



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**

Case File No. CCC/MER/3/5/2020

Decision¹ of the Seventy-First (71st) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving Red Rocket Africa and Tororo Solar North Limited

ECONOMIC SECTOR: Energy

8th June 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 20th March 2020, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) received a notification for approval of a merger involving Red Rocket Africa and Tororo Solar North Limited.
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

Red Rocket Africa (the Acquirer)

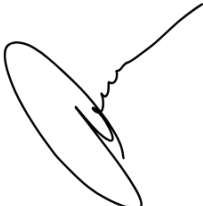
4. It was submitted that Red Rocket Africa is a limited liability private company incorporated in accordance with the laws of Mauritius. Red Rocket Africa is controlled by Evolution II Fund. It has been submitted that the acquiring group, in COMESA Member States, is largely constituted of investment holding firms that do not themselves offer any products and/or services. The Acquiring Group is operative in the following COMESA Member States: Burundi, Mauritius and Kenya. Relevant to the proposed merger is that Evolution II Fund exercises a controlling interest over Alten Kenya Solarfarms B.V. (“Alten Kenya”), also an IPP. Alten Kenya has been awarded preferred bidder status in respect of its Kesses Project, a 50 MW solar photovoltaic plant, which is located in Kenya.

Tororo Solar North Limited (the Target)

5. It was submitted that Tororo Solar North Limited is an independent power producer (“IPP”) managing Tororo Solar Plant. Tororo Solar Plant is a solar photovoltaic utility-scale power plant in Uganda, with a capacity of 10MW, and is located in Tororo District. Tororo Solar North Limited is operative in Uganda.

Nature of the Transaction

6. It was submitted that the notified transaction is an equity investment transaction in terms of which Mauritian equity investment funds, Evolution II (Mauritius) LP and Evolution II (Mauritius) No 2 LP, will invest in Tororo Solar North Limited, indirectly via its subsidiary Red Rocket Africa. This investment takes place alongside existing senior management of Building Energy S.p.A (the seller) in a joint-management buy-out (the “Proposed Transaction”).

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Competition Analysis

Relevant Product Market

7. The CID observed that both parties are present in the renewable energy sector; the target being an independent power producer in Uganda; and the Acquiring Group holding controlling interests in Alten Kenya, an independent power producer in Kenya.
8. The CID observed that the parties are active in the generation and wholesale distribution of electricity, which can be distinguished from retail activities which encompass sale of electricity to final consumers. Electricity is a secondary commodity produced through primary products such as oil, coal, natural gas, or solar power, in power plants and generation facilities. The generated energy is then transported through transmission networks to the wholesale buyers or distribution companies who acquire the electricity and sell it on to other end users in the retail market. The CID considered that generation and wholesale supply of electricity as one single relevant product market because generation of electricity is not a market activity as long as the electricity is not sold.
9. With respect to the energy mix utilised by the undertakings for the electricity production, the CID made no distinction with respect to the resources from which electricity is generated in the power plants. The merging parties confirmed that the technology used to generate electricity does not influence the network or transmission infrastructure.
10. Noting that the competitive assessment would not be materially altered under any alternative market definition, the CID thus defined the relevant product market as the generation and wholesale distribution of electricity.

Relevant Geographic Market

11. The CID considered that differences in the regulatory framework governing electricity trade would create different competitive environments across Member States. The CID did not come across evidence of significant interconnection capacities between Member States and noted that the target was only active in Uganda.
12. The CID has thus defined the relevant market as the generation and wholesale supply of electricity in Uganda.
13. The CID observed that the transaction would not result in a change in the market structure due to the absence of any horizontal overlap in the activities of the parties pre-merger. The CID therefore concluded that the transaction will not lead to any increase in market concentration.

Determination

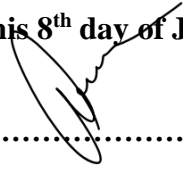
14. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it as the parties activities do not overlap in the identified relevant market. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID therefore approved the transaction.

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

Dated this 8th day of June, 2020

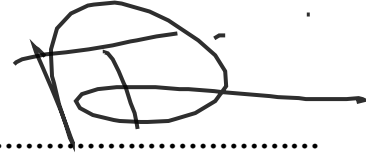


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Commissioner Islam Tagelsir Ahmed Alhasan (Chairperson)



Commissioner Brian M. Lingela



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Commissioner Thembelihle P. Dube née Dlamini