



COMESA Competition Commission

Kang'ombe House, 5th Floor

P.O. Box 30742

Lilongwe 3, Malawi

Tel: +265 1 772 466

Email- compcom@comesa.int



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/05/15/2021

**Decision¹ of the Eightieth (80th) Committee Responsible for Initial
Determination Regarding the Proposed Acquisition by Trafigura
Group Pte Ltd of control over Puma Energy Holdings Pte Ltd**

ECONOMIC SECTOR: Petroleum

6th December 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Introduction and Relevant Background

1. On 12th August 2021, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a proposed transaction involving Trafigura Group Pte Ltd (“**Trafigura**”) as the acquiring firm and Puma Energy Holdings Pte Ltd (“**Puma Energy**”) as the target firm, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the “**Regulations**”).
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the 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. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The CID is responsible for making initial determinations on cases before the Commission. The decision of the CID is set out below.

The Parties

Trafigura (the Acquirer)

4. The parties submitted that Trafigura is a firm incorporated in accordance with the laws of Singapore, under registration number 201017488D. Trafigura is a commodity trader, specializing in the physical trading, i.e., supply and transport of oil and petroleum products, as well as mineral and metal commodities globally. In the Common Market, Trafigura is involved in trading activities relating to oil and petroleum products, as well as metal and minerals.
5. Table 1 summarises the Member States and commodities in which Trafigura has been active as a trader in the twelve months preceding the merger notification:

Table 1 –Trafigura’s trading activities in the Common Market

Commodity	Member State
Petrol / Mogas	Burundi, the Democratic Republic of Congo (“DRC”), Egypt, Ethiopia, Kenya, Libya, Malawi ² , Mauritius, Rwanda, Somalia, Sudan, Tunisia, Uganda, Zambia ³ and Zimbabwe
Jet A-1	Burundi, DRC, Ethiopia and Zimbabwe
Fuel Oil	Burundi, Egypt
Gas Oil	Burundi, DRC, Egypt, Ethiopia, Kenya, Libya, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Uganda, Zambia and Zimbabwe

² The parties submitted that Trafigura’s products in Malawi are the subject of an import tender by Petroleum Importers Limited.

³ The parties submitted that Trafigura’s products in Zambia are the subject of a Ministry of Energy Government Supply Tender.

Puma Energy (the Target)

6. The parties submitted that Puma Energy is a company incorporated in accordance with the laws of Singapore, under registration number 201311781D. Puma Energy is an integrated energy company, primarily active in retail, wholesale and business-to-business distribution of refined petroleum products. Puma Energy also owns and operates a number of midstream infrastructure assets (including storage facilities and marine terminals).
7. Within the Common Market, Puma Energy is involved in (a) the retail and non-retail sale of refined fuel products, including petrol, diesel, jet A-1, lubricating oil and aviation fuel (b) the sale of fuel oil and gas oil (bunkering) which relates to the supply of fuel used for ships; and (c) the operation of fuel service stations.
8. Table 2 below lists the products sold by Puma Energy in or into the Common Market during the financial year ended 31 December 2020⁴:

Table 2 – Puma Energy’s sales in the Common Market

Commodity	Member State
Petrol	Eswatini, Malawi, Zambia, and Zimbabwe
Diesel	Eswatini, Malawi, Zambia, and Zimbabwe
Jet A-1	Burundi, Eswatini, Malawi, Zambia, and Zimbabwe
Lubricating Oil	Malawi, Zambia
Fuel Oil	Zambia
Gas Oil	Zambia
Aviation Fuel	Malawi, Zambia, and Zimbabwe

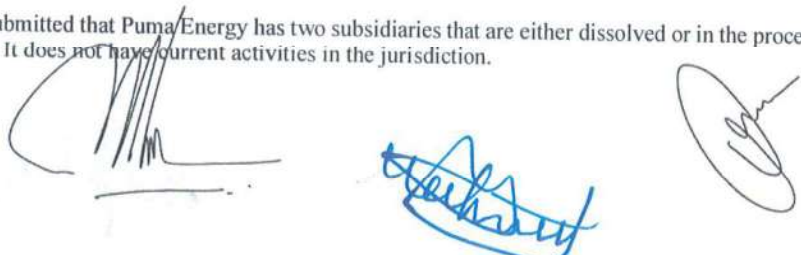
Jurisdiction of the Commission

9. Article 24(1) of the Regulations requires ‘notifiable mergers’ to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the “**Merger Notification Thresholds Rules**”) provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
- b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million,*

