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**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/MER/09/37/2019**

**Decision<sup>1</sup> of the Sixty-Ninth (69<sup>th</sup>) Committee Responsible for  
Initial Determination Regarding the Proposed Acquisition of 100%  
Shares in Iberafrica Power (E.A.) Limited by Africa Infrastructure  
Fund I K/S via AIF East Africa Power & Energy LLP**

**ECONOMIC SECTOR: Energy**

**9<sup>th</sup> March 2020**

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<sup>1</sup> 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## Information and Relevant Background

1. On 1<sup>st</sup> November 2019, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a proposed merger involving the proposed acquisition of 100% Shares in Iberafrica Power (E.A.) Limited (“**Iberafrica**”) by Africa Infrastructure Fund I K/S (**AIF I**) via AIF East Africa Power & Energy LLP (the “**acquirer**”).
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the “**Regulations**”). 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. The Committee Responsible for Initial Determination (the “**CID**”) established that the parties operate in more than one COMESA Member State and they meet the prescribed notification thresholds. 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

### *AIF East Africa Power & Energy LLP (the Acquirer)*

4. It was submitted that the acquirer is a limited liability partnership incorporated in England and Wales and is wholly owned by AIF 1. The acquirer has been established as a special purpose vehicle by AIF 1 to invest in, own and operate power and energy infrastructure assets in Kenya with a target to invest up to US\$ 200 million in equity capital in greenfield and brownfield power and energy infrastructure assets in Kenya. AIF 1 is a Danish limited partnership established as an investment fund to create and enable opportunities through investments in African infrastructure whose purpose is to support sustainable economic growth and prosperity on the African continent. AIF is controlled by A.P. Moller Capital P/S which is an investment arm of the AP Moller Group. The AP Moller Group has operations in the following Member States of COMESA: Burundi, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

### *Iberafrica (the Target Undertaking)*

5. It was submitted that the target undertaking is a company incorporated in Kenya. Iberafrica currently owns and operates a 52.5 MW heavy fuel oil fuelled Nairobi South Power Plant (NSPP II) situated at Lunga Lunga Road industrial area. It was submitted that Iberafrica has a Power Purchase Agreement with Kenya Power and Lighting Company (KPLC) for NSPP II which will expire in 2034. KPLC is the sole utility company licensed to purchase and distribute grid connected electricity in Kenya. The target is 100% controlled by First Independent Power (Kenya) Limited (FIPK), a Kenya private company limited by shares and wholly owned by Global Power Generation, S.A. which is in turn owned by Naturgy Energy Group, S.A. and Wren House

Infrastructure Management Limited. Iberafrica has operations in one COMESA Member State namely, Kenya.

### **Nature of the Transaction**

6. The parties submitted that the First Independent Power (Kenya) Limited is disposing of 100% of its shares in Iberafrica to AIF I via AIF East Africa Power & Energy LLP.

### **Competition Analysis**

7. The CID observed that the parties were not involved in the same activities within the Common Market. It was observed that the acquirer is a fund that invests in the energy sector while the target was active in the actual generation and supply of electricity.
8. The CID defined the relevant market as the market for the generation and wholesale supply of electricity in COMESA.
9. The CID observed that the transaction does not result in a change in the market structure due to the absence of any overlapping relation between the parties. It was further observed that the market for the generation and wholesale supply of electricity is competitive due to the presence of alternative producers of electricity.

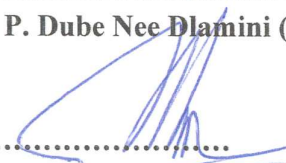
### **Determination**

10. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID therefore approved the transaction.
11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 9<sup>th</sup> March, 2020



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**Commissioner Thembelihle P. Dube Nee Dlamini (Chairperson)**



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**Commissioner Deshmuk Kowlessur**



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**Commissioner Brian M. Lingela**