CAK DECISION ON PROPOSED ACQUISITION BY KCB GROUP PLC OF UP TO 100% OF THE ORDINARY SHARES OF NATIONAL BANK OF KENYA LIMITED

1. The Competition Authority of Kenya has approved the proposed acquisition of National Bank of Kenya Limited by KCB Group on condition that 90% of the merged entity's employees will be retained for a period of eighteen (18) months from closing of the merger.

2. KCB Group PLC (KCB), the acquirer, is a non-operating holding company incorporated in Kenya and listed on the Nairobi Securities Exchange (NSE). KCB is cross-listed on Dar es Salam Stock Exchange, Uganda Securities Exchange and Rwanda Stock Exchange.

3. KCB, through its subsidiaries, provides various financial services including retail and corporate banking services, forex trading, financing of trade and other auxiliary banking activities. The bank also provides asset financing, insurance brokerage, bancassurance, leasing, stock brokerage, investment advisory, and partnership services. One of its subsisdiaries, KCB Bank Kenya Limited, operates as a commercial bank in Kenya.

4. National Bank of Kenya Limited (NBK), the target, is a public limited liability company incorporated in Kenya and listed on the NSE. It is also licensed to operate as a commercial bank in Kenya.

5. NBK provides retail and corporate banking services, investment banking and brokerage services, insurance services, among other financial services.

6. The proposed transaction is an offer by KCB to acquire up to 100% of the share capital of NBK through a share swap. The transaction therefore qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No.12 of 2010.

7. The parties' combined and relevant turnover for the preceding year was **over Sh1 billion** and, therefore, the transaction met the threshold for full merger analysis as provided in the **Merger Threshold Guidelines**.

8. The Central Bank of Kenya (CBK) classifies commercial banks operating in Kenya into three tier groups using a weighted composite index (CWI) that considers net assets, customer deposits, capital and reserves, number of deposit accounts and number of loan accounts.

9. While KCB and NBK may focus, or are stronger, on certain aspects of banking, their products offerings are in three main business lines namely; (i) Retail banking (ii) Corporate banking and (iii) Non-banking products, specifically the sale of short-term insurance.

10. The table below illustrates the various segments in banking.

Retail Banking	Corporate Banking

• Current accounts
• Savings accounts
• Lending (comprising both short-term and long-term loans)
• Mobile-Lending
• Credit Cards.
	• Government deposits
	• Current accounts
	• Fixed Deposits/Call accounts
	• Lending
	• Credit cards; and
	• Investment Banking:
	    o Brokerage; and
	    o Corporate Advisory.

11. It is the Authority's view that the CBK's CWI provides a detailed analysis of the market structure and forms a concrete basis for assessment of the impact that the prosposed transaction would have on competition.

12. Therefore, for the purpose of this transaction, the relevant product markets were determined as:

    i. The market for retail and corporate banking services; and

    ii. The market for insurance intermediaries.

13. Both the acquirer and the target offer their products throughout the country. Therefore, the relevant geographic market was determined as **national**.

A. The market for retail and corporate banking services

14. According to information from the CBK, there are 42 licensed banks in Kenya. Based on their asset base, the banks are classified into three tiers – Tier 1, 2 and 3.

15. Data from the CBK shows that the market shares and concentration for the leading banks in the market for retail and corporate banking services are as follows: **KCB (14.14%)**, NIC/CBA Banks (10.67%), Cooperative Bank of Kenya (9.93%), Equity Bank (9.85%), Standard Chartered Bank (7.11%), Diamond Trust Bank (6.72%), Barclays Bank of Kenya (6.57%), CFC Stanbic (5.65%), I & M Bank (4.78%). These banks are classified as Tier 1.

16. Collectively, commercial banks in Tier 2 and 3 control 24.58% of the market for retail and corporate banking services market. **NBK, a Tier 2 bank, has a market share of 2.37%,** according to CBK data. It is worth noting that the NBK has been ceding market share. In 2015,

the bank had a market share of 3.42%.

17. Post-merger, the market share of merged entity will stand at 16.51%.

18. The Authority expects that the merged entity will face competition from other banks, more so Tier 1 institutions which control 49.47% of the market. Therefore, the proposed transaction is unlikely to lead to lessening of competition in the market for retail and corporate banking services in Kenya.

B. The Market for insurance intermediaries

19. Data from the Insurance Regulatory Authority indicates that there were 8,123 licensed insurance intermediaries as at August 2017. Commercial banks mainly operate insurance agency services.

20. Customers can access insurance products directly from an insurance company, brokers or agents. Data gathered by the Authority indicates that these segements control 18%, 31.5% and 50.5% market share respectively.

21. Data from the IRA indicates that KCB and NBK's combined insurance business represents a market share **less than 1%** in an industry that is valued at over Ksh. 200 billion.

22. In the brokerage business, some of the market players include Minet Insurance Brokers, D&G Insurance Brokers, Bim Biz Insurance Brokers, Royal Associate Insurance Brokers and Chancery Insurance Brokers.

23. Based on the foregoing, it is the Authority's view that proposed transaction is unlikely to raise competition or market foreclosure concerns since the target has a minimal market presence. Further, the market has thousands of players who will offer competitive restraint.

24. During merger analysis, the Authority also considers the financial health of the parties and the extent to which the proposed transaction will impact the sustainablitly of the businesses in question.

25. In this regard, it is important to note that NBK's profits decreased by 84% from Ksh. 410,784,000 in 2017 to Ksh. 7,008,000 in 2018 due to reduced lending. Loans and advances to customers in 2018 dropped by Ksh 9.9 billion (or 17%) to Ksh. 48 billion compared to Ksh. 57.88 billion the previous year. This drop was attributable to increased loan impairement.

26. As at December 2018, NBK's core capital stood at KES 2.34 billion. This was four times lower than the Ksh. 9 billion it closed 2017 with. This left the bank significantly in breach of regulatory capital ratios. NBK's total capital to total risk weighted assets ratio stood at 3.7% compared to the minimum statutory limit of 14.50%

27. Although its liquidity ratio is above the minimum requirement of 20%, NBK's total capital to total risk-weighed assets was deficient to the extent of -10.4% at at the end of 2018. Additionally, the bank's core capital to total debt liabilities stood at a negative 5.5% while core capital to total assets stands at negative 7.9%.

28. Based on the financial position elucidated above, it is the Authority's view that the NBK is under financial distress and requires additional capital injection in order to continue operating as a going concern.

29. KCB delivered positive financial results in 2018. The bank closed the financial year with total assets of KES 714.3 billion, while its profits impvroved 22% to KES 24 billion. The bank's return on average equity was 21.9%. Further, the bank was not in breach of minimum staturoty limits.

30. Another key consideration during merger analysis is public interest concerns that maybe occasioned by proposed transactions. Public interest concerns during merger analysis include;

    i. extent to which a proposed merger would impact employment opportunities;
    ii. impact on competitiveness of small and medium enterprises (SMEs);
    iii. impact on particular industries/sectors; and
    iv. impact on the ability of national industries to compete in international markets.

31. The Authority is of the view that the proposed merger is likely to result in negative public interest concerns that need to be considered and addressed. Specifically, the Authority anticipates that the merger will result in duplication of certain roles which is likely to lead to loss of employment.

32. The acquirer and the target made submissions to the Authority indicating that they had, separately, been undertaking organizational restructuring over the past three (3) years. This exercise led to loss of jobs. Currently, KCB has 4,835 employees while NBK has 1,356 staff.

33. In order to strike a balance between addressing the public interest concerns and accommodating the strategic intent of the merging parties, the Authority was of the view that granting a conditional approval to the propised transaction would be appropriate.

34. Premised on the above, the Authority approved the proposed acquisition of National Bank of Kenya Limited by KCB Group on condition that 90% of the merged entity's employees will be retained for a period of eighteen (18) months from closing of the merger.

35. In the Authority's view, the limitation on the number of employees that can be laid off will enable the merged entity progress with the ongoing restructuring. The time limitation of 18 months was informed by case precedence and submissions by the parties.