



COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email- compcom@comesacompetition.org



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/08/29/2024

**Decision¹ of the 112th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition of Joint Control by Repsol Industrial
Transformation, S.L.U. of Bunge Ibérica, S.A.**

ECONOMIC SECTOR: Agriculture



14 December 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

Desirous 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 16 August 2024, the Commission received a notification for approval of the merger involving Repsol Industrial Transformation, S.L.U. (“**Repsol IT**”, together with its controlled and controlling affiliates, “**Repsol**”) and Bunge Ibérica, S.A. (“**BISA**” or the “**Target Firm**”) 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

Repsol IT

4. Repsol IT is a company incorporated in accordance with the laws of Spain. Repsol IT is the primary acquiring firm in this transaction.
5. Repsol IT is ultimately controlled by Repsol S.A. (together with its controlled affiliates, “**Repsol**”), which is also a company incorporated in accordance with the laws of Spain.
6. Repsol is a Spanish multinational energy company. It operates as an integrated energy company performing activities in the hydrocarbon sector throughout its entire value chain (exploration, development and production of crude oil and natural gas; refining, production, transportation and sale of a wide range of oil and petrochemical products, oil derivatives and natural gas), as well as in the generation and sale of electricity.
7. Specifically, Repsol’s main global activities include:
 - a) the commercialisation and transportation of oil and gas;
 - b) the production and commercialisation of
 - i. asphalt,
 - ii. fuels for different uses,
 - iii. specialised products (such as petroleum oils, sulfur, waxes, paraffins, emulsions, liquefied gases and petroleum coke),
 - iv. lubricants, and
 - v. chemicals for different uses (including Benzene, Butadiene, Styrene and Ethylene), among others.
 - c) the development and construction of service stations; and
 - d) the generation and commercialisation of electricity and gas.
8. In 2023, Repsol had activities in Egypt, Libya, Madagascar, Mauritius and Tunisia. Table 1 below presents the activities of the Repsol’s subsidiary incorporated in the Common Market.

Table 1 – Activities of Repsol’s subsidiary incorporated in the Common Market

Subsidiary	Description of activities
Repsol Exploración Murzuq, S.A.U. (suc), which is a company controlled by Repsol	Explores, produces, and transports liquefied petroleum gas, electricity, and natural gas. Repsol Exploración Murzuq operates worldwide.



that is incorporated in Spain with a branch office located in Libya	
---	--

9. Table 2 below presents the subsidiaries Repsol, which have been incorporated outside the Common Market but have generated turnover from sales to customers in the Common Market in the 2023.

Table 2 – Activities of Repsol’s subsidiary incorporated outside the Common Market

Entity	Description of activities
Repsol Comercial de Produc Petrolif, S.A.	Operates as an energy company, refining and distributing natural gas, chemicals, lubricants, asphalts, oil, diesel, petrol and petroleum products.
Repsol Exploración Murzuq, S.A.	Explores, produces and transports liquefied petroleum gas, and natural gas, and produces electricity.
Repsol Lubricantes y Especialidades, S.A.	Explores and produces oil and gas, sells derived products and provides services such as natural gas and electricity.
Repsol Química, S.A.	Provides petroleum products, manufactures and sells asphalt, fuel oils, diesel, gas, lubricants, petrochemicals, and chemicals.
Repsol Trading, S.A.	Operates as an oil and gas company. It distributes fuel, gas, oils, petrol, lubricants, and other related products.

BISA

10. BISA is a company incorporated in accordance with the laws of Spain.
11. BISA is currently directly controlled and wholly owned by Koninklijke Bunge B.V. (“KBBV”) which is a company incorporated in accordance with the laws of the Netherlands.
12. KBBV is indirectly controlled and wholly owned by Bunge Global SA (together with its controlled affiliates, excluding the Target Firm, “Bunge”).
13. BISA operates as an agribusiness company and is globally predominantly active in the oilseed processing and production, distribution and supply of plant-based oils, fats and proteins. BISA also produces biodiesel and related by-products. BISA sells its products to a wide range of customers, from food and animal feed companies to companies active in the production of renewable fuels and also uses the soybean oil that it produces in its own downstream biodiesel production.
14. In 2023, in Common Market BISA operated in Egypt, Libya and Madagascar and is engaged in the marketing of:
- i. vegetable oils [REDACTED]; and
 - ii. non-grain feed ingredients (“NGFIs”) [REDACTED].



Jurisdiction of the Commission

15. 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 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".*
16. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived a turnover of more than the threshold of USD 50 million in the Common Market and they each derived a turnover of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The Commission was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

17. The notified transaction concerns the acquisition by Repsol IT of 40% of the share capital of BISA from KBBV, which will result in Repsol IT acquiring a 40% stake in three industrial Spanish plants located in Bilbao, Barcelona, and Cartagena, owned by BISA.

[REDACTED]



19. [REDACTED]

20. Post the transaction, BISA will fall under the joint control of Bunge and Repsol and the notified transaction will lead to a change of control over BISA from sole to joint control by Bunge and Repsol.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

21. 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"***.
22. It is recalled that Repsol operates in the gas, petroleum, oil and energy sectors in the Common Market.
23. It is further recalled that BISA is engaged in the marketing of:
- a) vegetable oils [REDACTED]; and
 - b) non-grain feed ingredients ("NGFIs") [REDACTED].
24. The CID further noted from the filing that Repsol operates in all areas of the oil and gas industry, including exploration and production, refining, distribution and marketing, petrochemicals, power generation, and trading and also has a division for renewable energy, including renewable fuels, while the target produces biodiesel and related by-products.
25. The target sells its products to a wide range of customers, from food and animal feed companies to companies active in the production of renewable fuels, but it also uses the soybean oil that it produces in its own downstream biodiesel production.
26. The CID considered whether there is a potential horizontal overlap between the parties' activities in respect of biodiesel and other types of fuel (both renewable and non-renewable) and whether there could exist potential vertical links in the operations of the merging parties in this regard.



27. The parties submitted that there is no substitutability between renewable and non-renewable fuels. The parties clarified that biodiesel is added to traditional fuels (i.e., diesel) to constitute so-called biofuels. According to the parties, renewable fuels are not alternatives to non-renewable fuels, and vice versa. The parties explained that Biodiesel is only mixed with diesel to create a more environmentally friendly fuel. Bio-gasoline, however, is typically made by blending fossil gasoline with ethanol and other derivatives, but not with biodiesel.
28. The CID noted that none of the merging parties supply biodiesel in the Common Market.
29. The CID noted that biofuels are produced from biomass extracted from living organisms, which can be plants or animals. Examples of biofuels include ethanol and biodiesel. Biofuels are considered to be more sustainable sources of fuel and are environment friendly. The CID further noted that most machines and vehicles which are propelled by fuel have not been engineered to operate 100% on biofuels. Indeed, as the parties suggest, biofuels are added to fuels sourced from fossils to make them less harmful to the environment. To this end, substitutability between biofuels and fuels may indeed be limited.
30. However, considering that the parties' do not supply biofuels in the Common Market, these activities of the merging parties have no nexus to the Common Market. For this reason, the CID is of the view that the renewable fuels and non-renewable fuel markets are not affected markets in this transaction.
31. Therefore, in view of the absence of overlap between the activities of the merging parties in the Common Market, the products of the target will be analysed for the purposes of defining the affected market in the notified transaction.
32. As can be noted above, BISA operate in the agricultural commodities segment particularly the marketing of vegetable oils. Agricultural commodities or agro commodities include staple crops that are grown and harvested to produce food and can be used as an industrial ingredient, e.g. in the production of fuel. Agricultural commodities include grains, livestock and meat, cotton, oil seeds, dairy and soft commodities comprising of inter alia sugar, cocoa and coffee and other miscellaneous agricultural commodities including wool and rubber.
33. The agricultural commodities supply chain comprises of various stages. The value chain starts with origination. Origination refers to the market for purchasing crops such as harvested grains and oilseeds directly from farmers. Purchasers include agricultural traders, distributors, millers or crushers (including the target).
34. Once the agriproducts have been originated from the farmers, they are stored and handled in silos, elevators and/or port terminals. The agriproducts are then either transported to processing or refining facilities (e.g., crushing or milling facilities to



turn soybeans into soybean oil; wheat into wheat flour; sugar into refined sugar; etc.) or transported directly in their unprocessed form for trade and distribution.

35. The agriproducts are then sold to a large variety of export markets, including to food manufacturing companies, animal feed manufacturing companies, and non-food manufacturing companies (e.g., biofuels or industrial products). These manufacturers then sell the final product to food/feed retailers and other outlets for consumption. Direct sales can also occur between non-adjacent parts of the chain (e.g., direct sales by farmers/cooperatives to processors or direct sales by processors to end users).
36. The CID has previously considered that the origination stage would constitute a distinct market separate from the downstream wholesale markets as they involve different supply and purchase conditions, considering that origination is the market for purchasing crops such as harvested grains and oilseeds directly from farmers². Origination is the market at the upstream level of the supply chain and the CID noted that certain players may choose to be involved at distinct levels of the supply chain or at one or more level of the supply chain. For instance, some players may be involved only in trading, marketing or others may be involved in both origination and trading agriproducts.
37. Given that the target is not involved in the origination stage within the Common Market, the assessment has therefore focused on the marketing segment.

Vegetable Oils

38. Vegetable oils, including oilseed oils, are an agricultural commodity whereby oil-bearing crops are crushed and pressed to produce oil in crude form. The oil may be a blend of several crops (for example, groundnut, linseed, palm, palm kernel, rape, soya, and sunflower). The crude oil can be further processed to produce refined oil for cooking or renewable fuel.
39. On the demand-side, all types of vegetable oils may be processed and refined to reach the same functionality for downstream uses and further processing. This is reflected in the fact that both nutritional values and sale prices are comparable. The CID is of the view that, on the supply-side, the production, transport and marketing methods are also broadly consistent between vegetable oils. Suppliers are able to switch production between vegetable oils and market them in the short term without significant additional costs.

² Decision of the 85th Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Control by Viterra USA Investment, LLC of Gavilon Agriculture Investment, Inc



40. In Viterra/Bunge³, the CID considered the European Commission's (EC) market investigation *ADM/ WILMAR/OLENEX JV*,⁴ which pointed towards a limited degree of substitutability between different types of vegetable oils. Market participants highlighted differences in terms of composition, nutritional and taste profiles, and price between the different vegetable oils that limit their interchangeability. It was found that sunflower and rapeseed oils are generally easier to substitute to each other than soybean oil, although sunflower oil has been historically more expensive and is considered by some respondents as a premium oil compared to the other two. Furthermore, all of the customers responding to the market investigation indicated that they would not be able to easily switch their orders to a different oil type following a 5-10% price increase. Nonetheless, the market investigation also revealed a certain degree of supply side substitutability, noting that while each type of vegetable seed oil requires somewhat different processing equipment and treatment (e.g., refined sunflower oil refining for bottling requires dewaxing, rapeseed oil contains phospholipids to be controlled), a number of refineries are already set up to be able to process several different types of vegetable oils (typically at least soybean, rapeseed, sunflower, corn).
41. The CID further considered that in Africa, different regions have different preferences for vegetable oils. In terms of oils and fats production, the Sub-Saharan region mainly produces palm oil in West Africa, and soyabean and sunflower in Southern and East Africa respectively.⁵ Major palm oil producing countries include Nigeria, Ghana, Côte d'Ivoire, and Cameroon. South Africa produces sunflower and soyabean oils while Tanzania produces sunflower oil.
42. The CID further considered that in the African Market Observatory (AMO)⁶ project by Centre for Competition, Regulation and Economic Development ("CCRED") in collaboration with the Commission, producers in Malawi, Zambia and Zimbabwe indicated that the only limit to producing vegetable oil from oilseeds such as sunflower and cotton as opposed to only from soybeans is the availability of these oilseeds. The CID noted that the majority of production is skewed towards soybeans, with investments in increasing crushing capacity in Malawi, Zambia and Zimbabwe, and importantly driven by the growing local and regional poultry industries (Nsomba et al., 2022b).
43. The CID noted that the AMO project gathered that from a supply perspective, oilseed crushers have over the last 5 years moved to installing or renovating

³ Decision of the 103rd Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Viterra Limited by Bunge Limited

⁴ EC Case M.7963 - ADM / WILMAR / OLENEX JV, paragraphs 27-31.

⁵ https://www.ofimagazine.com/content-images/news/Sub-Saharan-Africa_2022-06-28-134655_aaaz.pdf

⁶ The AMO project monitors prices within and across countries in East and Southern Africa at different levels of supply chains and assesses other market dynamics of the workings of markets for staple foods.



production capacity to allow for crushing various types of seeds, with a combination of mechanical crushing and solvent extraction.

44. The AMO project, however, also suggested that consumers in Southern Africa (Malawi, Zambia and Zimbabwe) predominantly consume vegetable oil from oilseeds. The most common vegetable oil consumed is soybean oil, other types of oil such as sunflower and cotton are also available in smaller quantities due to lower production. Blends of these different types of oil with palm oil are also available with the exception of Zimbabwe where only soybean, sunflower and cotton oil are consumed. In the eastern part of Africa, palm oil is predominantly consumed with the exception of Uganda where there are significant levels of sunflower oil production. It was observed that Uganda's sunflower seed production has been increasing since 2021, including projects by the Ugandan Government to distribute sunflower seed to farmers in Northern Uganda to boost Oil Crop production⁷ which has resulted in an increase in the local supply of crude sunflower oil. From the consumer side, the AMO interviews established that consumers in Uganda can switch between palm oil and sunflower oil.
45. Oil can also be segmented according to the level of processing it has undergone. Crude oil is unrefined oil which contains impurities along with other fats which may be harmful to human's health. Crude oil is refined to remove the impurities according to certain quality standards, making it fit for human consumption. Refining of oil is therefore an additional process which makes it distinct from both the demand and supply side.
46. While the CID is of the view that there may exist narrower markets for the supply of sunflower and palm oils within the broad market for the supply of vegetable oils and the type thereof, considering that there is no overlap between the activities of the parties, the CID is of the view that for the purposes of this assessment, the broad market for the supply of vegetable oils can be adopted.
47. In view of the foregoing discussion, the CID's assessment has therefore considered the broad market for the supply of vegetable oils.

NGFI

48. NGFI are by-products from the oil milling industry (oilseed meal) and the by-products from the starch and ethanol industry (by-products of the starch and ethanol industry (including corn gluten feed, corn germ meal, distillers dried grain)⁸. NGFI are used to meet the protein requirements of livestock whereas grains supply the majority of the starch and fibre needs of animals. Grains and

⁷ <https://naads.or.ug/naads-distributes-76-tons-of-sunflower-seed-to-farmers-in-northern-uganda-to-boost-oil-crop-production/>

⁸ https://ec.europa.eu/competition/mergers/cases/decisions/m5550_20090708_20310_en.pdf



NGFI are thus separately required to produce compound feed that fulfils the nutritional needs of different animal species.

49. Animal feed producers use a variety of ingredients to achieve a suitable mix of energy, protein, fats, fibre, vitamins and minerals in the end product. The feed component allows the animal to obtain its required mix of nutrients. To this end, animal feed producers have a choice of the main feed ingredient. NGFIs can be obtained from soybean, cottonseed meal, groundnut meal, sunseed meal, rapeseed meal, sesame meal, corn germ meal, corn gluten feed, sugar beet pulp pellets, DDGS, palm kernel meal, copra meal, linseed meal and fish meal.
50. The CID has considered NGFIs can be segmented according to oilseed meals, animal meal, and pulp, having regard to the different nutritional, technical and toxicity limits for different animal groups, which reduces the interchangeability of the various components of feedstuff⁹. The CID further noted that within the oilseed meal market, soybean meal is the meal that has the highest protein content of all NGFI meals (at 44-50% as opposed to rapeseed or sunflower meal at 28-38%)¹⁰ and deemed it to constitute an indispensable ingredient for producing feed¹¹. The CID considered EC's market investigation in *Bunge / European Oilseed Processing Facilities*,¹² which unanimously indicated that soybean meal is not entirely substitutable with other NGFI, noting that for certain animals such as poultry, lamb and young ruminants require a higher average protein content of the meal needs of above 40%, which is technically only achievable if some soybean meal is present; and that a minimum of 25% of the oilseed meal needs at all times to be soybean based.
51. The CID considered that there were strong indications that within the broader category of NGFI, soybean meal constitutes a distinct product market considered both the broad market for NGFI and the narrower market for soybean meal.
52. The CID is of the view that the same approach can be adopted for this transaction.
53. On the basis of the foregoing assessment, the CID considers that the relevant product markets are:
 - i. the marketing of vegetable oils, and
 - ii. the marketing of NGFI (with potential segmentation for soybean meal).

⁹ Decision of the 103rd Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Viterra Limited by Bunge Limited

¹⁰ EC Case M.8199 - BUNGE / EUROPEAN OILSEED PROCESSING FACILITIES, paragraph 13.

¹¹ EC Case No COMP/M.4042 - TOEPFER / INVIVO / SOULÈS, paragraph 18.

¹² EC Case M.8199 - BUNGE / EUROPEAN OILSEED PROCESSING FACILITIES, paragraphs 13-14.



Relevant Geographic Market

54. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising "**...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**"¹³.
55. The AMO project considered that vegetable oil production in the southern part of Africa is also supplemented by imports of soyabean crude oil from countries such as South Africa and Argentina. The imported crude oil is refined for distribution and for sale to retail markets. In Kenya and Rwanda, the vegetable oil value chain starts from the importation of crude palm oil for refining and sale in the retail market. DRC grows the palm fruit which it processes into vegetable oil and considered that local production is not sufficient and this is supplemented with imports of crude palm oil for processing. In Uganda, in addition to the importation of crude palm oil for refining, sunflower is locally grown and crushed for vegetable oil.
56. The CID has previously noted that most of the oils and fats produced in the Sub Sharan region is for local consumption and domestic requirements are greater than the region can supply on its own.
57. The CID noted that the target does not have any processing activities or own any industrial assets (including plants) in the Common Market. Its sales activities in the Common Market are therefore conducted on an import basis. Certain products supplied into the Common Market by the merging parties are procured from countries outside of the Common Market.
58. In view of the foregoing, the CID is satisfied that the relevant markets are at least COMESA-wide and possibly global in scope.

Conclusion of Relevant Market Definition

59. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID has identified the relevant markets as:
- i. **the marketing of vegetable oils (which is at least COMESA-wide, and**
 - ii. **the marketing of NGFI (with potential segmentation for soybean meal) which is at least COMESA-wide.**

¹³ Paragraph 8



Market Shares and Concentration

60. The parties submitted that the BISA's share of supply for the marketing of vegetable oils and NGFIs in the Common Market is de minimis, less than 3%¹⁴.
61. The parties submitted its market shares and that of their competitors in respective markets for the marketing of vegetable oil in the Common Market and the marketing of NGFIs in the Common Market per Tables 3 and 4 below¹⁵.

Table 3: Market Shares for the marketing of vegetable oil in the Common Market

Entity	Market Shares
Wilmar	[30 – 40]%
Apical	[20 – 30]%
MOI	[10 – 20]%
Cargill	[10 – 20]%
Premium Vegetable Oils SDN BHD	[0 – 5]%
BISA	[0 – 5]%
Others (Including Archer-Daniels-Midland (ADM), Afia, Louis Dreyfus, PT museum mass, Mac world, Palmtop, Pacific Interlink)	[10 – 20]%

Table 4: Market Shares for the marketing of NGFIs in the Common Market

Entity	Market Shares
Export Development Canada	[10 – 20]%
ADM	[10 – 20]%
The Andersons	[10 – 20]%
VA Intertrading	[5 – 10]%
Setaf Saget	[5 – 10]%
BISA	[0 – 5]%
Others (including Al Ghurair, Al-Delta, Amaggi, Avere, COFCO International (COFCO), Louis Dreyfus, Kernel Trade)	[30 – 40]%

¹⁴ Confidential information claimed by the merging parties

¹⁵ Confidential information claimed by the merging parties



62. From the tables above, it is noted that BISA is a smaller player in the two relevant markets in the Common Market, and that the merger would result in combined market shares that would not exceed 5% in any of the markets.

Consideration of Third-Party Views

63. Submissions were received from the national competition authorities of Egypt, Kenya, Libya and Mauritius which did not raise any competition concerns which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

64. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
65. The CID, therefore, approved the transaction.
66. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 14th day of December 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah

