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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/ MER/09/39/2024**

**Decision<sup>1</sup> of the 120<sup>th</sup> Meeting of the Committee Responsible for Initial Determinations Regarding the Contravention of Article 24(1) of the COMESA Competition Regulations in relation to the Merger involving Robert Bosch GMBH of the Residential and Light Commercial Heating, Ventilation, and Air Conditioning Business of Johnson Controls International plc**

**ECONOMIC SECTOR: Manufacturing**



**23 September 2025**

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<sup>1</sup> 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

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;

Determines as follows:

### Introduction and Relevant Background

1. On 6 November 2024, the COMESA Competition Commission (“**the Commission**”) received a notification for approval of a merger involving Robert Bosch GmbH (“**Bosch**”, or the “**acquiring firm**”, together with its controlled and controlling affiliates the “**acquiring group**”) and Johnson Controls International plc’s (“**JCI**”, residential and light commercial Heating, Ventilation, and Air Conditioning (“**HVAC**”) business (the “**target firm**”), pursuant to Article 24(1) of the Regulations.
2. The transaction was notified following the merging parties’ submission to the Commission that transaction was notifiable and that the statutory 30 days within which to notify a merger under the Article 24(1) of the Regulations had been missed.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID.



- The CID at its 120<sup>th</sup> meeting was called to determine the matter.

## **The Parties**

### ***Bosch***

- Bosch is a company incorporated in accordance with the Laws of Germany, with its business address at Robert-Bosch-Platz 1, headquartered in Gerlingen, Germany. It is a private, globally active supplier of technology solutions for a wide variety of industries. The acquiring group's activities are organized in four business divisions, namely Mobility Solutions; Industrial Technology; Consumer Goods; and Energy and Building Technology.
- In the Common Market, the acquiring group operates in Burundi, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

### ***HVAC***

- HVAC comprises JCI's residential and light commercial HVAC business, which includes JCH (a joint venture between JCI and Hitachi Global Life Solutions, Inc. ("**Hitachi**")), all entities and assets related to JCI's residential and light commercial ducted HVAC business and several brand and IP licenses.
- JCH is a company incorporated in accordance with the laws of the United Kingdom. Further, JCI, headquartered in Cork, Ireland, is a public listed multi-industrial company traded on the New York Stock Exchange, incorporated in accordance with the Laws of Ireland. The parties also submitted that Hitachi is a joint stock company incorporated in accordance with the Laws of Japan.
- In the Common Market, the target operates in Egypt, Ethiopia, Kenya, Libya, Mauritius, Tunisia, Uganda and Zambia.

## **Legal framework**

- Article 24(1) of the Regulations provides that, "*A party to a notifiable merger shall notify the Commission in writing of the proposed merger as soon as it is practicable but in no event later than 30 days of the parties' decision to merge*".
- Article 24 (2) of the Regulations provides that, "*Any notifiable merger carried out in contravention of this part shall have no legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger shall be legally enforceable in the Common Market*".
- Article 24(3) of the Regulations provides that, "*Notification in terms of paragraph 1 shall be made in such form and manner as may be prescribed and shall be accompanied by the prescribed fee and such information and particulars as may be prescribed or as the Commission may reasonable require*".



13. Further, Article 24(4) of the Regulations provides that, "*The Commission in addition to sanctions under paragraph 1 may impose a penalty if the parties to a merger fail to give notice of the merger as required by paragraph 1*".
14. Article 24(5) of the Regulations further states that "*A penalty imposed in terms of paragraph 4 may not exceed ten per centum of either or both of the merging parties' annual turnover in the Common Market as reflected in the accounts of any party concerned for the preceding financial year*".
15. Article 24(6) of the Regulations provides that, "*When determining an appropriate penalty, the Commission shall consider the following factors:*
  - (a) *The nature, duration, gravity and extent of the contravention;*
  - (b) *Any loss or damage suffered as a result of the contravention;*
  - (c) *The behaviour of the parties concerned;*
  - (d) *The market circumstances in which the contravention took place;*
  - (e) *The level of benefits derived from the contravention;*
  - (f) *The degree to which the parties have co-operated with the Commission; and*
  - (g) *Whether the parties have previously been found in contravention of competition Regulations in the region.*"
16. The Commission's Guidelines for Determination of Administrative Fines and Penalties ("**Guidelines on Fines and Penalties**") provide a step-by-step process of calculating fines and penalties for contraventions under the Regulations. Section 5, Paragraph 1 of the Guidelines on Fines and Penalties provides that:

