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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/12/33/2023

Decision[1] of the 106th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving Public Investment Fund and Alkhorayef Petroleum Company

ECONOMIC SECTOR: Petroleum

COMESA COMPETITION COMMISSION * 04 MAY 2024

04 May 2024

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 22 December 2023, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Public Investment Fund ("**PIF**" or the "**acquiring undertaking**") and Alkhorayef Petroleum Company ("**APC**", together with its affiliates, the "**target undertaking**"), pursuant to Article 24(1) of 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

PIF (the acquiring undertaking)

4. The parties submitted that PIF was established in 1971 in the Kingdom of Saudi Arabia (the "Kingdom") and is regulated by the Law of the Public Investment Fund established by Royal Decree No. M/24. PIF is a sovereign wealth fund with direct and indirect investments in several sectors.

5. The parties submitted that PIF controls the following portfolio companies which generated turnover from the Common Market:

Table 1: PIF's entities with operations in the Common Market[2]

Name of entity	Member State	Description of activities
Gulf International Bank B.S.C.	Egypt, Libya	Engaged in wholesale commercial, asset management, investment and retail consumer banking services
Saudi Arabian Mining Company (Ma'aden)	Egypt, Kenya, Malawi, Mauritius, Tunisia, Zambia, Zimbabwe	Engaged in various projects related to all stages of the mining industry, including development, advancement and improvement of the mineral industry, mineral products and by-products. Ma'aden, through its subsidiaries, is also active within the Common Market in the sale of fertilizer products
Industrialisation & Energy Services Company (TAQA)	Egypt	Geophysical surveying for oil & gas exploration, as well as (through a subsidiary) provision of services to oil and gas companies such as slickline services, inspection services, wireline services, surface well testing services and directional drilling services.

[2] The Commission has recently unconditionally approved the proposed joint venture between Public Investment Fund and Pirelli Tyre S.p.A.,, which will entail the production and sale of PCR tyres in the Gulf region. The CID's decision can be accessed at https://comesacompetition.org/wp-content/uploads/2024/02/CID-Decision-PIF-Pirelli_Redacted.pdf

APC (the target undertaking)

6. The parties submitted that the Target Undertaking is a closed joint stock company incorporated in the Kingdom. APC is currently wholly owned by Alkhorayef Group Company ("**AGC**"), a closed joint stock company incorporated in the Kingdom and has activities worldwide, but is primarily active in the Middle East, North Africa and South America.

7. The parties submitted that AGC only controls a single entity incorporated in the Common Market, namely Alkhorayef Misr for Investment registered in Egypt. In addition, the parties submitted that AGC controls Alkhorayef Industries Co. ("**AIC**"), a closed joint stock company incorporated in the Kingdom but which generated turnover from the Common Market in the preceding financial year. It was also submitted that APC controls Alkhorayef Petroleum CJS Company, a joint stock company incorporated in the Kingdom, which also generated turnover in the Common Market in APC's immediately preceding financial year.

8. The parties submitted that APC is active in the manufacturing and installation of electrical submersible pumps (ESP) equipment and other equipment needed during the installation and production processes for oil and gas resources as well as the provision of after-sales services (i.e., monitoring and data collection for ESP systems), provision of wireline services and early production facilities (EPF) projects. APC has the following core business segments:

   a) **ESP equipment**: ESP equipment is an artificial-lift system used to lift fluids from a resource well to the surface by increasing pressure inside the tubing of the well. ESPs consist of a downhole (i.e., inside the well) pumping system that is electrically driven and comprises a series of centrifugal pumps that generate centrifugal force to pull fluids to the surface. ESPs are the most sophisticated and versatile artificial-lift system and can be used at different depths and flow-rates. APC designs, sources, manufactures, delivers, installs, maintains and manages the operation of a comprehensive range of downhole ESP equipment, such as sensors, motors, protectors, pumps and power delivery equipment, and surface ESP equipment, such as step-up/step-down transformers and variable-speed drives. Some of APC's ESP equipment is sold on a "pure" sale contract, where APC constructs, installs and commissions the equipment before handing it over to the customer, and some of its equipment is leased to customers. In both cases, APC also provides "monitoring and maintenance" to some of its customers, where APC will provide manpower, equipment, materials, replacements and maintenance for the ESP equipment, for which it is paid a monthly monitoring fee. ***APC is active in ESP equipment in the Common Market***.

   b) **Wireline Services**: wireline services or wireline logging services which entail lowering different tools fixed to an electric cable (the "wireline") into the borehole of a resource well. This allows the operator to collect information about the well for analysis, such as, the remaining life of a well, how to position pumping systems to exploit remaining resources in a well, or if safety and maintenance activities need to be carried out. ***APC is not currently active in the provision of wireline services in the Common Market***.

c) **Early production facility ("EPF") projects**: EPFs are modularised solutions for oil and gas production that allow for swift commencement of production while still determining whether to establish a permanent production facility over a well. Where a customer has a resource well, but they are unsure whether it is feasible to establish a full production facility, they may use an EPF to establish a short-term facility to begin exploiting the well's resources while also carrying out further surveys and tests to determine whether to establish the permanent facility. This allows customers to quickly begin production at a site whilst also limiting the risk of financial loss if the well is not as valuable as initially thought. APC provides end-to-end project design, management, installation, commissioning and operation of EPFs. ***APC is active in EPF projects in the Common Market***.

