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Common Market for Eastern and Southern Africa

Case File No. CCC/ MER/08/36/2022

Decision[1] of the Ninetieth (90th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Sole Control of Abu Dhabi Future Energy Company – P.J.S.C. by Abu Dhabi National Energy Company – P.J.S.C.

COMESA COMPETITION COMMISSION
19 DEC 2022

ECONOMIC SECTOR: Energy

19 December 2022

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 1 September 2022, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed acquisition by Abu Dhabi National Energy Company - P.J.S.C. ("**TAQA**") of sole control of Abu Dhabi Future Energy Company - P.J.S.C. ("**Masdar**" together with its controlled affiliates, the "**Target Firm**"), pursuant to Article 24(1) of the COMESA Competition Regulations (the "**Regulations**").

2. 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. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

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The Parties

TAQA (the acquiring undertaking)

4. TAQA is an entity incorporated in accordance with the laws of the Emirate of Abu Dhabi which is ultimately majority owned by Abu Dhabi Developmental Holding Company – P.J.S.C. ("**ADQ**"). TAQA and ADQ are referred to as the Acquiring Group. TAQA is headquartered in Abu Dhabi and listed on the Abu Dhabi Securities Exchange. Established in 2005, TAQA is a fully integrated utility company, with power and water generation, transmission, and distribution assets, as well as upstream and midstream oil and gas operations. TAQA aims to provide sustainable, clean, and reliable power and water.

5. The parties submitted that TAQA does not control any firm in the Common Market. However, ADQ is active in the Common Market through various portfolio companies in the following COMESA Member States: Burundi, Democratic Republic of Congo, Djibouti, Egypt, eSwatini, Ethiopia, Kenya, Libya, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda and Zambia.

Masdar (the target undertaking)

6. Masdar is a company incorporated under the laws of the Emirate of Abu Dhabi. It is active in renewable energy and sustainable urban development. Masdar develops renewable energy projects in the Middle East and North Africa (**"MENA")** and other international markets, with a focus on clean technologies. Masdar is supporting UAE's transition towards a knowledge-based economy. A catalyst for development in the Arab world over the past decade, Masdar is demonstrating how the business community can deliver on the global sustainability agenda.

7. It was submitted that Masdar is a developer and operator of utility-scale renewable energy projects, community grid projects, and energy services consultancy. Its clean energy divisions comprise the following units:

    a. **Asset management and technical services**: this unit is responsible for managing the project's return on investment, its relationships with key stakeholders, and all project-related risks and opportunities, including the company's strategic exit from a project;

    b. **Business development and investment services**: this unit oversees Masdar's local and global business and project origination, development and acquisition activities of utility-scale clean energy projects, including both greenfield and brownfield projects;

    c. **Energy services and solutions**: this unit comprises three main functions namely:

        - Operations and Maintenance Services, for renewable energy projects;

- Energy Services, which support Masdar's clients in adopting sustainability best practices across their operations, providing additional support in the form of project financing options and performance contracting agreements; and
- Project Management Services, which provide life-cycle project management services and deliver renewable energy and energy-efficiency projects.

d. **Delivery, bids, and supply chain services**: this unit oversees Masdar's participation in global renewable energy Independent Power Producer (IPP) competitive bids and the delivery of Masdar's utility-scale renewable energy projects across the globe, while managing the Clean Energy unit's procurement activities.

8. Masdar is particularly active in the generation of photovoltaic power concentrated solar power, wind power, and waste-to-energy power and hydrogen projects. Masdar provides energy storage solutions and is engaged in developing demonstration technologies in the field of renewable energy.

