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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/01/06/2022

Decision[1] of the Eighty-Third (83rd) Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by VIP II Blue B.V. of the entire issued and to be issued share capital of Vivo Energy Plc

ECONOMIC SECTOR: Petroleum

31 May 2022

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 8th February 2022, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed acquisition by VIP II Blue B.V. ("**Blue**") of the entire issued and to be issued share capital of Vivo Energy Plc ("**Vivo Energy**"), 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 decision of the CID is set out below.

The Parties

Blue (the Acquiring Firm)

4. Blue is a company incorporated in accordance with the laws of the Netherlands. It is a newly incorporated special purpose vehicle established for purposes of the proposed transaction and is a wholly-owned, indirect subsidiary of Vitol Investment Partnership II Limited, itself being an investment vehicle advised by employees of the Vitol Group (as defined below), which is itself controlled by Vitol Holding II S.A. ("**Vitol Holding**"). Vitol Holding together with its controlled affiliates are collectively referred as the "**Vitol Group**".

5. The parties submitted that the Vitol Group is an independent energy marketing and trading company. The Vitol Group is in the core business of physical supply and distribution of crude oil, petroleum products and natural gas. The parties further submitted that the Vitol Group owns a number of assets across the energy value chain worldwide, including more than 480,000 barrels per day of refining capacity and 100 million barrels of terminal and storage assets, and owns or markets to approximately 6,500 retail service stations.

6. Within the Common Market, the Vitol Group is mainly active in the trading of refined petroleum products. It sources petroleum products internationally and competes to supply these to the domestic markets in the Common Market. In the Common Market, the Vitol Group generates turnover in the following Member States: Comoros, the Democratic Republic of Congo (the "**DRC**"), Djibouti, Egypt, Kenya, Libya, Mauritius, Rwanda, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe. The group's activities per Member State in the financial year preceding the Proposed Transaction are listed in Table 1 below:

Table 1 – Vitol Group activities in the Common Market

Member State	Activities
Comoros	• Trading of refined petroleum products (gasoline, gasoil and jet fuel)
DRC	• Trading of refined petroleum products (gasoline, gasoil and jet fuel)
Djibouti	• Trading of refined petroleum products (gasoline, gasoil, jet fuel and liquefied petroleum gas (**LPG**))
Egypt	• Trading of refined petroleum products (gasoline, gasoil and LPG)
Kenya	• Trading of refined petroleum products (gasoil and jet fuel) • Supply of fuel storage capacity • Supply of ethanol to commercial customers
Libya	• Trading of refined petroleum products (gasoline, gasoil, crude oil, fuel oil and jet fuel)
Mauritius	• Trading of refined petroleum products (gasoline, gasoil and jet fuel)
Rwanda	• Trading of refined petroleum products (gasoil)
Sudan	• Trading of refined petroleum products (gasoline, gasoil, jet fuel, LPG) and crude oil
Tunisia	• Trading of refined petroleum products (gasoline, gasoil and LPG)
Uganda	• Trading of refined petroleum products (gasoil and jet fuel)
Zambia	• Trading of refined petroleum products (gasoline and gasoil)
Zimbabwe	• Trading of refined petroleum products (gasoline and gasoil)

7. In Kenya, VTTI Kenya, an entity jointly controlled by the Vitol Group, offers 111,000 m^3 of storage capacity[2], which ties into the inland Kenya pipeline system in Mombasa. The pipeline transports petroleum products, such as gasoil, from Mombasa to Nairobi, and further onward to Nakuru, Eldoret and Kisumu. Fuel pipeline infrastructure in Western Kenya also provides access to the Ugandan markets and other landlocked countries further west.

Vivo Energy (the Target)

8. The parties submitted that Vivo Energy is a public limited company incorporated in England and Wales, with its business address at 5th Floor, The Peak, 5 Wilton Road, London, SW1V 1AN, United Kingdom.

9. Vivo Energy distributes and markets Shell and Engen branded fuels and lubricants to retail and non-retail customers in Africa and operates in 23 countries across North, West, East and Southern Africa where it has a network of over 2,400 service stations. Vivo Energy also generates revenue from non-fuel related activities,

[2] https://www.vtti.com/terminal/vtti-kenya-mombasa/, accessed on 14 April 2022.

including convenience retail and quick service restaurants, and also supplies LPG primarily to consumers, but also to industrial users.