⁴ For completeness, it was submitted that Puma Energy has two subsidiaries that are either dissolved or in the process of being dissolved in the DRC. It does not have current activities in the jurisdiction.



unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

10. The merging parties have operations in more than two COMESA Member States, their combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide turnover within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger⁵

11. The parties submitted that the transaction concerns the proposed acquisition of sole control by Trafigura over Puma Energy. Puma Energy launched a rights issue process on 8 March 2021, pursuant to which Puma Energy's existing shareholders were given the opportunity to subscribe for additional shares in Puma Energy. Further, on 15 April 2021, Trafigura and Puma Energy concluded a binding share purchase agreement with Sonangol Holdings, Limitada ("Sonangol"), another significant shareholder in Puma Energy, for the sale of Sonangol's existing shareholding in Puma Energy to Trafigura.

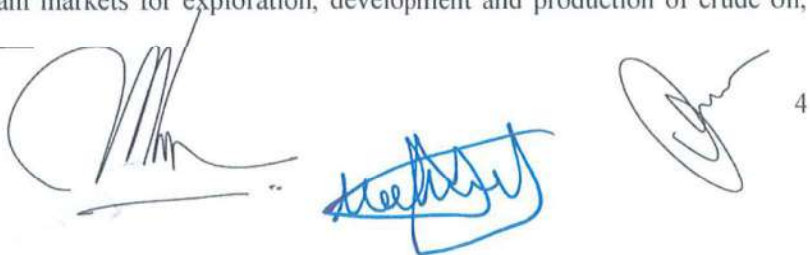
Competition Assessment

Relevant Markets

Relevant Product Market

12. The parties are both active in petroleum industry. It is recalled that in the Common Market, Trafigura is involved in the trading, i.e., import and distribution, of refined fuel products, and Puma Energy is involved in the retail and non-retail sale of refined fuel products.
13. The parties have submitted that the oil industry consists of the following activities:
 - a. Oil exploration, extraction and transportation;
 - b. The production, refining, storage and transportation of petroleum products produced from crude oil, coal and/or natural gas;
 - c. The import and distribution of refined fuel products (particularly in markets without sufficient domestic production to meet local demand); and
 - d. The retail and non-retail marketing, distribution and sale of refined fuel products to customers.
14. The CID considered that the oil industry is generally divided into the upstream sector (i.e., exploration, development and production of crude oil) and the downstream sector (importation, marketing, distribution, and sale of the various fuels). The transaction does not raise competition concerns in the upstream markets for exploration, development and production of crude oil,

⁵ As at the time of filing.



4

given that neither of the merging parties are active at that level. The upstream activities can be distinguished from the trade and sale of petroleum products as they require distinct equipment for drilling and extraction, licenses for exploration, development of infrastructure for production (such as oil platforms, pipelines and terminals). In view of the foregoing, the CID has focused its assessment on the downstream wholesale and retail markets where the parties operate.

Wholesale distribution of refined fuel products

15. Two different levels of wholesale distribution of refined fuel products can be identified⁶, namely ex-refinery sales (primary level of distribution) and non-retail sales (secondary level of distribution). Ex-refinery sales are typically targeted to wholesalers, traders, and large resellers pricing. The CID considered that the contractual terms and conditions applied at ex-refinery level and at non-retail level were likely to differ in view of expected higher volumes off-taken ex-refinery, compared to volumes offered at the non-retail level. Non-retail sales are understood as encompassing both sales made to smaller resellers as well as retail sales made to large industrial and commercial consumers (aviation companies, hospitals, car rental fleets, factories). Further, in line with its previous decisions in the petroleum and petrochemical sector⁷, the CID has identified a distinct retail channel for sales to end customers.

