



## MERGER DECISION NO 44: 2023

### Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 74% OF THE ENTIRE ISSUED AND TO BE ISSUED SHARE CAPITAL OF ENGEN LIMITED BY VITOL EMERALD BIDCO PROPRIETARY LIMITED**

##### **Introduction of the Merging Parties**

Pursuant to section 53(4)(a)(ii) of the Competition Act 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in relation to the proposed acquisition of 74% of the entire issued and to be issued share capital of Engen Limited ("Engen" or the "Target Enterprise") by Vitol Emerald Bidco Proprietary Limited ("VEB" or "The Acquiring Enterprise"). The proposed transaction entails VEB acquiring sole control over the operations of Engen.

The Acquiring Enterprise, VEB, is a company incorporated in accordance with the Laws of South Africa. The shares in VEB are owned by Vitol Africa B.V., a company incorporated in accordance with the Laws of The Netherlands. For completeness, VEB and Vitol Africa B.V. are ultimately controlled by Vitol Holding II S.A. ("Vitol Holding"), a company incorporated in accordance with the Laws of Luxembourg. Vitol Holding together with its subsidiaries and affiliates, is hereafter referred to as the Vitol Group.

The Target Enterprise, Engen, is a public company incorporated in accordance with the Laws of South Africa. Engen is controlled by PETRONAS Marketing International Sendirian Berhad ("PETRONAS"), a private company incorporated in accordance with the Laws of Malaysia. PETRONAS is the seller in the proposed transaction. Engen and its subsidiaries and affiliates are referred to as the "Engen Group".

##### **Relevant Markets**

In Botswana, the Vitol Group, through its subsidiary Vivo Energy Botswana (Pty) Ltd ("Vivo Botswana"), is engaged in the distribution and retail supply of refined petroleum products, i.e. gasoil (diesel), lubricants and gasoline to retail and commercial customers.

Similarly, the Engen Group imports and distributes certain refined petroleum products (i.e. gasoline, diesel, kerosene and lubricants) from South Africa to the

Retail customers and Commercial customers in Botswana through a network of service stations across the country. Specifically, the Merging Parties supply unleaded 93 and 95 octane petrol as well as 50ppm diesel. Furthermore, Engen Group is also engaged in the supply of jet fuel/ kerosene.

The Merging Parties' business activities in Botswana therefore comprise *the supply of overlapping Fuel products to Retail customers (filling stations), and to Commercial customers (such as mines, construction companies, road haulage companies, government entities)*. This infers that the Merging Parties target and compete for similar customers. Thus, the assessment of the merger has established a horizontal overlap in the activities of the Merging Parties in the two established market segments. The Merging Parties' network of filling stations are located across Botswana hence the geographical market is national.

### **Competitive Analysis and Public Interest**

The analysis of the facts of the merger have shown that the implementation of the proposed transaction will result in an acquisition of dominance in the market for the supply or wholesale of petroleum products to Retail customers in Botswana and a substantial player in the Commercial market. This has an effect of enhancing market power for the merged entity and substantially lessening competition in the relevant market, as it contemplates the removal of a vigorous and effective competitor.

On the other hand, the dynamics and structure of the relevant market in terms of licensing and price, have the ability to negate the competition effects that may arise due to the established dominant position by the merged entity.

However, the Authority is alive to the potential public interest concerns that may arise from the merger regarding the risk to security of supply, merger specific retrenchments and is also determined to neutralise concentration in any market available in Botswana. The Authority is also actively facilitating for citizen empowerment as well as the enhancement of market entry.

### **The Determination**

Taking into account the concerns discovered and pursuant to the provisions of section 53 of the Act, the Competition and Consumer Authority has resolved to approve the proposed acquisition of 74% of the entire issued and to be issued share capital of Engen Limited by Vitol Emerald Bidco Proprietary Limited be approved with the following conditions:

- a) The Merged Entity will dispose (sell) of a total of 40 service stations (whether Engen or Shell branded), which will dilute their market dominance post-merger to facilitate new entry. The disposal must be structured as follows:

- i. All sites must be disposed (sold) to citizens or wholly citizen-owned companies;
  - ii. The disposal must prioritise the existing dealers who are engaged in the operation of each identified site;
  - iii. 50% of the 40 sites must be disposed (sold) to new entrants. The new entrant should not include the Merging Parties' principals, agents, partners, representatives, shareholders or directors; and
  - iv. The other 50% must be disposed (sold) to entities with 20 or less sites (including those in partnerships or joint ventures);
- b) The disposal shall be concluded within a period of 18 months (business days) from the implementation date, subject to the right to request for an extension of the time period from the Authority. If the disposal is not executed within the prescribed timelines and the Authority is not satisfied with the merged entity's efforts to dispose of the 40 identified sites, the Authority reserves the right to appoint an independent Trustee to facilitate the disposal at the Merging Parties' cost;
- c) The disposal of the 40 sites must target Company Owned Dealer Operated (CODO) sites, inclusive of those owned and leased by the Merging Parties from third parties;
- d) The Merged entity is prohibited from taking part to franchise bid for any of the 40 sites identified for disposal for a period of 10 years from the completion date of disposal;
- e) The Merged entity is prohibited to supply the identified 40 sites with fuel requirements for a period of 10 years from the completion date of disposal, except under challenging or unfavorable circumstances such as natural disasters and pandemic situations like Covid 19 where national supply is severely constrained;
- f) Pending the disposal of the service stations, a CCA approved independent trustee will be appointed immediately, at the Merging Parties' cost to monitor the manner in which the merged entity interacts with the relevant service stations, in order to ensure that their viability and competitiveness are not unreasonably impaired after the merger is implemented;
- g) The Merged Enterprise shall inform the Authority of the date of implementation within thirty (30) business days post implementation date. However, if the Merging Parties fail to implement the merger within 36 months from the date of approval, the consummation of the acquisition post this period will require a new merger filing to the Authority for re-assessment as the market dynamics and competitive landscape may change;

- h) There shall be no direct merger specific retrenchments or redundancies of citizen employees for a period of three (3) years from the Approval date. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
- i. voluntary retrenchment and/or voluntary separation arrangements;
  - ii. voluntary early retirement packages;
  - iii. unreasonable refusals to be redeployed;
  - iv. resignations or retirements in the ordinary course of business;
  - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
  - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
- i) The Merged Enterprise shall inherit all employees of the Target Enterprise on the same or better terms and conditions of employment;
- j) The Merged Enterprise shall provide details (Full Name; Identification Number; Gender; Position; and; contact number) of the current employees of the Target Enterprise and the Acquiring Enterprise within thirty (30) business days from the Approval date;
- k) The Merged Enterprise shall share a copy of the conditions of approval with all employees of the Target Enterprise and Acquiring Enterprise and/or their respective representatives within thirty (30) business days from the Approval date;
- l) The Merged Enterprise shall for a period of (three) 3 years from the implementation date submit to the Authority, a report on each anniversary of the implementation date, detailing its compliance with the conditions of approval and demonstrate its contribution to Citizen Empowerment, SMMEs development, Environmental Conservation, Facilitation of market entry of citizen-owned companies into the transport and logistics segment, and Employment in addition to its current commitments on these highlighted areas.

However, as stated under Section 61 of the Act, this approval shall not relieve an enterprise from obtaining such other approvals as may be required from bodies in exercise of their statutory responsibilities.

Dated at Gaborone on this 15<sup>th</sup> day of September 2023.

Tebelele Pule, Chief Executive Officer, Competition and Consumer Authority,  
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