10. Within the Common Market, Vivo Energy generates turnover in the DRC, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe. The activities of Vivo Energy in each of the Member State are as set out in Table 2 below. In addition, Vivo Energy makes a limited amount of fuel storage capacity available to third parties. It has established, directly or through third parties, a network of storage facilities across Africa as part of its supply and distribution operations.

Table 2 – Activities of Vivo Energy in the Common Market

Member Sate	Activities
DRC	• Supply of lubricants to non-retail customers • Supply of fuels to non-retail customers
Kenya	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of LPG to retail and non-retail customers • Supply of lubricants to retail and non-retail customers • Supply of aviation fuel to non-retail customers • Supply of ethanol to non-retail customers
Madagascar	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of lubricants to retail and non-retail customers
Malawi	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of lubricants to retail and non-retail customers
Mauritius	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of LPG to non-retail customers • Supply of lubricants to retail and non-retail customers • Supply of aviation fuel to non-retail customers
Rwanda	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of lubricants to retail and non-retail customers
Tunisia	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of LPG to non-retail customers • Supply of lubricants to retail and non-retail customers
Uganda	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of LPG to non-retail customers • Supply of lubricants to retail and non-retail customers • Supply of aviation fuel to non-retail customers

Zambia	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of lubricants to retail and non-retail customers
Zimbabwe	• Retail supply of motor fuels (i.e., gasoline and gasoil) • Supply of fuels to non-retail customers • Supply of lubricants to retail and non-retail customers

Jurisdiction of the Commission

11. 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 COM$ 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 COM$ 10 million, 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.

12. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value 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 asset value 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 Merger

13. The notified transaction involves the proposed acquisition by Blue of the entire issued and to be issued share capital of Vivo Energy, excluding shares held by the existing the Vitol Group shareholders (Vitol Africa B.V. and VIP Africa II B.V. As noted above, the Vitol Group holds an existing aggregate 456,700,930 of the publicly traded shares in Vivo Energy, representing a 36% interest in Vivo Energy. Pursuant to the Proposed Transaction, the Vitol Group, acting through Blue, has made an offer to acquire the remainder of the issued and to be issued share capital of Vivo Energy.

Competitive Assessment

Relevant Markets

14. The Vitol Group is active in the trading of refined petroleum products and to a limited extent in the supply of storage facilities while Vivo Energy is active in the retail and non-retail distribution of petroleum products to end users. Vivo Energy is also active in the supply of storage facilities to third parties, to a limited extent, under hospitality arrangements.

15. 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 (trading, importation, 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, given that neither of the merging parties are active at that level.

Wholesale distribution of refined fuel products

16. Two different levels of wholesale distribution of refined fuel products can be identified[3], namely ex-refinery sales (primary level of distribution) and non-retail sales (secondary level of distribution).

17. Ex-refinery sales are typically targeted to wholesalers, traders, and large resellers. This is the market where the Vitol Group is active in the Common Market. Traders buy and re-sell (third-party) products with a view to obtaining a broker's margin. The CID considered that trading activities do not constitute a separate market but rather are a part of the wholesale market, on the basis that customers can source such products interchangeably from wholesalers and traders. The CID noted that in ***ROSNEFT / MORGAN STANLEY GLOBAL OIL MERCHANTING UNIT***[4], the market investigation conducted by the European Commission ("**EC**") established that a large majority of both competitors and almost all customers consider the sales conditions for fuel oil of traders and producers as comparable, while all customers and a large majority of competitors regard the price terms as comparable. For purposes of this transaction, and in line with its approach in past cases[5], the CID considered, having regard to the activities of the acquiring group, that the relevant market is the ex-refinery sales of refined fuels, including trading activities.

18. The target is active in the non-retail and retail distribution of petroleum products. The CID considered that the contractual terms and conditions applied at ex-

[3] 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

[4] Case No COMP/M.7318 - ROSNEFT / MORGAN STANLEY GLOBAL OIL MERCHANTING UNIT, paragraph 21.

refinery level and at non-retail level were likely to differ in view of expected higher volumes at ex-refinery level, 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). The CID therefore identified a distinct market for non-retail sale of refined petroleum products. The CID noted that at this level, it is not possible to aggregate the different types of fuels into one category 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. There are also differences in physical specifications such as viscosity, sulphur and metal content. In the light of the above, in the non-retail channel, each refined fuel product constitutes a relevant product market.

Retail sale of fuel

19. The retail supply for automotive fuels involves providing automotive fuels to individual customers through retail service stations. The products sold are predominantly gasoline and gasoil. From a demand perspective, it is not possible to aggregate gasoline and gasoil into one category. For instance, although they are both intended to fuel motor vehicles, the two are not substitutable as they must be used according to the type of engine of the buyer's car. Gasoil is purchased by users of diesel-powered cars while petrol is purchased by petrol engine cars. Gasoline pumped through the fuel system of a diesel vehicle can cause serious damage to the engine. Per litre, gasoil is said to contain more energy than gasoline and the vehicle's engine combustion process is more efficient, adding up to higher fuel efficiency and lower CO2 emissions when using gasoil[6].

20. 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 broad market for the retail supply of motor fuels.

Supply of lubricants

21. Vivo Energy is also active in the retail supply of lubricants. Lubricants are blends of base oils and a number of chemical additives, each contributing their specific properties to the finished products[7]. In past EU cases[8], automotive lubricants have

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[6] See at https://www.acea.auto/fact/differences-between-diesel-and-petrol
[7] Case COMP M.1891 fi BP Amoco/Castrol, paragraph 11; COMP M.2208 - Chevron/Texaco, paragraph 14.
[8] See Exxon/Mobil Case No. IV/M.1383 (para 806)

traditionally been distinguished from other types of lubricants (for instance, jet lubricants, industrial lubricants or marine lubricants) by reason of limited demand and supply side substitutability.

22. In view of the foregoing, the CID considered that in this case it is appropriate to assess automotive lubricants separately from industrial lubricants. Within the automotive lubricant market, there is considerable supply side substitutability across the products, such that a further segmentation of the product is not necessary for the purposes of this transaction.

Supply of LPGs

23. The CID considered LPG to constitute a separate market, not substitutable to most other energy sources (such as natural gas and electricity). The overall LPG market can be further segmented into (i) LPG sold in cylinders of different dimensions, mostly for domestic and light commercial use, and (ii) bulk LPG for industrial use. The CID considered in particular that these markets may be differentiated by their modes of distribution, uses and quantities consumed.

Ethanol

24. Ethanol (ethyl alcohol) is a colourless, flammable liquid with a characteristic odour. Ethanol can either be produced synthetically from ethylene, a feedstock which is extracted from crude oil or natural gas, or through fermentation from sugars derived from plants or other agricultural or non-agricultural products (also known as bioethanol)[9]. The CID noted that both parties are involved only in the supply of bioethanol. Bioethanol is essentially the same across producers but there are different grades to meet local legislation and specific customer requirements[10]. Bio-ethanol can be sub-divided according to specific uses such as motor fuels, beverages and chemicals[11]. For purposes of this assessment, given that the parties' operations in the bioethanol market are each limited to one customer, the CID considered that a further segmentation was not warranted and a single market for bioethanol can be considered, as the competitive assessment will not be materially altered under any narrower relevant markets by type of use.

Provision of storage facility

25. The Vitol Group, through its joint control of VTTI Kenya, has 111,000m^3 of total storage capacity in Kenya. The target has similarly made its storage capacity available to third parties in Mauritius and in Kenya.

26. Storage depots for petroleum products perform both a logistic and strategic function. They are used for the collection and distribution of refined products by

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[9] Case No COMP/M.7162 - INEOS / SSG SOLVENTS BUSINESS, paragraph 7.
[10] Case No COMP/M.5846 - SHELL/ COSAN/ JV, paragraph 10.
[11] Case No COMP/M.4798 - BP / ASSOCIATED BRITISH FOODS / JV (dated 30/08/2007), paragraph 12.

different petroleum operators. The availability of storage capacity within the petroleum depots allows operators to build reserves of refined products, more or less lasting and able to satisfy downstream demand, as well as to protect themselves against price fluctuations of petroleum products. The availability of such logistic infrastructures constitutes a prerequisite for the access to the markets for the final distribution of refined products. According to Vivo Energy, owning storage assets in Africa is essential to control costs, guarantee supply and manage product quality[12]. In view of the foregoing, the CID identified a separate market for provision of storage facilities to third parties.

27. Both parties' storage tanks are designed for gasoline and gasoil[13]. The EC has traditionally identified separate bulk liquid storage markets by type of product (e.g., chemicals, petroleum, edible oils). The tanks used are different in their technical characteristics, size, and side-equipment (pipeline connections, berths, jetties, etc.)[14]. Some of these differences are due to different regulatory requirements that apply to particular products, for instance since 'edible oils' are neither flammable nor explosive, they can be stored in tanks which are located at short distance from each other. However, other liquids such as crude oil, petroleum and chemicals, for safety reasons, must be stored in tanks which are further apart. Furthermore, being edible materials, edible oils cannot be stored in tanks used previously for the storage of, for instance, petroleum. Edible oils also typically require less storage capacity than petroleum products, which would make switching tanks ineffective and uneconomical. Therefore, the relevant product market is construed as the market for the storage of petroleum products.

28. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as follows:

a) **Ex-refinery supply of refined petroleum products**

b) **Non-retail supply of gasoline**

c) **Non-retail supply of gasoil**

d) **Non-retail supply of jet fuel**

e) **Non-retail supply of bioethanol**

f) **Supply of bulk LPG**

g) **Supply of cylinder LPG**

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[12] https://investors.vivoenergy.com/~/media/Files/V/Vivo-Energy-IR/reports-and-presentations/2019/Company%20Presentation%20-%20October%20-%20Final.pdf, accessed on 16 April 2022.

[13] https://www.vtti.com/terminal/vtti-kenya-mombasa/#:~:text=VTTI%20Kenya%20is%20one%20of,Kipevu%2C%20Changamwe; https://www.vivoenergy.com/News/tabid/1368/entryid/7049/vivo-energy-kenya-opens-a-23-million-litre-diesel-storage-tank-in-mombasa.aspx, accessed on 16 April 2022.

[14] COMP/M. 4532 Lukoil /ConocoPhillips, paragraph 14, IV/M.1621 – Pakhoed / Van Ommeren (II), paragraph 8-11.

h) **Retail supply of automotive fuels**

i) **Supply of automotive lubricants**

j) **Storage of petroleum products.**

Relevant Geographic Market

29. The CID noted that energy traders operate on a global basis and the orders placed for the sale and purchase of crude oil and refined petroleum products occur internationally and are not limited to a particular geographic region. 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 the Vitol Group, the geographic market is for ex-refinery sales is likely to be at least COMESA-wide and plausibly global in scale.

30. With respect to the non-retail and retail sales of different fuel product markets identified above, the geographic markets are likely to be national in scope as the petroleum sector is heavily regulated in most Member States and maximum prices and/or price fluctuations range tend to be fixed by regulatory bodies[15]. Transport costs are often also an important factor.[16]

31. In line with its past decisional practice for jet fuel[17], the CID considered that the geographic market is likely to be airport specific as it depends on the supply contracts and the fuelling infrastructure at the airport.

32. With respect to the automotive lubricants market, the relevant geographic market is likely broader than national. Lubricants are specified according to international standards and can be largely traded across Member States[18]. The relevant market is thus likely to be the Common Market.

33. The market for LPG distribution (wholesale and retail) is likely to be national in scope in view of the different regulations and standards adopted by different

[15] For example, from the Member States; in the DRC - the market is open and prices are regulated by the energy ministry, in Kenya - a monthly Open Tender System (OTS) is adopted with the price of gasoil and gasoline (as well as a specific type of kerosene) regulated by the energy ministry; in Rwanda - the market is open and prices are regulated by the Rwanda Utilities Regulatory Authority (RURA) in collaboration with the Ministry of Trade and Industry (MINICOM); in Tunisia - the market is regulated and imports of petroleum products operate under a state monopoly, in Mauritius - the State Trading Corporation (STC) is the state monopoly buyer which institutes an annual tender process and prices are regulated by the energy ministry in respect of gasoil, gasoline and jet fuel; in Uganda - the market is open, however it is linked to the Kenyan OTS system in terms of pipeline access and prices are regulated by the energy ministry; in Zambia - the market was previously a state monopoly with the energy ministry importing products via a tender process, the market is presently moving to a hybrid model of private imports and tenders, with prices being regulated by the ministry of energy; and in Zimbabwe: prices are regulated by the energy ministry. Paragraph 8.6 of Exhibit B – confidential information submitted by the parties.

[16] See European Commission decision in Repsol YPF/Shell Portugal, 13 September 2004 (para 12), COMP/M.3516

[17] Case File No. CCC/MER/05/15/2021, dated 15 December 2021.

[18] The EC adopted a similar approach in defining the geographic market for lubricants in *Galp Energia/ExxonMobil Iberia*.

countries[19]. LPG is a product that is generally transported over short distances, so that the geographical market could even be narrower, especially for retail markets in relatively larger countries[20]. Nonetheless, given that retailers/resellers of LGP operate on a national basis, the CID considered that the relevant geographic market can be taken as national for purposes of this assessment.

34. With respect to the bioethanol market, the CID considered that the non-retail sale of bioethanol is likely to be national in scope due to regulatory differences in various Member States and pattern of consumption[21].

35. With respect to storage of petroleum products, in the Common Market, the parties' storage facilities which are made available to third parties are located in Mauritius and Kenya (Nairobi and Mombasa). For purposes of this competitive assessment, the CID considered that the national market for Mauritius was the appropriate geographic market having regard to the smaller size of the island and the inland connectivity. With regard to the Kenyan market, the CID considered whether the Mombasa and Nairobi ports constitute distinct markets in view of their strategic location and capacity. The CID nonetheless determined that there is likely to be some degree of competition between the storage facilities available at either port, such that the national market in Kenya can be considered.

Conclusion of Relevant Market Definition

36. 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 supply of refined fuels;**

b) **Non-retail supply of gasoline at national level in DRC, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe;**

c) **Non-retail supply of gasoil at national level in DRC, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe;**

d) **Non-retail supply of jet fuel at airports within Kenya, Mauritius, and Uganda;**

e) **Non-retail supply of bioethanol in Kenya;**

[19] See for instance, Kenya Energy (Liquified Petroleum Gas) Regulations, 2009 (accessed at https://www.epra.go.ke/wp-content/uploads/2018/11/THE-ENERGY-LIQUEFIED-PETROLEUM-GAS-REGULATIONS-2009-f-1.pdf on 16 April 2022), and Mauritius Consumer Protection (Use of Liquefied Petroleum Gas in Small Cylinders). Regulations 2012 (accessed at https://www.mcci.org/media/35766/consumer-protection-use-of-liquefied-petroleum-gas-in-small-cylinders-regulations-2012.pdf on 16 April 2022).

[20] Case No COMP/M.4028 - FLAGA / PROGAS / JV

[21] It is noted that in Case No COMP/M.4798 - BP / ASSOCIATED BRITISH FOODS / JV, the EC considered a likely geographic market for non-retail sales of bio-fuels as national, but eventually left the market definition open.

f) **Supply of bulk LPG in Kenya, Mauritius, and Uganda;**

g) **Supply of cylinder LPG in Kenya;**

h) **Retail supply of automotive fuels in DRC, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe;**

i) **Supply of automotive lubricants in the Common Market; and**

j) **Provision of storage facility for refined petroleum products at national level in Kenya and Mauritius.**

Market Shares and Concentration

37. Vivo Energy does not operate in the ex-refinery market, as such the proposed transaction will not affect the existing market structure in the aforementioned market. Nonetheless, it is noted that there exist other global players operating within the Common Market which will continue to impose competitive pressures on the merging parties, including Sinopec, Shell, ExxonMobil, Equinor, and Trafigura.

38. With respect to Vivo Energy's operations in the non-retail supply of automotive fuels, the CID observed that the target is a significant player in some Member States, with market shares up to [30-40]% in the non-retail and retail channels (as seen in Table 3 below).

Table 3: Estimated market shares in non-retail and retail supply of fuels[22]

Relevant Geographic Market	Name of competitor	% Market Share in Non-Retail Market	% Market Share in Retail Market
Kenya	*Vivo Energy*	*[10-20]*	*[30-40]*
	Total energies	[redacted]	[redacted]
	Rubis energy	[redacted]	[redacted]
	OLA Energies	[redacted]	[redacted]
	Others	[redacted]	[redacted]
Mauritius	*Vivo Energy*	[redacted]	[redacted]
	Total Mauritius	[redacted]	[redacted]
	Engen	[redacted]	[redacted]
	Indian Oil	[redacted]	[redacted]
Rwanda	Societe Petroliere	[redacted]	[redacted]
	Oryx Energies	[redacted]	[redacted]
	Mount Meru	[redacted]	[redacted]
	Vivo Energy	*[0-10]*	*[10-20]*
	Rubis Rwanda	[redacted]	[redacted]
	Merez Petroleum	[redacted]	[redacted]
	Hashi Energy	[redacted]	[redacted]
Uganda	*Vivo Energy*	*[10-20]*	*[20-30]*
	Total Energies	[redacted]	[redacted]

[22] Confidential Information claimed by the merging parties.

Relevant Geographic Market	Name of competitor	% Market Share in Non-Retail Market	% Market Share in Retail Market
	Oryx Energies Uganda	[redacted]	[redacted]
	Rubis Energies	[redacted]	[redacted]
	Mogas	[redacted]	[redacted]
	City Oil	[redacted]	[redacted]
	Others (independent)	[redacted]	[redacted]
Zambia	Total Energies	[redacted]	[redacted]
	Puma	[redacted]	[redacted]
	Mount Meru	[redacted]	[redacted]
	Oryx Energies	[redacted]	[redacted]
	Kobil/ Rubis	[redacted]	[redacted]
	Spectra	[redacted]	[redacted]
	Lake Petroleum	[redacted]	[redacted]
	Vivo Energy	***[0-10]***	***[10-20]***
Zimbabwe	Redan Petroleum Zimbabwe (Puma Energy)	[redacted]	[redacted]
	Vivo Energy	***[0-10]***	[10-20]
	Zuva Petroleum Zimbabwe	[redacted]	[redacted]
	Total Zimbabwe	[redacted]	[redacted]
	Petrotrade	[redacted]	[redacted]
	National Oil and Infrastructure	[redacted]	[redacted]

39. In the market for jet fuel, Vivo Energy is a small player, with a market share of [1-10]% in Kenya. Rubis Energy is the market player with a market share of [redacted]%, followed by Total Energies [redacted]%. Whilst market shares were not available for the other Member States, the presence of other competitors was noted, including Indian Oil and Total Mauritius in Mauritius; and Mogas Uganda and Total Energies in Uganda.

40. The market for LPG (both wholesale and retail) in Kenya is dominated by Proto Energy which commands a market share of approximately [redacted]%. Vivo Energy is a relatively insignificant player, with a market share below [0-10]%. Other players on the market include Rubis Energy, Total Energies, and OLA Energy (each holding less than [redacted]% market share). In Mauritius, Vivo Energy's main competitor is Total, whilst in Tunisia and Uganda, other competitors exist (including Mogas Uganda, Rubis Energy, Oryx Energies in Uganda; Total Energies and SNDP in Tunisia).

41. The CID further noted that while Vivo Energy is a significant player at national level in Kenya in the distribution of lubricants (with an estimated market share of [20-30]%), across the Common Market there exists numerous effective regional

competitors, including Rubis Energy and Total. The market structure is highly unlikely to be affected as a result of the Proposed Transaction.

42. The parties are only active in bioethanol distribution in Kenya. The Vitol Group only supplies Vivo Energy, who in turn supplies one customer. The CID noted that this partnership aims to provide more clean cooking fuels solutions to customers and was already in place pre-merger. In terms of the supply chain, the parties submitted that the customer will request a volume of bioethanol from Vivo Energy, who will in turn issue a tender to the market following which the Vitol Group may be selected as the winning bidder (taking into account factors such as price, availability and ethanol purity). It is highly unlikely that the merger would negatively affect the bioethanol market structure. Further, CID noted that there are other suppliers of ethanol in Kenya, and specifically ethanol cooking fuel, namely Agro Chemical and Food Company Limited and Kibos Sugar & Allied Companies[23].

43. Despite the target's relatively high market shares in some Member States, the proposed merger will not lead to any market share accretion in the relevant markets for distribution of refined fuels as the acquirer and the target are active at different levels of the supply chain market. Therefore, post-merger, the relevant market structure will remain the same as pre-merger.

44. With respect to the storage market, in Mauritius it is noted that the target provides storage capacity to one third party. Given that the acquirer was not present in the market for storage of refined fuels in Mauritius, the Proposed Transaction will not affect the market structure in Mauritius.

45. In Kenya, Vivo Energy makes a limited portion of its own fuel storage capacity available to third parties under hospitality arrangements. The acquirer through VTTI Kenya provides 111,000 m^3 of storage facility to third parties, including Vivo Energy. The CID further noted that there are a number of other storage facility suppliers in Kenya such as Kenya Petroleum Refiners Limited, Kenya Pipeline Company, Gapco, MJT (a joint terminal owned by Total and Kobil), and Ola Energy – Mombasa. The Proposed Transaction may result in a minor accretion of market share but will not have a material impact on the market structure in the short run.

46. The CID considered whether the merged entity may have an incentive to foreclose Vivo Energy's competitors in the downstream markets from access to storage depots. VTTI Kenya provides Vivo Energy with access to a percentage of its storage capacity under a hospitality arrangement. The CID observed that on its website, VTTI Kenya is described as "*one of the largest and most modern facilities in East Africa*" and further, "*it is the only privately owned terminal that ties into the*

[23] Kenya Ethanol Cooking Fuel Masterplan, June 2020, page 27. Accessed at https://southsouthnorth.org/wp-content/uploads/2020/06/ECF-Kenya-Masterplan_23-June-2020.pdf on 17 April 2022.

Kenya Pipeline in Mombasa"[24]. The CID thus considered that VTTI Kenya constitutes an important player in the storage market for refined fuels.

47. The CID nonetheless considered that an input foreclosure strategy would not make commercial sense for the acquiring group as it would forego significant revenues from other customers in Kenya. The CID noted that even if the relevant market is limited to Mombasa, VTTI Kenya's market share would still not be sufficient to credibly sustain an input foreclosure strategy in an attempt to grow the merged entity's market shares in the downstream markets. The CID further observed that VTTI Kenya is not solely controlled by the Vitol Group and the other co-shareholders of VTTI Kenya include IFM Investors and the Abu Dhabi National Oil Company which are not affiliated with Vivo Energy. Therefore, the co-shareholders are unlikely to sanction any foreclosure strategy that could benefit Vivo Energy in the downstream markets, given that the latter only utilises VTTI storage capacity on an *ad hoc* and short-term basis and it has access to its own storage facilities.

Consideration of Third-Party Views

48. Submissions were received from DRC, Egypt, Madagascar, Malawi, Mauritius, and Zambia which views did not raise any concerns, given that the parties do not operate in the same Member State.

49. The CID considered views raised by the Competition Authority of Kenya in relation to a potential concern of foreclosure in the petroleum storage market. The CID took note of the prevailing market dynamics which may not allow the parties in the short run to engage in successful foreclosure of fuel retailers from access to the storage facilities of VTTI Kenya.

50. The CID also took into consideration the parties' submission that post- transaction, the Vitol Group has no intention to seek to stop providing third parties with access to VTTI Kenya's storage capacity.

51. The CID nonetheless noted the importance of access to storage facilities for players in the market, and therefore resolved that monitoring of the relevant markets may be undertaken to ensure that the parties do not engage in foreclosure strategies.

52. The CID further considered that in an event that VTTI Kenya terminates its existing arrangements with its customers post-merger, this can also be addressed under the relevant national laws prevailing in Kenya, or the Regulations, should developments in the relevant market(s) warrant such actions.

[24] https://www.vtti.com/terminal/vtti-kenya-mombasa/, accessed on 17 April 2022.

Determination

53. 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.

54. The CID resolved that the Commission reserves the right to monitor developments in the market as a result of the implementation of the transaction and to intervene through the relevant provisions of the Regulations should market conditions warrant such actions.

55. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 31st day of May 2022

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Commissioner Mahmoud Momtaz (Chairperson)

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Commissioner Vincent Nkhoma

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Commissioner Islam Tagelsir Ahmed Alhasan