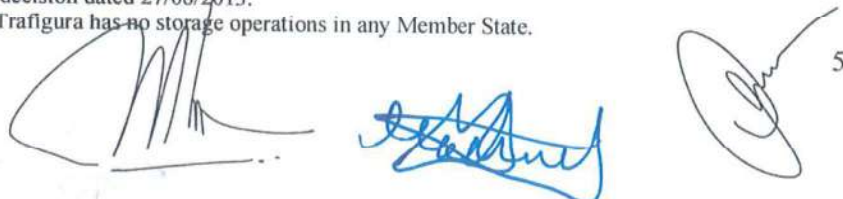
Ex-refineries sales of refined fuel products

16. Trafigura's activities as a trader includes *inter alia* (i) offtake agreements with oil producers and refineries for purchase of refined fuels; (ii) storage of petroleum products⁸ at Trafigura investment Puma Energy's facilities and term-lease and spot-lease tankage around the globe; and (iii) delivery to customers via barge, trucks, rail, pipeline or vessel. It is noted that these activities can be provided as a package by vertically integrated companies or separately by independent players. The CID has focused on the markets for petroleum products in Zambia and Zimbabwe, being the areas of overlaps for the merging parties.
17. In Zambia, Trafigura primarily sells through government tender. The procurement of crude oil is done by the Government of Zambia through a central tender process, which according to the CCPC, provides commodity traders equal opportunities to supply petroleum to the government. The Government then distributes the products to downstream oil marketing companies (OMCs). Trafigura competes for the tender supply contract for each fuel type in Zambia and the central purchasing agency will decide who will receive the relevant contracts. OMCs can also apply to the Government of Zambia for a waiver, allowing them to import directly from the supplier of

⁶ Decision of the European Commission in Case No COMP/M.7311 - MOL / ENI CESKA / ENI ROMANIA / ENI SLOVENSKO, dated 24/09/2014, at paragraph 13. Accessed on 20th September 2021 at https://ec.europa.eu/competition/mergers/cases/decisions/m7311_20140924_20310_3893113_EN.pdf

⁷ Case No CCC/MER/01/03/2018, decision dated 5th July 2021. The European Commission has likewise identified distinct markets for retail and non-retail sales of fuels, as seen in its decision in Case No COMP/M.6935 - ARGOS/SOPETRAL, Paragraph-12, decision dated 27/06/2013.

⁸ The parties submitted that Trafigura has no storage operations in any Member State.



5

their choice. This is done on a case by case basis depending on the market dynamics as determined by the Energy Regulatory Board in Zambia.

18. As regards the Zimbabwean market, Trafigura sells through Government and retail tenders. Trafigura mainly sells to Puma Energy who imports product and on-sells in Zimbabwe. It was submitted that some of Trafigura's customers in Zimbabwe compete with Puma Energy in both the retail and non-retail markets, such as [REDACTED]

Non-retail sale of refined fuels

19. Non-retail sales are made to independent resellers and high volume end-consumers. As concluded above, for the non-retail sales, it is not possible to aggregate the different types of fuels into one category. The non-retail sale of fuels cannot be aggregated from a supply perspective. The different fuels are supplied for different uses to different types of customers, and the distribution channels can also differ significantly, for example, the provision of petrol to a transport fleet operator will differ from the supply of marine fuel at ports. In the light of the above, in the non-retail channel each refined product constitutes a relevant product market.

Retail sale of refined fuels

20. The retail supply for automotive fuels involves providing automotive fuels to individual customers through retail service stations. The products sold are predominantly gasoline and diesel. From a demand perspective, it is not possible to aggregate diesel and petrol into one category. Although petrol and diesel are both intended to fuel motor vehicles, the two are not substitutable as they must be used according to the type of engine. Petrol pumped through the fuel system of a diesel vehicle can cause serious damage to the engine. Per litre, diesel is said to contain more energy than petrol and the vehicle's engine combustion process is more efficient, adding up to higher fuel efficiency and lower CO2 emissions when using diesel⁹.
21. However, from a supply side, there is substitutability as the same players tend to be active in both types of fuels (e.g., Puma, Shell, Total). At the distribution level, both products are typically available at the same point of sales. For purposes of this case, the CID identified the relevant market as the retail supply of petrol and diesel.
22. On the basis of the foregoing assessment, the relevant product markets are construed as follows:
- a) **Ex-refinery sale of refined fuels;**
 - b) **Non-retail sale of refined fuels (sub categorised by petrol, diesel, jet fuel, and marine fuel);**
 - c) **Retail sale of petrol and diesel.**

