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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/35/2024

**Decision¹ of the 113th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition of Wananchi Group (Holdings) Limited by Axian
Telecom Fibre Limited**

ECONOMIC SECTOR: Telecommunications

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

Desirous 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 29 August 2024, the Commission received a notification for approval of the proposed acquisition by Axian Telecom Fibre Limited (“**Axian**” or the “**Acquiring Firm**”) of Wananchi Group (Holdings) Limited (“**WGHL**” or the “**Target Firm**”), pursuant to Article 24(1) of the Regulations.
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.



The Parties

Axian

4. Axian is a newly incorporated company under the Laws of Mauritius and a wholly owned subsidiary of Axian Telecom Limited (“ATL”), a company also incorporated under the Laws of Mauritius. ATL and all entities controlled by ATII within the Common Market are referred to at the **Acquiring Group**.
5. ATL provides telecommunication and financial services within the Common Market through its subsidiaries in Comoros, Democratic Republic of Congo (“DRC”), Madagascar and Uganda. ATL also has an administrative office in Kenya which carries out business support functions for the Acquiring Group and does not generate any turnover in Kenya.
6. Table 1 below presents the subsidiaries of ATL in the Common Market.

Table 1 – Subsidiaries of ATL in the Common Market²

Member State	Undertaking
Comoros	Holdco S.A.
	Telecom Comores S.A.
	Telco Money S.A.
DRC	Towerco of Africa DRC Limited
Kenya	Axian Telecom Kenya Limited
Madagascar	BNI Madagascar
	Mvola S.A.
	Nexta S.A.
	Sanko S.A.
	Pulse Sarl
	Telecom Malagasy S.A.
	Towerco of Africa Madagascar
Mauritius	Axian/the Acquiring Firm
	Honora Holdings Limited
	Telecom Malagasy S.A.
	Telecom Comores Holding Limited
	Global Crossing Limited
	Maya Africa Holding Limited
	Towerco of Africa Limited
	Stellar IX Data Centers Limited
	Axian Financial Services Limited
	Meta Market Limited
	Axian Support Services Limited
	Indian Ocean Financial Holding Limited

² Confidential information claimed by merging parties



	Discovery Place Limited
	Saga Africa Holdings Limited
	TODRC Holding Limited
Uganda	Towerco of Africa Uganda Limited

7. Table 2 below presents the activities of Acquiring Group in the Common Market.

Table 2 – Activities of the Acquiring Group in the Common Market

Member State	Activities
Comoros	Voice, SMS, mobile data services and mobile money wallet
DRC	Wireless and broadcast towers
Kenya	Administrative Office (business support services)
Mauritius	Holding companies
Madagascar	SMS and mobile data services, wireless and broadcast towers and broadband internet through wireless and fibre networks
Uganda	Tower infrastructure services

WGHL

8. WGHL is a holding company incorporated under the Laws of Mauritius. WGHL is a holding company. WGHL provides broadband internet and television broadcasting via fiber and satellite networks through its subsidiaries in Mauritius, Kenya, Uganda and Malawi.
9. WGHL and its subsidiaries are referred to as the “**Target Group**”.
10. Table 3 below presents the activities of the Target Group in the Common Market.

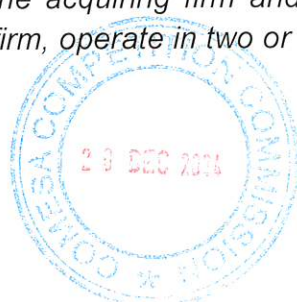
Table 3 – Activities of the Target Group in the Common Market

Member State	Undertaking (s)
Kenya	Broadband internet services and the retail supply of pay TV
Malawi	Broadband internet services and the retail supply of pay TV
Mauritius	Holding Companies
Rwanda	Dormant entity
Uganda	Broadband internet services and the retail supply of pay TV

Jurisdiction of the Commission

11. 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”.*
12. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived a turnover of more than the threshold of USD 50 million in the Common Market and they each derived a turnover 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 turnover or asset value in one and the same Member State. The Commission was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

13. The proposed transaction constitutes the acquisition of 99.63% of the issued share capital of WGHL by Axian.
14. The parties further submitted that the proposed transaction would result in the WGHL becoming a subsidiary of Axian and forming part of the Acquiring Group.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

15. 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”***.
16. The CID noted that the Acquiring Group provides telecommunication and financial services within the Common Market. The CID further noted that the target firm also provides telecommunication and broadcasting services within the telecommunications sector.
17. Specifically, within the telecommunications market, the Acquiring Group, through its subsidiaries, provides:
- i. voice, SMS and mobile data services in Comoros and Madagascar;



- ii. wireless and broadcast towers in Uganda, Madagascar and the DRC; and
 - iii. broadband internet in Madagascar through wireless and fibre networks.
18. The Target Firm provides broadband internet and television broadcasting via fibre and satellite networks through its subsidiaries in Mauritius, Kenya, Uganda and Malawi.
 19. The CID noted a likely vertical link in the operations of the merging parties given that the provision of tower infrastructure services (passive equipment - towers and energy systems) by the acquirer is required by mobile network operators and internet service providers who host their antennas.
 20. The CID considered the relevant markets in conjunction with applicable theories of harm, including unilateral and coordinated effects according to the services provided by the target firm in the Common Market as follows.

Provision of passive infrastructure

21. In Eaton Towers Holdings / ATC Heston B.V.³, the CID considered that the telecommunication infrastructure market can be segmented into passive and active infrastructure⁴.
22. Passive telecommunication infrastructure refers to the physical supporting and non-electronic infrastructure at a cell site, such as towers, masts, power supply, air conditioning and management system and site support cabinets⁵. Active telecommunication infrastructure refers to the electronic infrastructure of the network including antennas, base transceiver station, backhaul networks and controllers⁶.
23. While passive infrastructure only seeks to provide a platform where different Mobile Network Operators (“MNOs”) can setup their various telecommunication equipment, active infrastructure is typically unique to a particular MNO and is key to ensuring that actual transmission of telecommunication services is possible. Passive and active infrastructure are thus not substitutable and do not belong to the same product market.
24. An important part of the passive infrastructure market are the communication towers, on which MNOs and other internet providers place active equipment which is used to transmit data to enable mobile and other communication services⁷.

³ Case File No. CCC/MER/06/24/2019

⁴ <https://www.technomag.co.zw/2015/08/06/what-is-passive-and-active-sharing/>

⁵ Geradin, Damien and Karanikioti, Theano, Network Sharing and EU Competition Law in the 5G Era: A Case of Policy Mismatch (June 16, 2020). TILEC Discussion Paper No. DP2020-037

⁶ Ibid

⁷ CASE M.7758-HUTCHISON 3G ITALY/ WIND / JV, paragraph 106.



25. In line with its previous decisional practice, the CID considered that a market for the provision of passive telecommunication infrastructure services is a relevant market.

Broadband internet

26. Broadband internet services refer to high-speed access to internet, which is always on, and which allow users to connect to the internet much faster than through dial-up connections. It enables high-quality and quick access to information and data transmission in both directions, that is from the sender and the receiver. Broadband internet services can be provided using copper phone wires, cable internet which uses same cable as televisions, fiber-optic cables, or through wireless options such as satellite and 4G/5G LTE.
27. The CID noted that the target provides broadband internet services through fiber and satellite. Fiber internet relies on fiber-optic cables, which transmit data as pulses of light through numerous thin fiber strands. The light-based transmission makes fiber-optic internet fast, enhances its high-quality and dependable connection. Within the telecommunications sector, fiber optics are thus widely used for internet, telephone, and television services, which allows high-speed data transfer and clear signals. To access internet via fiber, a user needs to have access to the required equipment, including an optical network terminal and a router.
28. The provision of internet via satellite requires no wires and therefore requires less infrastructure. The transmission of data happens using satellite orbiting the Earth. A user requires a satellite dish and a satellite internet modem to be able to access internet provided by satellite. Internet through satellite is often used to service remote regions where cables are not available.
29. The CID observed that on the demand side, the equipment required by the end user to access internet will differ depending on the medium through which its supplier is providing internet. In the same vein, the ground infrastructure will determine the medium used for the supply of the internet. Broadband internet via satellites is mostly used to supply internet where cables cannot reach. To this end, the CID noted that suppliers of broadband internet services are likely to use both cables and satellite for the provision of their services. There are also likely to be price differences between broadband internet provided by cable and satellites.
30. The CID therefore observed that the technology used to provide broadband internet services, that is either satellite or cable, may constitute sub-products and consequently sub-markets within the broad broadband internet services.
31. The supply of broadband internet can be to end customers or to business customers. The CID noted that the target provides internet services to business customers only in Uganda. Business customers require broadband internet to run



their network or intranet for their efficient running. Business customers can be categorised according to their sizes, they can either be large, medium and small. The internet requirements and the security level for each business customer differs. While acknowledging that the provision of broadband internet services can be further segmented according to residential or business customers and business customers can be further segmented according to their sizes, the CID considered that further narrowing of the market is not required as this will not change the competitive assessment of this transaction.

32. Given that the competitive assessment of the transaction will not change under any alternative or narrower market definition, for the purposes of this assessment, the CID considered that a broad market for the supply of broadband internet services can be adopted.

Television Broadcasting

33. Broadcasting services are communication services designed for direct reception by the public. Television broadcasting transmits visual images and other visible signals, with or without sound, and the visual images are received as moving pictures.
34. Broadcasting services can be transmitted via cable, terrestrial wireless, or satellite media.
35. The CID noted that the target offers pay-television services in the Common Market. The CID further noted that, with the Common Market, the target's pay-television services are offered via fiber in Nairobi, Kenya and via satellite⁸ in Kenya, Uganda and Malawi.
36. The target firm therefore is a pay TV distributor and provides television broadcasting services at the retail level to end customers.
37. A pay TV distributor advertises and markets the packages for sale to end customers. The distributor also sells or rents a terminal to the subscriber, providing decoding and decryption, and the reception equipment where the services are provided via satellite.
38. As the name suggests, viewers have to pay a subscription to have access to the television content. Video content, which can be live programmes or pre-recorded programmes are provided over different channels within the subscription package. Pay TV suppliers deliver content in a linear TV format, arranged according to a programming and advertisement schedule by the broadcaster. The viewer therefore cannot determine its own viewing time but has to tune in to a TV channel to view desired content.

⁸ Ibid



39. On the demand-side, a distinction can be made between pay TV and free TV services. Free TV services are usually provided by state owned enterprises or religious bodies with restricted channel options and restricted viewership. Free TV is usually financed by advertising and the viewer has no active role to play in this supply chain. Pay TV services offer a wide range of content, which has arguably less advertising and allows a viewer to access content which would otherwise not be accessible to it.
40. The CID further noted that within the pay TV market, a distinction can be drawn between linear and non-linear pay TV services⁹. In linear TV services, content is provided according to the schedule set by the broadcaster or the provider, and the viewer has to view the content accordingly. Non-linear TV on the other hand, allow viewers to choose the content and time at which they wish to view. Linear pay TV services and non-linear pay TV services are likely to differ in terms of content, viewing schedule and prices, such that they constitute different product from a demand side¹⁰. For this reason, the CID considered that the linear pay TV and non-linear pay TV are likely to constitute different markets. However, given that narrower markets will not change the competitive assessment of the case, the CID considered that a broad market for the retail supply of pay TV services can be adopted.
41. The distribution technologies through which the pay TV service is provided, that is, satellite or fiber are also likely to make the product distinct. This is because the equipment required for the supply and the reception are different.
42. However, given that narrower markets will not change the competitive assessment of the case, the CID considered that a broad market for the retail supply of pay TV services can be adopted.
43. Based on the foregoing, for the purposes of this transaction, the CID identified the relevant product markets as the market for:
- i. **The provision of passive telecommunication infrastructure services;**
 - ii. **The supply of broadband internet services; and**
 - iii. **The retail supply of pay TV services.**

Relevant Geographic Market

44. 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**

⁹ The European Commission has in the case M.5932 NewsCorp/BskyB determined that linear and non-linear TV services belonged to separate product markets.

¹⁰ European Commission's case M.7000 Liberty Global/Ziggo



distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas¹¹.

The provision of passive telecommunication infrastructure services

45. The CID's previous decisional practice has considered that the provision of passive infrastructure for mobile network communication tends to serve the customers, MNOs and other internet service providers in a particular locality within a country. The CID considered that from a demand side perspective, it is unlikely that an MNO or other internet service providers would switch and immediately rent space on towers outside a country of its operation. The CID further considered that the regulatory framework surrounding accessing passive infrastructure may limit the extent to which substitutability across countries is possible. The CID determined that conditions of competition are heterogeneous across countries on account of different tariffs and exchange rate variations, the degree of coverage required, and access to suitable sites.
46. The CID hence considered that the relevant geographic scope for the provision of passive infrastructure is limited to only to the Member State where the acquirer has operations, namely DRC, Madagascar and Uganda.

The supply of broadband internet services

47. The CID considered that the supply of broadband internet services is likely to be national in scope, pertaining to Kenya, Malawi and Uganda, because the supply is highly regulated. Further, the pricing policy of the service provider is reflective of dynamics at national level and the required infrastructure available at national level to enable the supply of the service.