*"The Commission will use the following two-step methodology when setting the fine to be imposed on undertakings found to be in breach of the Regulations:*

  - a. *First, the Commission will set a base amount for each undertaking or association of undertakings.*
  - b. *Second, the Commission may adjust the base amount upwards or downwards considering aggravating and mitigating factors on a case-by-case basis.*"
17. Section 5, Paragraph 7 of the Guidelines on Fines and Penalties provides that, "...the base amount of the fine denotes the starting point against which the mitigating and aggravating factors will be adjusted. The base amount will be a proportion of the turnover depending on the nature, the degree of gravity and the duration of the infringement". Further, "the assessment of gravity will be determined on a case-by-case basis for all types of infringements, taking account of all the relevant circumstances of the case".



18. Section 5, Paragraph 5 of Guidelines on Fines and Penalties provides that, “...in determining the turnover of an undertaking, the Commission will take into account the undertaking’s latest available audited figures...”.
19. Section 5, Paragraph 12 of the Guidelines on Fines and Penalties provides that the general base proportion of turnover to be applied shall be as follows:  
“...other infringements, a base from 0.5% to 1% of turnover...”.
20. Section 5, Paragraphs 15 and 16 of the Guidelines on Fines and Penalties also provide that the base amount may be adjusted depending on aggravating or mitigating factors. For mitigating factors, the Commission is required to consider the following factors:
- a. *Cooperation – whether the undertaking(s) concerned has cooperated with the Commission during the investigation by among others, through admission of liability, disclosure of more evidence, and working within the given timelines, the base amount may be decreased by up to 50%;*
  - b. *First offender- whether the undertakings(s) are first-time offenders and have not been the subject of previous enforcement action on similar conduct under the Regulations, the Commission at its own discretion may decrease the base amount by up to 30%; and*
  - c. *Termination of the infringement- where the undertaking(s) concerned provide evidence that infringement was terminated as soon as the Commission commenced investigations or intervened, the base amount may be decreased by up to 5% on account of this factor.*
21. Section 6, Paragraph 3 of the Guidelines on Fines and Penalties further provides that,  
“The Commission may, in certain cases, impose a symbolic fine. The justification for imposing such a fine should be given in its decision.”
22. 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”.*

23. The merging parties had operations in two or more Member States. The undertakings concerned held a combined annual asset value of more than the threshold of USD 50 million in the Common Market and they each held asset value of more than USD 10 million in the Common Market. In addition, the parties did not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The CID was thus satisfied that the transaction constituted a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

## **Compliance with Article 24(1) of the Regulations**

### **Submissions by the Commission**

24. The Commission submitted that on [REDACTED] it was informed by the merging parties that the relevant documents relating to the transaction were signed on [REDACTED].<sup>2</sup> Further, the merging parties informed the Commission that ‘...*the 30-day deadline for notifying the transaction to the Commission expired on [REDACTED]*’ and sought the Commission’s indulgence to submit a merger notification as soon as possible.
25. The Commission also submitted that, on [REDACTED]<sup>3</sup>, the merging parties confirmed that the agreements in respect of the proposed transaction were concluded on [REDACTED] and that more than 30 calendar days had passed between [REDACTED] and when the parties informed the Commission about the proposed transaction on [REDACTED]. The parties acknowledged that the deadline for submission of a merger notification to the Commission expired on [REDACTED]. However, the parties submitted that their failure to comply with the deadline was entirely inadvertent and was because they were under the erroneous impression that the transaction did not meet the thresholds for notification. The parties expressed willingness to rectify the anomaly and undertook to submit a merger notification.
26. The Commission submitted that the merging parties signed the Share Purchase Agreement (“SPA”) relating to the transaction on [REDACTED].<sup>4</sup> Therefore, by virtue of Article 24(1) of the Regulations and paragraph 5.1 of the Merger Assessment Guidelines, the decision to merge relating to this transaction was made on [REDACTED].

<sup>2</sup> Email dated [REDACTED] sent to the Commission by Bowmans Gilfillan, on behalf of the merging parties

<sup>3</sup> Letter dated [REDACTED] sent to the Commission by the Bowmans on behalf of the merging parties

<sup>4</sup> See Annexure I.A of the merger filing



27. The Commission submitted that the merging parties had an obligation to complete the merger filing by [REDACTED] but did not.
28. The Commission submitted that on 24 March 2025 the parties were issued a Statement of Concerns (“SoC”) through which they were informed that since the merger filing was made beyond 30 days of the parties’ decision to merge, the parties contravened Article 24(1) of the Regulations.
29. Through the SoC, the Commission informed the parties that it reached the conclusion that there had been a breach of Article 24(1) of the Regulations as such it would recommend that the merging parties are sanctioned for the breach and a fine be imposed consistent with the case precedent by the CID in **Helios Towers/Madagascar Towers/Malawi Towers**<sup>5</sup> and **Sabic/ETG**<sup>6</sup>. The Commission informed the merging parties that it would recommend a fine of [REDACTED].
30. The Commission submitted that the merging parties responded to the Commission’s SoC. The Commission presented its assessment of the merging parties’ responses as follows:

Condonation for the late filing

31. The Commission noted the submission by JCI for it to recommend to the CID condonation for the late filing pursuant to its powers under the Regulations. The Commission also noted JCI’s argument that Article 24(4) gives discretion to condone merging parties for contravention of the Regulations, since the latter provision states that, “The Commission **may** impose a penalty...”.
32. The Commission agreed with the submission that the Regulations have given it discretion to imposition penalties for contravention of Article 24(1). The Commission reiterated the position communicated to merging parties in its SoC that Article 24(1) of the Regulations imposed a legal obligation on merging parties to notify a merger within 30-days of the parties’ decision to merge and no exceptions to this obligation have been provided for under the Regulations.
33. Further, the Commission’s case precedents on non-compliance with this obligation after the condonation in **Lactalis/Greenland** were set in **Helios Towers/Madagascar Towers/Malawi Towers** and **SABIC/ETG** where the Commission invoked its powers to impose penalties pursuant to Article 24(4) of the Regulations for similar contraventions of Article 24(1) of the Regulations.

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<sup>5</sup> See CID Decision regarding the Proposed Acquisition of Helios Towers Ltd of shares in Madagascar Towers S.A. and Malawi Towers Limited, <https://comesacompetition.org/wp-content/uploads/2021/05/2021.09.03-Decision.20.2.2021-Fines-for-Non-Compliance-of-Article-24.pdf>

<sup>6</sup> See CID Decision regarding Contravention of Article 24(1) of the COMESA Competition Regulations by SABIC Agri-Nutrients Company and ETG Inputs Holdco Limited, <https://comesacompetition.org/wp-content/uploads/2023/05/Decision-Case-No-CCC-MER-08-38a-2022-compressed.pdf>



34. The Commission submitted that it also noted the submissions by both merging parties that in ***Lactalis/Greenland***, it elected not to impose a fine for a similar contravention and that this precedent was applicable in the current case since the Regulations had not been reviewed. Further, the Commission noted the submission by JCI that the current matter presented a stronger case for condonation than the ***Lactalis/Greenland*** merger given the parties voluntarily and immediately disclosed the contravention to the Commission.
35. The Commission submitted that it considered this argument and disagreed with the rationale that since there had been no amendments to the Regulations, it should be bound by its decision in ***Lactalis/Greenland***. The Commission is empowered to impose penalties for contraventions of the Regulations to ensure compliance, absent which there would be a lack of deterrence on potential future violations and lack of accountability from parties that contravene the Regulations.
36. Further, the Commission considered that while there was condonation previously, this was at a time when the Commission had no Guidelines on its approach to the imposition of fines and penalties. The Commission considered that the absence of such Guidelines on how fines and penalties would be administered left the interpretation and enforcement of the Regulations, in terms of sanctions and fine or penalties, open to subjectivity, inconsistency and likely bias. Therefore, to avert such subjectivity, inconsistency and likely bias the Commission published the Guidelines on Fines and Penalties on 19 December 2023 to guide *the Commission and the concerned parties on the factors and issues that the Commission shall take into account when determining fines or other administrative penalties for any violation of the Regulations or the Rules.* The Commission also observes that the Guidelines on Fines and Penalties have not provided for condonation except mitigating factors to be considered in the administration of fines and penalties for breaches of the Regulations and Rules. The Commission considers that adopting such an approach would defeat the purpose of the Guidelines on Fines and Penalties and such an approach would expose the administration of fines and penalties under the Regulations to subjectivity, inconsistency and likely bias which the Commission sought to cure in the said Guidelines.
37. With regards to the parties' submission that without their voluntary disclosure the Commission would not have known about the contravention, the Commission considered that this does not exonerate the parties nor give the Commission grounds for condonation. The Commission may still elect to impose a fine even where the parties self-report a contravention. The issue of self-reporting therefore does not necessarily oust the Commission's powers to penalize undertakings for contraventions of Article 24(1) of the Regulations. However, the Commission in its investigation and assessment takes due recognition of the voluntary disclosure of the contravention and this is one of the mitigating factors in the computation of the penalties. Further, the Commission noted that there is an increasing trend in regard



to the failure of merging parties to comply with Article 24(1) of the Regulations, therefore measures that would ensure deterrence should be applied.

**Disproportionate quantum of the recommended fine**

38. The Commission noted the submissions by both parties that the fine of ██████ proposed in the SoC was disproportionate given that the contravention of Article 24(1) did not result in any harm or prejudice to the market and was beyond the maximum fines under the Regulations for contraventions under Parts 3 and 5 of the Regulations which are capped at **USD300,000**. The Commission further noted the merging parties' request that a symbolic fine of ██████ should be recommended in the alternative.
39. The Commission observed that the capping of the fines at USD300,000 applies to non-merger cases. In the case of mergers, the penalties are clearly provided for under the relevant parts of the Regulations which are supreme to the Rules in hierarchy. The Commission recalled the CID's decisions in the **Helios Towers/Madagascar Towers/Malawi Towers** and **Sabic/ETG** where, for similar contraventions respective penalties of **USD102,101.765** and **USD314,913.56** were imposed on the concerned parties which represented 0.05% of the parties' turnover derived in the Common Market. Further, as it can be observed from one of the previous cases, a fine beyond the cap of **USD300,000** provided for under Parts 3 and 5 of the Regulations was imposed.
40. The Commission further considered that the Regulations have not provided for a specific monetary limit for contraventions under Part 4 of the Regulations. The Commission considered that the applicable section of the Regulations was Article 24(5) which provides that a fine imposed in terms of the Regulations "**...may not exceed ten per centum of the either or both of the merging parties' annual turnover in the Common Market...**". The Commission observed that no aggravating factors applied in the current case to justify imposing a fine up to 10% of the merging parties' turnover in the Common Market. To the contrary and in line with the Guidelines on Fines and Penalties, the Commission considered all the mitigating factors including the absence of any prejudice to the market for the contravention.
41. The Commission further submitted that it found merit in imposing penalties for such contraventions for purposes of achieving compliance with the Regulations and observed that the absence of such an approach results in enforcement gaps such as:
- a) **Lack of Deterrent Effect:** the purpose for the Commission recommending the imposition of fine is to ensure that the merging parties do not engage in any similar conduct and to send a strong signal to stakeholders that non-compliance with the Regulations is taken seriously by the Commission. The Commission has observed that instances of non-compliance with Article 24(1) are increasing. It is



therefore important that the Commission takes a firm stance on the matter to stop the increasing trend. The Commission considered that a symbolic fine would not allow the Commission to achieve this objective and may even encourage recidivism by parties found to have contravened the Regulations; and

- b) **Lack of accountability:** the imposition of a symbolic fine would be inadequate to impute liability on the merging parties for the breach of Article 24(1) of the Regulations. The breach of Article 24(1) is not a trivial offence, is in direct conflict with the merger review powers of the Commission and must be dealt with the severity required.
42. The Commission therefore assessed that a fine calculated in line with the Regulations and the Guidelines on Fines and Penalties remains necessary to ensure accountability and maintain deterrence.

**Applicability of paragraph 12(f) of the Guidelines on Administrative Fines and Penalties**

43. The Commission considered the submission by JCI that the base amounts of the fine provided under paragraph 12(f) of the Guidelines on Fines and Penalties were not applicable in the current case as it speaks to “*mergers implemented in contravention of the Regulations*”.
44. The Commission submitted that it agreed that paragraph 12(f) of the Guidelines on Fines and Penalties was not relevant given that the transaction had not been implemented. The Commission considered that the issue at hand related to a contravention by the merging parties of their obligation to notify the merger within the prescribed timeline and not the implementation of the merger.
45. The Commission further noted that while Section 5, Paragraph 12(f) of the Guidelines on Fines and Penalties was not relevant to set the base amount of the fine, Section 5, Paragraph 12(h) which has set the base amounts for other infringements, is relevant to guide the Commission on the appropriate base amount to adopt in its calculation of the fine in the present case.

**No fault or wrongdoing by Bosch**

46. The Commission noted the submission by Bosch that the 30-day deadline was missed due to JCI’s *bona fide* and inadvertent error [REDACTED]. The Commission also noted the submission from the parties that if Commission arrived at the finding of a contravention and/or impose a fine, the relevant facts reflect that it would not be warranted, necessary, reasonable or appropriate for Bosch to be the subject of such a finding and/or fine.
47. The Commission considered that there was merit in Bosch’s submission that the contravention was occasioned by JCI’s *bona fide* and inadvertent error. The Commission observed Bosch’s submission that it did not take part in the



commissioning of the infringement and further that it was initially of the understanding that the merger was not notifiable to the Commission until JCI advised it that on the basis of its computation, the COMESA Merger Notification Thresholds were met.

48. The Commission submitted that it considered and excluded Bosch from liability upon further submissions of affidavits in support of Bosch's position that the infringement was not occasioned by it.

### **Legal framework**

49. The Commission noted Bosch's submission that *"the Regulations do not place a specific obligation on an acquiring firm to notify the Commission. The inclusion of the words "a party", rather than "the acquiring party" or "the target firm", reflects a deliberate choice on the part of the Legislature to frame the obligation in general terms, rather than attributing the obligation to a particular party. Put differently, where a merger notification deadline is missed, this is not as a matter of law, a circumstance for which the acquiring firm bears liability or responsibility. Given the absence of any fault or wrongdoing on the part of Bosch, and where Bosch undertook its responsibilities with diligence and sought to ensure compliance with the Regulations, it is respectfully submitted that the Commission ought to absolve Bosch of any liability"*.
50. The Commission submitted that it considered that generally merger filings are notified to the Commission pursuant to an agreement by all parties to implement a merger, unless in the case of a hostile merger. Therefore, the Commission considered that both parties may be held liable for contravention of the Regulations. The Commission further drew guidance from its case precedents where penalties were calculated based on the turnover of all merging parties to a transaction.
51. The Commission further observed that the legal framework may place a specific obligation on the acquiring firm to notify a merger. For instance, the Commission observed that the Merger Notification Form ("**Form 12**") provides that, *"The notification shall be completed jointly by the parties to the merger or in the case of the acquisition of a controlling interest in one firm by another, the acquiring firm shall complete the notification"*.<sup>7</sup> The Commission observed that Form 12, which is developed pursuant to Rule 55(1) of the Rules, puts responsibility to submit a merger filing on an acquiring firm in the instant of acquisition of controlling interest. Pursuant to Rule 55(1), therefore, the responsibility for submitting a merger filing was on Bosch. However, the Commission further considered the fact that Bosch had to rely [REDACTED] in assessing whether Bosch could be absolved of liability for the contravention. The Commission considered that this assessment should include assessing the evidence from

<sup>7</sup> See page 2 of Form 12 on 'Who Must Notify' to the Commission



Bosch affirming the circumstances under which the contravention was occasioned, by 'JCI's claimed *bona fide* and inadvertent error'. The Commission therefore assessed further submissions from Bosch evidencing that it was not at fault with regards to the contravention.<sup>8</sup>

52. The Commission considered the affidavits submitted by Bosch as sufficient to absolve Bosch of liability for contravention of the Regulations. The affidavits were binding on Bosch and in the event Bosch's submission in the affidavits are factually incorrect and misleading, Bosch would be held liable for misleading the Commission and would be fined to the maximum permissible under law.

Applicability of Article 24(2) of the Regulations

53. The Commission noted the submission by Bosch that while the Commission's SoC did not consider Article 24(2) of the Regulations, the Proposed Transaction had not yet been 'carried out'. The Commission took note of Bosch's submission that a finding of a contravention of the Regulations and/or the imposition of a fine was not warranted, reasonable, appropriate or necessary.
54. The Commission considered that the contravention had nothing to do with the implementation of a merger as provided for under Article 24(2), but the contravention of Article 24(1).

Quantum of the fine

55. The Commission submitted that the merging parties were cooperative and as such this mitigating factor should be considered in the calculation of the fine, consistent with Article 24(6) of the Regulations and the Guidelines on Fines and Penalties. Therefore, considering the cooperation of the merging parties and all mitigating factors, the Commission submitted that a reduction of 85% should be applied to the base amount by the CID, resulting in the imposition of financial penalties of Eight Thousand Sixty-Seven United States Dollars and Six Cents (**USD8,067.06**).

**Consideration by the CID**

56. The CID considered that the Regulations impose an obligation on merging parties to notify a proposed merger as soon as it is practicable and no later than 30 days of the parties' decision to merge. Further, merger notification under the Regulations is non-suspensory, that is, parties are at liberty to consummate the transaction even before the Commission has issued a decision on its effects on competition and public interest. For this reason, the CID considered that it was imperative for merging parties to adhere to the timelines set in the Regulations, such that if ever the merger has been consummated and where it is found that the transaction will negatively impact competition and public interest, remedial



measures can be taken promptly to prevent the pernicious effects of the transaction. To this end, where such an obligation has been set in the legal framework, it is imperative that the Commission ensures adherence to the same.

57. The CID observed that the decision to merge occurred on [REDACTED], being the date of signing of the binding agreement between the merging parties. The CID therefore observed and considered that the merging parties breached Article 24(1) of the Regulations by failing to notify the transaction within the prescribed 30-day period.
58. The CID noted that Article 24(4) of the Regulations empowers the Commission to impose penalties of not more than ten percent of either or both of the merging parties' annual turnover in the Common Market where the parties fail to give notice of the merger as required under Article 24(1) of the Regulations.
59. The CID pursuant to Article 24(6) of the Regulations, is guided to consider the following factors in the determination of an appropriate penalty:
  - (a) The nature, duration, gravity and extent of the contravention;
  - (b) Any loss or damage suffered as a result of the contravention;
  - (c) The behaviour of the parties concerned;
  - (d) The market circumstances in which the contravention took place;
  - (e) The level of benefits derived from the contravention;
  - (f) The degree to which the parties have co-operated with the Commission; and
  - (g) Whether the parties have previously been found in contravention of competition Regulations in the region.
60. The CID observed that it is guided by the Guidelines on Fines and Penalties which provide a step-by-step process of calculating fines and penalties for contraventions under the Regulations. The relevant provisions of the Guidelines on Fines and Penalties are provided below.
61. Section 5, Paragraph 1 of the Guidelines on Fines and Penalties provides that:

*“The Commission will use the following two-step methodology when setting the fine to be imposed on undertakings found to be in breach of the Regulations:*

  - a. First, the Commission will set a base amount for each undertaking or association of undertakings.*
  - b. Second, the Commission may adjust the base amount upwards or downwards considering aggravating and mitigating factors on a case-by-case basis.”*



62. Section 5, Paragraph 3 of the Guidelines on Fines and Penalties further provides that the base amount will be set by reference to the turnover and applying the following methodology:

*"In determining the base amount of the fine to be imposed, the Commission will consider the undertaking's turnover within the Common Market in a given financial year which shall be determined as follows: ...for mergers implemented in contravention of the Regulations, it shall be the year before implementation of the merger..."*

63. Section 5, Paragraph 7 of the Guidelines on Fines and Penalties further provides that, *"...the base amount of the fine denotes the starting point against which the mitigating and aggravating factors will be adjusted. The base amount will be a proportion of the turnover depending on the nature, the degree of gravity and the duration of the infringement". Further, "the assessment of gravity will be determined on a case-by-case basis for all types of infringements, taking account of all the relevant circumstances of the case".*

64. Section 5, Paragraph 12 of the Guidelines on Fines and Penalties also provides that the general base proportion of turnover to be applied shall be as follows:

*"...other infringements, a base from 0.5% to 1% of turnover ..."*

65. Section 5, Paragraphs 15 and 16 of the Guidelines on Fines and Penalties have also provide that the base amount may be adjusted depending on aggravating or mitigating factors. For mitigating factors, the Commission is required to consider the following factors:

- a. *Cooperation – whether the undertaking(s) concerned has cooperated with the Commission during the investigation among others through admission of liability, disclosure of more evidence, provision of undertakings and working within the given timelines, the base amount may be decreased by up to 50%;*
- b. *First offender- whether the undertakings(s) are first-time offenders and have not been a subject of previous enforcement action on similar conduct under the Regulations, the Commission at its own discretion may decrease the base amount by up to 30%;*
- c. *Termination of the infringement- whether the undertaking(s) concerned provide evidence that infringement was terminated as soon as the Commission commenced investigations or intervened, the base amount may be decreased by up to 5% on account of this factor.*

66. Section 6, Paragraph 3 of the Guidelines on Fines and Penalties further provides that,

*"The Commission may, in certain cases, impose a symbolic fine. The justification for imposing such a fine should be given in its decision."*



67. The CID noted that the primary objective of administrative penalties is deterrence against repeated violations of the Regulations by the same undertakings, as well as a general deterrence to other firms that may be contemplating engaging in similar breaches. The CID observed that for an administrative penalty to achieve its deterrence objective, it is important that the quantum of the fine be sufficiently high to deter future breaches of the Regulations, whilst having regard to the nature of the contravention. Further, the CID observed that there was an increasing trend in regard to the failure of merging parties to comply with Article 24(1) of the Regulations, therefore measures that would ensure deterrence should be applied.

Factors to be considered in the calculation of the fine

68. The CID noted that Article 24(5) limits the penalty for contravention of Article 24(1) at a maximum of 10% of the turnover of the parties in the Common Market. Further, the CID notes that Article 24(6) of the Regulations and Section 5, Paragraphs 15 and 16 of the Commission's Guidelines on Fines and Penalties provide for the mitigating and aggravating factors that should be considered in determining the proposed fine. The CID considered the following factors in arriving at the fine:

- a. **nature, duration, gravity and extent of the contravention:** in assessing this attribute, the CID considered the time the parties took in reporting the said contravention after it came to their knowledge. The CID considered the nature of the contravention and its impact on competition including whether it had any negative effect on the market structure that harmed competition. The CID considered that the parties expediently and voluntarily informed the Commission about their contravention of Article 24(1). The CID also noted that after the parties voluntarily informed the Commission about their contravention of Article 24(1), the notification was made before the transaction was implemented. Therefore, there was no effect on competition on the market.
- b. **loss or damage suffered as a result of the contravention:** The CID considered that the market had not suffered any loss or damage due to the contravention. This is confirmed from the conclusion of the assessment that the transaction does not raise any competition concerns.
- c. **behaviour of the parties concerned:**

Based on facts and circumstances surrounding the case, the CID noted that it was apparent that the parties collaborated with the Commission and there was no harm identified on the market as a result of the contravention. Further, the merging parties have not previously been found to be in breach of the Regulations.

The CID considered that the parties had acted in good faith on their own initiative by reporting their failure to comply with Article 24(1) of the



Regulations. Further, the parties took the necessary steps to regularize the transaction.

d. **degree to which the parties have co-operated with the Commission:**

(i) The CID noted that the parties voluntarily approached the Commission and informed it of the contravention. Further, the parties immediately undertook to regularise the contravention by notifying the merger. This is seen from the parties' engagement of the Commission on [REDACTED] at which point they informed the Commission that the 30-day timeline was missed.

(ii) Further, upon identifying the transaction as notifiable, the parties submitted a merger filing on 4 October 2024.

(iii) The CID considered that the parties have co-operated with the Commission throughout its assessment of the contravention.

e. **Whether the parties have previously been found in contravention of the competition Regulations in the region:** The CID noted that the parties had not been previously found in contravention of the Regulations.

69. With regard to the submissions by Bosch that the violation was occasioned by the inadvertent error by JCI [REDACTED] and as supported by the affidavits of Bosch, the CID considered that Bosch was not responsible for the error. Therefore, the CID considered that the computation of the fine, should be calculated based on the turnover of JCI for the year preceding the transaction, being the financial year [REDACTED]. However, the CID considered that Bosch should be held accountable for negligence. The CID considered that in a commercial transaction such as this, the acquirer has a responsibility to conduct due diligence to ensure its compliance with relevant legal obligations such as the obligation to notify a merger. The CID further observed that as an acquiring undertaking, Bosch, had a responsibility to submit the merger filing to the Commission as required in the Form 12 which states, "*The notification shall be completed jointly by the parties to the merger or in the case of the acquisition of a controlling interest in one firm by another, the acquiring firm shall complete the notification.*"

Calculation of the Fine

70. The CID therefore considered that a symbolic fine should be imposed on Bosch. With regard to JCI, the CID observed from the merger filing that in the year preceding the merger, JCI derived a turnover of USD [REDACTED].

71. The CID further considered that given that the merger had not been implemented, the determination of the fine should be assessed using a base amount from the lower end of the scale in line with Section 5, Paragraph 12(h) of the Guidelines on



Fines and Penalties which provides for a base amount range of 0.5% - 1% for other infringements of the Regulations.

72. The CID considered that the base amount from which to apply any mitigating or aggravating factors was USD [REDACTED], being [REDACTED] % of the turnover of JCI in the **Common Market for the year [REDACTED]**.
73. The CID considered that there were no aggravating factors, noting that the parties are neither repeat offenders nor had they been uncooperative in dealing with the Commission.
74. The CID considered that, having realised that they breached the Regulations, the parties were proactive in informing the Commission of their breach by voluntarily approaching the Commission. The parties were also forthcoming in undertaking to regularise the contravention by completing the merger notification. To this end, the Commission did not expend substantial resources and time in ensuring the breach is regularised. Therefore, the CID considered that it is justified to apply the maximum reductions, as provided for in the Fines and Penalties Guidelines, on mitigating factors to the base amount as follows:

**Table 1: Summary on mitigating factors and reductions on the base amount**

| Mitigating Factor  | Reduction (%)             | Amount (USD)    |
|--|---------------------------|-----------------|
| Cooperation  | 50% of the base reduction | [REDACTED]      |
| First offender   | 30% of the base reduction | [REDACTED]      |
| Termination of infringement  | 5% of the base reduction  | [REDACTED]      |
| <b>Total Reductions</b>  |                           | [REDACTED]      |
| <b>Fine (Base Amount [USD [REDACTED]] - Total Reductions [USD [REDACTED]])</b> |                           | <b>8,067.06</b> |

### Determination

75. Having taken into consideration of the Guidelines on Fines and Penalties, the CID imposes a fine of **EIGHT THOUSAND AND SIXTY-SEVEN UNITED STATES DOLLARS AND SIX CENTS (USD8,067.06)** on JCI.
76. The CID further resolved to impose a symbolic fine of **One United States Dollar (USD1)** on Bosch.
77. The CID directed the parties to pay the fine within thirty (30) days of this Decision.



78. This decision is adopted in accordance with Article 24 of the Regulations.

Dated this 23<sup>rd</sup> day of September 2025

**Commissioner Mahmoud Momtaz (Chairperson)**

**Commissioner Lloyds Vincent Nkhoma**

**Commissioner Vipin Naugah**