⁹ European Automobile Manufacturers' Association, 'Differences between diesel and petrol explained', accessed at <https://www.acea.auto/fact/differences-between-diesel-and-petrol/> on 28th July 2021.

Relevant Geographic Market

23. Paragraph 8 of the Commission's Guidelines on Market Definition defines the relevant geographic market as follows:

"The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas".

24. The parties submitted that although each jurisdiction (and, indeed, Member State) has its own regulatory requirements in relation to the import of fuel into the country¹⁰, they nonetheless regard trading to be an activity that takes place on an international basis. The reason for this is that the majority of commodity traders compete with one another internationally and are not limited to a single jurisdiction. Customers can and do switch to sourcing products from an alternate global trader if, for example, they are dissatisfied with the offering from their regular trader, or if additional supply is required.
25. The parties submitted that the individual requirements per Member State are not the primary consideration for determining the appropriate geographic market – rather, the nature of competition amongst market participants should be considered.
26. In proposing a global geographic market, the parties considered the approach adopted by the European Commission (the "EC") which has indicated that the market for international trading of crude oil and refined petroleum products is at least EEA-wide or, in fact, world-wide in scope. In each of these decisions, however, the EC left the exact geographic market definition open. The parties submitted that given that key competitors generally trade on a global basis, the relevant market is likely international in scope.
27. The CID noted that in *BP/Mobil*¹¹, the EC found that the relevant geographical market for ex-refinery sales appeared to be the EU or Western Europe wide whereas in *Preem/Skandinaviska*¹², the EC identified the relevant geographic as at least Scandinavian given the significant imports and exports between the Scandinavian countries. In *PKN/MAZEIKIU*¹³, the EC's market investigations suggested that the geographic dimension of ex-refinery sales of gasoline and diesel would not be wider than the EEA, and despite low transport costs, there exists price differences between different countries that occur due to demand fluctuations and different

¹⁰ For instance, according to a statement by the Zimbabwe Energy Regulatory Authority, "prospective licensed fuel importers should own or manage at least three retail sites and have proof of importing 10 million litres of fuel in a year between 2016 to 2019". Accessed at <https://www.zera.co.zw/new-fuel-import-licensing-conditions/> on 2nd August 2021.

¹¹ M. 727 BP/Mobil, paragraph 34.

¹² M.3291 Preem/Skandinaviska Raffinadotri, paragraph 14.

¹³ COMP/M.4348 - PKN / MAZEIKIU, paragraphs 21 – 22. Accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m4348_20061107_20310_en.pdf

indexing and fuel quality requirements of the European Union hence preventing substantial imports from Russia and other Commonwealth of Independent States (CIS) countries.

