THE ACQUISITION OF KENOLKOBIL PLC BY RUBIS ENERGIE SAS.

1. The Competition Authority of Kenya (CAK) approved the acquisition of KenolKobil Plc by Rubis Energie SAS.
2. Rubis Energie SAS (Rubis), the acquirer, is a subsidiary of Rubis SCA, an international firm that deals in the storage, distribution and sale of petroleum, liquefied petroleum gas, food and chemical products.
3. Rubis is involved in the distribution of petroleum products, liquid petroleum gas and bitumen across Europe, the Caribbean and Africa. Rubis does not directly or indirectly control any undertakings in Kenya and, therefore, does not have relevant turnover or assets in Kenya.
4. KenolKobil Plc (KenolKobil), the target, is incorporated Kenya and listed on the Nairobi Securities Exchange. Rubis presently owns 24.99% of KenolKobil's issued shares.
5. KenolKobil Plc is a holding company for KenolKobil Kenya, Uganda, Rwanda, Ethiopia and Burundi. These subsidiaries engage in importation, storage, marketing and retail of petroleum products.
6. The proposed transaction, as per a public offer by Rubis, will see Rubis make a cash offer of KES 23 per share for 1,182,968,076 shares. This would result in Rubis taking 100% control of KenolKobil.
7. The proposed transaction qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No.12 of 2010.
8. The combined turnover of the parties is over **Ksh. 1 Billon for the preceding year (2017)** and, therefore, the transaction meets the threshold for full merger analysis as provided in the **Merger Threshold Guidelines**.
9. For purposes of analysing the proposed transaction, the Authority determined that the **relevant product markets** are:
    i. The market for the importation of petroleum products;
    ii. The market for the supply of lubricants;

iii. The market for the supply of Liquefied Petroleum Gas (LPG); and

iv. The downstream market for retail of petroleum products;

10. The relevant **geographical markets** were determined as;

    i. The upstream market of importation and storage of petroleum products through strategically located storage facilities and depots in the cities of Mombasa, Nairobi, Nakuru and Kisumu; and

    ii. The downstream market for retail of petroleum products with a national and local dimension.

11. At the national level, the target competes with other companies in the same line of business on strategy, concept development and advertising.

12. At a local level, where individual retail outlets are located, each market is defined by different characteristics. Fuel stations are set up strategically, depending on commuter & vehicle patterns, traffic flows and types of vehicles that use a road/highway.

13. The market for importation of refined petroleum products is centrally coordinated by the Ministry of Energy and Petroleum through the Open Tender System (OTS).

14. It is the Authority's view that the proposed transaction is unlikely to lessen or prevent competition between the 13 oil marketing companies who participate in the OTS since this is an open bidding process.

15. According to 2017 data from the Petroleum Institute of East Africa, the major players in **the product market for the supply of lubricants** in Kenya are; Total Kenya (38.6%), VIVO Energy (34.2%), Oilibya (10.1%) and KenolKobil (6.6%).

16. It is the Authority's view that, the transaction is unlikely to negatively affect the structure and concentration of this market since Rubis does not participate in this market.

17. In **the product market for LPG**, 2017 data from the Petroleum Institute indicates the major players are; Hashi (25%) Total Kenya (21%), KenolKobil (11%), VIVO (10%), Libya Oil, through Oilibya (10%), and Oryx (6.5%).

18. Post-merger, the Authority is of the opinion that the structure and concentration of this market is unlikely to change since the acquirer is not a player in the supply of LPG in the country.

19. The **market for downstream market of retail of petroleum products** is regulated by the Energy Regulatory Commission of Kenya (ERC) which fixes the maximum the

retail pump prices of petroleum products monthly. ERC has licenced 71 oil marketing companies in Kenya.

20. Rubis is not actively present as an oil marketer but owns 24% stakes in the target as the largest shareholder.

21. According to ERC data, the top five operators out of the 1,708 retail stations countrywide are; VIVO Energy & Engen (202), Total Kenya & Gapco (188), KenolKobil (134) and National Oil Corporation of Kenya (NOCK) (87). There are over 900 independently-run stations.

22. Data from the Petroleum Institute of East Africa indicates that the top players in terms of revenue are; Total Kenya-Gapco (21.2%), VIVO Energy-Engen (17.7%), KenolKobil (12.7%), Gulf Energy (8.8%), Oilibya (5.5%), NOCK (5.3%) and others (28.8%),

23. It is the Authority's view that post-merger, the structure and concentration of this market is unlikely to change since the acquirer has no operations in Kenya. Further, the market has recently witnessed entry and exit through mergers & acquisitions, indicating that the market is contestable and that there are no prohibitive barriers to entry.

24. Additionally, the proposed transaction is unlikely to raise negative public interest issues since the acquisition is being implemented as a going concern.

25. Premised on the fact that the transaction is unlikely to raise **negative competition or public interest concerns,** the Authority approved **acquisition of control of KenolKobil Plc by Rubis Energie SAS**.