



THE GOVERNMENT GAZETTE OF MAURITIUS

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CC/DS/0058 – Decision i.r.o. Investigation into Potential Acquisition of Engen Limited by Vitol Emerald Bidco (Pty) Limited (Inv067)



Decision of the Commission

Non-Confidential Public Version

CC/DS/0058

**INV067- Report of Undertakings IRO Potential
Acquisition of Engen Limited by Vitol Emerald
Bidco (Pty) Limited**

06 May 2024

Decision of the Competition Commission

of 06 May 2024

relating to proceedings under section 63 of the Competition Act 2007 further to a report of undertakings of the Executive Director in the matter referred to as 'INV067 - Potential Acquisition of Engen Limited by Vitol Emerald Bidco (Pty) Limited'

THE COMMISSION

Mr. M.A. Bocus	-	Chairperson
Mr. A. Mariette	-	Vice-Chairperson
Mrs. V. Bikhoo	-	Commissioner
Mrs. S. Dindoyal	-	Commissioner

Having regard to –

the Competition Act 2007,

the Competition Commission Rules of Procedure 2009,

final undertakings offered by the Merger Parties dated 10 March 2024 (hereinafter the 'Undertakings'),

a report of the Executive Director of the Competition Commission on the undertakings submitted to the Commission on 20 March 2024 (hereinafter the 'Report'),

WHEREAS:

1. INTRODUCTION

- 1.1. Undertakings have had been offered to the Commission in respect of an investigation made by the Executive Director pursuant to sections 30(1) and 51 of the Competition Act 2007 (the 'Act') into Potential Acquisition of Engen Limited by Vitol Emerald Bidco (Pty) Limited, hereinafter referred to as 'the investigation'.
- 1.2. The Executive Director's investigation bears reference INV 067, and his Report of Undertakings is dated 20 March 2024, hereinafter referred to as the 'Report'.
- 1.3. The Commission has determined the present matter on the basis of the undertakings, pursuant to section 63(3) of the Act.

2. BACKGROUND

i. The investigation

- 2.1. The Executive Director opened the investigation after the COMESA Competition Commission (CCC) notified the Competition Commission of a transaction whereby Vitol Emerald Bidco (Pty) Limited (“VEB”) intends to acquire 74% stakes in Engen Limited from PETRONAS Marketing International Sendirian Berhad (“PETRONAS” or the “Seller”).
- 2.2. The Executive Director of the Competition Commission of Mauritius enquired into the proposed notified merger which led to him finding reasonable grounds to believe that the transaction amounted to a reviewable merger situation within the meaning of the Act, in as much as the transaction may result in substantial lessening of competition in markets for the supply of mogas, diesel, lubricants, jet fuel, marine fuel, and Liquefied Petroleum Gas in Mauritius. An investigation was therefore launched on 30 June 2023.
- 2.3. The Merger Parties were informed of the launch of the investigation on 04 July 2023, and a media release was issued inviting views on the possible effects of the transaction on the state of competition in any market(s) in Mauritius.

ii. The transaction

- 2.4. The transaction which is the subject matter of the investigation is the acquisition of 74% of the shares in Engen Limited by Vitol Emerald Bidco (Pty) Limited (“VEB”) from PETRONAS Marketing International Sendirian Berhad (“PETRONAS” or the “Seller”).
- 2.5. Moreover, the remaining 26% shareholding in Engen Limited by Phembani Group would also be acquired by VEB so that it will end up with 100% shareholding in Engen Limited.
- 2.6. There is also a second layer to the above transaction involving restructuring within Vitol Holding which is the ultimate owner of VEB through Vitol Africa B.V.
- 2.7. Here, Vitol Holding would transfer VEB from Vitol Africa B.V. to Vivo Energy Emerald Holding B.V. The latter falls under the ultimate control of Vivo Energy Limited (“Vivo Energy”).
- 2.8. Hence, Vivo Energy will, through its subsidiary, Vivo Energy Emerald Holding B.V.’s own and control [redacted] [Confidential to Merger Parties] stake in VEB (or another renamed company).
- 2.9. The comments to the Provisional Report of Undertakings indicate that [redacted] [Confidential to Merger Parties] has already transferred its shares in VEB to Vivo Energy Emerald Holding B.V.

iii. The parties to the transaction (the merging parties)

- 2.10. A complete picture of the matter requires that the parties to the above transaction be classified in terms of the merger transaction by identifying the acquirer and the target.



2.11. From the Report it is gathered that

2.11.1. Vivo Energy has stakes (direct/indirect) in Vivo Energy Mauritius Limited ("Vivo Mauritius"). Vivo Mauritius operates in Mauritius under the brand "Shell." Vivo Energy and its subsidiaries are thus viewed as the "Acquiring Group" or "Acquirer".

2.11.2. Engen Limited in turn owns indirectly 100% of Engen Mauritius.

2.12. Based on the above transactions the concerned parties to the investigation are –

2.12.1. Vivo Energy and its subsidiaries, namely VEB, and Vivo Mauritius are thus viewed as the "Acquirer" (referred to as the "acquiring group" in the Report).

2.12.2. Engen Limited, and Engen Mauritius are regarded as the Target (referred to as the 'target group' in the Report).

2.13. The acquirer and the target companies are therefore the **Merging Parties** as set out above.

iv. Undertakings

2.14. During the investigation, the merging parties expressed their willingness to offer undertakings.

2.15. A meeting was thus held with the representatives of the parties on 21 July 2023, wherein the process and procedures of the investigation were explained and the Merger Parties expressed their willingness to propose solutions to resolve the competition concerns.

2.16. The Merger Parties submitted a first draft written undertaking to the Competition Commission on 06 October 2023, followed by a second draft submitted on 15 October 2023. Further discussions on the proposed undertakings occurred through virtual meetings and email exchanges.

2.17. A revised version of the undertakings was submitted to the Executive Director on 15 January 2024, and a Provisional Report of Undertakings was sent to the legal representative of the Merger Parties on 08 February 2024. A signed version of the undertakings was submitted to the Executive Director on 13 March 2024.

2.18. It is based on these undertakings that the Executive Director has wrapped up the investigation and is recommending that the undertakings be accepted.

3. LEGAL FRAMEWORK

3.1. To determine whether a transaction gives rise to a merger situation which is amenable to review under the Act, we have to determine-

(a) whether the transaction qualifies as a merger situation under section 47 of the Act;

(b) whether the enterprises party to the merger situation meet the applicable statutory market share threshold under s. 48(a) and s. 48(b); and

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- (c) whether the merger situation has resulted or is likely to result in, a substantial lessening of competition (section 48(c)).

i. Merger situation

- 3.2. A merger situation is defined under s47(1) of the Act as *'the bringing together under common ownership and control of 2 or more enterprises of which one at least carried its activities, in Mauritius, or through a company incorporated in Mauritius.'*
- 3.3. It follows from the above that a merger situation will arise where: -
- (a) 2 or more enterprises are involved;
 - (b) the enterprises are being brought under common ownership and control and;
 - (c) there exists a territorial nexus with Mauritius.
- 3.4. Section 2 (1) of the Act defines 'enterprise' as *'any person, firm, partnership, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them.'*
- 3.5. As per section 47 (2) of the Act, enterprises are regarded as being under common control where they are – (a) *enterprises of interconnected bodies corporate; (b) enterprises carried on by 2 or more bodies corporate of which one person has or groups of persons have control; or (c) 2 distinct enterprises, one carried on by a body corporate and the other carried on by a person having control of that body corporate.*
- 3.6. Section 47 (3) provides that, any person may be treated as bringing an enterprise under his control where-
- (a) *He becomes able to control or materially to influence the policy of the enterprise, but without having a controlling interest in it (termed as 'material influence' as per the Guidelines¹);*
 - (b) *Being already able to control or materially to influence the policy of the enterprise, he acquires a controlling interest in it (termed as 'controlling interest' as per the Guidelines²);*
or
 - (c) *Being already able materially to influence the policy of the enterprise, he becomes able to control that policy (termed as 'de facto control' as per the Guidelines³).*
- 3.7. It is clear from the above provisions that where the transaction confers an increase in the level of control, the three thresholds starting from the lowest being material influence, de facto control and controlling interest, the transaction may be treated as a person bringing an enterprise under his control and this may be considered as a merger situation⁴.



¹ The Competition Commission Guidelines on mergers

² The Competition Commission Guidelines on mergers

³ The Competition Commission Guidelines on mergers

⁴ Provided that 2 or more enterprises are also being brought under common ownership.

- 3.8. The three different levels of control are extensively explained in the Competition Commission Guidelines on Mergers (the 'Guidelines on Mergers') and will not be reproduced here but they will be referred to, as may be required.

ii. Reviewability of merger situations

- 3.9. Section 48 of the Act stipulates that a merger situation shall be subject to review by the Commission where the parties to the transaction will have 30% of the market share post transaction or where one of the parties to the transaction already had 30% of the market share prior to the transaction.

iii. Substantial lessening of Competition

- 3.10. The third condition is whether the transaction has resulted in or is likely to result in a substantial lessening of Competition (SLC) as stipulated under section 48 (c) of the Act. The Guidelines on Mergers provide that an SLC will occur whenever there is a loss in rivalry. In order to determine whether a merger situation is likely to lead to an SLC, the Guidelines on Merger provides that an assessment of the competitive effects of the transaction must be carried out. Four (4) elements need to be defined/assessed to determine the competitive effects and they are: -

- (a) Market definition
- (b) Counter-factual (what would have happened without the merger)
- (c) Assessment of entry constraints
- (d) Theory of harm and effects

iv. Remedies in merger control

- 3.11. Section 61 of the Act provides that *the Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to –*

- (i) *Remedy, mitigate or prevent the substantial lessening of competition; and*
- (ii) *Remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.*

- 3.12. Section 61(2) of the Act stipulates that *in the case of a prospective merger, a direction may require an enterprise to –*

- (a) *desist from completion or implementation of the merger insofar as it relates to a market in Mauritius;*
- (b) *divest such assets as are specified in the direction within the period so specified in the direction, before the merger can be completed or implemented;*
- (c) *adopt, or desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of proceeding with the merger.*

v. "Undertakings" under section 63 of the Act

- 3.13. Under section 63(1) of the Act, enterprises may offer undertakings to the Commission "to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation". Section 2 of the Act, defines "undertaking" as "an obligation or commitment given in writing by

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an enterprise to, and accepted by, the Commissioners, to prevent or terminate a restrictive business practice."

3.14. The Commission has accordingly confined its ensuing determination to the legal threshold enunciated at section 63(3) of the Act.

4. THE INVESTIGATION AND FINDINGS OF THE EXECUTIVE DIRECTOR

i. The merging parties are 'enterprises'

4.1. The Executive Director has firstly assessed whether the merging parties are enterprises.

4.2. Engen Limited operates in Mauritius through Engen Mauritius, and Vivo Energy operates through Vivo Mauritius. Both have stakes in several entities, including MOST⁵, JUHI⁶, and JIP⁷

4.3. Section 2 of the Act defines an enterprise as any entity engaged in commercial activities for gain. The EU case of *Höfner and Elser v Macrotron* [Case C-41/90 [1991] ECR I-1979, EU:C:1991:161] elaborates that any economic activity qualifies as an enterprise. The Companies Act 2001 and the Business Registration Act 2002 support this definition, suggesting that companies registered in Mauritius are deemed to be commercial entities.

4.4. Based on the above, the Report sets out a detailed review and finds that

4.4.1. Vivo Mauritius is a public company engaged in the retail and commercial supply of fuels and lubricants. It markets different products including Shell Fuel Save, Fuel Oil Plus and Shell lubricants, and Marine Gasoil, Marine Fuel Oil and Marine lubricants, Jet A1 for Aviation and Shell Gas for domestic and industrial use. These goods and services are offered on the market in exchange for a fee, from which profit is derived or can be derived.

These activities of Vivo Mauritius are therefore commercial in nature, indicating its commercial nature and qualification as an enterprise.

4.4.2. Engen Mauritius, a private company, is also involved in the retail and commercial supply of various fuels and lubricants. Its nature of activities includes (i) the retail supply of mogas, gasoil, and lubricants to retail customers; (ii) the supply of mogas, diesel, jet fuel, bunker fuel, LPG, and lubricants to commercial customers. These goods and services are offered on the market in exchange for a fee, from which profit is derived or can be derived.

Thus, Engen Mauritius's activities, similarly, show a commercial nature, qualifying it as an enterprise.



⁵ Mer Rouge Oil Storage Terminal Co. Ltd

⁶ Joint Utilisers Hydrant Installation

⁷ Joint into Plane

4.5. The investigation further found other commercial activities in which both Vivo Mauritius and Engen Mauritius are involved, namely

4.5.1. MOST is a private company established in 2014, it is involved in the wholesale of fuels and offers storage facilities for a fee. Both Vivo Mauritius and Engen Mauritius hold 20% stake each in MOST. With revenue and profit generation, MOST qualifies as an enterprise.

4.5.2. JIP, an unincorporated joint venture, operates a fleet for airplane refuelling, offering services for gain, and therefore qualifies as an enterprise. Vivo Mauritius has a stake of [REDACTED] [Confidential to Merger Parties] and Engen Mauritius has [REDACTED] [Confidential to Merger Parties] stakes in JIP.

4.5.3. JUHI, another unincorporated joint venture, stores jet fuel at the Airport depot, providing services for a fee, and also qualifies as an enterprise. Engen Mauritius has [REDACTED] [Confidential to Merger Parties] stakes in JUHI whilst Vivo Mauritius has a stake of [REDACTED] [Confidential to Merger Parties].

4.6. However, the Executive Director takes the view at paragraph 4.26 of the Report that *"Irrespective of whether MOST, JIP and JUHI qualify as enterprises or not they may be considered within the investigation in that the scope of this investigation is not to consider whether the transaction is affecting control of those entities. However, they are considered as assets or facilities in which having access or not may affect an entity's ability to operate and access the markets."*

4.7. The Executive Director carried out a thorough and extensive investigation with respect to the proposed transaction in order to determine whether the proposed transaction qualifies as a merger situation under section 47 of the Act and whether such transaction is a merger situation which is reviewable under section 48 of the Act.

ii. Ownership and control

4.8. Assessing if the transaction brings enterprises under common ownership and control is the essential part of a merger situation. Section 47(3) of the Act defines three control levels: material influence, "de facto" control, and controlling interest.

4.9. According to CC5-Mergers Guidelines, a shareholding exceeding 50% of voting rights typically represents a controlling interest. The UK's Merger Assessment Guidelines state that a 'controlling interest' usually means more than 50% of voting rights. A company can have multiple major shareholders, with one having a controlling interest.

4.10. In that respect, the Report found that

4.10.1. Vivo Energy Emerald Holding B.V., controlled by Vivo Energy, holds [REDACTED] of VEB shares after acquiring Vitol Group's shares. VEB will own 100% of Engen Limited, which indirectly holds 100% of Engen Mauritius.

4.10.2. A shareholding of over 50% in Engen Limited gives the holder a **controlling interest**.

- 4.10.3. Engen Mauritius is a subsidiary of Engen Limited, and through this relationship, they are interconnected within the Act's meaning. Post-transaction, Engen Limited and Engen Mauritius will be interconnected with Vivo Energy.
- 4.10.4. Vivo Energy is likely to have a controlling interest in Engen Mauritius through its [REDACTED] shareholding in VEB.
- 4.10.5. Currently, Vivo Energy has 75% shareholding in Vivo Mauritius, indicating a controlling interest.
- 4.10.6. Thus, within the Act, Vivo Mauritius and Vivo Energy are interconnected. Vivo Energy will control both Vivo Mauritius and Engen Mauritius, making them interconnected and potentially subsidiaries of Vivo Energy.
- 4.10.7. The transaction might affect shareholdings in JUHI, JIP, and MOST, influencing post-merger and post-divestment competition, irrespective of whether they constitute a merger situation.
- Engen Mauritius holds stakes in MOST (20%), JUHI [REDACTED], and JIP [REDACTED], and Vivo Mauritius holds stakes of 20%, [REDACTED], and [REDACTED], respectively. [REDACTED].
- 4.10.8. Engen Limited and Vivo Energy plan to amalgamate their businesses, further consolidating the merger situation.

iii. Territorial Nexus

- 4.11. As mentioned in the report, one of the requirements for a merger situation to fall under the purview of the Act is that at least one of the enterprises concerned carries its activities, in Mauritius, or through a company incorporated in Mauritius.
- 4.12. The Executive Director is of the view that, the merging parties meet the national presence criterion (territorial criterion) based on the following –
- 4.12.1. by having entities incorporated in Mauritius. Both Engen Mauritius and Vivo Mauritius are registered in Mauritius under the Companies Act 2001 and hold a Business Registration Number (BRN) and they conduct commercial activities as explained above in Mauritius.
- 4.12.2. by providing goods and services in the local market.
- 4.13. As such, the merger situation would concern enterprises of Vivo Mauritius and Engen Mauritius which carry their activities in Mauritius and are incorporated in Mauritius. Therefore, it seems that the territorial nexus is likely to be met.

The block contains four handwritten signatures or initials. From left to right: a stylized signature, a signature that appears to be 'NSK', a signature that appears to be 'A', and a signature that appears to be 'SP'.

iv. Conclusion on merger situation

- 4.14. The Executive Director thus concluded that Vivo Mauritius and Engen Mauritius would come under the common ownership and control of the Acquirer (Vivo Energy or Vivo Group) and hence the transaction meets the criteria for a merger situation as per the Act.

v. Market definition and market share

- 4.15. Further to the submissions of the merging parties the transaction, the Executive Director has identified seven potential markets that may be affected by the transaction, namely the supply in Mauritius of -

1. Mogas and Diesel to and through retail service stations.
2. Mogas and Diesel to commercial customers.
3. Lubricants with the possibility that the market may be split into retail and commercial sales.
4. Marine Gas Oil - MGO
5. Fuel Oil
6. Storage for mogas, diesel, jet fuel, MGO and marine fuel oil at or near the Port, and
7. The marketing and supply of Jet Fuel to commercial customers, with the possible existence of sub-markets namely storage facility at the Airport and into-plane fuelling services.

- 4.16. The Executive Director then set out in his report the estimated market shares in each of the above markets.

4.16.1. The supply of mogas and diesel to and through retail service stations in Mauritius

The market share following the merger, prior to any undertakings, is approximately [>50%] [REDACTED]. It appears that the relevant market share threshold is likely to be exceeded.

4.16.2. The supply of mogas and diesel to commercial customers in Mauritius

The combined market shares post-merger, prior to any undertakings, is approximately [>30%] [REDACTED]. Consequently, it appears that the market share threshold will likely be met.

4.16.3. The supply of lubricants in Mauritius (Retail & Commercial)

It is estimated that Vivo Mauritius holds approximately [REDACTED] of the market share [Partly Confidential], while Engen Mauritius accounts for about [REDACTED] [Confidential to Merger Parties], covering both the retail and commercial sectors combined.

Consequently, it is unlikely that the market share threshold will be met, particularly given the presence of several other lubricant suppliers in addition to the four main petroleum operators.

The Executive Director here noted in the report that 'In any event, in view of the undertaking, there is no need to further probe into that market...'

4.16.4. The marketing and supply of jet fuel to commercial customers in Mauritius

The jet fuel market in Mauritius is composed of four main players: Vivo Mauritius, Engen Mauritius, TotalEnergies Mauritius, and IndianOil Mauritius. Post-merger, without any undertakings, the combined market share of the merging parties is estimated to be [REDACTED] [REDACTED] [>30%]. It is likely that this will meet the market share threshold.

4.16.5. The supply of marine gas oil in Mauritius

The market for the supply of marine gas oil in Mauritius is currently served by six players: Vivo Mauritius, Engen Mauritius, TotalEnergies Mauritius, IndianOil Mauritius, Peninsula Petroleum (Mauritius) Ltd, and Bunker One (Mauritius) Limited.

Post-merger, without any undertakings, the combined market share based on volume is estimated to be approximately [>30%] [REDACTED] for the year 2023, and above [>50%] [REDACTED] for the years 2021 and 2022 [Partly Confidential]. It is likely that this will meet the market share threshold.

4.16.6. The supply of fuel oil in Mauritius

There are currently six players in the market for the supply of marine gas oil in Mauritius: Vivo Mauritius, Engen Mauritius, IndianOil Mauritius, Stonewin (Mauritius) Ltd, Peninsula Petroleum (Mauritius) Ltd, and Bunker One (Mauritius) Limited. It is important to note that volume data (in metric tonnes) have been obtained from the Mauritius Ports Authority.

Post-merger, without any undertakings, the combined market share appears to be approximately [REDACTED] [Partly Confidential] in 2021, [REDACTED] [Partly Confidential] in 2022, and [REDACTED] [Partly Confidential] in 2023. [REDACTED]

[REDACTED]. As a result, it seems unlikely that the market share threshold will be met.

4.16.7. Storage Capacity

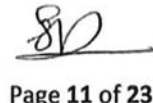
The investigation then estimated market share for storage capacity across different fuel types in Mauritius, namely, mogas, diesel, jet fuel, marine gas oil and fuel oil.

Post-merger without undertakings, the combined market of the merging parties share exceeds 30% for all fuel types, indicating that the market share threshold is likely to be met.

vi. The Competition Concerns

4.17. Since, the merging parties have offered undertakings as per section 63 of the Act, there was no need for the investigation to make any findings on the above matters set out in this chapter, namely the definition of the relevant markets, the market share.

4.18. As such, the Executive Director proceeded to set out the competition concerns he had identified.


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- 4.19. These concerns were identified on the basis of a counterfactual which indicated that post-merger the prevailing competition between the merging parties would be lost. As such an assessment of the transaction as to whether it substantially reduces competition is made on the assumption that absent the merger *'Engen Mauritius and Vivo Mauritius would have continued to operate in the various markets as distinct enterprises'*.
- 4.20. The potential markets of concern include the supply of diesel and mogas to service stations, supply to commercial users, and storage for mogas and diesel.

4.20.1. The market for supply of diesel and mogas to and through service stations

The combined market share of the merged entity in retail supply to and through service stations is estimated to increase to around [$>50\%$] [REDACTED]. According to CC5-Mergers Guidelines and EC Guidelines, mergers with market shares exceeding 50% are likely to result in unilateral market power. The post-merger Herfindahl-Hirschman Index (HHI) indicates a highly concentrated market, which may hinder competition.

The merged entity would control more than 50% of the service stations in Mauritius, impacting non-price competition elements such as branding, payment services, and promotional activities. The market is saturated with limited scope for new entrants due to regulatory barriers and high concentration of existing service stations. The combination of Vivo Mauritius and Engen Mauritius would reduce brand choices for consumers.

The Executive Director is concerned that the transaction could lead to reduced competition, *'increase the risk of coordination by bringing fuel stations in a closer relationship and more so that in the past'* there seems to have been attempts of coordinated conduct by fuel stations, and potential harm to customers, particularly small consumers who may not have the leverage to counteract price increases or non-price competitive degradation. The Executive Director is concerned that the transaction may substantially lessen competition, affecting market concentration, non-price competition, service delivery, inter-brand competition, and terms offered to dealers.

More particularly, since the number of competitors in the market is going to decrease from 4 to only 3, with a 50% share of market and high concentration of the market, the investigation identified a major competition concern arising out of the transaction in respect of the market for supply of diesel and mogas to and through service stations.

4.20.2. The market for the supply of mogas/diesel to commercial users

Post-transaction, the estimated combined market share for the supply of mogas/diesel to commercial users would be around [$>50\%$] [REDACTED], with a [REDACTED] increment. The pre-merger HHI for 2022 was approximately [REDACTED], and post-merger it would be about [REDACTED], indicating a significant increase and concentration in market shares.

In the commercial segment, unlike the retail segment, there exists price competition among suppliers. High barriers to entry, including long-term contracts of 1-5 years and additional facilities provided by certain oil companies, make it challenging for new entrants to compete. Such mechanisms create binding relationships with customers, limiting the ability to switch suppliers.

Despite the presence of multiple suppliers at the commercial level, customers are unlikely to have sufficient power to counteract price increases post-merger. Therefore, the Executive Director is concerned that the transaction may result in a substantial lessening of competition, leading to significant aggregation of market shares, and impact on choice and inter-brand competition.

More particularly, since the number of competitors in the market is going to decrease from 4 to only 3, with a % share of market in excess of 50% and high concentration of the market, the investigation identified a major competition concern arising out of the transaction in respect of the market for supply of diesel and mogas to commercial users.

4.20.3. The market for the supply of lubricants

The market for lubricants in Mauritius is competitive, with the Merged Entity expected to face competition from several players including TotalEnergies Mauritius, IndianOil Mauritius, and independents like Motul, Liqui Molly, Cofran, and Castrol. Post-merger, the estimated combined market share of the Merged Entity in the lubricants market is [REDACTED], which does not meet the market share threshold set by the Act. Consequently, the Executive Director believes that no further assessment is needed in this market.

Additionally, post-merger, Engen Mauritius will [REDACTED], which means Vivo Mauritius will not gain increased market power in the lubricants segment. This is expected to alleviate concerns regarding potential market concentration.

Furthermore, the Merged Entity has committed to divesting a certain number of service stations, which is likely to reduce competition concerns by diluting its market shares for lubricants and redistributing them among other service stations.

The lubricant market in Mauritius is characterized by low barriers to entry, allowing new entrants to easily penetrate the market and introduce their own branded products. This ensures that consumers will continue to benefit from a variety of choices.

4.20.4. The market for supply of jet fuel in Mauritius

The supply of jet fuel in Mauritius is currently dominated by [REDACTED] with an estimated average market share of [REDACTED], followed by Vivo Mauritius at [REDACTED] and Engen Mauritius at [REDACTED]. Post-transaction, the combined market share of Vivo and Engen is expected to be around [$>30\%$] [REDACTED], making them [REDACTED]. The market is highly concentrated, with the post-merger Herfindahl-Hirschman Index (HHI) standing at [REDACTED], indicating a significant increase in concentration. A change in HHI of [REDACTED] further suggests potential competition concerns.

The Executive Director is concerned that the transaction will further concentrate the market, reducing the number of main players from three to two, which may lead to both horizontal and coordinated effects. There are also concerns about the limited future entry of new players due to land availability constraints at the port and established aviation logistics.

While the Merger Parties argue that the jet fuel market has a multinational dimension due to tendering, the Executive Director believes it has a strong local dimension, as evidenced by



airlines being rejected for fuel supply in Mauritius and facing high refuelling costs at nearby airports.

Barriers to entry in the jet fuel market include the need for storage facilities, stakes in JUHI (a joint venture), and participation in the Tarbox agreement signed by international petroleum companies. Additionally, the JUHI joint venture agreement allows each party to the JUHI agreement the right to purchase any selling party's stake proportionally, limiting Vivo Mauritius' potential capacity post-transaction.

Overall, the Executive Director is concerned that the transaction may substantially lessen competition in the jet fuel market in Mauritius, potentially resulting in significant market concentration, horizontal effects, and coordinated effects.

4.20.5. *The market for supply of Marine Gas Oil (MGO) in Mauritius*

Post-merger, Vivo Mauritius' estimated average market share in the market for the supply of Marine Gas Oil (MGO) is expected to increase [to above 50%] [REDACTED]. The pre-merger HHI is [REDACTED], and post-merger HHI is [REDACTED], indicating a likely concentration in the market. Despite the presence of 7 players initially, the merger will result in 6 players post-merger, with the merged entity becoming the main player. Given the aggregation of market shares above 50% and the significant change in HHI, the Executive Director is concerned about potential competition issues in the supply of MGO.

4.20.6. *The market for supply of fuel oil in Mauritius*

Vivo Mauritius, although not very active in the market, [REDACTED]
[REDACTED]
[REDACTED]. The Executive Director was initially concerned that the transaction might give the merged entity significant control over barge operators, enhancing its market power and potentially impeding competition.

However, the Merger Parties clarified that [REDACTED]
[REDACTED], and Engen Mauritius [REDACTED]. Thus, the transaction is unlikely to confer any incremental control over barge capacity to the merged entity, making further assessment on this matter unnecessary.

Nonetheless, the Executive Director remains concerned that the transaction may lead to a substantial lessening of competition in the fuel oil market, as Vivo Mauritius could potentially re-enter the market through its existing assets, resulting in a significant aggregation of market share.

4.20.7. *The market for supply of Liquefied Petroleum Gas*

The transaction does not create a horizontal overlap in LPG supply. Vivo Mauritius is an LPG bottler and supplier, while Engen Mauritius resells LPG through service stations but is not involved upstream. TotalEnergies and Vivo are the main upstream players.

Post-acquisition, concerns arose that Engen might prioritize Vivo-branded LPG over TotalEnergies. This vertical integration could reduce competition at the retail LPG supply level.

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However, most LPG is sold through retail stores. TotalEnergies sells [REDACTED] of its LPG this way, while Vivo sells only [REDACTED] through service stations. The Merger Parties argue against customer foreclosure:

1. Only [REDACTED] of sales are at service stations.
2. The parties' combined forecourts make up [REDACTED] of all in Mauritius.
3. Their forecourts cover [REDACTED] of retail demand.
4. Only [REDACTED] of Engen's [REDACTED] forecourts stock only Vivo LPG.
5. TotalEnergies has access to around [REDACTED] LPG resellers in Mauritius.

Engen's and Vivo's combined service stations are less than [REDACTED] of all resellers. Thus, the Executive Director believes this will not substantially lessen competition.

4.20.8. The market for storage

The Executive Director is concerned about Vivo Mauritius' increased market share in storage capacity post-transaction:

- For mogas storage, Vivo's share may rise [to above 50%] [REDACTED].
- For diesel storage, it could increase [above 30%] [REDACTED].

Given that storage is crucial for effective market operation, a share above 50% could strengthen the Merger Parties' market power, especially during product scarcity or conflicts in Mauritius.

Vivo's market share in MGO storage may surge [above 50%] [REDACTED], indicating significant control over MGO storage post-transaction.

In fuel oil storage, Vivo holds [REDACTED] but [REDACTED].

The Executive Director is concerned that Vivo may re-enter the market with increased market power due to its storage capacity.

Overall, the Executive Director is concerned that the transaction could aggregate the merged entity's storage capacity market share, affecting market *'in terms of control of storage capacity or supply of such capacity through rent'*.

vii. Undertakings

- 4.21. After being informed of the competition concerns raised by the Executive Director, the merger parties voluntarily offered to submit undertakings to address these concerns. A signed version of the undertakings was submitted to the Executive Director on 13 March 2023. An extract of the undertakings is reproduced below –



1.1.4	The Merger Parties are hereby providing undertakings to the Commission related specifically to possible effects of the Proposed Transaction on the Mauritius market under section 63 of the Competition Act 2007 with a view to-
1.1.4.1	allaying the preliminary concerns that the Executive Director of the Commission has expressed in respect of the Proposed Transaction; and
1.1.4.2	obtaining a speedy affirmative decision from the Commission to proceed with the Proposed Transaction ("the Decision"),

4.22. The main undertaking is that the merging parties would divest part of their business as set out below :

4.22.1. Divestment as undertaking

- 4.22.1.1. At section 2.1 of the undertakings, the merging parties offered divesting the business of Engen Mauritius (referred to as the Divestment Business) by disposing of shares held by shareholders in Engen Mauritius to an independent Purchaser so as to sustain competition on the market.
- 4.22.1.2. The Divestment Business encompasses Engen Mauritius's ongoing operations in supplying diesel, mogas, jet fuel, and marine fuel, including [REDACTED] service stations of Engen Mauritius, along with the company's head office, equipment, personnel, depots, storage tanks, and lease agreements.
- 4.22.1.3. However, some assets are excluded. Assets not forming part of the Divestment Business include [REDACTED].

4.22.2. Operation status

- 4.22.2.1. The Merger Parties undertake at section 2.31 of the undertakings to maintain the economic viability, marketability, and competitiveness of the Divestment Business in line with good business practices. They aim at minimizing any risk of loss of competitive potential of the Divestment Business. Specifically:

1. Ensure that Engen trademarks and branding remain intact within the retail network of the Divested Business.
2. Refrain from taking actions that could significantly harm the value, management, or competitiveness of the Divestment Business, or alter its nature, scope, or strategic direction.
3. Provide or arrange for Transitional Services and allocate sufficient resources for the development of the Divestment Business based on existing business plans.
4. [REDACTED]

4.22.3. Operational Separation, Transitional Services, confidentiality and ring fencing

- 4.22.3.1. The Merging Parties commit at section 2.3.2 of the undertakings, to maintaining the Divestment Business separate from Vivo Mauritius' operations. The latter's, directors, management, and staff are prohibited from involvement in the

Divestment Business and cannot be appointed to Engen Mauritius's board of directors.

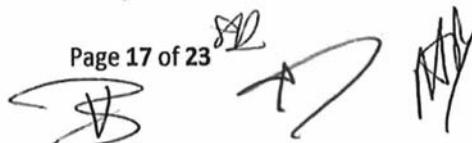
- 4.22.3.2. Key personnel of the Divestment Business are also restricted from engaging in Vivo Mauritius' business or any other Merging Parties' businesses and must not report to individuals outside the Divestment Business.
- 4.22.3.3. At section 2.2.6 of undertakings, the merging parties undertake that Engen Limited will offer certain transitional services to the Divestment Business, akin to the existing support services provided by Engen Limited to Engen Mauritius for a fee.
- 4.22.3.4. These services are expected to persist until the complete transfer of the Divestment Business to the Purchaser. It is emphasized that without these support services, Engen Mauritius may not remain viable.
- 4.22.3.5. At section 2.34 of the undertakings, The Merger Parties undertake to put in place necessary measures to prevent themselves and their Affiliated Enterprises from accessing any Confidential Information related to the Divestment Business, except what is essential for Transitional Services and maintaining the Divestment Business's independent operation.
- 4.22.3.6. Any Confidential Information obtained before the Closing Date must be discarded and not used post-closure. Engen Shareholders and their appointees on Engen Mauritius' board must maintain the confidentiality of this information, except for necessary Transitional Services. Specifically, the Divestment Business's participation in Engen South Africa's central IT network should be terminated as much as possible without harming the Divestment Business's viability.

4.22.4. Appointment of Hold Separate Manager

- 4.22.4.1. The undertakings at section 2.3.5 provides that until the transfer of shares in Engen Mauritius to a Purchaser is completed, the Merger Parties will ensure the Divestment Business is managed separately from Vivo Mauritius by appointing a Hold Separate Manager [REDACTED].
- 4.22.4.2. The Hold Separate Manager is [REDACTED], report to its board, be independent of the Merger Parties, have the financial capability and business experience to manage the Divestment Business.
- 4.22.4.3. The Hold Separate Manager's role is to supervise the Divestment Business to maintain its economic viability, marketability, competitiveness, and independence from other Merger Parties' businesses.
- 4.22.4.4. The Hold Separate Manager must report pertinent operational issues and any required information to the Commission and ensure compliance with divestment requirements.
- 4.22.4.5. If the Executive Director finds the Divestment Business is not managed independently or as per ring-fencing arrangements, he can require the Merging Parties to appoint an independent trustee at [REDACTED] to ensure independent management until the divestment is completed.

4.22.5. Approval of Purchaser by the Commission

- 4.22.5.1. The Commission's approval, is conditional on the following criterion to be satisfied by the Purchaser of the divestment business:
 - **Independence:** The Purchaser must be independent and unconnected to the Merging Parties and their affiliated enterprises; this being assessed considering the situation post-Divestiture.



- **Capability:** The Purchaser should have the ability to sustain and develop the Divestment Business as a viable and competitive entity, capable of competing with Vivo Mauritius and other market players.
- **Competition and Implementation:** The acquisition by the Purchaser should not likely raise competition concerns, and there should be no risk of implementation delays for the Divestment. The Purchaser is also expected to secure all necessary regulatory approvals for the acquisition.

4.22.6. *Trustee as a solution*

4.22.6.1. At section 2.4.3 of undertakings, it is provided that if the Commission rejects an initial buyer proposed by the Merging Parties and no alternative buyer is presented within the First Divestiture Period [REDACTED]

4.22.6.2. Any sale by the Trustee needs the Commission's written approval, including the purchaser and sale price, if contested by the Merging Parties as not being fair market value.

4.22.7. *Undertakings regarding JUHI, JIP and MOST*

4.22.7.1. [REDACTED]

4.22.7.2. [REDACTED]

viii. *Executive Director's assessments of the Undertakings*

4.23. The Executive Director has assessed the undertakings in light of section 63 of the Act in respect of the markets for MOGAS/DIESEL, JET FUEL, Marine Fuel, LPG/Lubricants.

4.24. He concluded that that the undertakings proposed by the Undertaking Parties effectively address the competition concerns that may arise from the transaction. These undertakings include both structural and behavioural measures.

Additionally, the undertakings establish a reporting mechanism, allowing the Competition Commission to monitor their implementation. Overall, the Executive Director is satisfied that the proposed undertakings adequately mitigate the competition concerns associated with the transaction.

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5. Determination

- 5.1. Having regards to the Competition concerns identified and the Executive Director's assessment thereof as set out in the Report of investigation, the Commission proceeded to determine whether the requirements of section 63 of the Act are satisfied.
- 5.2. Pursuant to Section 63(3) of the Act, the Commission may determine a case on the basis of an undertaking.
- 5.3. The threshold for the acceptance of undertakings under section 63(3) is that the Commission must be satisfied that the undertaking addresses "*all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition*" which may arise from the matter at hand. Each of the competition concerns are set out below, against which the undertakings are assessed.

1. Markets for supply of mogas and diesel to and through retail service stations in Mauritius and to commercial customers in Mauritius

- 5.4. The Executive Director is concerned about the potential increase in Vivo Mauritius' market share to above 50% in the retail supply of mogas and diesel due to the transaction, which could lessen competition. The merged entity would also control over 50% of Mauritius' service stations. To counter this, the Merger Parties propose to divest Engen Mauritius to an independent Purchaser, including its retail supply business, except for [REDACTED] confidential service stations they plan to retain. Assessment shows that Post-divestment, estimated market shares would be:

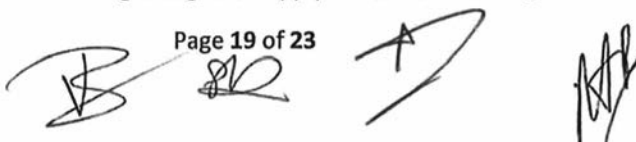
- Vivo Mauritius: [REDACTED]
- Purchaser: [REDACTED]
- TotalEnergies Mauritius: [REDACTED]
- IndianOil Mauritius: [REDACTED]

- 5.5. Vivo Mauritius' market share would increase by about [REDACTED], compared to [REDACTED] without the divestment. In terms of service stations, Vivo Mauritius would control [REDACTED] of them, up from [REDACTED]. The service stations being acquired by Vivo Mauritius are geographically dispersed, with nearby competing stations.

- 5.6. Engen Mauritius' commercial business for diesel and mogas will also be divested, [REDACTED]. The new Purchaser is expected to continue and expand this business. [REDACTED]

However, these details will be discussed, agreed upon during the divestment process, and then submitted to the Commission along with the Purchaser's approval request.

- 5.7. Based on the above and considering the view of the Executive Director that the undertakings sufficiently address concerns regarding the supply of diesel and mogas to both retail and



commercial users, the Commission finds that the undertakings meet the requirements of section 63 in the present matter.

II. The market for storage

5.8. The divestment will include Engen Mauritius' storage facilities for diesel and mogas, vital for the new operator's market operation.

5.9. [REDACTED]

5.10. Given the rights of MOST shareholders, the Merger Parties cannot directly divest their stakes to the new purchaser. However, this does not hinder the new Purchaser's ability to operate, [REDACTED]

5.11. Refusing the new entrant a shareholding in MOST might contradict the creation purpose of MOST and could indeed, be scrutinized by the Commission.

5.12. However, blocking the transaction involving Engen Mauritius will not significantly impact the issue of [REDACTED].

5.13. Thus, we are convinced that the undertakings offered satisfactorily address the concerns with respect to the storage of diesel and mogas since it will include the storage facilities of Engen Mauritius to a new operator (the purchaser).

III. The market for supply of jet fuel in Mauritius

5.14. The competition concern in this segment for jet fuel is that the transaction will increase market concentration, [REDACTED]

5.15. The Undertaking to divest Engen Mauritius' jet fuel business, expecting no significant change in the market structure. [REDACTED]

5.16. Upon the purchase of Engen Limited by the independent purchaser, [REDACTED]



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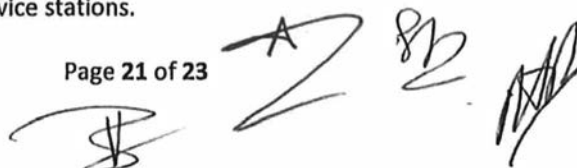
- 5.17. Access to JUHI and JIP is crucial for the Purchaser to sustain jet fuel operations. If access is denied, the Executive Director may assess the matter under other Act provisions or consider the potential impact on competition. [REDACTED].
- 5.18. We therefore agree with the Executive Director's view that '*...the final outcome of the undertaking on competition in the jet fuel market cannot be fully gauged*' and find that the proposed undertaking is reasonable and proportionate in the given circumstances to address the competition concerns in the jet fuel market.

IV. The market for supply of Marine Gas Oil (MGO) and Fuel Oil in Mauritius

- 5.19. The concern in this market is that the transaction might lead to a significant increase in the merged entity's market share for marine gas oil (MGO), potentially reducing competition. Vivo Mauritius and a related company, [REDACTED], could potentially enter the fuel oil market, affecting competition.
- 5.20. The Undertaking Parties plan to divest Engen Mauritius, including its marine business (MGO and fuel oil), to an independent Purchaser. However, the Acquiring Group (Vivo Energy and its subsidiaries will be referred to collectively as the "Acquiring Group") [REDACTED]. The Executive Director believes this undertaking addresses competition concerns for both MGO and fuel oil.
- 5.21. The market share for MGO and fuel oil is expected to remain unaffected by the divestment, with the Purchaser taking over Engen Mauritius' market share. Even if the Acquiring Group enters the market, the situation remains the same since they will not acquire Engen Mauritius' fuel oil business.
- 5.22. [REDACTED]. We therefore find this situation to be acceptable, noting that the storage tank will be owned by the Purchaser, and the leaseback agreement will be negotiated to ensure operational continuity.
- 5.23. Overall, the proposed undertakings adequately address competition concerns related to marine fuel.

V. The market for supply of Lubricants/LPG

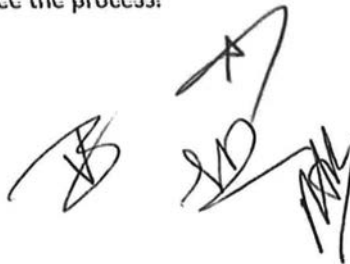
- 5.24. The Executive Director has no concerns about the lubricants and LPG markets in Mauritius. The combined market share of the merging parties in the lubricants market is not expected to surpass the threshold, and Engen Mauritius' market share is not significant enough to raise concerns, especially since the Engen lubricant brands will be discontinued.
- 5.25. With Engen Mauritius' [REDACTED] service stations being sold to a Purchaser, any remaining concerns about lubricants are alleviated. The Purchaser will have the freedom to sell the lubricant brand of its choice at the acquired service stations.



- 5.26. Similarly, for LPG, the Purchaser will have the autonomy to choose and sell any LPG brand it prefers at the service stations acquired from Engen Mauritius.
- 5.27. We therefore find no issue in these markets which would require addressing by the undertakings.

VI. Further components of the undertakings

- 5.28. The divestment terms ensures that Engen Mauritius operates independently during the divestment process, safeguarding market competition. A Hold Separate Manager, likely [REDACTED], will oversee the business during this period.
- 5.29. The proposed divestment timeline of [REDACTED] post-Commission Decision seems appropriate given potential regulatory complexities. The Commission will approve the Purchaser to ensure its independence from the merged entity and its ability to maintain market competition.
- 5.30. The Commission will monitor the divestment process and steps taken to ensure compliance with the undertakings.
- 5.31. Engen Mauritius will be sold as a going concern, including all assets and personnel, allowing the business to continue uninterrupted. A transitional period will permit the Purchaser to use the Engen brand, facilitating a smooth rebranding process.
- 5.32. If the divestment is not finalized by the set deadline, the undertakings stipulate [REDACTED].
- 5.33. The Commission also had regards to feedback from industry players, including [REDACTED], [REDACTED], and others, emphasized the importance of Engen Mauritius being sold as a going concern and including storage tanks in the divestment package for effective competition.
- 5.34. The Commission further notes that before being finalised, the undertakings had been amended based on feedback and identified shortcomings, particularly regarding the inclusion of Engen Mauritius' jet fuel and marine fuel businesses.
- 5.35. The undertakings include a reporting mechanism for monitoring their implementation, ensuring the Competition Commission can oversee the process.

Handwritten signatures and initials in black ink, including a large stylized 'A' and 'B' and several other scribbled marks.

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6. DECISION

NOW THEREFORE,

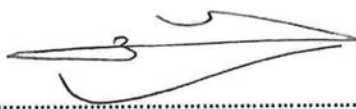
6.1. For the reasons set out in this decision, the Commission decides as follows:

6.1.1. We accept the Undertakings *in toto* given by the Merging Parties also referred to as the Undertakings Parties (as herewith annexed) which shall be the decision of the Commission in the present matter, as provided for under section 63(4) of the Act;

6.1.2. The said Undertakings shall have the effect of a direction given by this Commission under section 60 of the Act; and

6.1.3. The Undertakings shall be effective as from the date of the present Decision.

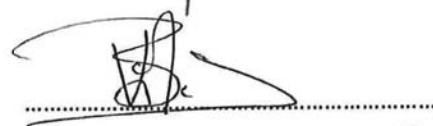
Mr. M. Bocus (Chairperson)


.....

Mr. A. Mariette (Vice-Chairperson)


.....

Mrs. V. Bikhoo (Commissioner)


.....

Mrs. S. Dindoyal (Commissioner)


.....

Made on 06 May 2024

RESTRICTION OF PUBLICATION CLAIMED

WITHOUT PREJUDICE

UNDERTAKINGS PROVIDED TO THE COMPETITION COMMISSION OF MAURITIUS BY VITOL EMERALD BIDCO PTY LTD

1 BACKGROUND

1.1 Introduction

1.1.1 On 11 April 2023 the Merger Parties, Vitol Emerald Bidco Pty Ltd ("**VEB**") and Engen Limited ("**Engen South Africa**"), notified the COMESA Competition Commission of a proposed transaction in terms of which VEB would acquire control over Engen South Africa ("**Proposed Transaction**").

1.1.2 The merger investigation was subsequently referred to the Competition Commission of Mauritius ("**Commission**") in terms of Article 24(8) of the COMESA Competition Regulations insofar as it concerns Mauritius.

1.1.3 Pursuant to the said referral, the Executive Director of the Commission notified the parties of a merger investigation into the Proposed Transaction in terms of sections 30(c) and 51 of the Competition Act 2007 on 4 July 2023.

1.1.4 The Merger Parties are hereby providing undertakings to the Commission related specifically to possible effects of the Proposed Transaction on the Mauritius market under section 63 of the Competition Act 2007 with a view to-

1.1.4.1 allaying the preliminary concerns that the Executive Director of the Commission has expressed in respect of the Proposed Transaction; and

1.1.4.2 obtaining a speedy affirmative decision from the Commission to proceed with the Proposed Transaction ("**the Decision**"),

without the Merger Parties making any admission or incurring any legal liability in respect of such expressed concerns.

1.2 Definitions

1.2.1 For the purpose of these Undertakings, the following terms shall have the following meaning -

1.2.1.1 **"Affiliated Enterprises"** - enterprises controlled by any of the Merger Parties;

1.2.1.2 **"Closing"** - the transfer of the legal title in respect of the Divestment Business by way of a sale of all the Divestment Shares to the Purchaser;

1.2.1.3 **"Closing Date"** - the date upon which Closing takes place;

1.2.1.4 **"Closing Period"** - the period of [REDACTED] from the later of (a) the date of approval by the Commission of the Purchaser and (b) the date of Completion, which period may be extended by agreement between the Commission and the Merger Parties for a further [REDACTED] period if necessitated by circumstances;

1.2.1.5 **"Completion"** - means the implementation of the Proposed Transaction;

1.2.1.6 **"Confidential Information"** - any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain;

1.2.1.7 **"Divestment"** - the disposal by the Merger Parties of the Divestment Shares by way of a sale to the Purchaser pursuant to a binding sale and purchase agreement;

1.2.1.8 **"Divestment Business"** - the business which at the time of this undertaking is owned, run and managed by Engen Mauritius, as described in Schedule 1, excluding the Excluded Assets, and which the

Merger Parties commit to divest by disposing of the Divestment Shares. For the avoidance of doubt, the Divestment Business includes the business of the supply of jet fuel and bunker fuel, subject to clauses 2.2.3 and 2.2.4;

- 1.2.1.9 **"Divestment Shares"** - shares held by the Engen Shareholders in Engen Mauritius;
- 1.2.1.10 **"Divestment Trustee"** - a person appointed to dispose of the Divestment Business after the First Divestment Period in terms of paragraph 2.4.3;
- 1.2.1.11 **"Effective Date"** - the date of adoption of the Decision by the Commission;
- 1.2.1.12 **"Engen Mauritius"** - Engen Petroleum (Mauritius) Limited, a company incorporated under the laws of Mauritius with registration number C06001768 and BRN C06001786;
- 1.2.1.13 **"Engen Shareholders"** - the direct and indirect shareholders of Engen Mauritius, being [REDACTED] (Proprietary) Limited and Engen South Africa;
- 1.2.1.14 **"Engen South Africa"** - Engen Limited, a company incorporated under the laws of South Africa with registration number 1968/002086/06;
- 1.2.1.15 **"Excluded Assets"** - the assets of Engen Mauritius that the Merger Parties will retain despite the Divestment and which will be transferred to an entity designated by VEB between Completion and Closing, which assets are listed in Schedule 3;
- 1.2.1.16 **"First Divestiture Period"** - the period of [REDACTED] from the Effective Date, which period may be extended by a further [REDACTED] for good cause as notified by the Merger Parties to the Commission;

1.2.1.17 "Hold Separate Manager" - the person that may be appointed by the Merger Parties to supervise and oversee the day-to-day business for the Divestment Business, on the basis set out in paragraph 2.3.5;

1.2.1.18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1.2.1.19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1.2.1.20 "Key personnel" - all personnel within the Divestment Business in executive positions or having managerial responsibilities;

1.2.1.21 "Merger Parties" - VEB and Engen South Africa;

1.2.1.22 [REDACTED]
[REDACTED]

1.2.1.23 "Personnel" - all staff employed by the Divestment Business as at the Completion Date;

1.2.1.24 "Purchaser" - the entity or entities approved by the Commission as an acquirer of the Divestment Shares;

1.2.1.25 "Purchaser Criteria" - the criteria laid down in paragraph 2.4.1 that the Purchaser must fulfil in order to be approved by the Commission;

- 1.2.1.26 "Schedules" - the schedules to these Undertakings;
- 1.2.1.27 [REDACTED]
[REDACTED]
- 1.2.1.28 "Transitional Services" - the services provided by Engen South Africa and/or its subsidiaries to the Divestment Business as at the Effective Date, as set out in Schedule 4;
- 1.2.1.29 "these Undertakings" - this document containing the obligations and commitments being offered to the Commission by the Merger Parties; and
- 1.2.1.30 "VEM" - Vivo Energy Mauritius Limited, a company incorporated under the laws of Mauritius under business registration number C07007577, which company is an associated company of VEB.

2 UNDERTAKING TO DIVEST

2.1 Divestiture

- 2.1.1 In order to maintain effective competition, the Merger Parties undertake to procure that the Engen Shareholders dispose of the Divestment Shares by the end of the Closing Period to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 2.4.
- 2.1.2 To carry out the Divestiture, the Merger Parties undertake within the First Divestiture Period to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Shares, subject to Completion and approval by the Commission in terms of paragraph 2.4.
- 2.1.3 The Divestment shall not be implemented before the Commission has approved the Purchaser in terms of paragraph 2.4, subject to Completion.

2.1.4 The Merger Parties shall be deemed to have complied with these Undertakings if -

2.1.4.1 by the end of the First Divestiture Period, the Merger Parties have implemented paragraph 2.1.2, to effect the Divestment; and

2.1.4.2 the Closing takes place within the Closing Period; or

2.1.4.3 the Divestment Trustee is granted an exclusive mandate to sell the Divestment Shares in accordance with paragraph 2.4.3.

2.1.5 In order to maintain the structural effect of these Undertakings, the Merger Parties shall, for a period of [REDACTED] after Closing, not acquire, whether directly or indirectly, control (as defined in section 47(3) of the Competition Act) over the whole or part of the Divestment Business, unless this occurs with the written approval of the Commission on application made.

2.2 The Divestment Business

2.2.1 Subject to paragraphs 2.2.3, 2.2.4 and 2.2.5, the Divestment Business consists of the ongoing business of Engen Mauritius, [REDACTED]
[REDACTED]
[REDACTED]

2.2.2 The legal shareholding structure of the Divestment Business as operated to date is described in Schedule 2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.2.3 Notwithstanding anything to the contrary in these Undertakings, the Merger Parties shall be entitled at any time after the approval by the Commission of the Purchaser in terms of paragraph 2.4.2 to -

2.2.3.1 transfer for no consideration the Excluded Assets from Engen Mauritius to an entity nominated by VEB; and

2.2.3.2 [REDACTED]

2.2.4 [REDACTED]

2.2.5 [REDACTED]

2.2.6 Should the Purchaser by the Closing Date require to use the Engen trademark in respect of the Divestment Business during a temporary transitional re-branding period after the Closing Date, the Merger Parties shall allow such use for a period not exceeding [REDACTED] on reasonable terms agreed between Engen South Africa and the Purchaser, whereafter the use of such trademark will cease.

2.3 **Related Undertakings**

2.3.1 **Operation Status**

2.3.2 From the Effective Date until Closing, the Merger Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Merger Parties shall -

2.3.2.1 ensure that the Engen trademarks and branding are not removed from the retail network serviced by the Divested Business;

2.3.2.2 not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

2.3.2.3 to make available, or procure to make available the Transitional Services as well as sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and

2.3.2.4

[REDACTED]

2.3.3 Hold Separate Undertakings

2.3.3.1 The Merger Parties undertake, from the Effective Date until Closing, to keep the Divestment Business separate from VEM's business and to ensure that, unless explicitly permitted under these Undertakings -

2.3.3.1.1 the directors, management and staff of VEM have no involvement in the Divestment Business and not be appointed to the Engen Mauritius board of directors;

2.3.3.1.2 subject to paragraphs 2.3.2.3, the Key Personnel and Personnel of the Divestment Business have no involvement in the business of VEM and the other businesses of the Merger Parties, and do not report to any individual outside the Divestment Business.

2.3.4 Ring Fencing

2.3.4.1 The Merger Parties shall implement, or procure to implement, all necessary measures to ensure that they and their Affiliated Enterprises do not, after the Completion, obtain any Confidential Information relating to the Divestment Business except as may be strictly necessary to carry out the Transitional Services and preserve the continued independent operation of the Divestment Business, and that any such Confidential Information obtained by the Merger Parties and their Affiliated Enterprises before the Closing Date will be eliminated and not be used by Engen Shareholders, the Merger Parties and their Affiliated Enterprises after the Closing Date. This includes instituting measures to ensure that the Engen Shareholders' appointees on the board of directors of Engen Mauritius keep the Confidential Information confidential, except as may be strictly necessary to carry out the Transitional Services and preserve the continued independent operation of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network of

Engen South Africa shall be severed to the extent possible, without compromising the viability of the Divestment Business.

- 2.3.4.2 Notwithstanding the foregoing, the Engen Shareholders and their Affiliated Enterprises may obtain or keep information relating to the Divestment Business which is reasonably necessary for the operation of the Excluded Assets or the disclosure of which to the Merger Parties is required by law.

2.3.5 Hold Separate Manager

- 2.3.5.1 Until Closing, the Merger Parties shall procure that the Divestment Business is managed as a distinct and saleable entity separate from VEM. To that end, the Merger Parties shall immediately as soon as practicable after [REDACTED] procure to be appointed a Hold Separate Manager.

- 2.3.5.2 The Hold Separate Manager shall be a person:

- 2.3.5.2.1 [REDACTED]
[REDACTED]

- 2.3.5.2.2 [REDACTED]

- 2.3.5.2.3 has the necessary financial capability and proven business experience to manage the Divestment Business; and

- 2.3.5.2.4 who is subject to approval from the Commission, after which the Hold Separate Manager shall sign an agreement to manage the Divestment Business separately until Closing.

- 2.3.5.3 The Hold Separate Manager shall supervise and oversee the Divestment Business to ensure that it is being run independently and in the best interest of the business with a view to ensuring its continued economic

viability, marketability and competitiveness and its independence from the other businesses of the Merger Parties.

2.3.5.4 The Hold Separate Manager shall have, as part of its appointment obligations, the duty to report to the Commission on any pertinent issues relating to operations, any other information required by the Commission and divestment of the Divestment Business as required.

2.3.5.5

[REDACTED]

2.3.6 Non-Solicitation

The Merger Parties undertake, subject to customary limitations, not to solicit, and to procure that their Affiliated Enterprises do not solicit, the Key Personnel transferred with the Divestment Business for a period of [REDACTED] after Closing.

2.3.7 Divestiture Process

2.3.7.1 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Merger Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, provide to potential purchasers sufficient information -

2.3.7.1.1 as regards the Divestment Business; and

2.3.7.1.2 relating to the Key Personnel and allow them reasonable access to the Key Personnel.

- 2.3.7.2 The Merger Parties undertake to explain the divestiture and purchaser selection process to the Commission, and processes shall not include provisions having the effect of disqualifying any potential purchaser on the basis of its potential competitive effect on the Mauritius market.

2.3.8 Reporting

- 2.3.8.1 The Merger Parties shall submit ongoing updates and reports to the Commission on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers and hold a meeting with the Commission [REDACTED] until the later of the end of the First Divestiture Period and the end of the Closing Period, except as otherwise advised by the Commission. [REDACTED]

- 2.3.8.2 The Merger Parties shall inform the Commission on the preparation of the data room documentation (should one be employed in the divestment process) and the due diligence procedure and shall submit to the Commission a copy of any information memorandum that may be made available to potential purchasers.

2.4 The Purchaser

- 2.4.1 In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- 2.4.1.1 The Purchaser shall be independent of and unconnected to the Merger Parties and their Affiliated Enterprises (this being assessed having regard to the situation following the Divestiture).

2.4.1.2 The Purchaser shall have the capability to maintain and develop the Divestment Business as a viable and active competitive force in competition with VEM and other competitors.

2.4.1.3 The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Divestment will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

2.4.2

[REDACTED]

2.4.3

[REDACTED]

2.4.4 The sale concluded by the Divestment Trustee shall be conditional upon written approval by the Commission of -

2.4.4.1 the Purchaser; and

2.4.4.2 the sale price, should the Merger Parties contest that the sale price was at fair market value.

2.4.5 In acting upon such divestiture mandate, the Divestment Trustee shall act with the utmost good faith and shall protect the legitimate financial interests of the Merger Parties, subject to the Merger Parties' unconditional obligation to divest.

3 MISCELLANEOUS

3.1 Revision

3.1.1 The Commission may extend the time periods foreseen in these Undertakings in response to a request from the Merger Parties or, in appropriate cases, on its own initiative.

3.1.2 The Commission may further, in response to a reasoned request from the Merger Parties showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Undertakings. Any request made by the Merger Parties shall not have the effect of suspending the application of these Undertakings and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

3.2 Entry into force

These Undertakings shall take effect upon the date of adoption of the Decision.

Schedule 1

Assets of the Divested Business

The ongoing business of Engen Mauritius, excluding the Excluded Assets, including but not limited to the following assets:

Service stations dealer contracts as set out in the table below.

No	Site Name	Location	Address
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
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23			
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25			
26			
27			
28			
29			
30			

The land and improvements on which the CODO service stations are situated

The leases to the land and improvements on which the CLDO service stations are situated

The lease to the head office premises of Engen Mauritius

All office equipment of Engen Mauritius

All Personnel employed at Engen Mauritius

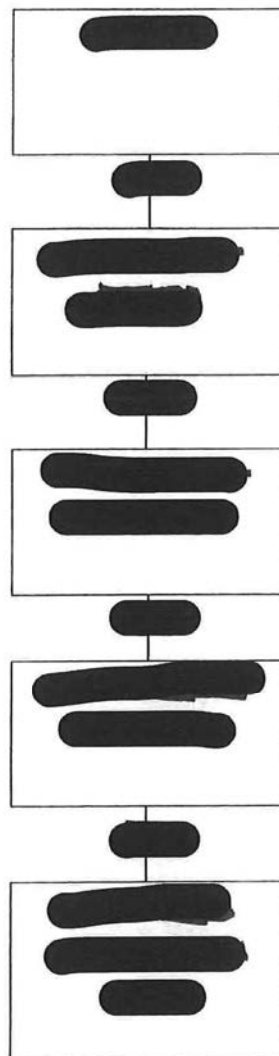
The depots, storage tanks and equipment of Engen Mauritius in the Port Louis harbour and the leases with the Mauritius Ports Authority in respect of the land on which those assets are situated

For the avoidance of doubt, the Divestment Business shall not include the Excluded Assets,

[REDACTED]

Schedule 2

Shareholding structure of Engen Mauritius



Schedule 3**Excluded Assets**

Service stations dealer contracts as set out in the table below.

No	Site Name	Location	Address
1			
2			
3			
4			
5			
6			
7			

The land and improvements on which the CODO service stations are situated.

The leases to the land and improvements on which the CLDO service stations are situated.

Schedule 4**Transitional Services to be provided by Engen Limited between Completion and Closing**

As per the services set out in the support services provided currently by Engen Limited to Engen Mauritius for a fee in terms of the Management Agreement between the parties.

SIGNED BY AUTHORISED SIGNATORIES OF VITOL EMERALD BIDCO PTY LTD

Jay S. Gleacher

NAME: Jay Gleacher

CAPACITY: Director

DATE: Mar 10, 2024

Harvey Foster

NAME: Harvey Foster

CAPACITY: Director

DATE: Mar 10, 2024

(execution version)(8603645.1)

Final Audit Report

2024-03-10

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