CAK DECISION ON THE PROPOSED ACQUISITION OF 75% OF THE ISSUED SHARE CAPITAL IN HEALTHLINK MANAGEMENT LIMITED BY DR. SAM MAINA THENYA

1. The Competition Authority of Kenya has approved the proposed acquisition of 75% shareholding in Healthlink Management Limited by Dr. Sam Maina Thenya, a medical practitioner and founder of Nairobi Women's Hospital Group, unconditionally.

2. This approval has been granted based on the finding that the transaction is unlikely to negatively impact competition in the market for the provision of health care services by private hospitals in Kenya, nor elicit negative public interest concerns. These are the two key considerations during merger analysis.

3. Dr. Sam Maina Thenya is a Kenyan citizen and entrepreneur who directly controls undertakings in the country that are involved in the real estate business, specifically leasing.

4. Healthlink Management Limited (Healthlink), is incorporated in Kenya and controls Healthlink Matcare Limited which trades as Nairobi Women's Hospital through nine (9) branches locally. The hospital provides various healthcare services including in-patient, casualty, surgery, laboratory, radiology & imaging.

5. The proposed transaction involves the acquisition of 75% of the shareholding in Healthlink by Dr. Sam Maina Thenya. The transaction, therefore, qualified as a merger pursuant to section 2 and 41 of the **Competition Act, No. 12 of 2010.** The Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, vertical integration.

6. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority before

ISO 9001:2015 CERTIFIED

implementing the proposed transaction. The transaction between Healthlink and Dr. Sam Maina Thenya met this threshold for mandatory notification and full analysis as provided in the Competition (General) Rules, 2019.

7. During merger analysis, and in order to determine the impact that a transaction will have on competition, the Authority identifies the **relevant product market** as well as the **relevant geographic market.**

8. The **relevant product market** comprises products/services that are interchangeable or substitutable by the consumer due to their characteristics, prices and/or intended use. Based on this criteria, the relevant market for the proposed transaction is the market for the provision of healthcare services, including outpatient services, inpatient services, and specialized services, while the **relevant product market is the market for the provision of healthcare services by private hospitals.**

9. Determination of the **relevant geographic market** involves interrogating the area in which merging parties undertake the business and in which competition conditions are sufficiently similar. With regard to the proposed transaction, the markets differ according to the type of service offered. The Authority determined that the relevant geographical market for the proposed transaction is **local** for **outpatient services,** and **regional/national** for **inpatient services.**

10. Healthcare services in Kenya are typically provided by public hospitals, private hospitals as well as faith & community-based hospitals. Generally, public, faith and community-based hospitals are low-cost and mainly serve low-income earners as well as members of the National Hospital Insurance Fund (NHIF). On the other hand, private hospitals tend to be more expensive and serve upper and middle income earners and users of private insurance covers.

11. Services provided by public hospitals and private hospitals are not easily substitutable in terms of the quality of services/facilities and fees charges. Therefore, the product market for analysis of the proposed transaction was determined as the market for

provision of **private healthcare services.**

12. According to the Kenya Master Health Facilities List, there are over 10,000 health facilities in Kenya with a bed capacity of 61,430 beds. In terms of bed capacity, private hospitals account for 23% of the available beds in Kenya, faith-based facilities (21%) and public facilities (56%). There are 400 private hospitals and clinics spread across major towns in Kenya. Nairobi is leading with 22 facilities, Central (7), Coast (6), Nyanza (4) and Rift Valley (6).

13. Further, available data indicates that the leading 10 private hospitals in Kenya are Nairobi Hospital, The Aga Khan University Hospital, MP Shah Hospital, Metropolitan Hospitals, The Mater Hospital, Gertrude's Garden Children's Hospital, Guru Nanak Ramgarhia Sikh Hospital, Avenue Hospital, Coptic Hospital and Karen Hospital.

14. One criteria for assessing a merger's impact on competition is the post-merger market share of the undertakings involved in the transaction. With regard to the proposed merger, the target's market share (in terms of bed capacity) is 4.63%. Since the transaction only involves an increase in shareholding in the target by an existing shareholder who does not undertake a similar business in Kenya, the post-merger structure and concentration of the market for the provision of health care by private hospitals at the local, regional and national level will not change.

15. Premised on the foregoing, the Authority determined that the proposed transaction **will not lead to substantial lessening or prevention of competition in the market for the provision of health care services by private hospitals in Kenya or any part of Kenya**.

16. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. Public interest refers to various economically-inclined concepts that, when considered, protect the welfare of the Public. Some of the public interest considerations enumerated in the Competition Act are;

    a) extent to which a proposed merger would impact employment opportunities;

b) impact on competitiveness of SMEs;
c) impact on particular industries/sectors; and
d) impact on the ability of national industries to compete in international markets.

17. As per the parties' submissions, this transaction will not elicit negative public interest concerns. Specifically, the target's employees (over 1,000) will retain their employment under the same terms.

18. Premised on the foregoing facts and analysis, the Authority approved the proposed acquisition of 75% shareholding in Healthlink Management Limited by Dr. Sam Maina Thenya unconditionally.