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**Common Market for
Eastern and Southern Africa**

Staff Paper No. 2018/03/JB/08

Decision¹ of the Fortieth Committee Responsible for Initial Determination on the Application for Authorisation of the Merger involving Total S.A. and the Liquefied Natural Gas Business of Engie S.A.

ECONOMIC SECTOR: Petroleum

18th March 2018 – Johannesburg, South Africa

¹ In the published version of this decision, some information may have 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 7th February 2018, the COMESA Competition Commission (hereinafter referred to as “the Commission”) received a notification for approval of a merger between Total S.A. (hereinafter referred to as “Total”) and Engie S.A. (hereinafter referred to as “Engie”).
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. 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

Total

4. Total, together with its subsidiaries, is an international integrated energy producer. With operations in more than 130 countries, TOTAL is engaged in every sector of the oil and gas industry, including upstream (hydrocarbon exploration, development and production) and downstream (refining, petrochemicals, specialty chemicals, trading and shipping of crude oil and petroleum products and marketing). Total has operations in the following COMESA Member States: the Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Uganda, Zambia, and Zimbabwe.

Engie

5. Engie is a French-listed global energy player active across the entire energy-value chain in the fields of gas, electricity and energy services.

Nature of the Transaction

6. The transaction entails the acquisition by Total of sole control of part of the liquefied natural gas business (“LNG”) currently carried on, directly or indirectly through entities in its corporate group, by Engie. The target business comprises a portfolio of contracts for the supply, sale and regasification of LNG as well as various equity and contractual rights over the LNG shipping assets and over gas liquefaction plants, together with associated legal entities and relevant personnel in various jurisdictions.

Competition Analysis


7. The CID defined the relevant markets as:
 - Exploration for crude oil and natural gas at global level; and

- Wholesale supply of natural gas in Egypt.
8. The CID observed that pre-merger, there are no horizontal overlaps in the activities of the merging parties in the upstream market for exploration for crude oil and natural gas and therefore the proposed transaction is unlikely to lead to any accretion of market shares in this market. With regard to the wholesale supply of natural gas, the CID observed that the merger will lead to a small accretion of market share. This situation is unlikely to raise competition concerns as the merged entity's market share would not be substantial to engage in either unilateral or coordinated anti-competitive conduct.

Determination

9. The CID determined that the merger is not likely to substantially lessen competition in the Common Market and/or negatively affect trade between Member States. The CID therefore approved the transaction.
10. This decision is adopted in accordance with Article 26 of the Regulations.


Dated this 18th of March 2018



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Commissioner Thabisile Langa
(Chairperson)



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Commissioner Patrick Okilangole
(Member)



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Commissioner Chilufya Sampa
(Member)