COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 (0)111 772 466/529/530
+265 (0) 999 970 269
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

**Case File No. CCC/MER/08/30/2024**

# Decision[1] of the 113th Meeting of the Committee Responsible for Initial Determinations Regarding the Acquisition of Sole Control of Energean Capital Ltd by CIEP Spin Bidco Ltd[2]

**ECONOMIC SECTOR**: Energy

COMESA COMPETITION COMMISSION
20 DEC 2024

**20 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.
[2] As of 30 August 2024, CIEP Spin Bidco Ltd trades as Thesian Energy Limited

## 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 30 August 2024, the Commission received a notification for approval of the merger regarding the proposed acquisition by CIEP Spin Bidco Ltd ("**Carlyle BidCo**"), which is indirectly owned by investment funds managed by affiliates of entities doing business as "The Carlyle Group" ("**Carlyle**" or "**the Acquiring Group**") of sole control of Energean Capital Ltd ("**Energean Capital**"), and together with its subsidiaries and affiliates, the "**Target Group**", 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.

COMESA COMPETITION COMMISSION
20 DEC 2024

## The Parties

### *Carlyle Bidco (the "acquiring firm")*

4. Carlyle BidCo is a company incorporated under the Laws of the United Kingdom and is indirectly controlled by funds managed by affiliates of the Carlyle Group ("**Carlyle**" or the "**Acquiring Group**").

5. Carlyle BidCo is a newly created acquisition vehicle indirectly owned and controlled by Carlyle International Energy Partners II, S.C.Sp. and Carlyle International Energy Partners II – EU S.C.Sp. (together with their affiliates and subsidiaries, the "**CIEP II Fund**"), which are investment funds managed by affiliates of Carlyle. Two co-investment entities affiliated with CIEP II Fund ("**CIEP II Co-Invest**"), also managed by affiliates of Carlyle, will invest alongside the CIEP II Fund.

6. Carlyle is a global investment firm, which manages funds that invest globally across four business segments, namely, (i) corporate private equity; (ii) real assets (iii) global credit; and (iv) investment solutions.

7. The parties submitted that CIEP is Carlyle's international energy franchise. The parties further submitted that CIEP has established itself as one of the leading private equity investors in oil and gas outside North America. The CIEP franchise is focused on investments in the oil and gas industry covering the entire value chain (exploration and production, midstream, refining and marketing, chemicals and oil fields services) across Europe, Africa, Asia and Latin America. CIEP has a proven track record of responsibly owning and operating upstream oil and gas companies, having successfully executed sizeable oil and gas carve out transitions safely and on time.

8. The parties have submitted that in the Common Market, the Acquiring Group operates in all Member States, except Comoros and Eritrea. Table 1 below presents the activities of the Acquiring Group, as at 1 July 2024, in the Common Market.

***Table 1 – Activities of the Acquiring Group in the Common Market***[3]

| Undertaking | Member State | Activity |
|---|---|---|
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |

[3] Confidential information claimed by merging parties. The Commission notes that the filing indicates that Amecor and Jagex as part of the Acquiring Group. The Commission was informed on 7 October 2024 that Carlyle has divested its interest in two portfolio companies listed in the COMESA filing (Amecor, Jagex), so they are no longer part of the acquiring group.

| | | |
|---|---|---|
| [redacted] | [redacted] | |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |

| | | |
|---|---|---|
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | | [redacted] |

| | | |
|---|---|---|
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |

***Energean Capital (the "target")***

9. The target, Energean Capital, comprises certain assets of Energean PLC (the "**Seller**") which are active in the exploration, development, and production of oil and gas in the Mediterranean (namely in Egypt, Italy and Croatia). Energean's Capital portfolio consists primarily of gas-weighted assets.

10. The target is engaged in:

    a) The exploration and development of oil and gas assets, which activity involves the identification and assessment of new oil and gas prospects through geological and geophysical surveys, conducting exploratory drilling to discover new reserves, and appraising the potential of these discoveries to determine their commercial viability.

    b) The management of producing assets, which activity involves operating and optimizing existing oil and gas fields, ensuring efficient extraction, processing, and transportation of hydrocarbons. The oil and gas extracted from producing assets is sold on a wholesale basis to refiners.

11. In the Common Market, Energean Capital is active only in Egypt, in oil and gas exploration and production activities and operates

    a) three producing concessions (operated offshore); and

    b) two exploration concessions (one non-operated offshore and one operated onshore).

## 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 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".*

COMESA COMPETITION COMMISSION
2 0 DEC 2024

13. 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

14. The notified transaction involves the proposed acquisition by Carlyle BidCo of 100% of the shares in Energean Capital. The parties have submitted that two co-investment entities affiliated with CIEP II Co-Invest, also managed by affiliates of Carlyle, will invest alongside the CIEP II Fund. As a result of the Transaction, CIEP II Fund and CIEP II Co-Invest will acquire indirect control of the Target Group.

## Competition Analysis

### Consideration of the Relevant Markets

#### *Relevant Product Market*

15. Paragraph 7 of the Commission's Guidelines on Market Definition provides 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".*

16. The CID noted that Carlyle indirectly controls a number of portfolio companies that are active in the oil and gas sector. The CID also noted that Energean Capital is active in oil and gas exploration and production activities in Egypt only.

17. The CID observed that the activities of the merging parties overlap as below:

    a) The exploration of oil and gas;

    b) The development, production, and upstream wholesale supply of crude oil;

    c) The development, production, and upstream wholesale supply of gas.

<u>Exploration of gas and crude oil</u>

18. The upstream level of the oil and gas industry comprises of exploration activities, which include finding new potential reserves of oil and gas through the use of geological surveys and thereafter obtaining land rights and the development thereof.

COMESA COMPETITION COMMISSION
2 0 DEC 2024

19. The CID has previously segregated the market for the exploration of crude oil and natural gas market from the production and supply market[4]. Exploration is deemed as a separate activity from the production and supply because these activities may not always be conducted by one and same enterprise and the competition dynamics and the customer at each level differs. Exploration is not a market which is open to all market participants. Rights of exploration are given by a host country to one or a consortium of enterprises. The main customer at the exploration stage is the Government of the country which has given the exploration rights. Once crude oil and gas has been found, other entities can come in to exploit the products.

20. The CID has previously considered that the exploration of crude oil and gas comprises of a single product market because at exploration stage, the contents of the reserve are unknown[5]. Noting that the formation of crude oil and gas occur through the same process, that is, from fossilised animals and plants, and may be found at the same place, the CID considered that the exploration of crude oil and natural gas comprises of a single relevant product market[6].

21. In view of the foregoing, and in line with its previous decisional practice, the CID considered that the exploration of crude oil and natural gas comprises of a single relevant product market.

*Production and supply of gas and crude oil*

22. Where an oil reserve has been identified, the site is drilled to extract and produce gas and crude oil.

23. The CID has previously considered that along the value chain of crude oil/natural gas production and for competition assessment, it is the supply which should be considered as a market activity since at this stage the products are available for trading to customers[7].

24. In line with its decisional practice, the CID considered the other relevant markets as respectively, the wholesale supply of natural crude oil and the wholesale supply of gas.

25. The CID's decisional practice has considered the upstream wholesale production and supply of crude oil as distinct from the upstream wholesale production and supply of natural gas and thus assessed these markets separately[8]. Distinctions between the two markets can be drawn based on the different usages that crude oil and natural gas are intended for. For instance, oil is mainly used for transportation as opposed to gas, which is mainly for power generation and the equipment, items, machines that

---

[4] Decision of the 101[st] Committee Responsible for Initial Determinations Regarding the Merger Involving Abu Dhabi National Oil Company and OMV Aktiengesellschaft

[5] *Ibid*

[6] *Ibid*

[7] *Ibid*

[8] *Ibid*

COMESA COMPETITION COMMISSION * 20 DEC 2024 would allow usages of the two are different and this would limit substitution. Further, crude oil and gas are subjected to different costs (i.e., transportation, storage) and pricing constraints which is likely to limit their substitution.

26. Based on the foregoing, for the purposes of this transaction, the CID considered the wholesale production and supply of natural gas and the wholesale production and supply of crude oil as separate relevant markets.

27. In view of the activities of the merging parties, the CID defined the relevant product markets as the market for the:

    a) **exploration of oil and gas;**
    b) **production and wholesale supply of natural gas; and**
    c) **production and wholesale supply of crude oil.**

***Relevant Geographic Market***

28. The Commission 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**"[9].

*The exploration of oil and gas*

29. The CID has previously considered that the exploration of oil and gas market is undertaken on a global basis given the players operate at a global level[10]. The players can engage in exploration activities in different jurisdictions globally if they obtain the requisite licenses issued by national governments to conduct these activities. Therefore, the market is likely to be categorised as global.

30. In line with its decisional practice, in the current transaction, the CID considered the relevant market for the exploration of oil and gas to be global.

*The wholesale supply of crude oil and the wholesale supply of natural gas*

31. The CID has previously concluded that the supply of crude oil and natural gas takes place at the global level wherein their pricing, demand and supply are subjected or are influenced by global forces[11]. The CID considered that the players in these markets operate globally and can switch supply across the globe as influenced by demand and supply forces, for instance. Further, from a customer perspective the demand pattens are not limited to national boundaries but rather the availability of

---

[9] Paragraph 8

[10] Decision of the 101st Committee Responsible for Initial Determinations Regarding the Merger Involving Abu Dhabi National Oil Company and OMV Aktiengesellschaft

[11] Decision of the 101st Committee Responsible for Initial Determinations Regarding the Merger Involving Abu Dhabi National Oil Company and OMV Aktiengesellschaft

COMESA COMPETITION COMMISSION
2 0 DEC 2024

supply on the global market such that in an event of 5 – 10% small but significant non-transitory increase in the price for crude oil or natural gas, customers are able to shift to global suppliers.

32. In view of the going, the markets for the wholesale supply of crude oil; and the production and supply of natural gas were considered as global.

***Conclusion on Relevant Markets***

33. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the CID has identified the relevant markets as:

   **a) The global exploration of oil and gas;**

   **b) The global production and wholesale supply of natural gas; and**

   **c) The global production and wholesale supply of crude oil**

## Consideration of Substantial Lessening of Competition or "Effect" Test

### Market Shares and Concentration

34. The parties submitted that the above relevant markets are highly fragmented. The four biggest players, Saudi Aramco, Gazprom, Rosneft, and ExxonMobil, account for only approximately one third of the relevant markets identified above.

35. The parties further submitted that Carlyle's and Energean Capital's combined market shares in each of the relevant markets for (i) the global exploration of oil and gas, (ii) the global production and supply of natural gas and (iii) the global wholesale supply of crude oil were, respectively, no more than 0.1% in the year 2023.

36. The CID noted the market shares information for the year 2022 for the global exploration of oil and gas as presented in Table 2 below

***Table 2: Estimated Market Shares in the global market for the exploration of oil and gas in 2022***

| Entity | Market share (%) |
|---|---|
| Saudi Aramco | <15 |
| ADNOC | <10 |
| ExxonMobil | <5 |
| CPNC | <5 |
| Shell | <5 |
| Bp Group | <5 |

37. The CID noted that the relevant markets have exporters such as Saudi Arabia, Russia, Canada, United States of America, Iraq, UAE, Kuwait and Norway. The CID noted that the output of such markets is controlled by the Organisation for Petrol Exporting Countries. Notwithstanding the absence of exact market shares of competitors, the

Commission is informed by its research and from previous decisional practice that there is no player which holds a dominant position in the market for the global production and supply of natural gas and the global wholesale supply of crude oil.

38. In view of the overlap in the activities of the merging parties in each of the of the relevant market for the global exploration of oil and gas; the global production and supply of natural gas and the global wholesale supply of crude oil, the transaction will result in a market share accretion. The merged entity will after the transaction have a combined market share no more than 0.1%.

39. The CID, however, considered that the market share accretion was insignificant. Therefore, despite the market share accretion, the CID considered that the market is competitive and replete of numerous players which will continue to provide competition to the merged entity.

## Consideration of Third-Party Views

40. In arriving at its determination, the CID also considered submissions from the national competition authorities of DRC, Egypt, Eswatini, Kenya, Libya, Madagascar, Mauritius and Seychelles which confirmed the absence of competition and public interest concerns.

## Determination

41. 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.

42. The CID, therefore, approved the transaction.

43. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 20th day of December 2024

**Commissioner Dr Mahmoud Momtaz (Chairperson)**

**Commissioner Lloyds Vincent Nkhoma** | **Commissioner Vipin Naugah**