9. The parties submitted that within the Common Market, Masdar is active in Egypt.

Jurisdiction of the Commission

10. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and

b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million,

unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

11. The merging parties have operations in more than two COMESA Member States. The parties' combined annual turnover value in the Common Market exceeds the threshold of USD 50 million and each of at least two of the parties derived turnover or asset value of more than USD 10 million whichever is higher in the Common Market. In addition,

the merging parties do not achieve more than two-thirds of their respective COMESA-wide asset value within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

12. The transaction concerns the proposed acquisition by TAQA, an entity ultimately controlled by ADQ, of sole control of Masdar (an entity wholly-owned and controlled by Mubadala Investment Company ("**Mubadala**"). Pursuant to the proposed transaction, TAQA will acquire a stake of 43% in Masdar. Mubadala will maintain a 33% non-controlling interest in Masdar, and Abu Dhabi National Oil Company (ADNOC) P.J.S.C ("**ADNOC**") will acquire the remaining non-controlling stake of 24%.

13. The parties submitted that the Proposed Transaction will result in the creation of a leading global contributor to renewable power generation and to the industry of green hydrogen, thus presenting the opportunity for the development of clean energy solutions in UAE, MENA and around the world.

Competitive Assessment

Relevant Markets

Relevant Product Market

14. TAQA is not active in the Common Market. However, ADQ which majority owns TAQA is active across the Common Market in various sectors, namely agricultural processing; manufacturing, distribution and marketing of pharmaceutical products; steel manufacturing; food and beverage; oil & gas; media/broadcasting; copper & aluminium cable production; production of frozen chicken and beef products; and maintenance, repair and overhaul services for military & aviation sector. On the other hand, the target undertaking is only active in the generation and wholesale distribution of electricity in Egypt only. The target generates the electricity from renewable energy sources.

15. The CID considered that the interrelationship between the activities of the parties is essential in guiding the determination of the relevant market within which any competition effects may arise due to the merger. Such effects may be horizontal, vertical or conglomerate. The CID observed that the activities of the Acquiring Group and target undertaking are unrelated whether horizontally, vertically or in a conglomerate manner.

16. The CID observed that the target firm does not provide the same products or services as the Acquiring Group and neither are the parties' activities vertically related in the Common Market. Further, the parties do not have a conglomerate relationship such that a fall it the demand for wholesale electricity is not likely to affect the demand pattern of any of the services supplied by the Acquiring Group in the Common Market. The CID

assessed the relevant market by considering the generation and wholesale distribution of electricity.

Generation and wholesale distribution of electricity

17. Generation of electricity is among the key stages in the value chain of electricity production which comprises generation, transmission and distribution. These stages constitute different and unique processes due to their different characteristics and purposes. For instance, generation is the first stage that involves producing electricity through the harnessing of mechanical energy which is used to rotate a turbine.[2] The mechanical energy to spin the turbine can come from falling water, wind, or steam from heat generated by a nuclear reaction or by burning fossil fuels.

18. Transmission of electricity involves the movement of bulk electrical energy through a power grid from a generation site, such as a power station, to an electrical sub-station where voltage is transformed and distributed to consumers or other sub-stations[3]. Power grids consist of towers and the wires that run between them, underground cables, transformers, switching equipment, reactive power devices, and monitoring and telecommunications equipment. Distribution is the last stage in the value chain which entails supplying of electricity to final users at which point high voltage electricity transmitted from a generator is converted into lower voltage by sub-station transformers and carried in wires over poles or in wires buried underground to final users such as businesses and homes.

19. From the above, the CID considered that the three stages in the electricity production value chain were unique and comprise separate markets which are not substitutable from either a demand or supply perspective. For instance, from a supply perspective, the equipment for generating electricity is bound to be different from transmission equipment. Under the former a company requires generators operated either via falling water, wind, fossil fuels or nuclear to generate the electricity while under the latter a company would require setting up a power grid through which to transmit electricity once generated. Further, the distribution of electricity would require different equipment and investment from that needed under generation and transmission. From a demand perspective, generated electricity is meant for selling to distribution companies which then distributes the electricity to final users at a price.

20. In view of the foregoing and given that the target firm is only active at the level of generation of electricity, the CID limited its assessment of relevant market to generation of electricity.

21. The CID observed that the generation of electricity can be segmented according to the mode of generation such as hydro-power, wind, nuclear or generally from renewable or

[2] https://electricity.ca/learn/electricity-today/generating-electricity/

[3] https://www.power-and-beyond.com/basics-of-an-electrical-power-transmission-system-a-919739/, accessed on 3rd June 2021 at 10:52hrs

non-renewable resources. From a demand perspective, it does not matter how electricity is generated since once generated, such electricity can be used for the same purposes. Thus, electricity generated from water, wind or nuclear or any other resource can similarly be used for lighting, heating, cooling, and refrigeration, operating appliances, computers, electronics, machinery, or any other use. Therefore, the CID considered that segmenting the generation of electricity according to the source of production was not necessary and was unlikely to alter the competitive assessment of the transaction.

22. The CID observed that the generation of electricity is not often considered as a market activity unless the generated electricity is sold either to a wholesale buyer or to a distribution company for onward retail sale to end users[4]. A distinction can be drawn between the generation and wholesale distribution of electricity; and retail distribution of electricity. The wholesale market targets large industrial users and the amount of electricity supplied is bulky while the retail market targets individual household consumers who are end users and the amounts of electricity supplied are low. Further, the pricing of electricity under these two categories is bound to be different.

23. The CID observed that target undertaking is active in the generation and wholesale distribution of electricity. Therefore, the relevant market for purposes of the competitive assessment in this transaction was considered **as the generation and wholesale distribution of electricity.**

Relevant Geographic Market

24. The CID observed that the market for the generation and wholesale distribution of electricity has often been considered as national in scope given the unique regulatory requirements that apply in different countries. Broadening the geographic scope would require the availability of sufficient capacity and investment in relevant infrastructure to ensure that interconnection across countries is possible.

25. Therefore, the CID considered that it is unlikely for demand or supply substitution to occur in a timely manner given a 5 – 10 % change in the price of electricity across countries. Therefore, the geographic scope for generation and whole distribution of electricity may be considered as national in scope. The CID noted that a similar approach was adopted in ***Red Rocket/Tororo Solar***[5] and under various European Commission (EC) case law[6] which considered the market for the generation and wholesale distribution/supply of electricity to be national in scope.

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[4] See Case File No. CCC/MER/3/5/2020 - Red Rocket Africa-Tororo Solar North Limited
[5] Ibid
[6] See cases COMP/M.5979 – KGHM/TAURON Wytwarzanie/JV, para. 24; COMP/M.5711 – RWE/Ensys, para. 21; COMP/M.4180 – GDF/Suez, para. 726.

26. The CID therefore considered the geographic scope of the generation and wholesale distribution of electricity as national and pertaining to Egypt, the only Member State where the target operates.

27. In view of the foregoing and for the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID identified the relevant market as **the generation and wholesale distribution of electricity in Egypt**.

Market Shares and Concentration

28. The CID observed that the proposed transaction does not result into a change in the market structure given that none of the activities of the target undertaking are interchangeable with, or substitutable with the activities of the Acquiring Group in the Common Market. Therefore, the proposed transaction does not result in any market share accretion.

29. The CID observed that the merged entity will continue to face competition from several firms operating within the market for the generation and wholesale distribution of electricity in Egypt such as Cairo Electricity Production Company, West Delta Electricity Product Company, East Delta Electricity Production Company and Upper Egypt Electricity Production Company.

30. The CID's assessment also established that barriers to entry are not likely to offer an incentive to the merged entity to limit entry into the relevant market since the market structure will not change post-merger. Further, the CID observed that the relevant market is characterised by sufficient countervailing power from the National Government of the Arab Republic of Egypt which is the single buyer of electricity through the state-owned Egyptian Electricity Holding Company.

31. In view of the above, the CID concluded that competition concerns were unlikely to arise in Egypt as a result of the transaction.

Consideration of Public Interests

32. The proposed transaction is not likely to negatively affect any of the public interest elements provided for under the Regulations given that the market shares of the parties are relatively small within the Common Market. Competition will not be affected as there will be no removal of a strong competitor, and thus the transaction will not be to the detriment of consumers.

Consideration of Third-Party Views

33. Submissions were received from the national competition authorities of Kenya, Mauritius, Seychelles and Zambia which confirmed that the transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's assessment, as presented above.

Determination

34. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID, therefore, approved this transaction.

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

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan