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**Common Market for  
Eastern and Southern Africa**

**Case No. CCC/MER/07/28/2018**

**Decision<sup>1</sup> of the Forty-Sixth Committee Responsible for Initial Determination on the Application for Authorisation of the Merger Involving Chase Bank Kenya Limited (In Receivership) and SBM Bank (Kenya) Limited**

**ECONOMIC SECTOR: Banking and Financial Services**

**5<sup>th</sup> October 2018 – Johannesburg, South Africa**

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<sup>1</sup> In the published version of this decision, some information may have 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

*u/e. T.P.D B.M.L*

## **Introduction and Relevant Background**

1. On 8<sup>th</sup> August 2018, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger between SBM Bank (Kenya) Limited (“**SBM Kenya**”) and Chase Bank (Kenya) Limited (In Receivership) (“**CBKL**”).
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 (hereinafter referred to as the “**CID**”) established that the parties operated in more than one COMESA Member State. This therefore meant that the regional dimension requirement under Article 23(3) of the Regulations was satisfied and asserted jurisdiction on the Commission to assess the transaction.

## **The Parties**

### ***SBM Kenya (the acquirer)***

4. The parties submitted that SBM Kenya, previously known as Fidelity Commercial Bank Limited, was a commercial bank in Kenya. It was licensed by the Central Bank of Kenya to carry on banking business in accordance with the Banking Act (Chapter 488 of the Laws of Kenya).
5. The parties further submitted that SBM Kenya was a subsidiary of SBM Africa Holdings Ltd, which was ultimately held by SBM Holdings Ltd, a company listed on the Mauritius Securities Exchange. The SBM Group had operations in three Member States, namely Kenya, Mauritius, and Madagascar. SBM’s lines of business included, *inter alia*, Retail, SME and Corporate Banking. SBM Kenya provided commercial banking services which included: deposit taking, lending, financing of trade and other auxiliary banking activities.

### ***CBKL (the target undertaking)***

6. The parties submitted that the target firm, CBKL was a commercial bank in Kenya licensed by the Central Bank of Kenya to carry on banking business in accordance with the Banking Act (Chapter 488 of the Laws of Kenya). CBKL was placed under receivership on 7<sup>th</sup> April 2016 by the Central Bank of Kenya and the Kenya Deposit Insurance Corporations (“**KDIC**”) was appointed the official receiver of CBKL.
7. The parties also submitted that KDIC was a state corporation and acts pursuant to powers conferred upon it by the Kenya Deposit Insurance Act, 2012. CBKL had operations in Kenya only. The target provided commercial banking services of deposit taking, lending, forex trading, financing of trade and other auxiliary banking activities.

**Nature of the Transaction**

- 8. The parties submitted that the transaction involved the acquisition of assets and liabilities of CBKL by SBM Bank Kenya.

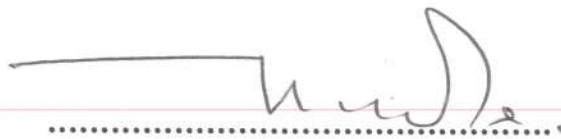
**Competition Analysis**

- 9. The CID defined the relevant markets as the markets for the provision of deposit products and lending products to retail customers; and the provision of deposit products, lending products, and investment banking products to corporate customers in Kenya.
- 10. The CID observed that the merging parties had individually low market shares in the relevant markets pre-merger and thus the merger would not lead to a significant accretion of market shares in the relevant markets. Pursuant to Article 26(2)(b) of the Regulations, the CID also considered that the target firm was failing which would exit the market in the foreseeable future absent the merger.

**Determination**

- 11. The CID determined that the merger was not likely to substantially lessen competition in the Common Market and is compatible with the COMESA Treaty objective of full market integration. The CID therefore ratified the merger authorisation issued by the Director of the Commission on 30<sup>th</sup> August 2018.
- 12. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5<sup>th</sup> of October 2018



**Commissioner Patrick O. Okilangole**  
**(Chairperson)**



**Commissioner Brian M. Lingela**  
**(Member)**



**Commissioner Thembelihle P. Dube**  
**(Member)**