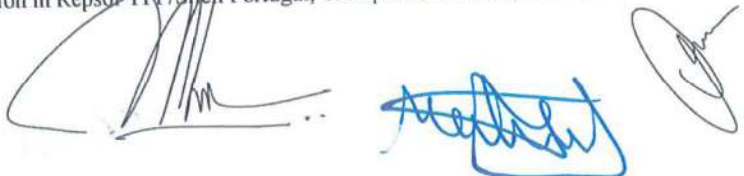
28. Having regard to the fact that fuels are imported into the Common Market, the absence of restrictions on the source of origin of fuel, and the global operations of Trafigura, the geographic market for ex-refinery sales is likely to be at least COMESA-wide and plausibly even global in scale.
29. The geographic markets for the retail and non-retail sale of automotive fuels are likely to be national in scope as the prices at retail and wholesale level are heavily regulated in most Member States and maximum retail prices and/or price fluctuations range tend to be fixed by regulatory bodies¹⁴. For jet fuel and marine fuel, the geographic market is likely to be port specific as it depends on the supply contracts and the fueling infrastructure at the port.
30. For retail sales, transport costs are often an important factor.¹⁵ From a geographic standpoint, retail supply of fuel is characterised by a local element in so far as the demand is constituted by motorists who are normally supplied by the filling stations near to their centre of activity. There is normally a certain overlap between filling stations' catchment areas, which will not only determine the competitive interactions between filling stations located close to each other, but will also, to some extent, have an effect on more distant filling stations. While prices are set at national level, retail players may have varying market presence in different localities. In this regard, the CID considered that the relevant geographic markets are narrower than national and can be grouped by localised areas depending on competition dynamics such as distances between filling stations, number of filling stations within the area, non-price competition factors (e.g., availability of convenience stores, loyalty cards,), etc.

Conclusion of Relevant Market Definition

31. For purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID has identified the following relevant markets:
- a) **Global ex-refinery sale of refined fuels;**
 - b) **Non-retail sale of refined fuels (sub categorised by petrol and diesel) at national level in Zambia, and Zimbabwe;**
 - c) **Non-retail sale of jet fuel at airport level in Zambia and Zimbabwe;**
 - d) **Non-retail sale of marine fuel at port level in Zambia and Zimbabwe; and**
 - e) **Retail sale of petrol and diesel at localised level within Zambia, and Zimbabwe.**

¹⁴ See for instance listed price structure by Mauritius State Trading Corporation (<https://www.stcmu.com/ppm/price-structure>); Zimbabwe's Petroleum Products Pricing Regulations 2019 (<https://www.zera.co.zw/wp-content/uploads/2021/04/S1-10-OF-2019-Petroleum-Products-Pricing.pdf>); Zambia's Energy Regulation Act of 2019 (https://www.erb.org.zm/press/statements/2020-09-16_PressStatement.pdf).

¹⁵ See European Commission decision in Repsol YRF/Shell Portugal, 13 September 2004 (para 12), COMP/M.3516.



Market Shares and Concentration

32. The estimated market shares of the Trafigura and those of their main competitors in the Common Market for the trading of fuel products were provided as per Table 3 below.

Table 3: Parties' Estimate of market shares in trading of fuel products in the Common Market

Name of competitor	% Market Share
Sinopec	[0-10%]
Shell	[0-10%]
ExxonMobil	[0-10%]
Vitol	[0-10%]
Equinor	[0-10%]
Trafigura	[0-10%]

33. The CID observed that the target does not operate in the ex-refinery market, as such the proposed transaction will not affect the existing market structure in the aforementioned market. They however noted that the transaction may affect the competitive dynamics of related markets, which are considered further below.
34. The parties submitted their estimated market shares in the narrower submarkets as per Tables 4 and 5 below:

Table 4 – Parties' Estimates of Market Shares for Puma Energy and Its Top Competitors in Zambia

Competitor	Retail Sale of automotive fuels	Non-retail sale of diesel	Non-retail sale of petrol	Non-retail sale of jet fuel	Non-retail sale of marine fuel
Puma Energy	[20-30%]	[20-30%]	[0-10%]	[30-40%]	N/A
Total Zambia Limited	[20-30%]	[20-30%]	[0-10%]	[50-60%]	N/A
Mount Meru Petroleum Zambia Limited	[10-20%]	[10-20%]	[0-10%]	N/A	N/A
Vivo	[10-20%]	[0-10%]	[0-10%]	N/A	N/A
Rubis	[0-10%]	N/A	[0-10%]	N/A	N/A

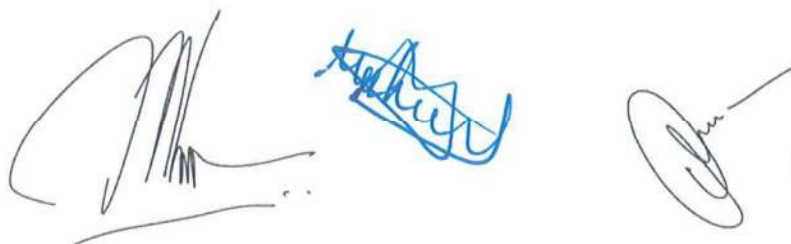


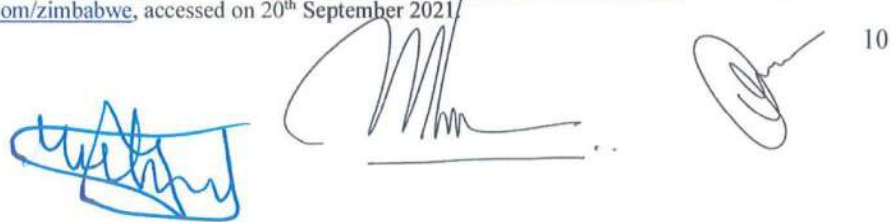
Table 5 – Parties’ Estimates of Market Shares for Puma Energy and Its Top Competitors in Zimbabwe

Competitor	Retail Sale of automotive fuels	Non-retail sale of diesel	Non-retail sale of petrol	Non-retail sale of jet fuel	Non-retail sale of marine fuel
Puma Energy	[20-30%]	[0-10%]	N/A	[30-40%]	N/A
Total Zimbabwe	[20-30%]	[20-30%]	N/A	[30-40%]	N/A
Vivo Energy	[0-10%]	[0-10%]	N/A	N/A	N/A
Zuva Petroleum	[10-20%]	[0-10%]	N/A	[30-40%]	N/A
Petrotrade	[0-10%]	[0-10%]	N/A	N/A	N/A

35. The CID noted from the table above that Puma Energy is a significant player in the downstream markets in both Zambia and Zimbabwe. In the retail markets for petrol and diesel, in Zambia¹⁶, the CID observed from statistics published by the national energy regulator that the target is the second largest player measured by number of retail service stations, with the market leader being Total Zambia operating 61 retail service stations out of 411 as at December 2020. The CID noted that the markets are highly fragmented with a number of retail players on the market.
36. In the retail petroleum market in Zimbabwe, the parties’ estimate Puma Energy as the market leader with a market share of [20-30%]. The CID observed from Total’s website that it operates more than 100 service stations across Zimbabwe¹⁷, which would suggest that the market shares of the two competitors are very close. Further, according to the Zimbabwe Energy Regulatory Authority, there were an estimated 709 retail outlets as of 31 December 2019, which confirms that the market is highly fragmented.
37. The CID noted that the Proposed Transaction will not lead to any market share accretion at downstream level as the acquirer was not active at downstream level pre-merger.
38. The CID further noted that barriers to entry in the relevant markets are not prohibitive as evidenced by the number of existing players and entrants in Zambia and Zimbabwe in recent years. The CID further considered that the transaction was unlikely to afford the merging parties the ability to engage in input foreclosure strategies having regard to the regulatory framework in place in Zambia and Zimbabwe.
39. The CID further noted that the transaction will not contribute to materially changing the structure of the markets to make coordination more likely or successful as there will be no removal of a competitor.

¹⁶ Zambia Energy Board Regulator, Statistical Bulletin 2020, Retail Service Stations Provincial Distribution, page 14 accessed on <https://www.erb.org.zm/downloads/eregulation/statisticalbulletin/statBulet2020.pdf>, on 2nd August 2021.

¹⁷ <https://totalenergies.com/zimbabwe>, accessed on 20th September 2021.



10

Third Party Views

40. Submissions were received from the national competition authorities of Burundi, Egypt, Ethiopia, Kenya, Malawi, Mauritius, Sudan, and Zambia which confirmed the CID's assessment that the transaction was unlikely to raise competition concerns due to the absence of overlap in the parties' activities pre-merger.

Determination

41. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
42. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 6th day of December 2021


.....
Commissioner Deshmuk Kowlessur (Chairperson)


.....
Commissioner Mahmoud Momtaz


.....
Commissioner Islam Tagelsir Ahmed Alhasan