9. The parties submitted that within the Common Market the target undertaking is active in Egypt, Libya, and Sudan.

Jurisdiction of the Commission

10. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") 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 undertakings concerned have operations in two or more Member States. The undertakings concerned derived turnover of more than the threshold of USD 50 million in the Common Market and they each derived turnover of more than USD

10 million in the Common Market. In addition, the parties did not derive more than two-thirds of their respective aggregate turnover in one and the same Member State. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

12. The parties submitted that following the implementation of the proposed transaction, PIF will jointly control APC whereby PIF will hold 25% of the issued share capital while the remaining 75% of the issued share capital of APC will be held by AGC. [3]

13. The CID observes that PIF will acquire joint control strictly under the meaning contemplated under the Regulations since it will have the ability, together with AGC, to materially influence key decision making at the level of the Board of APC i.e., decisions of Board Reserved Matters including approval of the business plan and budget.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

14. Paragraph 7 of the COMESA Guidelines on Market Definition (the "Market Definition Guidelines") provides that a *"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use".*

15. Within the Common Market, the acquiring undertaking provides: i) financial services such as wholesale commercial, asset management, investment banking and retail consumer banking services; and ii) mining related services including development, advancement and improvement of the mineral industry, mineral products and by-products. Further, the acquiring undertaking is active in the supply of fertiliser. On the other hand, the target undertaking is active in the manufacture and supply of ESP equipment and in Early Production Facility (EPF) projects. Accordingly, the activities of the parties are not likely to raise any horizontal nor vertical overlaps, as such the CID focused its assessment on the activities of the target undertaking since any effects from the transaction are likely to be witnessed in the target's activities.

Manufacture and supply of electrical submersible pumps (ESP)

[3] The parties claimed confidentiality on the number of shares and percentage shareholding that PIF will acquiring, see Exhibit A to the merger filing.

16. ESPs are an artificial lift system which are used to lift fluids up to the surface of an oil well by increasing the pressure inside the production tubing[4]. They are needed in wells where the natural pressure in the reservoir is insufficient to lift hydrocarbons. ESPs are installed at the bottom of the well and use an electric motor to drive a multistage centrifugal pump[5]. They are capable of handling high flow rates and depths and can be adjusted to changing well conditions. However, they tend to require high initial and operating costs, susceptibility to sand and gas interference, and are difficult to retrieve and repair. Other forms of artificial lifts include progressive cavity pumps, gas lifts, rod lifts, plunger lifts and hydraulic lifts. Each of these can be construed as separate markets since they function with different technologies, different specifications and are intended to address different needs depending on a well's characteristics.

17. To illustrate, the following other forms of artificial lifts are considered[6]:

    a. ***Rod pumping*** is one of the most widely used artificial lift methods. It involves a surface unit (pumpjack) that drives a rod string connected to a downhole pump. The pump lifts fluid to the surface through a tubing string.

    b. ***Gas lift*** which involves injecting gas into the wellbore to reduce the density of the fluid column, thereby increasing reservoir pressure. Gas lift systems can be continuous or intermittent, depending on operational requirements.

    c. ***Hydraulic pumping***, which utilizes a downhole pump powered by hydraulic fluid supplied from the surface. This method is suitable for wells with high gas-to-liquid ratios or other artificial lift methods are not feasible.

    d. ***Progressive cavity pump (PCP)*** system which employ a helical rotor and stator to lift fluid to the surface. The rotor rotates within the stator, creating cavities that trap and lift the fluid. PCPs are effective in handling viscous fluids and solids-laden production.

18. CID considered that ESPs comprise a separate market both from a supply and demand perspective. The European Commission ("**EC**")[7] has similarly held that that ESPs constitute a separate product market on account that the type of artificial lift selected for a well depends on specific conditions at a well and that different types of artificial lift systems cannot be used interchangeably. Further, the prices of different types of artificial lifts vary. Finally, the EC found that not all suppliers are active in manufacturing all different types of artificial lifts, as they require different expertise and production facilities.

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[4] See European Commission Case No. M.8297
[5] https://www.linkedin.com/advice/0/what-different-types-artificial-lift-systems-n9cpf accessed on 27 March 2024
[6] https://www.bobels.org/2024/03/24/artificial-lift-in-the-oil-and-gas-industry/ accessed on 16 April 2024
[7] See European Commission Case No. M.8297, paragraph 11 - 18

19. In view of the above and given that the target is only active in the manufacture and supply of ESPs, the CID considered the relevant product market **as the manufacture and supply of electrical submersible pumps (ESPs).**

Provision of early production facility (EPF) solutions

20. The CID noted that EPF entail solutions for oil and gas production that allow for swift commencement of production while still determining whether to establish a permanent production facility over a well. EPF are used where a customer has a resource well, but they are unsure whether it is feasible to establish a full production facility. To this end, an EPF may be established in the short-term to begin exploiting the well's resources while further surveys and tests are simultaneously carried out to determine whether to establish the permanent facility. EPFs may thus be seen as a risk management strategy that mitigate financial loss in the case where a well is not valuable.

21. The CID observed that the target firm provides end-to-end project design, management, installation, commissioning and operation of EPFs within the Common Market. Therefore, **the CID considered the provision of EPF solutions as a separate relevant product market.**

Relevant Geographical Market

22. The Commission's Guidelines on Market Definition define the relevant geographic market as follows:

> *"...the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas...'*[8].

23. The CID observed that within the Common Market, the target undertaking is active in Egypt, Libya and Sudan. Further, the relevant products are products or services that may be demanded and supplied on a cross-border basis. The demand and supply of these services are closely linked to the exploitation of oil resources which occurs on a global level. Therefore, in an event of a SSNIP, it is likely that the sourcing of ESPs and EPF solutions may be substituted from one geographic location to another, and the provision of these services is unlikely to be limited to a single country.

24. In view of the foregoing, the CID concluded that the geographical scope for both the manufacture and supply of electrical submersible pumps and the provision of EPF solutions can be construed as global.

[8] Paragraph 8

Conclusion on Relevant Markets

25. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets were identified as:

   a) The global manufacture and supply of electrical submersible pumps (ESP); and
   b) The global provision of early production facility (EPF) solutions.

Market Shares and Concentration

26. The CID considered that given the absence of horizontal and vertical overlaps between the activities of the parties, the proposed transaction was unlikely to alter the structure of the relevant markets and therefore unlikely to raise competition concerns.

27. The above notwithstanding, the CID considered the market shares for the target undertaking and its competitors in Egypt and Libya as per table 2 below:

Table 2: Estimated market share of APC and its competitors in COMESA

Member State	Name of undertaking	Market share
Egypt	Levare	[20 – 30]%
	Baker Hughes (TamOil)	[20 – 30]%
	APC (target undertaking)	***[20 – 30]%***
	SLB	[10 – 20]%
	Novomet	[5 – 15]%
	Redsea Oil Service	[0 – 10]%
Libya	SLB	[80 – 90]%
	Levare	[10 – 20]%
	Baker Hughes (TamOil)	[5 – 15]%
	APC (target undertaking)	***[0 – 10]%***

28. Further to the above, the CID noted the parties' submission that with regards to Sudan, APC they were not aware of other undertakings currently active within its segments. The CID also noted that the procurement of such services are tender based as such the market shares for the different players are subject to periodic change, especially given barriers to entry are low and customers are able to switch suppliers.

29. Further to the market structure remaining unchanged post-merger, the CID observed that the target undertaking will continue facing competition from significant competitors in Egypt and Libya. Further, the relevant markets are tender markets where market shares vary periodically.

30. The CID noted that among the barriers to entry into the relevant markets included capital requirements and customs duties/levies. Further, the estimated capital requirements for entry into the market for the supply of ESPs in Egypt is low,

pegged at USD 1,500,000. The CID also noted that start-up costs are low and mainly limited to a requirement to establishing a repair workshop for ESP suppliers to be able to participate in major tenders. In Egypt, oil and gas activities are also tax-exempt which incentivises entry of new service providers. The CID also noted that in countries such as Libya and Sudan there are no regulatory entry barriers and that start-up costs are low which are limited to the establishment of a repair workshop for aftersales services.

31. The CID concluded that the transaction will not lead to market share accretion as such, the merged entity will not be in a dominant position. Consequently, the merger will not result in a creation or strengthening of any dominant position that could enable the merged entity to unilaterally affect the market, given that, there exist other competitors in the relevant markets.

Consideration of Third-Party Views

32. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Egypt, Kenya, Malawi, Zambia and Zimbabwe which confirmed the absence of competition and public interest concerns.

Determination

33. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

34. The CID, therefore, approved the transaction.

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

Dated this 04th day of May 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**

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