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Common Market for Eastern
and Southern Africa

27th April 2021

CCC Merger Inquiry Notice No. 11 of 2021

Notice of Inquiry into the Proposed acquisition by AIF Thika Power Holding LLP of 100% shares in Thika Power Limited and Thika Power Services Limited

It is hereby notified in terms of Article 26(6) of the COMESA Competition Regulations (the “**Regulations**”) that the COMESA Competition Commission (the “**Commission**”), after receiving a notification in terms of Article 24 of the Regulations regarding the proposed acquisition of 100% shares in Thika Power Limited (“**TPL**”) and Thika Power Services Limited (“**TPSL**”) (together the **Target entities**) by AIF Thika Power Holding LLP (“**AIF Holdings**”) (the “**Proposed Transaction**”), intends to embark on an inquiry in terms of Article 26 of the regulations.

The parties have submitted that AIF Holdings is a limited liability partnership organized and existing under the laws of England and Wales. It is submitted that AIF Holdings is controlled by AIF East Africa Power & Energy LLP, which is a wholly owned subsidiary of Africa Infrastructure Fund I K/S (AIF I). AIF Holding was established as a special purpose vehicle by AIF I to invest in, own and operate power and energy infrastructure assets in Kenya and has a target to invest up to USD 200 million in equity capital in greenfield and brownfield power and energy infrastructure assets in Kenya.

The parties have submitted that AIF I is a Danish limited partnership, established as an investment fund to create and enable opportunities through investments in African infrastructure and whose purpose is to support sustainable economic growth and prosperity on the African continent. AFI is controlled by A.P Møller Capital P/S through a management agreement to manage stand-alone funds to invest in infrastructure in emerging markets.

The AP Møller Group offers container liner shipping, container terminal services, inland transportation, inland services, supply chain management services, harbour towage, reefer container manufacturing, and electricity generation (through AIF I). In the Common Market, the AP Møller Group has operations in the following Member States: Burundi, Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

The parties have submitted that TPL, a company incorporated in Kenya, owns the Thika Power Plant which is an 87MW combined cycle heavy fuel oil power plant located 5 km from the town Thika, 38 km north-east of Nairobi. The entire power output is contracted to Kenya Power and Lighting Company under a 20-year Power Purchase Agreement, from 2014–2034. The plant was commissioned in 2014 and consists of five heavy fuel oil generators and a 7MW steam turbine.

The parties have submitted that TPSL is a company incorporated in Kenya and is the manpower services provider with one customer, TPL. TPSL provides the following services:

- Manpower management
- Technical human resource services
- Recruitment and placement of the outsourced positions.

The parties have submitted that both TPL and TPSL are 100% controlled by Thika Holding Limited (“**THL**”), a company incorporated in the British Virgin Islands. THL is owned by Melec PowerGen Inc. BVI (as to 90% shareholding) and Africa Energy Resources Pte. Ltd. (as to 10% shareholding). In the Common Market, both TPL and TPSL have operations only in Kenya.

The Commission will, in accordance with the provisions of the Regulations, determine, among other things, whether or not the proposed transaction is likely to substantially prevent or lessen competition within the common market and whether the proposed transaction is or would be contrary to the public interest as provided for under Article 26 of the Regulations.

In view of this, the Commission hereby gives notice to all interested stakeholders, including competitors, suppliers and customers of the parties to the proposed transaction to submit written representations to the Commission with regard to the subject matter of the proposed inquiry by emailing them to: sbooluck@comesa.int. All written representations should be sent to the Commission not later than 17th May 2021.

If you wish to seek further details and/or clarifications on any aspect of this proposed transaction or need assistance you may get in touch with **Ms. Sandya Booluck, Senior Analyst, Mergers and Acquisitions** on Tel: +265 (0) 1 772 466 or sbooluck@comesa.int.

All written representations submitted to the Commission will be treated with the strictest confidentiality and will only be used for the purpose of this inquiry.