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Common Market for Eastern  
and Southern Africa

Case File No. CCC/MER/09/33/2018

Decision<sup>1</sup> of the Fifty-Seventh (57<sup>th</sup>) Committee Responsible for  
Initial Determination Regarding the Proposed Formation of a  
Greenfield Joint Venture between Orange S.A. and MTN Group  
Limited

ECONOMIC SECTOR: Telecommunication

19<sup>th</sup> June, 2019

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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### Information and Relevant Background

1. On 7<sup>th</sup> September, 2018, the COMESA Competition Commission (hereinafter referred to as the "Commission") received a notification for approval of a merger involving the Creation of a Greenfield Joint Venture (JVCo), also called Mowali, between Orange S.A. ("Orange") and MTN Group Limited ("MTN Group"), respectively.
2. The transaction has been notified with the Commission under Article 24(1) of the Regulations. The Commission's concern is primarily 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 as provided for under Article 26 of the Regulations.
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

#### *Orange (Acquiring Undertaking)*

4. Orange is a public limited company listed on Euronext Paris and the New York Stock Exchanges. Orange is at the head of the Orange Group (formerly, France Telecom S.A.), an operator of electronic communications for private customers, professionals and large companies. It has been submitted that Atlas Services Belgium S.A. ("Atlas Services"), a company registered under the Laws of Belgium and controlled by Orange, will be used by Orange to implement the proposed transaction.
5. Orange is active in Africa through several subsidiaries where it offers mobile telecommunications, fixed telephony, internet access services and mobile money payments to customers in various countries. The parties submitted that in 2008 Orange Ivory Coast launched its mobile money payment solution, Orange Money which is now available in most of the group's affiliates in Africa. Under Orange Money, users can deposit money in an account linked to their mobile phone numbers and then access a range of services such as transferring money domestically and internationally, paying bills and buying airtime top-up. Orange money is available in the following COMESA Member States: The Democratic Republic of Congo, Egypt, Madagascar, Mauritius, and Tunisia.
6. Orange has operations in the following COMESA Member States: The Democratic Republic of Congo, Egypt, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, and Uganda.

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**MTN Group (Acquiring Undertaking)**

7. The MTN Group is a South African based multi-national mobile telecommunications company, operating in various African, European, and Asian countries with its registered office at 216 14th Avenue, Fairlands, Johannesburg, South Africa. It has been submitted that MTN (Dubai) Limited ("MTN Dubai"), a subsidiary of MTN Group registered under the laws of the United Arab Emirates, will be used by the MTN Group to implement the proposed transaction.
8. The MTN Group is active in the provision of a number of telecommunication services including mobile telecommunication (i.e. voice and data services), digital services (i.e. mobile money platforms) and business services (i.e. provision of data centres, cloud services).
9. The MTN Group has operations in the following COMESA Member States: Rwanda, Sudan, Swaziland, Uganda, and Zambia.

**Mowali**

10. Mowali is a *Société par actions simplifiée* (Simplified Joint Stock Company) which will be jointly owned and operated by Orange and the MTN Group and will be organised under the laws of the Ivory Coast. Once established the Mowali intends to provide an open industry scheme as a business and technical accelerator for cross-operator payments and money transfers.

**Nature of the Transaction**

11. The proposed transaction entails the formation of a Greenfield Joint Venture called Mowali between Orange SA and MTN Group Limited.

**Competition Analysis**

12. The CID defined the relevant markets as follows:
  - a) The upstream market for the provision of interoperability services to mobile financial service providers in COMESA; and
  - b) The downstream market for the provision of mobile financial services in COMESA.
13. The CID observed that, post-merger, there is a risk of coordination between Orange and MTN Group in the provision of telecommunication services through their interaction in the Joint Venture.
14. The CID also observed that the transaction will entail the existence of vertical linkages between the upstream market for the provision of interoperability services to mobile financial service providers and the downstream market for the provision of mobile financial services, where Orange and MTN Group are active. The CID concluded that

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foreclosure concerns may arise, post-merger, due to this vertical relationship between Mowali and Orange and MTN Group.

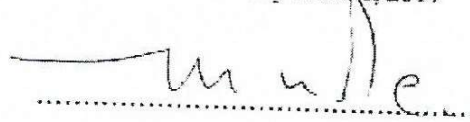
**Determination**

15. The CID determined that the merger was likely to raise competition concerns. The CID however also determined that the merger was likely to create efficiencies and benefits for the consumers in terms of reduced transaction costs and time as a result of the provision of a platform that would provide interoperability for different mobile money services providers.
16. In order to address the identified concerns, the merger is approved with the following undertakings:
  - a) Mowali shall not discriminate in the provision of the interoperability platform to any other mobile money service provider wishing to use their platform. Mowali shall establish a pre-defined objective, transparent and non-discriminatory access criteria for the applicants who wish to use its platform;
  - b) Mowali shall not conclude exclusive agreements with any of its affiliates and participants including with each of its parent companies' affiliates;
  - c) Mowali shall not share any sensitive business information within its Board of Directors, knowing that reports prepared for its member will strictly be limited to information necessary for them to make informed decisions as controlling shareholders of Mowali (e.g. Mowali's financial information, business information, quality-of-service information);
  - d) Orange and MTN Group shall not be involved in the day-to-day operations of the business of the Mowali;
  - e) The undertakings shall be effective from the date of approval of the transaction and endure for three years. Depending on the market circumstances that prevail at such time, the undertakings may be extended by the Commission for another period of three (3) years. Notice of the intention to extend the duration of the undertakings beyond three (3) years will be given to Mowali at least six (6) months prior to the expiry of the three-year period. During the notice period, Mowali will be given the opportunity to justify, based on changing market conditions and new competitors entering the market, why no extension is required; and
  - f) The parties shall appoint a Compliance Officer at senior management level in Mowali as soon as practicable but no later than six (6) months from the date of approval of the transaction. The Compliance Officer shall, within thirty (30) days after each anniversary of the approval, for a period of three (3) years (i.e. once a year during the three year-period of the Undertakings) submit an affidavit to the Commission confirming compliance with the undertakings.

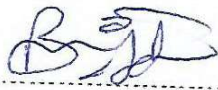
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17. The CID considered and approved the undertakings as adequate to address the competition concerns identified during the assessment of the transaction. The CID therefore approved the transaction on condition that the parties comply with these undertakings. Failure to comply with these undertakings shall render the transaction null and void. The Commission shall invoke the relevant provisions of the Regulations to address the violation.
18. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 19<sup>th</sup> day of June, 2019



Commissioner Patrick Okilangole (Chairperson)



Commissioner Brian Lingela  
(Member)



Commissioner Thembelilhe Dube Nee Dlamini  
(Member)