COMESA Competition Commission
Kang'ombe House, 5th Floor-West Wing
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 (0) 1 772 466
Email- compcom@comesa.int

Common Market for Eastern and Southern Africa

Staff Paper No. 2018/03/JB/10

Decision[1] of the Fortieth Committee Responsible for Initial Determination on the Application for Authorisation of the Merger involving Rubis Caribbean Holdings Inc., Progal Petroleum Limited and Galana Madagascar Holding Limited

ECONOMIC SECTOR: Petroleum

18th March 2018 – Johannesburg, South Africa

[1] In the published version of this decision, some information may have 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 9th October 2017, the COMESA Competition Commission (hereinafter referred to as the "Commission") received an application for authorisation of a merger between Rubis Caribbean Holdings Inc. (hereinafter referred to as "Rubis"), as the acquiring firm and Progal Petroleum Limited (hereinafter referred to as "Progal") and Galana Madagascar Holding Limited (hereinafter referred to as "Galana Holding"), as the target firms.

2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (hereinafter referred to as the "Regulations"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operate in more than one COMESA Member State. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

Rubis

4. Rubis is a company incorporated under the Paris Trade and Companies Register. Globally Rubis operates bulk storage facilities, distributes petroleum products and provides support services to the downstream petroleum market. Rubis has operations in the following Member States in the Common Market: Madagascar, Djibouti, Swaziland, and Comoros.

Galana Holding

5. Galana Holding is an investment holding company which, through its subsidiaries, markets fuel, gasoline, dual purpose kerosene, lubricants and LPG in Madagascar. It supplies these products from an import storage terminal to a network of 71 petrol stations.

Progal

6. Progal is a subsidiary of Galana Africa Limited and is a sister company to Galana Holding. Progal manages the procurement of all petroleum products (save for LPG and lubricants) for Galana in Madagascar.

Nature of the Transaction

7. The transaction entails the acquisition by Rubis of 100% of the issued share capital of Progal and Galana Holdings.

Competition Analysis

8. The CID defined the relevant market as the:

- Wholesale supply of bulk and cylinder LPG in Madagascar; and
- Retail supply of bulk and cylinder LPG in Madagascar.

9. The CID observed that the merger involves the acquisition of a retail distributor of LPG in Madagascar by the sole importer and wholesaler of LPG in Madagascar. The CID observed that the merging parties hold significant market shares in the respective relevant markets. Further, the CID noted that Rubis is vertically integrated and is present in the downstream retail supply of bulk and cylinder LPG in Madagascar through Vitogaz, the Rubis branded LPG. The CID observed that post-merger, Rubis and Galana would have more than 50% market share in the downstream retail supply of bulk and cylinder LPG in Madagascar. The CID was concerned that post-merger, Rubis and Galana Holding would be in a position to behave to an appreciable extent independently of the reaction of the competitors and customers in the downstream retail supply of bulk and cylinder LPG in Madagascar. The CID raised a concern that Rubis may supply LPG to its downstream competitors on discriminatory terms to place them at a competitive disadvantage.

Determination

10. In order to address the concerns raised by the CID, the merger was approved on 30th January 2018 with the following undertakings:

a) Rubis undertake to continue to supply LPG to its existing customers on a non-discriminatory basis and on similar and transparent terms and conditions as it did pre-merger (subject to any changes in economic circumstances unrelated to the transaction).

b) The merging parties and the Conseil de la Concurrence de Madagascar shall each appoint a compliance officer who shall within thirty (30) days of each anniversary of the merger decision, meet to review compliance to the condition in (a) above by the parties.

11. However, on 23rd February 2018, the parties requested the CID to reconsider undertaking (a) above by limiting the duration of the undertaking to a period of four years.

12. The CID reviewed undertaking (a) above and limited it to a period of four years. The CID noted that the four years duration of the undertaking would not materially alter the substance of the undertakings.

13. The CID therefore approved the transaction with the following undertakings:

(a) Rubis undertake to continue to supply LPG to its existing customers on a non-discriminatory basis and on similar and transparent terms and conditions as it did pre-merger (subject to any changes in economic circumstances unrelated to the transaction), for a period of four years commencing from the date of the merger decision;

(b) The merging parties and the Conseil de la Concurrence de Madagascar shall each appoint a compliance officer who shall within thirty (30) days of each anniversary of the merger decision, for the next four years, meet to review compliance to the condition in (a) above by the parties.

14. This decision is adopted in accordance with Article 26 of the Regulations. This decision replaces the CID decision issued on 30th January 2018.

Dated this 18th of March 2018

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Commissioner Thabisile Langa

(Chairperson)

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Commissioner Patrick Okilangole

(Member)

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Commissioner Chilufya Sampa

(Member)