

PRESS RELEASE

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08 August 2022

FCC STATEMENT OF CASE IN RESPECT OF ACQUISITION OF EQUITY IN PAEM

Swala Oil and Gas (Tanzania) PLC (“Swala” or “the Company”) advises that the Fair Competition Commission of Tanzania (“FCC”) has issued the attached Statement of Case in respect of the acquisition by the Company of a 7.93% equity interest in PAE Panafrican Energy Corporation (“PAEM”) on the 29th of December 2017.

The Company is not required to respond to this initial statement but must await further communication in which the FCC shall set out its position and claim.

For further information please contact:

Swala Oil & Gas (Tanzania) plc

Ms. Christina Eugene

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Forward-Looking Statements

About Swala:

Swala is the first Oil and Gas company listed on an East African Stock Exchange with a significant local ownership. Swala holds assets in the world-class East African Rift System with a total net land package in excess of 14,000 km² as well as a 7.93% interest in PAE PanAfrican Energy Corporation. New discoveries have been announced by industry participants in a number of licences along this trend that extend the multi-billion-barrel Albert Graben play so successfully developed by Tullow Oil into the eastern arm of the rift. Swala has an active operational and business development programme to continue to grow its presence in the hydrocarbon provinces of East Africa and globally.

IN THE UNITED REPUBLIC OF TANZANIA
FAIR COMPETITION COMMISSION
AT DODOMA

IN THE MATTER OF FAIR COMPETITION COMMISSION

FCC/COMP No. 6/2020

BETWEEN

COMPETITION COMMISSION..... COMPLAINANT

AND

SWALA (PAEM) LIMITED1ST RESPONDENT

ORCA EXPLORATION GROUP INC. 2ND RESPONDENT

PAE PANAAFRICAN ENERGY CORPORATION 3RD RESPONDENT

SWALA OIL GAS (TANZANIA) PLC. 4TH RESPONDENT

PANAFRICAN ENERGY TANZANIA LIMITED 5TH RESPONDENT

STATEMENT OF THE CASE

(Made under Rule 12 (2) and (3) of the Competition Rules, 2018)

1. DESCRIPTION OF THE PARTIES

1.1 The Complainant: Fair Competition Commission

The Fair Competition Commission (hereinafter referred to as the **Complainant** or the **FCC**) is a statutory body established under section 62 (1) of the Fair Competition Act No. 8 of 2003 (the FCA) to promote and protect effective competition in trade and commerce and protect consumers from unfair and misleading market conducts. Its address of service for the purposes of this Statement of the Case is:

Fair Competition Commission,
PSSSF House, 6th Floor,
Makole Road,
P. O. Box 2351
DODOMA

1.2 The Respondents

1.2.1 1st Respondent: Swala (PAEM) Limited

Swala (PAEM) Limited (hereinafter referred to as the **1st Respondent**), is a private limited company incorporated under the laws of England and Wales with registration number 11110427 whose registered office is located at Kemp House, 160 City Road, London, United Kingdom, EC1V 2NX. The 1st Respondent is a wholly owned subsidiary of Swala Oil Gas (Tanzania) Plc, a company registered in Tanzania.

The 1st Respondent's address of service for the purpose of this Statement of the Case unless prescribed otherwise by the 1st Respondent is:

Swala (PAEM) Limited,
c/o Swala Oil and Gas (Tanzania) Plc,
2nd Floor, Osterbay Plaza,
Plot No. 1196, Osterbay, Haile Selassie Road,
P.O. Box 105266,
DAR ES SALAAM.

1.2.2 2nd Respondent: Orca Exploration Group Inc.

Orca Exploration Group Inc. (hereinafter referred to as the **2nd Respondent**) is a company incorporated under the laws of British Virgin Islands. The 2nd Respondent is an established international public company, engaging in the development of natural gas resources in Africa.¹

The 2nd Respondent's address of service for the purpose of this Statement of the Case unless prescribed otherwise by the 2nd Respondent is:

Orca Exploration Group Inc.,
C/o PanAfrican Energy Tanzania Limited
Oyster Plaza Building, 5th Floor,
Haile Selassie Road,
P.O. Box 80139,
Dar es Salaam, Tanzania.

1.2.3 3rd Respondent: PAE PanAfrican Energy Corporation

PAE PanAfrican Energy Corporation (hereinafter referred to as the **3rd Respondent**) is a company incorporated under the laws of Mauritius. The 3rd Respondent is actively engaging in exploration and production of oil and gas. The Company also acquires, develops, and manages oil properties in Sub-Saharan Africa.

The 3rd Respondent, is a wholly owner of Panafrican Energy Tanzania Limited, a company registered in Mainland Tanzania and is a major supplier of natural gas to the country's domestic energy market who operates the Songo Songo field in Tanzania. The 3rd Respondent's address of service for the purposes of this Statement of the Case unless prescribed otherwise by the 3rd Respondent is:

¹ [Orca Energy Group Inc.](#) visited on 2nd June, 2022 at 17:58 hours.

PAE PanAfrican Energy Corporation
C/o PanAfrican Energy Tanzania Limited
Oyster Plaza Building, 5th Floor,
Haile Selassie Road,
P.O. Box 80139,
Dar es Salaam.

1.2.4 4th Respondent: Swala Oil Gas (Tanzania) Plc

Swala Oil and Gas (Tanzania) Plc (hereinafter referred to as the **4th Respondent or PAEM**) is an oil and gas company listed on the Dar es Salaam stock exchange with assets in Tanzania and Burundi and an active growth programme in both Africa and elsewhere. The 4th Respondent's current exploration licence is the Kilosa-Kilombero licence in Tanzania, which it operates with a 100% participating interest. The 4th Respondent's address of service for the purposes of this Statement of the Case unless prescribed otherwise by the 4th Respondent is:

Swala Oil and Gas (Tanzania) Plc,
2nd Floor, Osterbay Plaza,
Plot No. 1196, Osterbay, Haile Selassie Road,
P.O. Box 105266,
DAR ES SALAAM.

1.2.5 5th Respondent: PanAfrican Energy Tanzania Limited

PanAfrican Energy Tanzania Limited (hereinafter referred to as the **5th Respondent or PAET**) is a limited company registered under the laws of Tanzania and a wholly owned subsidiary of the 3rd Respondent. In 1991 the 5th Respondent acquired the Songo Songo lease and began development of the gas field in Southern Tanzania. The 5th Respondent is a major supplier of natural gas to the country's domestic energy market. The 5th Respondent's address of service for the purposes of this Statement of the Case unless prescribed otherwise by the 5th Respondent is:

PanAfrican Energy Tanzania Limited

Oyster Plaza Building, 5th Floor,
Haile Selassie Road,
P.O. Box 80139,
Dar es Salaam, Tanzania

2. FACTS CONSTITUTING THE ALLEGED INFRINGEMENT

The facts that constitute this case are as follows:

- 2.1 THAT**, on 29th December, 2017 the 2nd Respondent, a company incorporated under the laws of British Virgin Islands and the 1st Respondent, a private limited company incorporated under the laws of England and Wales, entered into an Investment Agreement (**the Agreement**);
- 2.2 THAT**, the Agreement referred under Paragraph 1 hereinabove, concerned acquisition of Class A common shares (the shares) of the 3rd Respondent, (a company registered in Mauritius and a wholly owned subsidiary of the 2nd Respondent) with a face value of USD 1.00 each;
- 2.3 THAT**, according to the Agreement, the 2nd Respondent sold the shares to the 1st Respondent in three tranches, to wit; the First Tranche Shares involving acquisition of 7,933, the Second Tranche Shares involving 12,067 and the Third Tranche Shares involving 20,000;
- 2.4 THAT**, the total number of issued and outstanding Class A common shares in the 3rd Respondent is 100,000;
- 2.5 THAT**, based on the facts under Paragraphs **2.3** and **2.4** hereinabove., the Shares in question represent, in aggregate, 40% of the issued and outstanding Shares in the 3rd Respondent;

- 2.6** THAT, on 1st April, 2019 the 4th Respondent, a company registered in Tanzania and a parent company of the 1st Respondent, issued a Press Release informing the public that, the parties to the Agreement have agreed to terminate the implementation of the Second and Third Tranche Shares;
- 2.7** THAT, based on the fact under Paragraph **2.6** hereinabove, the 1st Respondent effected the First Tranche Shares only which is equivalent to 7.93%;
- 2.8** THAT, the 3rd Respondent wholly owns the 5th Respondent, a limited liability company registered under the laws of the United Republic of Tanzania;
- 2.9** THAT, the 5th Respondent owns and operates Songo Songo gas field in Kilwa District, Lindi Region in Mainland Tanzania;
- 2.10** THAT, the 1st Respondent is a wholly owned subsidiary of the 4th Respondent, a company registered under the laws of the United Republic of Tanzania;
- 2.11** THAT, at the time of the Agreement the total assets of the 2nd Respondent were \$ **249,549,000** equivalent to **TZS 559,299,200,760²**;
- 2.12** THAT, subject to Paragraph **2.1** hereinabove, the Agreement involved parties who are not physically present within the United Republic of Tanzania;
- 2.13** THAT, subject to paragraphs **2.2** and **2.8** hereinabove, the 2nd Respondent is the ultimate owner of the 5th Respondent. In other words, the presence of

² <https://www.bot.go.tz> (exchange rate as at 31st December, 2017 USD=TZS 2,241.42).

the 2nd and 3rd Respondent in Mainland Tanzania is through the 5th Respondent;

2.14 THAT, the acquisition of the 7.93% of the issued and outstanding shares of the 2nd Respondent in the 3rd Respondent by the 1st Respondent amounted to change of control of business of the 5th Respondent in Mainland Tanzania, to wit, a merger, as defined under section 2 read together with section 7 (c) of the FCA, which ought to have been notified to the Complainant;

2.15 THAT, section 11 (2) of the FCA read together with the “Fair Competition (Threshold for Notification of a Merger) (Amendment) Order, 2017” (hereinafter to be referred to as **the Threshold Order**), specifies the current threshold amount for merger notification to be **Tanzanian Shillings Three Billion Five Hundred Million (TZS 3,500,000,000)** of which its calculation is based on the combined market value of either assets or turnover of the merging firms;

2.16 THAT, at the time the share transaction in the 3rd Respondent was effected, the market value of assets of the 2nd Respondent alone amounted to **TZS 559,299,200,760³**, which exceeds the **TZS 3,500,000,000** being the threshold amount specified under the Threshold Order;

2.17 THAT, “*acquisition*” of the shares in the 3rd Respondent resulted into a “***change of control***” of the business of the 5th Respondent’s in Mainland Tanzania, to wit, a **merger**, as defined under section 2 read together with section 7(d) of the FCA, a conduct which ought to have been notified to the Complainant;

³ Ibid.

2.18 THAT, on the strength of the facts stated under paragraphs **2.1** to **2.17** above, the Complainant hereby alleges that the 1st, 2nd, 3rd 4th and 5th Respondents contravened the provisions of the FCA, *to wit*;

“Failure to notify a notifiable merger to the Commission contrary to sections 11 (2) read together with section 11 (5) and (6) of the FCA, Rule 33 (1) of the Competition Rules, 2018 and the Threshold Order”;

2.19 THAT, pursuant to Rule 2 of the Competition Rules, the acquiring firms in this complaint is the 1st Respondent;

2.20 THAT, pursuant to Rule 2 of the Competition Rules, the target firm in this complaint is PAE PanAfrican Energy Corporation (the 3rd Respondent);

2.21 THAT, failure on the part of the 1st, 2nd, 3rd, 4th and 5th Respondents to notify a notifiable merger to the Commission prevented the Complainant from discharging its statutory obligation of assessing the lawfulness of such a merger as provided under Section 65 (2) (b) of the FCA.

WHEREFORE, in accordance with section 69 (1) of the FCA, Rules 10 (2) and 12 (3) of the Competition Rules, 2018, the Complainant hereby:

- 1. ISSUES** this “*Statement of the Case*” to the 1st, 2nd 3rd, 4th and 5th Respondents containing the facts and provisions of the FCA alleged to have been contravened;
- 2. NOTIFIES** the 1st, 2nd 3rd, 4th and 5th Respondents that *Provisional Findings*, as provided for under Rule 19 (3) of the Competition Rules, 2018, will be issued in due course containing all evidential material supporting the allegation and, that, in line with the **Competition Rules, 2018**, the 1st, 2nd and 3rd Respondents will be given an opportunity to respond to all allegations.

This Statement of the Case is signed and issued under my hand on behalf of the Complainant at Dodoma on this 29th day of July, 2022.



Dr. Allan S. Mlulla

DIRECTOR OF COMPLIANCE

DRAWN AND SERVED BY:

Dr. Allan S. Mlulla,
Fair Competition Commission,
PSSSF House, 6th Floor,
Makole Road,
P. O. Box 2351
DODOMA.

COPY TO BE SERVED UPON:

1. Swala (PAEM) Limited,
C/o Swala Oil and Gas (Tanzania) Plc,
2nd Floor, Osterbay Plaza,
Plot No. 1196, Osterbay, Haile Selassie Road,
P.O. Box 105266,
DAR ES SALAAM.
2. Orca Exploration Group Inc.,
C/o PanAfrican Energy Tanzania Limited
Oyster Plaza Building, 5th Floor,
Haile Selassie Road,
P.O. Box 80139,
Dar es Salaam, Tanzania.

3. PAE PanAfrican Energy Corporation
C/o PanAfrican Energy Tanzania Limited
Oyster Plaza Building, 5th Floor,
Haile Selassie Road,
P.O. Box 80139,
Dar es Salaam, Tanzania.
MO Simba Company Limited,
P.O. Box 20660
DAR ES SALAAM

4. Swala Oil and Gas (Tanzania) Plc,
2nd Floor, Oyster Bay Plaza,
Plot No. 1196, Oyster Bay, Haile Selassie Road,
P.O. Box 105266,
DAR ES SALAAM.

5. PanAfrican Energy Tanzania Limited
Oyster Plaza Building, 5th Floor,
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