The retail supply of pay TV services

48. Similarly, the CID considered that the retail supply of pay TV services is likely to be national in scope. The retail supply of pay TV services is likely to be regulated at the national level, which requirements are not likely to be the same in all Member States. Language can also be a barrier which may limit the provision of the services across national borders.
49. In view of the going, the respective markets for the supply of broadband internet services and the retail supply of pay TV services are considered as national, that is, Kenya, Malawi and Uganda.

Conclusion of Relevant Market Definition

50. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID defined the relevant markets as the market for the:

¹¹ Paragraph 8



- i. *provision of passive telecommunication infrastructure services in DRC, Madagascar and Uganda.*
- ii. *supply of broadband internet services in Kenya, Malawi and Uganda; and*
- iii. *retail supply of pay TV services in Kenya, Malawi and Uganda.*

Market Shares and Concentration

51. The parties have provided the market shares of Axian and its competitors for wireless and broadcast towers in Uganda per Table 4 below.

Table 4 – Market shares of Axian and its competitors in Uganda

Entity	Market Shares (%)
ATC Uganda	[75 – 80]
Uganda Telecommunications Corporation Limited	[10 – 15]
Axian	[4 – 8]

52. The CID observed the absence of have market shares information for Axian in each of DRC and Madagascar. The CID considered that this information will not change the competition assessment of this transaction as the target has no operations in the latter countries.
53. The parties have provided the below market shares information for WGHL and its competitors for the supply of broadband internet services in Kenya, Malawi and Uganda per Tables 5, 6 and 7 below.

Table 5 – Market shares of the Target Group and its competitors for the supply of broadband internet services in Uganda

Entity	Market Shares (%)
Target Group (Wananchi Cable (Uganda) Limited)	[40 – 46]
MTN Uganda	[20 – 25]
Airtel Uganda	[15 – 20]
Liquid Telecom Uganda	[3 – 5]
Roke Telkom	[3 – 5]
Savanna Fibre Limited	[0 – 1]

Table 6 - Market shares of the Target Group and its competitors for the supply of broadband internet services in Kenya

Entity	Market Shares (%)
Safaricom PLC	[35 – 40]
Jamii Telecommunications	[20 – 25]
Target Group (Wananchi Group (Kenya) Limited)	[15 – 20]
POA internet	[10 – 13]
Mawingu Networks	[1 – 3]
Vilcom Network Ltd	[0.1 – 2]



Target Group (Simbanet Com Limited)	[0.1 – 0.2]
Target Group (Wananchi Telecom Limited)	[0.1 – 0.2]

Table 7 - Market shares of the Target Group and its competitors for the supply of broadband internet services in Malawi

Entity	Market Shares (%)
INQ	[42 – 45]
Target Group (Simbanet Malawi Limited)	[10 – 15]
Globe Internet	[9 – 14]
Afrimax)	[0 – 2]
Converged	[0 – 1]
Datacom	[0 – 2]

54. The parties have provided the market shares of the Target Group and its competitors in the retail supply of pay TV in each of Kenya, Malawi and Uganda per Tables 8, 9 and 10 below.

Table 8 - Market shares of the Target Group and its competitors for the retail supply of pay TV in Uganda

Entity	Market Shares (%)
DSTV	[18 – 24]
Target Group (Wananchi Group (Uganda) Limited)	[5 – 10]
Azam TV	[4 – 9]
Startimes	[4 – 8]
GO TV	[1 – 5]
Kampala Siti Cable Ltd	[1 – 3]

Table 9 - Market shares of the Target Group and its competitors for the retail supply of pay TV in Kenya

Entity	Market Shares (%)
Multichoice Kenya	[60 – 65]
Star Times	[15 – 20]
Target Group (Wananchi Group (Kenya) Limited)	[12 – 18]
Azam Kenya	[1 – 5]

Table 10 - Market shares of the Target Group and its competitors for the retail supply of pay TV in Malawi

Entity	Market Shares (%)
GO TV	[30 – 35]
Startimes	[22 – 27]
DSTV	[13 – 17]
Target Group (Wananchi Media Limited)	[10 – 15]
Azam	[4 – 7]



55. Given that the merging parties do not operate in the same relevant markets, the transaction will not change the market structure of the relevant markets.

Consideration of Third-Party Views

56. In arriving at its determination, the CID also considered submissions from the national competition authorities of Kenya, Madagascar, Mauritius and Malawi which confirmed the absence of competition and public interest concerns.

Determination

57. 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.
58. The CID, therefore, approved the transaction.
59. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 20th day of December 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah

