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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/2/6/2019

**Decision¹ of the Fifty-Sixth (56th) Committee Responsible for Initial
Determination Regarding the Proposed Merger between AIIF3 Clean Energy
and BBOXX Capital Limited**

ECONOMIC SECTOR: Energy

3rd May 2019

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 11th March 2019, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving AIIF3 Clean Energy and BBOXX Capital Limited.
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the "**Regulations**"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed 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. The Committee Responsible for Initial Determination (the "**CID**") established that the parties operate in more than one COMESA Member State and they meet the prescribed notification thresholds. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

AIIF3 Clean Energy (the Acquiring Undertaking)

4. AIIF3 Clean Energy is a Global Business 1 Licence company incorporated in the Republic of Mauritius. It is a special purpose vehicle created for purposes of the proposed transaction. The acquiring group has operations in the following COMESA Member States: Kenya, Malawi, Mauritius, Rwanda, Sudan, Eswatini, Tanzania, Uganda and Zimbabwe.

BBOXX Capital Limited (the Target Undertaking)

5. BBOXX Capital Limited is a company incorporated in England and Wales. The target is a 100% owner of Beyond Energy Investment Limited ("**Beyond**") which is also a party to this transaction. Beyond is incorporated in the Republic of Mauritius. Further, BBOXX Capital Limited controls the following entities in COMESA: i) BBOXX Capital RDC S.A.R.L.U. ("**DRC NGU**"), a company incorporated in the Democratic Republic of Congo; ii) BBOXX Capital Kenya Limited (the "**Kenya NGU**"), a company incorporated in Kenya; iii) BBOXX Capital Rwanda Limited (the "**Rwanda NGU**"), a company incorporated in Rwanda. The target undertaking is active in the supply of solar systems.
6. BBOXX Capital Limited has operations in the following COMESA Member States: Democratic Republic of Congo, Kenya and Rwanda.

Nature of the Transaction

7. The transaction concerns the proposed acquisition by AIIF3 Clean Energy of 70% ordinary share interest in Beyond, a company wholly owned by the target undertaking and incorporated as the platform investment vehicle for purposes of the proposed transaction. Beyond will subsequently acquire a 40% interest in each of Rwanda NGU and DRC NGU and will be issued with convertible notes pursuant to a convertible loan note instrument to be issued by the Kenya NGU with the expectation that following the receipt of the relevant regulatory approvals, Beyond will acquire a 40% interest in the Kenya NGU by way of a

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share exchange. The parties submitted that through the proposed transaction, the Target and the Acquirer intend to establish an off-grid solar platform focused on the provision of solar home systems in certain African jurisdictions.

Competition Analysis

8. The CID defined the relevant market as the supply of electricity in the Common Market. The CID observed that the proposed transaction is not likely to result in a change in the market structure due to the absence of any horizontal overlap in the activities of the parties. This is because the parties are not competitors pre-merger. The CID therefore observed that competition concerns are unlikely to result from the merger because the market structure is unlikely to be altered.

Determination

9. The CID determined that the merger was not likely to substantially lessen and/or prevent competition in the Common Market and that it was also unlikely to negatively affect trade between Member States. The CID therefore approved the transaction.
10. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 3rd day of May, 2019



Commissioner Patrick Okilangole (Chairperson)



Commissioner Brian Lingela

(Member)



Commissioner Thembelihle Dube Nee Dlamini

(Member)