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Common Market for Eastern
and Southern Africa

CCC/MER/05/15/2019

Decision¹ of the Sixtieth (60th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of Shares by Azura Power Limited (Mauritius) in Thika Holding Limited, Thika Power Limited and Thika Power Services Limited

ECONOMIC SECTOR: Energy

31st July 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4th June 2019, the COMESA Competition Commission (the "Commission") received a notification for approval of a merger involving Azura Power Limited (Mauritius) ("APL"), Thika Holding Limited ("Thika"), and its two subsidiaries, Thika Power Limited and Thika Power Services Limited (together the "**Target Group**").
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (hereinafter referred to as 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 operate in more than one COMESA Member State. Further, the transaction satisfied the merger notification thresholds provided for under Rule 4 of the Rules of Determination of the Merger Notification Thresholds and Method of Calculation. 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

APL (the "Acquiring Undertaking")

4. APL is a newly created entity under the laws of Mauritius. APL is jointly controlled by Azura Power Holdings Limited ("APHL") and Africa50 Project Finance ("Africa50") through its wholly owned subsidiary Power Holdco 1 Limited. APL and its affiliated companies works as an advisor to a number of investment funds while Africa50 operates as an infrastructure development platform.
5. APL has operations in the following COMESA Member States: Egypt, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Uganda and Zambia.

Thika (the "Target Undertaking")

6. Thika is a company registered in the British Virgin Islands. Thika is directly controlled by Melec Powergen Inc. BVI. Thika is a holding company which operates exclusively through its two subsidiary companies namely, Thika Power Limited and Thika Power Services Limited which are registered in Kenya. It has been submitted that the target group generates electricity from heavy fuel oil and provides related support services. In the Common Market, Thika has operations in Kenya only.

Nature of the Transaction

7. The proposed transaction entails that APL will acquire 90% of the shares in Thika from Mellec Powergen Inc. BVI. The remaining 10% of the shares in Thika will be held by Africa Energy Resources Pte. Ltd. Through the transaction, APL will also directly acquire shares in undertakings directly controlled by Thika namely, Thika Power Limited and Thika Power Services Limited.

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Competition Analysis

8. The CID defined the relevant market as the market for the generation and wholesale supply of electricity in Kenya.
9. The CID observed that even though the parties are both active in the energy sector, the proposed transaction will not result in a change in the market structure since the parties do not provide electricity generation and supply activities in the same COMESA Member States. The CID further observed that the relevant market is fragmented and characterised by numerous competitors to the merged entity in the relevant market.

Determination

10. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is not inimical to the single market imperative of the Treaty. The CID therefore approved the transaction.
11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 31st day of July 2019



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Commissioner Patrick Okilangole (Chairperson)



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Commissioner Brian M. Lingela



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Commissioner Thembelihle P. Dube Nee Dlamini