



COMESA Competition Commission
Kang'ombe House
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/01/05/2023

**Decision¹ of the Ninety-Fourth (94th) Meeting of the Committee
Responsible for Initial Determinations Regarding the Proposed
Merger involving Serengeti Energy Limited and Rwaza
Hydropower Limited**

ECONOMIC SECTOR: Energy



29 May 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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 17 February 2023, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the proposed merger involving Serengeti Energy Limited (“**Serengeti**” or the “**acquiring undertaking**”) and Rwaza Hydropower Limited (“**Rwaza**” or 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

Serengeti (the “acquiring undertaking”)

4. Serengeti, formerly known as responsAbility Renewable Energy Holding, is a company incorporated in accordance with the laws of the Republic of Mauritius. Serengeti is an independent power producer that develops, builds and operates small to medium sized renewable energy power plants across sub-Saharan Africa.
5. Within the Common Market, Serengeti and all entities under its control, are active in Kenya, Malawi, Mauritius, Uganda and Zambia.

Rwaza (the “target”)

6. Rwaza is incorporated and organised under the Laws of Rwanda. Rwaza is an independent power producer that operates a hydroelectric power plant in Rwanda. Within the Common Market, the target is active in Rwanda only.

Jurisdiction of the Commission

7. Article 24(1) of the Regulations requires ‘notifiable mergers’ to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the “**Merger Notification Thresholds Rules**”) which 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,*

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.

8. 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 the parties derived 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

9. The Proposed Transaction entails the acquisition of an additional 30% shareholding in Rwaza by Serengeti, which will result in the latter holding a 60% shareholding in the target.

Competitive Assessment

Relevant Markets

Relevant Product Market

10. The CID observed that both Serengeti and Rwaza are engaged in the generation and wholesale supply of renewable electricity.
11. The generation of electricity features at the upstream level of the electricity sector supply chain. Generation of electricity involves the production of electricity in power stations. The electricity produced is thereafter traded on the wholesale market to electricity suppliers, which can be the regulatory body authorised to sell electricity at the retail level or large customers such as industrial plants which require electricity in bulk.
12. In line with its decisional practice², the CID observed that each stage in the electricity sector, namely generation (production of electricity), transmission or wholesale supply (moving electricity across high-voltage lines from generating plants to sub-stations) and distribution (delivering electricity to customers) comprise of different and unique processes.
13. Under generation, electromechanical generators propelled by heat or energy (kinetic energy from water or wind or other sources of energy such as solar energy or geothermal energy) are used in the generation of energy. On the other hand, the wholesale supply of electricity involves the bulk movement of electrical energy from the power plant to an electrical sub-station through transmission networks where voltage is transformed and distributed to consumers or other sub-stations. Transmission networks (or power grids) consist of towers and the wires that run between them, underground cables, transformers, switching equipment, reactive power devices, and monitoring and telecommunications equipment. After transmission of electricity, the last stage in the value chain is the distribution phase which entails the supply of electricity to end users. At this stage, high voltage electricity that is transmitted from a generator is converted into lower voltage by sub-station transformers and carried in wires over poles or in underground wires to end-users such businesses and homes.
14. The CID noted that the three stages in the electricity sector supply chain are unique processes which comprise of different markets by virtue of the unique processes that each one entails and by virtue of the intended end use of the electricity at each stage.

² Decision of the Seventy-Sixth Committee Responsible for Initial Determination Regarding the Proposed acquisition by AIF Thika Power Holding LLP of 100% shares in Thika Power Limited and Thika Power Services Limited



For instance, the equipment for generating electricity is bound to be different from the equipment needed for the transmission of electricity. Under the former, a company would require generators operated via flowing water, wind, fossil fuels or solar energy to generate the electricity while under the latter, a company would be required to set up a power grid through which to transmit electricity once generated. Similarly, the distribution of electricity would require different equipment and investment. The differentiation can also be appreciated from an end-use perspective. For instance, at generation, the intention is to produce electricity which is intended for a distribution company before supply to the ultimate end-users.

15. The CID considered that the generation, transmission and distribution of electricity are unique markets and therefore not substitutable. Given the overlap in the parties' activities in the generation of electricity, the CID focused its assessment of relevant market on the generation and supply of electricity.
16. The CID observed that electricity can be generated from different sources and this may be grounds for possible further segmentation of the market according to the mode of generation i.e., electricity generated from hydropower, wind, solar energy, or fossil fuels. However, the CID observed that from a demand perspective, the usage of electricity is not differentiated based on the mode through which it was generated. Electricity generated from water, wind or nuclear can similarly be used for lighting, heating, cooling, and refrigeration, operating appliances, computers, electronics, machinery, or any other use. Therefore, the CID did not further delineate the market on the basis of the mode of generation of electricity.
17. The CID observed that electricity, once produced, cannot be stored and must therefore be consumed at the same instant. The CID noted that once electricity is produced it may be sold, either in bulk to large customers or in small quantities to individual end consumers. The CID therefore observed that a further segmentation of the market was possible based on whether the generation and supply of electricity is at a wholesale or retail level. The wholesale market is targeted at distribution companies which buy electricity in bulk for onward sale to end users. The wholesale market is also targeted at large industrial users and the amount of electricity supplied is in bulk. The retail market concerns selling electricity to individual consumers who are end users and the amount of electricity supplied is low. In this respect and considering the parties activities, the CID concluded that the relevant product market in the transaction involved the generation and wholesale supply of electricity.
18. The CID recalled its previous decisional practice³ which reached the view that the generation and supply of electricity may comprise both wholesale and retail markets which are different given the different customers which are served under each segment.

³ Ibid n. 2



19. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product market was considered as the **generation and wholesale supply of electricity**.

Relevant Geographic Market

20. The CID noted that generated electricity is transmitted from power stations to buyers through capital intensive network of power lines such as national grids, regional networks and local networks. Further, the CID noted that there exists a possibility of trading electricity across national borders. However, for such trade to take place, the concerned companies and countries often conclude bilateral and multi-lateral trade agreements that take long time periods to negotiate/conclude and may also demand heavy financial investments. Suppliers would therefore need the electricity transmission infrastructures to export electricity across countries. The CID considered that it is highly unlikely that companies involved in the generation and wholesale supply of electricity would shift to generate and supply electricity across countries in the short term at reasonable costs.
21. The CID however noted that some Member States are active in the exportation and importation of electricity. For instance, Zambia is a major electricity exporter to its neighbouring countries, including DRC and Zimbabwe while Eswatini imports electricity from South Africa. Despite this cross-border movement of electricity, the CID reached the view that it is unlikely that the price of electricity will be the same in the exporting country and the importing country, given the asymmetry in the demand and the supply of the product. Additionally, the exportation and importation of electricity is highly regulated, which may also inhibit the free flow of the product across Member States.
22. The CID considered that it is unlikely that due to higher prices or more favourable conditions in other Member States, the merging parties would timely switch to set up electricity generation in such countries, as they would need to invest in the appropriate infrastructure, obtain the relevant licences, find customers for the electricity, which will inhibit timely and effective switching of operations into other Member States.
23. In this respect, the CID reached the view that the relevant geographic market was national.
24. In view of the above and given that the target's generation and wholesale supply of electricity is in Rwanda only, the CID considered the relevant geographic market as Rwanda.

Conclusion of Relevant Market Definition

25. For the purposes of this transaction, and without prejudice to the approach in future similar cases, the CID identified the relevant market as **the national market for the generation and wholesale supply of electricity in Rwanda**.



Market Shares and Concentration

26. The parties provided the approximate market shares of the target and the top five (5) electricity producers in relation to the market for generation and wholesale supply of electricity in Rwanda as follows.

Table 1: Approximate Market Shares in the market for generation and wholesale supply of electricity in Rwanda

Power Producer	Production Capacity	Estimated Market Share (%)
So Energy	30MW	[11 – 14]%
Nyabarongo I	28MW	[10 – 13]%
Kivuwatt Phase I	26.4MW	[9 – 12]%
Jabana 2	20MW	[6 – 9]%
Gishoma	15MW	[4 – 7]%
Rwaza	2.7MW	[0 – 2]%

27. The CID observed that the target is the smallest independent electricity producer in Rwanda with a market share of [0 – 2]%. The CID considered that since the acquiring undertaking does not operate in Rwanda, the transaction would not result in any market share accretion in the relevant markets premised on the fact that Serengeti and Rwaza do not operate in the same markets.
28. The CID considered that the transaction will not result in a change in the market structure, by way of market share accretion, given the absence of any overlapping activities provided by the parties. The CID further noted that the relevant market also includes the national producer of electricity which is likely to command a bigger market share and the remaining market shares are fragmented such that it is unlikely for any single independent electricity producer to have market power. The existence of these players, including the national electricity producer, will provide competitive discipline which will overrule any potential competition concerns likely to arise from the transaction within Rwanda.
29. The CID also noted that barriers to entry exist in the relevant market. The CID observed that a potential entrant into the relevant market would require to obtain licences for the production, transmission and trade of electricity from the utilities' regulator and negotiate and enter into a concession agreement with the relevant state agencies. The CID further observed that high capital investment is required to set up an electricity generating plant. Additionally, electricity once produced cannot be stored as such, only the amount of electricity that can be consumed should be produced, and this warrants the extensive



regulatory framework in the industry. Notwithstanding, the CID reached the view that the barriers to entry were not prohibitive and that entry can happen in an effective and timely manner.

30. Regarding unilateral effect, the CID observed that the target is a small player which holds insignificant market shares and will remain small post-merger. Therefore, the merged entity will still be constrained by the other players in the relevant market and this will thwart any attempt on its part to engage in unilateral conduct. Further, this will reduce the incentive and ability of the merged entity to increase its prices post-merger.
31. The CID also considered that the transaction will not raise coordinated effects in the relevant market. The CID noted the absence of overlap in the activities of the parties and that the transaction will not remove any effective competitor from the relevant market. This will not create transparency on the market nor confer the ability on the existing players to engage into successful collusion. The CID further observed that the high number of players with fragmented market shares makes the likelihood of coordinated effects unlikely. Therefore, the CID considered that the state of competition pre- and post-merger is expected to be the same which will overrule the possibility of coordinated effects in the relevant markets.
32. Further, the proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are relatively small within the Common Market. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers who will still have access to alternative suppliers.

Consideration of Third-Party Views

33. Submissions were received from the national competition authorities of Malawi, Kenya, Mauritius and Zambia which submitted that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

34. 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.



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

Dated this 29th day of May 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

