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Common Market for

and Southern Africa

Case File No. CCC/MER/7009/2013

Decision of the Committee of Initial Determination on the Application for Authorisation of the Acquisition by Total Outre Mer S.A of the Entire Issued Share Capital of Shell Marketing Egypt and Shell Compressed Natural Gas Egypt Company

ECONOMIC SECTOR: Petroleum

October 2013

1.0 Information and Relevant Background

1.1 On 2nd July, 2013, the COMESA Competition Commission ('the Commission') received an application for authorisation of a merger from Dentons Total Outre Mer S.A ("TOM") and Shell Petroleum Company Limited, The Asiatic Petroleum Company and Shell Gas B.V. hereinafter called the parties.

1.2 The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 ('the Regulations'). The Commission's concern is primarily 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 as provided for under Article 26 of the Regulations.

The Committee of Initial Determination (the CID) has determined that the transaction has a regional dimension in that both the acquiring firm operate in more than one COMESA Member State. This situation satisfies Article 23(3)(a) of the Regulations. The business of the acquiring firm is carried out in more than one Member State namely:

1. Democratic Republic of Congo
2. Djibouti
3. Eritrea
4. Ethiopia
5. Kenya
6. Madagascar

7. Malawi

8. Mauritius

9. Swaziland

10. Uganda

11. Zambia

12. Zimbabwe

2.0 **The Parties**

The Purchaser

2.1 The purchaser in the transaction and the notifying undertaking is Total Outre-Mer S.A ("Total Outre-Mer"), a societe anonyme (limited company) incorporated under the laws of France. Total Outre-Mer S.A. is a wholly-owned subsidiary of Total Raffinage Marketing S.A., which is itself a wholly-owned subsidiary of Total S.A.

The Sellers

2.2 The sellers in relation to the shares in Shell CNG Egypt are:

a) Shell Gas B.V., a limited liability company incorporated under the laws of Netherlands which owns 99.96% of the issued shares in Shell CNG Egypt; and

b) Alaa EI Din Mohamed Rafik EI Gharbawy and Amgad El-Ela, two individuals who currently between them own the remaining 0.08% of the issued shares in Shell CNG Egypt.

2.3 The sellers in relation to Shell Marketing Egypt are:

a) The Shell Petroleum Company Limited, which owns 86.57% of the issued share capital in Shell Marketing; and

b) The Asiatic Petroleum Company Limited, which owns the remaining 13.43%.

3.0 Competition Analysis and Relevant Observations

3.1 The CID determined that the relevant product market could be delineated into three separate markets namely:

1. Retail Supply of fuel
2. Non retail supply of fuel divided into diesel and gasoline
3. Storage of petroleum products

3.2 This delineation is premised on the fact the parties are engaged in the supply of fuel to the general consumers through their filling stations. The parties are also engaged in the supply of fuel in bulk to the commercial and industrial consumers. The parties also have storage facilities for the petroleum products from where they supply some of their customers. The CID determined that the retail supply of fuel is a separate and distinct market because generally the consumers do not buy the product in bulk compared to the industrial and commercial customers. Further, the consumers in this category buy the product for final consumption as opposed to the industrial and commercial customers who buy the product for further use in the production process.

3.3 From a demand-side perspective there is generally no (demand-side) substitutability between diesel and gasoline as motorists must use the type of fuel appropriate for their vehicle. This notwithstanding, from the supply side there is significant substitutability given that the distribution of each different fuel takes place at the same point of sale in order to maximise total retail fuel sales. This is consistent with the previous decisions by competition authorities in other jurisdictions where the product market is for the retail supply of fuel to motorists with no further segmentation between different types of fuel such as gasoline, diesel e.t.c.

3.4 As regards the non-retail supply of fuel products, the CID identified separate product markets for non-retail supply of different types of fuels on the basis that each fuel is supplied for different uses and to different types of customers. From a supply-side perspective, it is possible for the same supplier to distribute more than one fuel type (as indeed is the case as regards both TOM and Shell in

Egypt). The CID observed that the distribution channels required to be able to supply each product type will often vary (for example the provision of fuel oil to a power generation plant will differ significantly from the investment required to provide heating oil for domestic purposes). This approach is consistent with the decision of the European Commission in the case of Total/Elf. It therefore follows that the non-retail supply of fuel market can be divided into non-retail supply of gasoline and non-retail supply of diesel.

3.5 As regards the storage of petroleum products, the CID observed that TOM will be purchasing Shell's 50% interest in an unincorporated joint venture which operates a single depot in Cairo – the Mostorod depot. This depot will be used to store the petroleum products. Clearly it can be discerned with absolute certainty that this is a separate market from the retail and non-retail supply of fuel products identified above.

4.0 **Determination**

4.1 The CID determined that the transaction is not likely to substantially prevent or lessen competition and is not likely to be contrary to public interest. The CID has noted that the same market concentration levels will remain as the parties have diminutive market shares in the relevant market and even after the accretion of their market shares, they will not reach a level where they will alter the market concentration ratio, i.e the sum of the market shares of the top three market players (CR3). The CID has also observed that the merger is not likely to lead to a situation of abuse of a dominant position of market power because the parties will not be dominant post-merger due to their diminutive market shares. The CID has further observed that since the relevant market is highly regulated, it is highly improbable that the merged entity will engage in any foreseeable form of anti-competitive practices.

For the reasons set out in this decision the CID has decided not to oppose the notified merger and to declare it compatible with the Common Market.