



COMESA Competition Commission

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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/11/43/2024

**Decision¹ of the 116th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition by NEA Holding Management of Bangweulu
Power Company Limited and Neoen Renewables Zambia
Limited**

ECONOMIC SECTOR: Energy



25 March 2025

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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

Having regard to the COMESA Merger Assessment Guidelines of 2014;

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;

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

Determines as follows:

Introduction and Relevant Background

1. On 17 January 2025, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the Proposed Acquisition by NEA Holding and Management (“**NHM**” or the “**Acquiring Firm**”) of Bangweulu Power Company Limited (“**BPCL**”) and Neoen Renewables Zambia Limited (“**NRZL**”) (together the “**Target Firms**”), 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.

The Parties

NHM (the “Acquiring Firm”)

4. The parties submitted that NHM is a wholly owned subsidiary of Axian Energy Green Limited (“**AEG**”), a global business company incorporated under the laws of Mauritius. AEG is a wholly owned subsidiary of Axian Energy, a Global Business Licence Company, also incorporated under the laws of Mauritius.
5. NHM is part of the renewable energy division of the Axian pan African brand which primarily undertakes the following:
 - i. production and distribution of renewable energy;
 - ii. construction and development of utility projects, electricity and telecommunications;
 - iii. management of power generation projects (on-grid and off-grid), operations; and
 - iv. maintenance of telecommunication towers and power stations.
6. Within the Common Market, in the energy sector, AEG controls SCATEC Solar Rwanda Limited, a wholly owned subsidiary of NEA Rwanda Limited. It is a renewable energy solutions provider operating in the Republic of Rwanda.
7. NEA Rwanda Limited holds 49% of the shares in Gigawatt Global Rwanda Limited, a renewable energy solutions provider also operating in the Republic of Rwanda.

BPCL and NRZL (the “Target Firms”)

8. The parties submitted that BPCL is a private limited company incorporated under the laws of Zambia and operates in Zambia. BPCL is involved in the generation and supply of electricity to Zambia Electricity Supply Corporation (“**ZESCO**”) Limited.
9. BPCL is controlled by Zambia Sunlight One SAS, which is a subsidiary of Neoen SA, a limited company incorporated under the laws of France.
10. NRZL is also a private limited company incorporated under the laws of Zambia and operates in Zambia. NRZL’s role is to assist with the management of BPCL. NRZL is controlled by Neoen SA.



11. Both BPCL and NRZL are subsidiaries of Neoen S.A., a leading independent producer of exclusively renewable energy with expertise in solar power, wind power and storage.
12. The Target Firms operate in only Zambia.

Jurisdiction of the Commission

13. 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".*
14. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived a turnover of more than the threshold of USD 50 million in the Common Market and they each derived a turnover of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The CID was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

15. The notified transaction concerns the proposed acquisition by NHM of 85.6% of the shareholding in BPCL and 100% of the shareholding in NRZL.



Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

16. Paragraph 7 of the Commission's Guidelines on Market Definition states 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"***.
17. The CID noted that the merging parties' activities overlap in respect of the production and distribution of renewable energy. In line with Paragraph 8.4 of the COMESA Merger Assessment Guidelines, given that this transaction is a horizontal merger, the CID's assessment focused on the overlap between the product and geographic relations of the parties.
18. The CID noted that the Acquiring Group, provides renewable energy solutions in Rwanda, via its wholly owned subsidiary, SCATEC Solar Rwanda Limited. The latter holds 49% shareholding in Gigawatt Global Rwanda Limited, which is also a renewable energy solutions provider in Rwanda.
19. The CID noted that BPCL is engaged in the generation and sale of electric power in Zambia. The CID further noted that BPCL operates a solar photovoltaic independent power project, in Kafue District, Lusaka Province, Zambia, with an electricity generating capacity of approximately 55 MW which it sells to ZESCO.²
20. The CID observed that photovoltaic technology consists of converting solar energy into usable energy and turning it into renewable energy generating electricity from light. A photovoltaic power station is designed to capture the radiant energy (direct, reflected and diffused) of the sun in the form of photons, in order to transform it into energy in the form of electrical production connected to the public distribution or transport network.³ A photovoltaic system is composed of photovoltaic cells, electronic components that produce electricity by being exposed to light. There are different technologies available to produce photovoltaic cells.
21. The CID noted that the generation of electricity features at the upstream level of the electricity sector supply chain. The generation of electricity involves the production of electricity in power stations. The electricity produced is thereafter traded on the wholesale market to electricity suppliers, which can be the regulatory

² <https://ewsdata.rightsindevelopment.org/projects/2017-bangweulupower-bangweulu-power-company-limited/>

³ French Autorité de la Concurrence, Décision n° 15-DCC-102 du 30 juillet 2015 relative à la prise de contrôle exclusif de Solairedirect par GDF Suez, paragraphs 6-7. Accessed at: <https://www.autoritedelaconcurrence.fr/sites/default/files/commitments/15DCC102decisionversionpublication.pdf>.



body authorised to sell electricity at the retail level or large customers such as industrial plants which require the electricity.

22. The CID has previously considered that the generation and wholesale supply of electricity are considered one single relevant product market because the generation of electricity did not constitute a market activity as long as the electricity was not sold.⁴
23. The CID noted that the generation and wholesale supply of electricity can be distinguished from other markets in the electricity sector, such as retail supply (which involved sale of electricity to the final customer), having regard to the difference in types of contracts, and customers served.
24. In line with previous decisional practice⁵, the CID considered that each of the stage in the electricity sector, namely generation (production of electricity), transmission or wholesale supply (moving electricity across high-voltage lines from generating plants to sub-stations) and distribution (delivering electricity to customers) comprised of different and unique processes and each stage has a different objective.
25. The CID noted that electro-mechanical generators propelled by heat or energy (kinetic energy from water or wind or other sources of energy such as solar energy or geothermal energy) are used in the generation of energy stage. The CID further noted that the wholesale supply of electricity involved the bulk movement of electrical energy from the power plant to an electrical substation where voltage is transformed and distributed to consumers or other substations. Transmission networks (or 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. After transmission of electricity, the last stage in the value chain is the distribution phase which entails the supply of electricity to end users. The CID observed that at this stage, high voltage electricity that is transmitted from generator is converted into lower voltage by sub-station transformers and carried in wires over poles or in underground wires to end-users such businesses and homes.
26. The CID noted that the above three stages in the electricity sector supply chain are unique processes which comprised of different markets by virtue of the unique processes that each one entails and by virtue of the intended end use of the electricity at each stage. The CID observed for instance that, the equipment for

⁴ Decision of the Ninety-fifth Committee Responsible for Initial Determinations Regarding the Proposed Merger involving TotalEnergies SE and Total Eren Holding S.A.

⁵ Decision of the Ninety-Fourth Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Serengeti Energy Limited and Rwaza Hydropower Limited



generating electricity was bound to be different from the equipment needed for the transmission of electricity. Under the former, a company would require generators operated via flowing water, wind, fossil fuels or solar energy to generate the electricity while under the latter a company would be required to set up a power grid through which to transmit electricity once generated. Similarly, the CID noted that the distribution of electricity would require different equipment and investment. The CID further noted that the differentiation could also be appreciated from an end-user perspective. The CID observed for instance that, at generation, the intention is to produce electricity which is intended for a distribution company before supply to the ultimate end-users.

27. Hence, the CID was of the view that the generation, transmission and distribution of electricity were unique and not substitutable. Therefore, given the overlap in the parties' activities, the CID's defined the relevant market as the generation and supply of electricity.
28. The CID considered the fact that electricity can be generated from different sources may be provide grounds for possible further segmentation of the market according to the mode of generation i.e., electricity generated from hydropower, wind, solar energy, or fossil fuels. The CID was of the view that from a demand perspective, the usage of electricity is not differentiated based on the mode through which it was generated. The CID noted that electricity generated from water, wind or nuclear can similarly be used for lighting, heating, cooling, and refrigeration, operating appliances, computers, electronics, machinery, or any other use.
29. The CID noted that electricity can be generated from various sources, classified into renewable and non-renewable sources. However, from the demand perspective, the CID observed that at the consumption point, at the wholesale or retail level, electricity is a homogenous product, irrespective of the source from which the electricity has been generated. The CID further observed that the infrastructure to distribute electricity also did not differentiate between the source of which the electricity has been generated from. The CID noted that the price of electricity is in most instances the same irrespective of the source from which it has been generated, and the price is usually determined by regulatory bodies, without considering the source from which the electricity has been generated.
30. The CID observed that electricity is a product, which cannot be stored and must be consumed at the same instant that it is produced. The CID considered that a further segmentation of the market was also possible based on whether the generation and supply of electricity is at a wholesale or retail level. The CID noted that the wholesale market is targeted at distribution companies which buy electricity in bulk for onward sale to end users. The CID further noted that the



wholesale market is also targeted at large industrial users and the amount of electricity supplied is in bulk. The CID observed that the retail market concerns the sale of electricity to individual consumers who are end users and the amount of electricity supplied is low. In this respect, the CID concluded that the relevant product market in this transaction was the generation and wholesale supply of electricity.

31. In line with previous decisional practice⁶, the CID was of the view that the generation and supply of electricity may comprise both wholesale and retail markets which are different given the different customers which are served under each market.
32. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the CID defined the relevant product market as the **generation and wholesale supply of electricity**.

Relevant Geographic Market

33. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising ***"...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"***⁷.
34. The CID had previously considered that the market for the generation and whole supply of electricity is national⁸, in view of the underlying infrastructure required to transmit electricity on the grid and the fact that electricity is not a commodity which can be freely traded without a certain regulatory intervention to access the infrastructure.
35. In view of the underlying infrastructure required, the CID therefore considered that it was highly unlikely that companies involved in the generation and wholesale supply of electricity would swiftly shift to generate and supply electricity across countries in the short term at reasonable costs.⁹
36. The CID had previously observed that some Member States are active in the exportation and importation of electricity.¹⁰ The CID observed that Zambia for instance is an electricity exporter to its neighbouring countries, including to DRC and Zimbabwe. The CID further observed that Eswatini imports electricity from

⁶ Ibid

⁷ Paragraph 8

⁸ Decision of the Ninety-Fourth Committee Responsible for Initial Determinations Regarding the Proposed Merger involving Serengeti Energy Limited and Rwaza Hydropower Limited

⁹ Ibid

¹⁰ Ibid



South Africa.¹¹ Despite this cross-border movement of electricity, the CID held the view that it is unlikely that the price of electricity will be the same in the exporting country and the importing country, given the asymmetry in the demand and the supply of the product. The CID further considered that the exportation and importation of electricity is highly regulated, which may also inhibit the free flow of the product across Member States.

37. The CID considered that it unlikely that due to higher prices or more favourable conditions in other Member States, the merging parties would timely switch to set up electricity generation in such countries, as they would require investment in the appropriate infrastructure, obtain the relevant licences, find customers for the electricity, which will inhibit timely and effective switching of operations into other Member States¹².
38. To this end, the CID was of the view that the relevant geographic market was national. Given that the NHM operates in Rwanda and BPCL operates in Zambia, the CID was of the view that the affected **geographic markets are Rwanda and Zambia**

Conclusion of Relevant Market Definition

39. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the CID defined the relevant markets as **the generation and wholesale supply of electricity in Rwanda and Zambia**.

Consideration of Substantial Lessening of Competition or "Effect" Test Market Shares and Concentration

40. The CID noted the parties' submissions that the Acquiring Group started operations in Rwanda in 2024 and therefore had no market share information for the generation and wholesale supply of electricity in Rwanda. The CID however noted from a previously notified transaction¹³ that there has been a remarkable increase in electricity generation in Rwanda from 2021 to 2024 (Rwanda's installed electricity capacity has increased from 100.4 MW in 2010 to 406.4 MW in 2024 and there has been a substantial surge of 110.83 MW between 2022 and 2023 alone). The CID previously noted that the increase was likely due to public and private investments and strategic energy infrastructure expansions such as grid enhancements.

¹¹ Ibid

¹² Ibid

¹³ Decision of the 113th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by TotalEnergies Renewables SAS of SN Power A.S., SN Development B.V. and SN Malawi B.V.



41. The CID was of the view that this nascent operation of the Acquiring Group was unlikely to confer significant market shares for the generation and wholesale supply of electricity in Rwanda.
42. The CID noted the parties' submissions that information on the market shares of BPCL and its competitors for the generation and wholesale supply of electricity in Zambia, per Table 1 below.

Table 1 – Market shares for the generation and wholesale supply of electricity in Zambia

Supplier	Market Shares (%)
ZESCO	93
Copperbelt Energy Corporation	3
Lunsemfwa Hydro Power Company Ltd	2
BPCL	1
Enel Green Power RSA Ltd	0.3
Others	0.7

43. The CID noted that the relevant market in Zambia is dominated by ZESCO, which is a State-owned power company in Zambia. The CID observed that this was not an uncommon scenario for most of the Member States, given the crucial importance of electricity and the need to ensure continuity of its supply. The CID observed that electricity generation and its wholesale supply is mostly done by the State, the private sector complements in the generation, to ensure that the electricity generation is sustained. The CID was of the view that the market shares held by private enterprises would indeed be significantly lower.

Consideration of Third-Party Views

44. In arriving at its determination, the CID also considered submissions from the national competition authorities of Madagascar, Mauritius and Zambia, which confirmed the absence of competition and public interest concerns.

Determination

45. 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.
46. The CID, therefore, approved the transaction.



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

Dated this 25th day of March 2025

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah

