank Limited by Access Bank Plc dated 4 May 2024.

40. Further, it was noted that in previous decisions, the CID made a distinction between life and non-life insurance products.[8] Within each market, the CID noted that further segmentation can be made. The life insurance market could further be segmented into protection products, savings and investment products, and pension products. In relation to the non-life segment, from a demand perspective, non-life insurance services can be distinguished into different types of sub-markets as each product covers different kinds of risks which are reflected in their distinct characteristics, premiums and purposes. The Target (through NBK Bancassurance) offers the following products under general insurance: health, agricultural products (pet, livestock, crop, green house)[9], motor insurance, and general (domestic package, fire & perils, burglary, all risks, money, fidelity guarantee, electronic equipment (computer), plate glass, machinery breakdown, contractors all risks, public liability, professional indemnity, personal accident, and work injury benefits insurance as an intermediary in partnership with various insurers.[10]

41. In the current case, as explained below, the CID observed that any further segmentation of the relevant markets would not alter the outcome of the competition assessment. For purposes of this merger, the CID thus considered the broad markets for the provision of life insurance and non-life insurance.

42. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets were construed as follows:
   a) **Provision of deposit services (segmented for retail and corporate customers)**
   b) **Provision of lending services (segmented for retail and corporate customers)**
   c) **Provision of payment services**
   d) **Provision of life-insurance solutions, and**
   e) **Provision of non-life insurance solutions.**

Relevant Geographic Market

43. Paragraph 8 of the Market Definition defines the relevant geographic market as follows:

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[8] See for instance Case No. CCC/MER/8/37/2022, Decision of the 93rd Meeting of the CID regarding the Proposed Merger involving Sanlam Limited and Allianz SE issued on 30 April 2023, paragraph 28; and Case File No. CCC/MER/01/02/2024 Decision of the 106th Meeting of the CID regarding the Proposed Acquisition of up to 35% of the shareholding in Hennos Holdings Limited by Hollard International (Proprietary) Limited for an indirect minority stake of up to 25.9% in Apollo Investments Limited issued on 4 May 2024, paragraph 29.
[9] https://www.nationalbank.co.ke/personal-solutions/agricultural-products
[10] https://www.nationalbank.co.ke/personal-solutions/general-insurance

"The relevant geographic market comprises 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".

44. With respect to the provision of banking services, it was recalled that the acquirer provides its services in DRC, Kenya, Rwanda and Zambia and target provides its services in Kenya. By virtue of the licenses they are given, banking services tend to be regulated under the relevant laws in a country where the services are provided such that different requirements for operation are likely to apply in different countries. Corporate lending services (in particular advances and loans to corporate entities involved in international exports) tends to be predominantly national in scope since they usually require a close relationship between a bank and its clients in order to best tailor the funding to the particular needs of the clients.[11]

45. It was unlikely that as a result of more favorable conditions in other countries, the merging parties would timely switch to set up operations or branches in such countries, as they would need to obtain the relevant licenses in these jurisdictions, as contemplated under the SSNIP test. From a demand perspective, it was unlikely that a significant number of individuals or corporate customers located in DRC would be able or willing to substitute purchase of banking products/services from DRC to another country in response to a small but significant deterioration of the terms and conditions offered by banks in DRC.

46. The above demonstrated that the geographic scope for the relevant markets is likely to be national given the limited possibility of timely substitution of the products/services. Having regard to the acquirer's activities in the provision of deposit, loan, and payment products/services in the Common Market, the national markets affected by the merger are DRC, Kenya, Rwanda and Zambia. It was noted that there was an overlap in the activities of the parties in Kenya with respect to banking services, however, in view of the referral of the part of the merger to CAK, the CID did not further consider the Kenyan market in this assessment.

47. With regard to the insurance markets, the CID considered that the relevant geographic markets were likely to be national in scope as a result of distribution channels, established product brands, fiscal constraints for cross-border insurance services and differing regulatory systems across the various Member States. Further, from a demand perspective, it was unlikely that the majority of individual

[11] See Case No IV/M.596 - Mitsubishi Bank/Bank of Tokyo, paragraph 8.

customers would be able or willing to substitute purchase of an insurance policy in their place of residence to another country in response to a small but significant change in the price of the insurance in their place of residence[12]. It was noted that the acquirer is not present in the insurance markets and further that the target only offers such products in Kenya. In view of the referral to CAK, the CID did not further consider the markets for provision of insurance products in this assessment.

Conclusion of Relevant Market Definition

48. For purposes of assessing this merger, and without prejudice to its approach in future similar cases, the CID identified the following relevant markets:

a) **Provision of deposit services (segmented for retail and corporate customers) in each of DRC, Rwanda, and Zambia**

b) **Provision of lending services (segmented for retail and corporate customers) in each of DRC, Rwanda, and Zambia, and**

c) **Provision of payment services in each of DRC, Rwanda, and Zambia.**

Market shares and Concentration

49. The acquiring group's estimated market share in the broad banking market was relatively small, at less than 5% in each of DRC and Rwanda, and less than 10% in Zambia.

Table 2 - Market share of parties[13] in COMESA

Member State	**Access Bank**	**NBK**
	Estimated market share	***Estimated market share***
DRC	3.33%	
Kenya	0.20%	2.09% [14]
Rwanda	3.53%	
Zambia	8.49%	

50. The parties submitted that the estimated market shares on a weighted composite basis of their competitors in DRC, Rwanda, and Zambia were as set out in Table 3 below.

[12] Decision of the Seventy-Fifth (75th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of the Property and Casualty Business and Medical Insurance of Jubilee Holdings Limited by Allianz Africa Holding GmbH, dated 16th April 2021.
[13] The parties submitted that the market share is assessed based on a weighted composite index comprising net assets (or total assets), customer deposits, capital and reserves, number of deposit accounts, and number of loan accounts.
[14] As at 31st December 2022.

COMESA COMPETITION COMMISSION * 22 AUG 2024

Table 3 – Estimated Market Shares of the parties' and their competitors in the provision of banking services in DRC, Rwanda, and Zambia

Member State	**Player**	**Estimated Market Shares**
DRC	Raw Bank S.A	39.5%
	Equity Banque Commerciale du Congo SA (Equity BCDC)	33.61%
	FirstBank DRC SA	9.04%
	Bank of Africa RDC SA	5.22%
	Standard Bank Congo	3.61%
	Access Bank (R.D. Congo) SARL	***3.33%***
	United Bank For Africa DRC SA (UBA)	3.02%
	BGFI Bank	2.68%
Rwanda	Bank of Kigali Plc	38.25%
	Equity Group (comprising Equity Bank Rwanda Plc and the recently acquired Compagnie Générale de Banque (Cogebanque))	16.61%
	BPR Bank Rwanda PLC	16.55%
	I&M Bank Rwanda Plc	10.03%
	Ecobank Rwanda Plc	4.44%
	Access Bank Rwanda Plc	***3.53%***
	NCBA Bank Rwanda Plc	3.22%
	Bank of Africa Rwanda Plc	2.86%
	Guaranty Trust Bank Rwanda Plc	2.64%
	Others	1.86%
Zambia	Zambia National Commercial Bank Plc (Zanaco)	19.43%
	Stanbic Bank Zambia Limited	17.44%
	Absa Bank Zambia Plc	13.89%
	Access Bank Group (comprising Access Bank (Zambia) Limited and the recently acquired African Banking Corporation Zambia Limited T/A Atlas Mara Bank Zambia)	***8.49%***
	Standard Chartered Zambia	7.40%
	Indo-Zambia Bank Limited	6.61%
	First Capital Bank Zambia	6.23%
	First National Bank Zambia Limited (FNB Bank)	5.25%
	Others (nine banks)	15.26%

51. From the table above, it was noted that pre-merger, the acquirer was not amongst the top 3 players in the affected national markets. The same position could be observed when considering the parties' market shares in the narrower markets for lending services and deposit services, as seen in Table 4 below.

Table 4 – Estimated Market Shares of the Acquiring Group by deposit and loan in the Common Market [15]

Country	**Access Group's Market % shares in Lending Services**	**Access Group's Market shares % in Deposit Services**
Rwanda	1.7	4.8
Zambia	2.0	3.0
DRC	1.4	3.0

52. Further in Uganda, where the acquirer is in the process of acquiring Finance Trust Bank, it was noted that the latter's market share was relatively small i.e. 8% by deposits, and 4.9% by loans). Except for Kenya, the target had no activities in any of the other Member States where the acquiring group operated and as such the transaction would not lead to any market share accretion in the relevant banking submarkets post transaction. The transaction would not lead to any change in the existing market structures.

53. The CID observed that barriers to entry into the banking sector generally include regulatory obstacles including approvals and licenses, and minimum capital requirements which may constitute a significant capital barrier for new entrants to the market. Other entry requirements in the banking sector may include the high technological costs to establish systems, capital and liquidity requirements, compliance with money laundering regulations and consumer protection which may also act as barriers to entry in the banking sector. It may take approximately 12 months to enter the banking market given the regulatory and licensing requirements and the quantum of investment required.

54. This notwithstanding, the CID observed that entry in the Common Market was still possible through mergers and acquisitions as seen in the last three years, including the acquiring group's own acquisition activities across Africa:

a) Acquisition of Trust Merchant Bank S.A. by KCB Group Plc (2022)

b) Acquisition of Orient Bank Ltd. by I&M Group PLC (April 2021)

c) Acquisition of Top Finance Bank Limited by Salaam African Banking (2022)

d) Acquisition of Compagnie Générale De Banque (Cogebanque) PLC by Equity Group Holdings Plc (2023)

[15] Decision of the 106th meeting of the CID regarding the Proposed Acquisition of initially 69.67% and up to 80.89% of the issued shares in Finance Trust Bank Limited by Access Bank Plc (4 May 2024).

e) Acquisition of the Mauritius branch of the Hongkong and Shanghai Banking Corporation Limited by Absa Bank (Mauritius) Limited (2023)

f) Acquisition of Finance Trust Bank Limited by Access Bank (2024)

g) Acquisition of BancABC Mozambique by Access Bank (2021)[16]

h) Acquisition of Sidian Bank Limited by Access Bank (2022).

55. The CID also observed that the presence of a bank in other countries may increase its attractiveness at national level, by facilitating cross-border transactions. As a result, notwithstanding the lack of overlap at national level in DRC, Zambia, and Rwanda, the transaction could result in higher market shares for the merged entity in the long run, as a result of the acquiring group's increased operations in Kenya through the acquisition of NBK and future presence in Uganda through Finance Trust Bank.

56. From Table 4 above, it can be established that the acquiring group was a small player in the Common Market and as such it was unlikely for the transaction to result in higher market shares for the merged entity in any of the affected geographic markets as a result of the acquiring group's overseas presence.

57. Based on available information, the CID observed that the national banking markets in DRC, Zambia, and Rwanda were not concentrated and there were several players operating in the defined markets with varying market shares and capacity. The proposed transaction would further not result in a reduction in the number of players. The fragmented nature of the relevant markets and asymmetry of market shares among existing players suggest that the transaction would neither facilitate nor increase incentives for successful coordinated action.

Consideration of Third-Party Views

58. In arriving at its determination, the CID also considered submissions from the Commission Nationale de Concurrence of DRC, which confirmed the absence of competition and public interest concerns.

Determination

59. 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.

60. The CID, therefore, approved the transaction.

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16 https://investorrelations.accessbankplc.com/pages/Media/access-news/Access-Bank-PLC-Announces-Completion-of-BancABC-Mo.aspx

COMESA COMPETITION COMMISSION
22 AUG 2024

61. The above approval does not apply to the Kenyan market. In accordance with the referral granted by the Commission, the Competition Authority of Kenya shall issue its decision in relation to aspects of the merger relating to the Kenyan market.

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

Dated this 22nd day of August 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma