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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/4/11/2023**

**Decision<sup>1</sup> of the Ninety-Fifth (95<sup>th</sup>) Meeting of the Committee  
Responsible for Initial Determinations Regarding the Proposed  
Merger involving TotalEnergies SE and Total Eren Holding S.A.**

**ECONOMIC SECTOR:** Energy and Petroleum



**26 June 2023**

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<sup>1</sup> 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

## **The Committee Responsible for Initial Determinations,**

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the “**COMESA Treaty**”);

Having regard to the COMESA Competition Regulations of 2004 (the “**Regulations**”), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the “**Rules**”);

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States’ economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

### **Introduction and Relevant Background**

1. On 3 May 2023, the COMESA Competition Commission (the “**Commission**”) received a notification of a merger involving TotalEnergies SE (“**TotalEnergies**”) as the acquirer and Total Eren Holding S.A. (**Total Eren Holding**) as the target, pursuant to Article 24(1) of 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

### **TotalEnergies**

4. The Acquiring Undertaking is TotalEnergies, a company incorporated under the laws of France, with its business address at La Défense 6, 2 place Jean Millier, 92400, Courbevoie, Paris, France.
5. TotalEnergies is a vertically integrated international energy company. TotalEnergies is involved in all sectors of the oil and gas industry, including upstream (exploration, development, and production of hydrocarbons) and downstream (refining, petrochemicals, specialty chemicals, crude oil and petroleum products trading and marketing). TotalEnergies is also active in renewable energies, power generation and carbon neutral activities (energy efficiency, carbon use and storage, hydrogen, and natural solutions).
6. The Acquiring Group is active in the following COMESA Member States: Democratic Republic of Congo (DRC), Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe. A description of the Acquiring Group's activities in COMESA is set out below.

**Table 1 - Activities of the Acquiring Group in the Common Market**

<b>Member State</b>	<b>Acquiring Group activity/ies</b>
DRC	<ul style="list-style-type: none"><li>• Exploration, exploitation, processing, and related operations, as far as the petroleum sector is concerned<sup>2</sup></li><li>• Petroleum logistics activities (transportation, storage, etc.) related to the development of the above-mentioned activities; and</li><li>• Marketing of finished petroleum products (fuels, lubricants, etc.).</li></ul>
Egypt	<ul style="list-style-type: none"><li>• Engaged in the sale of (i) fuels; (ii) lubricants; (ii) fuel additives; and (iv) special fluids.</li><li>• Engaged in the provision of: (i) bonjour shops; (ii) car care services; (iii) rapid oil change; and (iv) aviation.</li><li>• Exploration &amp; production of oil &amp; gas</li><li>• Sales of gasoline, diesel, and other non-petroleum products (such as compressed natural gas) through a network of approximately 240 service stations in Egypt.</li><li>• Sale of gas oil and heavy fuel oil through resellers or directly to industrial clients</li><li>• Production and sale of lubricants (including blending)</li><li>• Supply of jet fuel to two airports in Egypt and other airline companies in non-operated domestic airports</li></ul>

<sup>2</sup> TotalEnergies EP DRC's exploration activities in Block III ceased in January 2019 upon expiration of the permit. The subsidiary is being liquidated.



	<ul style="list-style-type: none"> <li>• Storage and transportation of the above products; and</li> <li>• Limited business development activities in respect of renewable energy in Egypt.</li> </ul>
Eritrea	<ul style="list-style-type: none"> <li>• Retail of lubricants and petroleum products to business customers (B2B); and</li> <li>• Retail of fuel and products and related services (through a network of approximately 30 service stations) (B2C).</li> </ul>
Eswatini	<ul style="list-style-type: none"> <li>• Exploration for, extracting, producing, refining, compounding, manufacturing, importing, exporting, furnishing, storing, transporting, whether by way of pipeline or otherwise, distributing, buying and selling (both wholesale and retail) and otherwise acquiring and disposing of animal, mineral and vegetable oils, waxes and greases of all kinds, and their products and compounds or mixtures, chemicals and chemical products, naval stores, paints, varnishes, glue, acids, and other like substances, and other articles of raw materials of commerce;</li> <li>• Involved in the retailing of lubricants and petroleum products; and</li> <li>• Solarization of TotalEnergies service stations (operated by independent dealers, under the TotalEnergies brand).</li> </ul>
Ethiopia	<ul style="list-style-type: none"> <li>• Imports and distributes crude oil, liquified petroleum gases, lubricants, and all petroleum by-products for use in motor vehicles, airplanes, industries, and household consumption.</li> <li>• Imports, exports, stores, and distributes refined petroleum products and by-products.</li> <li>• Purchases, leases or exchanges tanks and other facilities for the storage of petroleum products and by-products</li> <li>• Operates filling and service stations or leases same to third persons; and</li> <li>• Engages in limited business development activities in respect of renewable energy in Ethiopia.</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>• Prospecting &amp; drilling for and the exploitation of deposits of hydrocarbons in all forms, as well as the prospecting and drilling for and the exploitation of all other minerals and natural products discovered as a result of these activities.</li> <li>• Processing, conversion, transportation, export, distribution of and the trading in raw materials, hydrocarbons and finished products of any origin, by any means; as well as to participate in, conduct the management of finance other companies including limited companies, to provide security for the debt of others and all that which is related or conducive to the foregoing.</li> <li>• Distribution, marketing, and export of petroleum products</li> </ul>





	<ul style="list-style-type: none"> <li>• Sale of solar lamps to B2C customers via an Early-Stage Support program which allows TotalEnergies to support various start-ups with access to the energy sector. The partnerships with the start-ups include companies developing solar agricultural solutions (e.g., irrigation, cooling, drying, milling and electronic tricycles), electric boat engine, battery rentals for fisherman and recycling of solar batteries; and</li> <li>• TotalEnergies has been developing a solar farm photovoltaic project which is now in the latest stages of development.</li> </ul>
Libya	<ul style="list-style-type: none"> <li>• Acting as operator for the development, operation and abandonment and reclamation of the sites in accordance with the Exploration and Production Sharing Agreement relating to license areas 70 &amp; 87 (ex Conc. 17) and the Exploration and Production Sharing Agreement relating to license areas 15, 16 &amp; 32 (ex Conc. 137), both of which are Exploration and Production Sharing Agreements</li> <li>• Exploration and exploitation of hydrocarbon deposits in Libya</li> <li>• In November 2021, TotalEnergies signed a Memorandum of Understanding with the General Electricity Company of Libya and the acting Prime Minister, to develop a 500 MW solar photovoltaic project in Mistrata South; and</li> <li>• Engages in limited business development activities in respect of renewable energy in Libya.</li> </ul>
Madagascar	<ul style="list-style-type: none"> <li>• Import, transportation, distribution, marketing and export of petroleum products and lubricants</li> <li>• Operation of service stations</li> <li>• Operation of an aviation station</li> <li>• Distribution of lubricants and petroleum products (B2B)</li> <li>• Solarization of industrial sites (roof) for B2B customers (in this regard, TotalEnergies performs engineering, construction, operation, and maintenance for all the photovoltaic systems connected to the grid network)</li> <li>• Sale of solar lamps to B2C customers; and</li> <li>• Engages in limited business development activities in respect of renewable energy in Madagascar, particularly looking for photovoltaic solar, onshore wind and battery storage opportunities.</li> </ul>
Malawi	<ul style="list-style-type: none"> <li>• Marketing petroleum products.</li> <li>• Sale and distribution of solar lamps to B2C customers.</li> <li>• TotalEnergies has started partnerships with distributors of solar home systems, providing them with products and supply chain services; and</li> <li>• Development and sale of solar home systems.</li> </ul>



Mauritius	<ul style="list-style-type: none"> <li>• Activities of exploration and production in the oil and gas sector</li> <li>• Logistics &amp; storage of liquified petroleum gas</li> <li>• Logistics &amp; storage of Mogas, Gasoil, Dual Purpose Kerosene, Jet fuel &amp; Heavy Fuel Oil</li> <li>• Data processing, hosting, and other related activities; and</li> <li>• TotalEnergies also engages in limited business development activities in respect of renewable energy in Mauritius.</li> </ul>
Rwanda	<ul style="list-style-type: none"> <li>• Marketing of petroleum products</li> <li>• Implementation of energy storage solutions for the electricity grid and development of renewable hydroelectricity; and</li> <li>• Limited business development activities in respect of renewable energy in Rwanda. The Acquiring Group is screening merger and acquisition opportunities in hydropower projects.</li> </ul>
Tunisia	<ul style="list-style-type: none"> <li>• Distribution of petroleum products (sale of fuels and lubricants, management, and operation of service stations)</li> <li>• Design, construction, and operation of storage depots for petroleum products and derivatives</li> <li>• Study, realization, and operation of liquefied petroleum gas filling centers</li> <li>• Formulation, production, processing, transformation, conditioning and packaging of lubricants and greases</li> <li>• Storage of aviation fuels</li> <li>• The operation of storage depots for aviation fuels as well as all related activities.</li> <li>• Professional training in all its forms and on all supports for any public, in particular in the fields of road transport</li> <li>• Management and operation of wharf and pipeline equipment for the supply of petroleum products transported by sea; and</li> <li>• Engages in limited business development activities in respect of renewable energy in Tunisia.</li> </ul>
Uganda	<ul style="list-style-type: none"> <li>• Renewables: development and operation of renewables projects, including the development of solar electricity plants, public solar lighting systems, and the development of B2B, government and private use solar farms.</li> <li>• Petroleum development and production projects</li> <li>• Holding of oil depots.</li> <li>• Distribution of lubricants and petroleum products (B2B).</li> <li>• Marketing and sale of fuels, products, and related services (B2C) (network of about 200 service stations); and</li> <li>• Sale of decentralized solar solutions for low-income populations.</li> </ul>



	<ul style="list-style-type: none"> <li>TotalEnergies is also involved, through TotalEnergies EP Uganda (TEPU), in the Tilenga Project. The Tilenga Project consists of 6 fields and 426 petroleum wells across 31 locations. The Tilenga Project envisions the development of oil resources in the Lake Albert region. Since Uganda is a landlocked country, the oil needs to be transported to a port where it can be shipped to refineries in the US, Europe, and Japan.</li> </ul>
Zambia	<ul style="list-style-type: none"> <li>Sale of petroleum products</li> <li>Import, storage and distribution of petroleum products and lubricants</li> <li>Design, construction, and operation of storage depots for petroleum products and lubricants</li> <li>Formulation, production, processing, transformation, conditioning, and packaging of lubricants</li> <li>Study, realization, and operation of petroleum filling stations</li> <li>Non-fuel activities including shops, car wash, solar installations; and</li> <li>Sale of solar lamps to (B2B) customers and solar home systems to (B2C) customers and through distributors. The Acquiring Group has also developed partnerships with local distributors of solar home systems, providing them with products and supply chain services.</li> </ul>
Zimbabwe	<ul style="list-style-type: none"> <li>Marketing and sale of petroleum products.</li> </ul>

### **TotalEren**

7. The target firm is Total Eren Holding (collectively with its controlled affiliates, the **Target Undertaking**), a company incorporated under the laws of France, with its business address at 37 rue La Pérouse, 75016 Paris, France.
8. Total Eren Holding and its subsidiaries develop, finance, build and operate renewable energy plants worldwide. They focus on greenfield projects and long-term investments in high-quality renewable energy assets.
9. In the Common Market, the Target Undertaking's activities are in respect of the:
  - a) development, construction, and operation of photovoltaic power plants in Egypt and Uganda; and
  - b) generation and wholesale supply of electricity in Egypt and Uganda.
10. The Target Undertaking entered the Egyptian market in 2015. In spring 2016, the Target Undertaking developed and invested in (alongside Access Power as a development partner and Proparco and the EBRD as lenders) two photovoltaic solar projects of 63 MWp each within the Benban complex. The two photovoltaic plants, whose electricity is contracted to the Egyptian Electricity Transmission Company, were commissioned in April 2019. The Benban complex is located in the





Aswan region in the south of Egypt and consists of 32 projects totalling 1.8 GW. Once completed, Benban is set to be the world's largest photovoltaic solar facility. The two photovoltaic power plants (with a total capacity of 126 MWp) of the Target Undertaking are among the first plants to have been successfully commissioned.

11. In Uganda, at the end of 2016, the Target Undertaking commissioned an initial 10 MW photovoltaic solar power plant linked to the grid in Soroti district. The electricity produced by the Target Undertaking at the aforementioned power plant is added to Uganda's national grid and sold to the Uganda Electricity Transmission Company.

### **Jurisdiction of the Commission**

12. 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.*
13. The undertakings concerned together have operations in two or more Member States. The undertakings concerned have a combined annual asset value in excess of the threshold of USD 50 million in the Common Market. In addition, the parties each held an asset value of more than USD 10 million in the Common Market and they did not hold 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**

14. The proposed transaction concerns the acquisition by TotalEnergies of sole control over Total Eren Holding and its subsidiaries, including Total Eren. As noted above, Total Eren Holding is currently jointly owned and controlled by TotalEnergies and New Eren, and would, following the proposed transaction, be exclusively controlled by TotalEnergies (the Proposed Transaction).





15. With the Proposed Transaction, the Acquiring Undertaking is pursuing its goal to achieve carbon neutrality by 2050 by transforming its energy model. From the perspective of New Eren, the Proposed Transaction results from the exercise of the call option granted to TotalEnergies pursuant to the Shareholders Agreement of 1 December 2017 and will give the Target Undertaking the means to fulfil and develop its ambitions through the implementation of its large portfolio of projects.

## COMPETITION ASSESSMENT

### Consideration of the Relevant Markets

#### *Relevant Markets*

16. As noted above, the target is active in the development, construction and operation of photovoltaic power plants, and generation and wholesale supply of electricity. The acquiring group is involved principally with the exploration, development and production of hydrocarbons, and the refining, trading, and marketing of petroleum products. TotalEnergies is also involved in the development of solar projects in a number of Member States, as seen in Table 1.
17. The transaction is not capable of affecting TotalEnergies' activities in the upstream nor downstream markets for petroleum products. In this regard, the competitive assessment will focus on the parties' operations with respect to photovoltaic plants, and the connected market for the generation and wholesale supply of electricity.

#### *Relevant Product Market*

18. Paragraph 7 of the Commission's Guidelines on Market Definition states that a "*relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use*".
19. Photovoltaic technology consists of converting solar energy into usable energy and turning it into renewable energy generating electricity from light. A photovoltaic power station is designed to capture the radiant energy (direct, reflected and diffused) of the sun in the form of photons, in order to transform it into energy in the form of electrical production connected to the public distribution or transport network<sup>3</sup>. A photovoltaic system is composed of photovoltaic cells, electronic components that produce electricity by being exposed to light. There are different technologies available to produce photovoltaics cells.

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<sup>3</sup> French Autorité de la Concurrence, Décision n° 15-DCC-102 du 30 juillet 2015 relative à la prise de contrôle exclusif de Solairedirect par GDF Suez, paragraphes 6-7. Accessed at: <https://www.autoritedelaconcurrence.fr/sites/default/files/commitments/15DCC102decisionversionpublication.pdf>.



20. In its review of TotalEnergies' joint acquisition of Total Eren Holding in 2017<sup>4</sup>, the CID identified a distinct market for the construction and operation of photovoltaic power plants. Given the scarcity of case law dealing with photovoltaic power plants, the CID's assessment drew analogy to the European Commission's practice on wind farms, given that wind farms and photovoltaic power plants respond to an identical technical logic which aims to capture, as efficiently as possible, primary, free, and renewable energy to transform it into electricity that can be injected into the public distribution or transmission network.
21. Further, the same steps can be found in the implementation of a wind project and a photovoltaic project in terms of development, construction, and operation development, construction, and operation/maintenance. Both the operation of a wind farm and a photovoltaic plant are part of a long-term contract (25 to 30 years) between the developer and the project company, under which the developer is responsible for the technical operation of the wind farm or the photovoltaic plant (performance monitoring, legal and financial management, maintenance).
22. Given the very strong similarities between the two activities, the market definition used by the European Commission for wind farms can be transposed to photovoltaic and that it is, therefore, appropriate to define a relevant market for the construction and operation of photovoltaic power plants.
23. The CID previously distinguished the market for the construction and operation of photovoltaic power plants from that of electricity generation, having regard to the different activities comprised in the former, which include choice of the location conditions, (ii) administrative procedures and environmental authorisations, (iii) acquisition of the necessary rights on the land and procurement of photovoltaic power plants, (iv) license to connect the photovoltaic power plants to the transmission network, (v) construction and (vi) start-up<sup>5</sup>.
24. The market for generation and wholesale supply of electricity, on the other hand, comprises electricity generated in power stations, traded on the wholesale market (through bilateral agreements, regulated marketplaces, and power exchanges) as well as electricity physically imported via interconnectors<sup>6</sup> for the purpose of resale to retailers, traders and to a lesser extent to large industrial end-users. On the supply side, market players are electricity producers, importers, and traders<sup>7</sup>.

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<sup>4</sup> Staff Paper 2018/01/JB/02

<sup>5</sup> European Commission decision Dong Energy Borkum Riffgrund I Holdco / Boston Holding / Birkum Riffgrund I Offshore Windpark cited above (para. 22); European Commission decision Iberdola Renovables / Gamesa (para. 13).

<sup>6</sup> European Commission decision Case M.7927 - EPH / ENEL / SE, paragraph 9.

<sup>7</sup> European Commission decision Dong Energy Borkum Riffgrund I Holdco / Boston Holding / Birkum Riffgrund I Offshore Windpark cited above (para. 16); European Commission decision Iberdola Renovables / Gamesa cited above (para. 8).



25. The generation and wholesale supply of electricity are considered one single relevant product market because the generation of electricity does not constitute a market activity as long as the electricity is not sold. Generation and wholesale supply of electricity can be distinguished from other markets in the electricity sector, such as retail supply (which involves sale of electricity to the final customer), having regard to the difference in types of contracts, and customers served.
26. For purposes of the present case, the CID considered that it was not necessary to delve into further possible segmentation of the markets according to the type of energy (i.e., nuclear energy, wind energy, gas etc.) given that the parties' overlap remain in the development of photovoltaic plants.
27. From the analysis, the following product markets have been determined:
  - a) Construction and operation of photovoltaic power plants; and
  - b) Generation and wholesale supply of electricity.

### ***Relevant Geographic Market***

28. The Commission's Guidelines on Market Definition define 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"*<sup>8</sup>.

29. Having regard to the relatively immovable nature of the photovoltaic power plants, the CID considered that the market of the construction and operation of photovoltaic power plants is national in scope. Despite the presence of global players, it is unlikely that in response to favourable conditions in either Member State, suppliers in other countries would be able to shift their production plants within a short timeframe and in a risk-free manner to satisfy the substitutability test. Of interest are the national markets for Egypt, Kenya, and Uganda given that the target plants are located in Egypt and Uganda, whereas the acquiring group is at an advanced phase in the development of solar plants in Kenya and Uganda.
30. The market for electricity generation has previously been defined as national, in particular because of the differences in legislation and regulation of the sector which

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<sup>8</sup> Paragraph 8.





exist in the Member States and limited interconnections between most neighbouring Member States<sup>9</sup>.

31. Having regard to the parties' operations in electricity generation, the affected markets are Egypt and Uganda. It was noted that both Egypt and Uganda have in place interconnectors with other countries. For instance, as part of Egypt's plan to become an energy hub, the country has constructed several energy interconnectors, which includes (i) Jordan with a capacity of 250 MW, and which is expected to increase to 450-500 MW; (ii) Sudan with a capacity of 80 MW and which is expected to increase to 300 MW; (iii) Libya has a current capacity of 200 MW<sup>10</sup>.
32. It was submitted that Egypt has been interconnected with Jordan and Libya since 1998, and with Sudan since 2019. Further, Egypt and Saudi Arabia are planning a 3,000-megawatt HVDC cable under the Red Sea by 2026, while the Egypt-Cyprus and Cyprus-Greece sections of the EuroAfrica interconnector should be operational by late 2023. In addition, Egypt is member of the Eastern Africa Power Pool, which includes Egypt, Ethiopia, Sudan, Burundi, the Democratic Republic of the Congo, Kenya, and Rwanda.
33. With regard to Uganda, it is reported that it has constructed interconnectors with DRC<sup>11</sup>, and Rwanda<sup>12</sup> (with synchronization of the interconnection between the electric grids of Burundi - DR Congo - Kenya - Rwanda - Uganda expected to take place). The parties submitted that to the best of their knowledge, Uganda is currently interconnected with Kenya, and additionally a 220-kilovolt transmission line is under construction in Western Kenya, from the Bujagali hydropower plant in Uganda.
34. In view of the foregoing, there are indications that the relevant geographic market for the wholesale supply of electricity could be broader than national. This notwithstanding, noting that any alternative market definition would not affect the outcome of the competitive assessment, this report has focussed on the narrow national markets.
35. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets have been identified as the national provision of:

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<sup>9</sup> It is worth noting the European Commission DG Competition Report on the Energy Sector Inquiry (January 10, 2007, SEC (2006) 1724, at 402) which found that on the basis of the analysis carried out for during the sector inquiry, all electricity wholesale markets were considered to be national in scope, except Denmark and Italy, where sub-national regional markets clearly existed. The inquiry found that cross-border sales do not currently impose any significant competitive constraint as incumbents rarely enter other national markets as competitors.

<sup>10</sup> <https://www.trade.gov/country-commercial-guides/egypt-electricity-and-renewable-energy>

<sup>11</sup> <https://nelsap.nilebasin.org/index.php/en/media-items/factsheets/113-drc-uganda-power-interconnection-project-brief/file>

<sup>12</sup> <https://nilebasin.org/nelsap/index.php/en/news-events/311-commissioning-of-rwanda-uganda-power-interconnection-and-synchronization-of-kenya-uganda-rwanda-burundi-drc-grids-in-2020>





- a) **Construction and operation of photovoltaic power plants in the national market for Egypt, Kenya, and Uganda; and**
- b) **Generation and wholesale supply of electricity in Egypt and Uganda.**

### **Market shares and Concentration**

36. The merged entity will continue to face competitive pressure from a number of players active in Egypt. The Egyptian market for renewable energy is particularly competitive, with many large players having recently signed memoranda of understanding to develop solar and wind projects in Egypt which will increase their respective footprints. Key players in the construction and operation of photovoltaic power plants in Egypt include ACWA Power<sup>13</sup> (who has an estimated market share of [0-10]%<sup>14</sup> based on current PV capacity in the country), Scatec (estimated market share of [20-30]%<sup>15</sup>), and Infinity (estimated market share of [10-20]%<sup>16</sup>), as well as Masdar<sup>17</sup>, Alcazar Energy<sup>18</sup>, and EDF<sup>19</sup>. According to the merging parties, the Target Undertaking has an estimated market share of [0-10]%<sup>20</sup> of current PV capacity in the country.
37. **Uganda** has 1.3 GW of installed capacity of which 84% is hydro, 8% is photovoltaic (approx. 104 MW) and 8% is bioenergy (there is no operational wind plant). Amongst the 104 MW, Building Energy Uganda<sup>21</sup> accounts for an approximate market share of [0-10]%<sup>22</sup> at Tororo Solar Farm, Bufulubi Solar accounts for an approximate market share of [0-10]%<sup>23</sup> and Total Eren accounts for an approximate market share of [0-20]%<sup>24</sup> at Soroti Solar Farm. The rest of the photovoltaic projects in Uganda are small scale PV. Other solar independent power producers active in Uganda include Xsabo, Tryba Energy, and AMEA Power.
38. In **Kenya**, as noted earlier, TotalEnergies is developing a solar farm photovoltaic project. Given that the target undertakings were not operational in Kenya pre-merger, the proposed transaction will not lead to any change in market structure. Further, even if one was to consider a broader market spanning Kenya and Uganda, it is noted that the acquirer's project is not operational.

<sup>13</sup> <https://www.acwapower.com/en/projects/benban-pv-ipp/>

<sup>14</sup> Information claimed as confidential by the merging parties.

<sup>15</sup> Information claimed as confidential by the merging parties.

<sup>16</sup> Information claimed as confidential by the merging parties.

<sup>17</sup> <https://masdar.ae/Masdar-Clean-Energy/Projects/7000-Solar-Home-Systems>

<sup>18</sup> <https://alcazarenergy.com/realised-assets/>

<sup>19</sup> <https://energyegypt.net/edf-becomes-strategic-shareholder-in-karmsolar-egypts-solar-power-developer-and-supplier/>

<sup>20</sup> Information claimed as confidential by the merging parties.

<sup>21</sup> Italian company Building Energy spa has developed a 10 MW photovoltaic plant. Building Energy owns a 96% share in the asset. Other companies such as Red Rocket Africa, First Solar and Windforce PVT LLC share ownership with Building Energy.

<sup>22</sup> Information claimed as confidential by the merging parties.

<sup>23</sup> Information claimed as confidential by the merging parties.

<sup>24</sup> Information claimed as confidential by the merging parties.



39. In the market for the **generation and wholesale supply of electricity**, the parties submitted that in Egypt, the Target Undertaking accounts for [0-10]%<sup>25</sup> of the 1,700 MW of current PV capacity in the country. Other competitors include ENGIE which operates a 265 MW wind plant since 2019 and has entered into a Memorandum of Understanding for the development of a 3 GW wind plant: SCATEC, and VOLTALIA. It is recalled that the transaction would not result in any change in market structure, and thus no material market share accretion is expected.
40. The CID observed that significant barriers to entry exist in the relevant markets in terms of accessibility of location, administrative procedures and environmental authorization, costs of acquiring power plants, license to connect the plant to the grid, etc. The CID considered that entry into the relevant markets was unlikely to occur on a likely and sufficient basis to constitute an effective source of competition for the existing players, including the merging parties.
41. Nonetheless, the target undertakings' presence in the Common Market is not significant. Whilst an overlap may be expected in Uganda and Kenya in the future once the acquiring group's projects become operational, it does not appear that the proposed transaction would result in the merged entity having a dominant position in the relevant markets. It is recalled that in Egypt, the acquiring group are still at an early phase of discussion with Egyptian public entities for solar PV greenfield projects. As such, the transaction is not expected to result in a change in market structure in Egypt in the foreseeable future, where the target is a relatively small player. The CID considered that the proposed acquisition will boost TotalEnergies solar renewables portfolio by giving it 100% control of key projects under Total Eren Holding. However, the transaction in itself will not cause any significant lessening or prevention of competition in the relevant markets within the Common Market, as it will not lead to the creation of a dominant position by the merged entity.
42. The CID noted that the relevant products were heterogenous, and the market was thus less likely to be conducive to successful coordinated behaviour. The transaction, in view of limited overlaps, likewise not contribute to facilitate or create any incentive for coordination, expressed or tacit, among the remaining firms in the industry.

### **Consideration of Third-Party Views**

43. Submissions were received from the national competition authorities of Egypt, Malawi, Kenya, Mauritius, Rwanda, and Zimbabwe which confirmed that the transaction is not likely to substantially prevent or lessen competition in the Common Market or be contrary to the public interest, in line with the CID's findings as set out above.

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<sup>25</sup> Information claimed as confidential by the merging parties.



## **Determination**

44. Based on the circumstances of the case and having regard to the foregoing assessment, 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 in the foreseeable future. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID, therefore, approved this transaction.
45. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 26<sup>th</sup> day of June 2023

**Commissioner Dr Mahmoud Momtaz (Chairperson)**

**Commissioner Lloyds Vincent Nkhoma**

**Commissioner Islam Tagelsir Ahmed Alhasan**

