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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/04/08/2023

**Decision¹ of the Ninety-Fifth (95th) Meeting of the Committee
Responsible for Initial Determinations Regarding the Proposed
Merger involving Energy Pulse Ltd and Equator Energy Limited**

ECONOMIC SECTOR: Energy

26 June 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 25 April 2023, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the proposed merger involving Energy Pulse Ltd (“**Energy Pulse**” or the “**Acquiring Firm**”) and Equator Energy Limited (“**Equator**” 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

Energy Pulse (the Acquiring Firm)

4. Energy Pulse is a special purpose vehicle incorporated under the laws of Mauritius which will be jointly controlled by IBL Energy Holdings Ltd (“**IEHL**”) and STOA S.A. (“**STOA**”). Energy Pulse is the primary acquiring firm, which is newly created, and it therefore has no activities in the Common Market.
5. IEHL is a subsidiary of IBL Ltd (“**IBL**”), a public company incorporated under the laws of Mauritius that is listed on the Stock Exchange of Mauritius. IEHL, IBL and all other entities falling under the common control of IBL are together referred to as the “**IBL Group**”. Within the Common Market, the IBL Group is active in Comoros, Kenya, Madagascar, Mauritius, Seychelles and Uganda.
6. The IBL Group operates in several sectors, namely agro and energy, building and engineering, commercial and distribution, financial services, hospitality and leisure, life and technologies, logistics, seafood and property. In the energy sector, the IBL Group does not have any active energy projects in Kenya and the transaction notified represents the IBL Group’s entry into the energy sector in Kenya. In Mauritius, the IBL Group has controlled investments in energy related activities which are not active and/or are under development and as such is currently not active in the generation and distribution of electricity in Mauritius.
7. STOA is a joint stock company incorporated under the laws of France which is controlled by Caisse des Dépôts et Consignations and it is an impact investor in large scale infrastructure and energy projects in emerging and developing countries. STOA and all the entities falling under its common control are together referred to as the “**STOA Group**”. Within the Common Market in the 2021 financial year, the STOA Group made sales in Democratic Republic of Congo (“**DRC**”), Egypt, Kenya, Libya, Malawi, Mauritius and Tunisia.
8. The STOA Group is not involved in the generation and/or supply of electricity in any COMESA member state.
9. Energy Pulse, IBL Group and STOA Group are together referred to as the “**Acquiring Group**”.

Equator (the Target Firm)

10. Equator is a private company limited by shares, registered in accordance with the laws of the Republic of Mauritius, under registration number 140436 and whose business address is Office FF01, Endemika Business Park Phase 2, Petit Raffray, Mauritius. Maris Limited owns 70%, and Nvision Engineering Limited owns 30% of the issued share capital in Equator.



11. Equator is a commercial and industrial solar power solutions company which finances, designs, installs, operates, monitors and maintains solar power plants. Specifically, Equator provides captive (i.e., behind the meter) solar power plants whereby energy is generated at the site of the customer for immediate on-site consumption by the customer only. Further, the electricity generated by Equator is not transmitted through, or exported to, the power grid. No other infrastructure, other than the solar power plants and the internal electrical set-up (behind the meter) of the customer, is required by Equator to provide the power.
12. Within the Common Market, Equator is active in Kenya, Mauritius, Uganda, and Zimbabwe. However, in the case of Mauritius, Equator is not active in the generation and retail supply of electricity.

Jurisdiction of the Commission

13. 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.

14. The merging parties have operations in more than two COMESA Member States. The parties' combined annual turnover value in the Common Market exceeds the threshold of USD 50 million and the parties derived turnover 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 turnover 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

15. The notified transaction entails Energy Pulse acquiring 50%+1 of the issued share capital in Equator.

Competitive Assessment

Consideration of the Relevant Markets

Relevant Product Market

16. The CID observed that Energy Pulse has no activities in the Common Market, being a newly created SPV. However, the controlling entities of Energy Pulse, namely IEHL and STOA, are active in the Common Market in several sectors. It was observed that IEHL is, *inter alia*, active in the agro and energy sector in Kenya and Mauritius. Further, IEHL's projects in Mauritius are either not active or they are underdeveloped while in Kenya, IEHL shall enter the market by virtue of this transaction.
17. The CID observed that STOA is also active in several sectors including large scale infrastructure and energy projects and the operation, maintenance and development of electrical network for high and very high voltage lines. However, it was noted that in respect of operation, maintenance and development of electrical network for high/very high voltage lines, STOA provides this service in France. As for the Common Market, STOA's activities related to energy concern studies on energy transaction tariff conducted in DRC and the evaluation of tender documents in Mauritius.
18. The CID noted that the target firm is active in the production and retail supply of electricity through solar which entail the supply of electricity to end consumers. The electricity is generated at the site of the customer for immediate on-site consumption by the customer only.
19. The CID observed that there are no likely horizontal overlaps between the activities of Acquiring Group and Equator. However, the CID observed that vertical overlaps may arise in terms of the operation, maintenance and development of high voltage and very high voltage lines and the production and retail supply of electricity. To this end, the CID focused its relevant product market assessment on the generation and retail supply of electricity.

The generation and supply of electricity

20. The electricity production value chain comprises three key stages, namely generation (making electricity), transmission (moving electricity across high-voltage lines from generating plants to sub-stations), and distribution (delivering electricity to customers). The three stages constitute different and unique processes due to the way each stage is implemented and the ultimate purpose under each stage.



21. Electricity can be generated from different sources. Thus, there may be a possibility of segmenting the market for generation of electricity according to the source of generation. For instance, power may be segmented based on the following sources of generation: thermal, fossil fuels, nuclear, hydro, solar and other renewable sources such as water and wind. A further justification for such segmentation could be due to the varying characteristics of the sources of generation, the extent of availability, prices, and regulations related to each of these sources of energy². However, the CID noted that from an end user perspective, generated electricity would be similarly used for the same purpose regardless of the mode through which it was generated.
22. Transmission entails the bulk movement of electrical energy from a generating site such as a power station to an electrical sub-station where voltage is transformed and distributed to consumers or other sub-stations³. Transmission networks (or power grids) consist of towers and wires that run between them, underground cables, transformers, switching equipment, reactive power devices, and monitoring and telecommunications equipment.
23. Distribution entails the supply of electricity to end users. At this stage, high voltage electricity that is transmitted from generator is converted into lower voltage electricity by sub-station transformers and carried in wires over poles or in wires buried underground to end-user such businesses and homes.
24. The CID considered that the stages in the electricity production value chain are unique and comprise different markets by virtue of the unique processes that each entail and by virtue of the intended purpose under each respective stage. For instance, the equipment for generating electricity is bound to be different from the equipment needed for transmission of electricity. Under the former a company would require generators operated via falling water, wind, fossil fuels or nuclear to generate electricity while under the latter a company would require a power grid through which to transmit electricity once generated. Similarly, the distribution of electricity would require different equipment and investment. Thus, from a supply perspective, the dynamics required under each stage are different and the costs involved are also bound to be different. The CID also considered that a differentiation exists from an end-user perspective to the extent that the intention at generation is to produce electricity for onward supply to either a distribution company or a large customer that buys electricity in bulk. However, at distribution, the intention is for onward sale to end-customers.
25. In light of the above, the CID concluded that generation, transmission and distribution of electricity are unique processes which are not substitutable.

² Indian Competition Authority, NEEPCO / NTPC, Press Release, 24 February 2020, available at: <https://cci.gov.in/images/caseorders/en/1652267327.pdf>.

³ <https://www.power-and-beyond.com/basics-of-an-electrical-power-transmission-system-a-919739/>, accessed on 3rd June 2021 at 10:52hrs



26. The CID noted that the target generates electricity through solar for immediate supply to customers on site. Solar generated electricity entails power that is generated by a solar thermal plant facility designed for converting solar energy into electricity through a conventional thermodynamic cycle. A solar thermal power plant concentrates the solar radiation to heat a fluid with thermally conductive properties and raise its temperature until it is converted into steam which is then fed to a turbine. At this stage the thermal energy is converted into mechanical energy which is then transmitted to an alternator where its final transformation into electricity takes place. Once the thermodynamic cycle has been completed, the steam is returned to a condenser where it recovers its liquid state, and the process is repeated.
27. Solar thermal plants use collectors, photovoltaic power plant using panels consisting of photovoltaic solar cells made of silicon (monocrystalline or polycrystalline solar panels) or other materials with photovoltaic properties (amorphous solar panels)⁴.
28. The CID noted that electricity generated through solar power helps consumers spend less as it requires zero up-front investment, delivers cleaner and cheaper energy compared to power generated from the grid or from on-site generator. However, from a demand perspective, it is not unusual for customers to opt for electricity generated through other means than solar in the event of supply constraints or price changes.
29. The CID further considered that given the target generates and supplies power directly to customers, the customers are still likely to have the option to connect to the national grid and access power that maybe generated through other means than solar. Therefore, the CID resolved not to limit the market to solar as accessibility of electricity generated from other sources is also a possibility. The CID noted that generation of electricity only becomes a market activity once the electricity is supplied to the market. Therefore, the relevant market is often considered as the generation and supply of electricity and in the current transaction the supply is limited to the supply to customers at retail level.
30. The CID observed that retail supply of electricity can be divided according to customers' size ranging from large industrial customers that are connected to the high and medium voltage grid such as industry and large commercial consumers to small industrial and commercial customers that are connected to the low voltage grid such as small businesses, small and medium enterprises, and farms, and domestic customers, such as private households.
31. From a demand-side perspective, there is a difference in the quantity of electricity demanded by large customers compared to small customers. Firstly, large customers are particular in their demand of electricity because their consumption is very stable over time, with a decrease in their consumption over weekends. However, smaller industrial and domestic customers have fluctuating demand within a day. Further, large customers tend

⁴ REPSOL Global Website, available at: <https://www.repsol.com/en/energy-and-the-future/energy-transition/solar-power-plant/index.cshtml>.



to request higher voltages compared to small customers. Consequently, large customers have higher negotiating powers compared to smaller customers.

32. The CID further observed that large customers tend to be more price sensitive, since they consume large quantities, therefore, their procurement departments tend to study the commercial offers and the terms and conditions carefully. Subsequently, they have higher tendency to change suppliers if they receive a better offer. Large customers tend to differ also from smaller customers with regards to their preference towards clean energy, or electricity from fossil fuels.
33. The CID considered that for the purpose of this transaction, the exact product market definition could be left open since the transaction is not likely to raise horizontal overlaps as such it is unlikely to raise competition concerns irrespective of the market definition. The relevant product market is therefore defined as the generation and retail supply of electricity to the end consumers.

Relevant Geographic Market

34. The CID noted that the acquiring firm does not have operations in the production and retail supply of electricity to end consumers in the Common Market. As for the target, the CID noted that it generates and retail supplies electricity in Kenya, Uganda and Zimbabwe.
35. The CID considered that the geographic scope for the generation and retail supply of electricity is likely to be national. The CID noted that there exists a possibility of exporting electricity including solar generated power and even though likely, it may be costly as such substitution may not be timely. The CID noted that an entity may require setting up a power grid through which to transmit electricity once generated. In view of this limitation, the CID considered that the market for the generation and retail supply of electricity is national.
36. Premised on the foregoing discussions, and for purposes of this transaction, the CID considered that the relevant geographic markets for the generation and retail supply of electricity to end consumers is Kenya, Uganda, and Zimbabwe.

Conclusion on Relevant Markets

37. On the basis of the foregoing assessment, and without prejudice to the approach in similar future cases, the CID identified the relevant geographic markets as **the generation and retail supply of electricity in Kenya, Uganda and Zimbabwe.**

Market Shares and Concentration

38. The CID noted that the activities do not overlap in the relevant markets and that the structure of the relevant market was not likely to change as a result of the proposed transaction. This notwithstanding, the CID considered the estimated market shares and



market shares of their competitors submitted by the parties for the generation and retail supply of electricity in Kenya, Uganda and Zimbabwe as follows.

Generation and retail supply of power to end consumers in Kenya

39. The parties submitted the following estimated market shares in respect of Kenya.

Table 1: broad estimated market shares of the Target Firm and its competitors in Kenya

Company name	Estimated market share (%)
Ecoligo	[10 – 15] %
Ariya	[10 -15] %
CP Solar	[10 – 15] %
Equator Energy Kenya Limited	[7 - 11] %
Equator Energy Kenya 2 Limited	[7 – 11] %
OfGen	[7 - 11] %
Solarise Africa Holdings Kenya Ltd	[4 - 7.5] %

40. The CID observed that post-merger the target will have the highest estimated market share of [17 – 22] % in Kenya with its closest competitors having estimated market shares of [10 - 15] %. The CID noted that the market in Kenya is fragmented and comprises several firms having with market shares.

Generation and retail supply of power to end consumers in Uganda

41. The parties submitted the following estimated market shares for Uganda.

Table 2: broad estimated market shares of the Target Firm and its competitors in Uganda

Company name	Estimated market share (%)
Ecoligo	[15 – 20] %
Ariya	[17 - 22] %
Mega Joule Energy Ltd	[10 – 15] %
Equator solar	[4 - 7.5] %
OfGen	[3 – 5] %

42. The CID noted that the target has the third highest estimated market share of 15%. The CID noted that the market structure in Uganda is fragmented and will not be altered as a result of the transaction and will remain fragmented with several competitors.

Generation and retail supply of power to end consumers in Zimbabwe

43. The CID noted the following estimated market shares for Zimbabwe.

Table 3: broad estimated market shares of the Target Firm and its competitors in Zimbabwe

Company name	Estimated market share (%)
Solar Energy Projects	[5 – 10] %
Madison Solar Engineering	[1 - 4] %



Equator Energy Genco 3 Ltd	[1 – 3] %
Equator Energy Genco 2 Ltd	[0.5 -1] %
Solar Energy Projects	[0.5 – 1] %

44. The CID noted that in Zimbabwe, the target's estimated market share is minimal, and the structure will not change post-merger. Further, the target will continue to face competition from other players in the market.

Consideration of Third-Party Views

45. Submissions were received from the national competition authorities of Egypt and Mauritius 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

46. 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.
47. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 26th day of June 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

