PRESS RELEASE

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LATEST DECISIONS BY THE COMPETITION AUTHORITY OF KENYA

1. Key decisions on mergers and acquisitions

1.1 Proposed Acquisition Of 100% of the Issued Share Capital of Engen International Holdings (Mauritius) Limited by Vivo Energy Holding B.V.

The Competition Authority of Kenya (CAK) has, with conditions, approved Vivo Energy Holding B.V.'s proposed acquisition of 100% of the issued share capital of Engen International Holdings (Mauritius).

Vivo Energy Holding trades in Kenya as Shell, distributing and marketing fuels and lubricants to retail and commercial consumers under the Shell brand.

Engen operates in Kenya through Engen Kenya, an oil marketing company involved in the importation, storage and retailing of refined petroleum products through a network of 15 retail outlets.

The parties to the transaction are both involved in importation and sale of petroleum products, making this the two relevant product markets in which the proposed transaction was analyzed.

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

It is the CAK's view that the proposed transaction is unlikely to lessen or prevent competition in the participation of oil marketers in the OTS since this is an open bidding process.

The downstream market of retailing petroleum products has a national and local dimension. At the national level, both firms compete with other oil marketers on strategy, concept development as well as advertising.

At the local level, the relevant markets were considered according to individual characteristics of the retail outlets, considering traffic flow patterns, distance between stations, and transportation means (commercial or personal vehicles).

It is CAK's position that the concentration of a given oil marketer in a given geographic location usually results in serious anticompetitive consequences, denying consumers choice in given areas and highways.

A critical analysis of the geographical locations of the targets stations against those of the target was done in order to establish the likelihood of the proposed transaction lessening or preventing competition.

The stations surveyed were located along the following routes; Machakos Junction, Nairobi-Namanga Road, Nyeri-Nanyuki Road, Nakuru-Eldoret Highway, Thika Super Highway, Kahawa Wendani Junction and Machakos Junction.

CAK also surveyed retail outlet density along Parklands Road, Eastleigh - 2nd Avenue, Argwings Kodhek Road, Enterprise Road, Mombasa Road, Waiyaki Way, Kathageri–Kanyuambora Road (Kigumo), Eastern Bypass Road and Thika-Garissa Road.

The analysis concluded that, in 15 of Engen's local markets (where their outlets are located), 13 of them did not show likelihood of raising competition concerns if the proposed transaction is approved.

This conclusion was based on the fact that the distance between the acquiring party's stations and the target's stations were significant enough – at least 3 kilometer radius as guided by international best practice -- not to raise any competition concerns.

It is also the Authority's opinion that the presence of several competitor petrol stations – Total and KenolKobil -- in close proximity to the merged entity's stations will offer vital competitive restraint.

However, along Parklands and Enterprise Roads, CAK's analysis concluded that the proposed transaction is likely to raise competition concerns by leaving the merged entity in a dominant position to the detriment of consumers.

The dominant position would have been further exacerbated by the fact that the geographical market has high barriers to entry given that there are no affordable pieces of land along the aforementioned roads.

Based on the aforementioned reasons, the Authority directs as follows;

1. The merged entity divests the Engen retail outlet along Parklands Road to a player currently not operating in this area or to a new entrant. This should be done within 36 months from the date the merger approval is notified to the parties.
2. Vivo should not renew the current dealership contract for the Enterprise Road retail station, either when it expires in 2 years, or if the dealer terminates the contract before the end of the existing term
3. The merged entity honors all existing contracts with its Small and Medium Enterprise (SME) suppliers.

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