Decision¹ of the Sixty-Ninth (69th) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of the Assets of Samfuel Limited by KenolKobil Plc

ECONOMIC SECTOR: Petroleum

9th March 2020

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

1. On 10th February 2020, the COMESA Competition Commission (hereinafter referred to as the “Commission”) received a notification for approval of a merger involving KenolKobil Plc (“KenolKobil”) and Samfuel Limited (“Samfuel”).

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

KenolKobil (the Acquirer)

4. The parties submitted that the acquiring undertaking, KenolKobil, is a company incorporated in Kenya. KenolKobil is acting through its subsidiary, Kobil Zambia Limited, a private limited liability company incorporated under the laws of the Republic of Zambia.

5. The KenolKobil group is an indigenous Kenyan oil marketing conglomerate that markets petroleum products in the downstream market and trades in refined petroleum products which include motor fuels, industrial oils, LPG, aviation fuels, lubricants and various other specialist oils. KenolKobil Plc operates in the following COMESA Member States: Burundi, Ethiopia, Kenya, Rwanda, Uganda and Zambia.

Samfuel (the Seller)

6. It was submitted that the seller, Samfuel Limited is a private limited liability company incorporated under the laws of the Republic of Zambia with its registered business address at Plot No. 8264 Kabwe Road, Post Office Box Number 71451, Lusaka, Zambia. The core business of Samfuel is the storage, distribution and supply of petroleum products, lubricants, bitumen and chemicals in Zambia. Samfuel has operations only in one COMESA Member State, namely Zambia.

Nature of the Transaction

7. The parties submitted that the proposed transaction entails the disposal by Samfuel of ten (10) petroleum retail outlets in Zambia to KenolKobil through Kobil Zambia Limited.
Competition Analysis

8. The CID defined the relevant markets as follows:
   a) Retail supply of automotive fuels in Ndola;
   b) Retail supply of automotive fuels in Chingola;
   c) Retail supply of automotive fuels in Kitwe;
   d) Retail supply of automotive fuels in Kapiri;
   e) Retail supply of automotive fuels in Kabwe; and
   f) Retail supply of automotive lubricants and industrial lubricants in the Common Market.

9. The CID observed that the transaction would result in market share accretion in the identified relevant markets. However, the CID observed that there were other players in the relevant markets with significant market positions. As such, the CID did not identify any significant competition concerns likely to arise post-merger which could impede the establishment of competitors in the Common Market.

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 9th day of 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