THE ACQUISITION OF CONTROL OF GULF ENERGY HOLDINGS LIMITED BY KENOLKOBIL PLC

1. The Competition Authority of Kenya has approved the proposed acquisition of control of Gulf Energy Holdings Limited by KenolKobil Plc, subject to various conditions.
2. KenolKobil Plc (KenolKobil), the acquirer, is a wholly-owned subsidiary of Rubis Energie SAS (Rubis), a French-based international firm.
3. KenolKobil is involved in the business of importing, storing, retailing, marketing and distributing refined automotive fuels, lubricants, liquefied petroleum gas and household fuels in Kenya, Uganda, Ethiopia, Zambia, Rwanda and Burundi.
4. Gulf Energy Holdings Limited (Gulf), the target, is a holding company incorporated in Kenya. Gulf has several wholly-owned subsidiaries in Kenya.
5. Gulf is involved in the retail oil marketing, sale of petroleum products to commercial and industrial establishments, export and transit markets, and retail service operations, lubricants, Liquefied Petroleum Gas (LPG) and aviation fuels.
6. The proposed transaction involves the acquisition of the entire issued share capital of Gulf by KenolKobil. The transaction therefore qualified as a merger within the meaning of section 2 and 41 of the Competition Act No.12 of 2010.
7. The parties' combined and relevant turnover for the preceding year was **over Sh1 billion.** The transaction therefore met the threshold for full merger analysis as provided in the **Merger Threshold Guidelines**.
8. The activities of the acquirer and the target overlap in the importation, storage and the retail of petroleum products. Therefore, the relevant product markets for the proposed transaction are the markets for; importation of petroleum products; storage of petroleum products; retail markets for petroleum products; lubricants, LPG and petroleum fuels and market for jet fuel.
9. The relevant geographical market for the purpose of this transaction is national.
10. **Importation of petroleum products** into Kenya is centrally coordinated by the Ministry of Energy and Petroleum through the Open Tender System (OTS) which has

been in place since 2005. Data from the Energy and Petroleum Regulatory Authority (EPRA) indicates that 13 out of a possible 96 Oil Marketing Companies (OMCs) participate in the monthly OTS tenders.

11. Importation through the OTS is regulated by Ministry of Energy and Petroleum and covers the country's petroleum product requirements for a projected period. Monthly tenders are floated to all OMCs inviting them to bid for petroleum cargoes.

12. Given this oversight by the Ministry, the proposed transaction is unlikely to lessen or prevent competition in the participation of OMCs in the OTS and, subsequently, the upstream market for the importation of petroleum products.

13. In the **market for storage of petroleum products**, there are three jetties in Mombasa where petroleum products are offloaded. Some OMCs own storage facilities near the jetties while others lease capacity from their counterparts.

14. The total storage capacity in Mombasa is 1,069,846 M^3.

15. According to PIEA, the market shares of the major players in the market for storage of petroleum products in Mombasa are; Hashi Energy (1.46%), Vitol Tank Terminals International (VTTI) Kenya Limited (10.24%), Vivo Energy Kenya Limited (5.81%), Gulf Energy Limited (1.07%), GAPCO Kenya limited (10.84%), Mbaraki Bulk Terminal limited (4.36%), Tecaflex Limited (1.42%), Libya Oil Kenya Limited (4.45%).

16. It is important to note that Mombasa Joint Terminal (MJT), which has a market share of 7.13%, is owned 33% by KenolKobil Limited, the acquirer, and 67% by Total Kenya Limited.

17. Gulf specializes in the storage of Heavy Fuel Oil (HFO). Gulf stores other petroleum products in the government storage facilities as well as through hospitality arrangements existing with parties such as Total, Vivo and Hashi.

18. The Government of Kenya, through the Kenya Pipeline Corporation (KPC) and the Kenya Petroleum Refinery Limited (KPRL) facilities, utilize 52.99% of the total storage capacity. The breakdown of the usage is as follows: KPRL Changamwe (17.42%) and KPRL input tanks (4.79%), and KPC (30.78%).

19. Post-merger, it is the Authority's view that the transaction is unlikely to affect the storage arrangements since the target and the acquirer and in different lines of storage.

20. Further, is it anticipated that the merged entity will face competition for storage space from the other entities such as Vivo and Total who have larger storage capacities to the extent of offering hospitality services.

21. Additionally, the merger will enable Gulf gain access to KenolKobil's terminal in Mombasa and potentially facilitate growth of its retail business while reducing operational costs involving storage and supply.

22. Based on the foregoing, the proposed transaction is unlikely to raise any competition concerns in the storage business as the parties store different products. Further, the transaction is not anticipated to disrupt the existing hospitality arrangements.

23. The **market for supply of lubricants** is segmented by end-user industry. They are; power generation, automotive & other transportation, heavy equipment, food & beverage, metallurgy & metalworking, chemical manufacturing, and others.

24. According to the Petroleum Institute of East Africa (PIEA), the major market players and their respective market shares are: Total (38.6%); Vivo (34.2%); Libya Oil (OLA) (10.1%); **KenolKobil** (6.6%); Hashi (3.5%) Hass (1.0%); Oryx (1.0%); Nock (1.0%); and Others (**including Gulf**) (4.0%).

25. Post-transaction, the merged entity will have 10.6% of the market share. This low market share is unlikely to raise competition concerns. Further, the merged entity will face competition from other players, including market leaders such as Total and Vivo.

26. Additionally, the Authority's research indicates that most OMCs service the lubricant demands derived from their retail stations and, therefore, it is expected that the status quo will persist post-transaction.

27. Based on the foregoing, the proposed transaction is unlikely to lessen or prevent competition in the market for the supply of lubricants.

28. In regards to the **market for Liquefied Petroleum Gas (LPG)**, KenolKobil refills and supplies its own product under the brand name K-Gas. The target distributes Del Gas under a deal with Delta Energy.

29. Data from the PIEA indicates that the leading players in this market and their respective market shares are; Hashi (25%) Total Kenya (21%), KenolKobil (11%), Vivo (10%), Libya Oil, through OLA, (11%), and Oryx (7%). Gulf has a 2.5% market share.

30. Post transaction, Gulf will transfer its LPG business to KenolKobil. Therefore, KenolKobil will have post transaction market share of 13.5% and will face competition from the other market leaders such as Hashi and Total.

31. From the above, the proposed transaction is unlikely to substantially lessen or prevent competition in the market for LPG.

32. The **market for jet fuel** is mainly harnessed at airports. The Kenyan jet fuel business consumes approximately 60,000 metric tonnes of fuel. The main component of jet fuel is illuminating kerosene (IK), which is subject importation through the OTS process.

33. The largest consumer of jet fuel is Kenya Airways (KQ). The national carrier consumes approximately 40,000 metric tonnes on average annually, representing 66.7% of the total jet fuel consumed in the country.

34. KQ usually contracts OMCs to supply it with fuel vide annual renewable agreements. However, the airline recently contracted Aviation Services Management (ASM), a logistics company that resells fuel since the firm has presence in a majority of the airline's international destinations. AMS in turn engaged KenolKobil.

35. The market structure and concentration in the jet fuel market is largely informed by the volumes supplied to JKIA by OMCs. Be Energy and KenolKobil are the market leaders, controlling over 88% of the market.

36. KenolKobil's command of this market is informed by the fact that it has a contractual arrangement with ASM. Gulf, the target, supplies 3% of the total fuel consumed at JKIA.

37. Post-merger, the merged entity will supply about 71% of the jet fuel consumed at JKIA fuel. It is important to note that due to the contractual basis of the market, the market share currently enjoyed by KenolKobil may cease in the event of a change of terms by either KQ or ASM. The contracts are reviewed annually.

38. Therefore, based on the foregoing, the Authority is of the view that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in the market for jet oil.

39. The downstream market of retail of petroleum products, including their indicative pricing, is regulated by the Energy and Petroleum Regulatory Authority (EPRA),

40. It is also the Authority's opinion that the presence of several competitor petrol stations in close proximity to the merged entity's stations (within the 3-kilometer minimum radius recommended by international best practice) in the downstream market will offer vital competitive restraint.

41. According to EPRA, there are 96 OMCs operating over 3,000 service stations in Kenya. However, it is worth noting that more than half of these service stations are owned by independent players.

42. The current market shares for the top 10 OMCs are as follows; Total (16.4%); Vivo (16.2%); KenolKobil (15.4%); OLA (6.9%); Gulf (5.8%); NOCK (4.4%); Galana (2.7%); Petro Oil (2.4%); and Be Energy (1.85%).

43. Post-merger, there will be a slight market accretion of 5.8% based on the fact that the merging entities are both involved in the retail petroleum business. As a result, the merged entity will have a market share of 21.2%.

44. Whereas the transaction will occasion the merged entity gaining the market leader position, it will not confer a dominant position. Additionally, the merged entity will face competition from the other OMCs who control 78.8% of the market.

45. Based on the foregoing, the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in the downstream market for retail petroleum products.

46. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. The public interest concerns considerations include;

    i. extent to which a proposed merger would impact employment opportunities;
    ii. impact on competitiveness of small and medium enterprises (SMEs);
    iii. impact on particular industries/sectors; and
    iv. impact on the ability of national industries to compete in international markets.

47. The Authority is of the view that the proposed transaction is likely to lead to redundancies. To mitigate against this, the parties have committed that, for twenty-four (24) months from the date of implementing the transaction;

    i. No steps shall be taken to declare any employee redundant;
    ii. Basic remuneration for all employees shall not be reduced; and
    iii. Other employment benefits shall, taken as a whole, be no less favorable than those provided as at the date of signing of agreement.

48. The Authority, through market surveillance, noted that several Small and Medium Enterprises (SMEs), have engagements with the merging entities. Some of these SMEs are contracted directly by the landlord of the premises where the retail stores are located while others are contracted directly by Gulf.

49. Therefore, the proposed merger is likely to affect the arrangements between the SMEs and Gulf and occasions the need to ensure that the SMEs are protected post-transaction.

50. The Authority established that there are three types of petrol stations; Company owned - Company Operated (CO-CO), Dealer Owned – Dealer Operated (DO-DO) and, Company Owned – Dealer Operated (CO-DO).

51. Most of the target's retail stations are either DO-DO or CO-DO. The dealer in these two scenarios identifies a prime location, and enters into a contractual agreement with the OMC which includes setting up the retail station. The OMC thereafter supplies the product and prohibits the dealer from stocking competitor products.

52. It is the Authority's view that the proposed merger is likely to affect these arrangements. Therefore, to preserve the investment made by the dealer, it is prudent

that the merged entity ensures that the existing contractual arrangement are not altered for the length of the contract.

53. Premised on the above reasoning, the Authority approved the proposed acquisition of control of Gulf Energy Holdings Limited by KenolKobil Plc on condition that:

    i. For a period of twenty-four (24) months from the date of implementation of the proposed transaction, the merged entity shall;

        a. Not declare any target's 102 employees redundant;
        b. Not reduce the basic remuneration for all employees transferred to the merged entity; and
        c. Ensure that other employment benefits shall, taken as a whole, be no less favorable than those provided as at the date of the signing of agreement.

    ii. For the duration of the existing contract between Gulf Energy and the SMEs operating within the retail stations, the merged entity shall ensure that these SMEs enjoy the same benefits within the contract as provided at the signing of the contract;

    iii. The merged entity shall ensure that the contracts entered into between Gulf Energy and the retail station dealers is maintained for the length of such contracts; and

    iv. The merged entity to furnish the Authority with annual reports regarding the aforementioned conditions for a duration of twenty-four (24) months or up to the expiry of the longest of any of the existing contracts between Gulf Energy and the SMEs or the Dealers, whichever is longer.