COMESA Competition Commission
COMESA Competition Commission
Kang'ombe House, 5th Floor-West Wing
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 (0) 1 772 466
Email- compcom@comesa.int

Common Market for Eastern and Southern Africa

Case File No. CCC/ MER/11/41/2019

Decision[1] of the Sixty-Seventh (67th) Committee Responsible for Initial Determination Regarding the Proposed Merger involving Marinvest S.r.l., Ignazio Messina & C. S.p.A. and RORO Italia S.r.l.

ECONOMIC SECTOR: Shipping

22nd December 2019

[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible the information omitted has been replaced by ranges of figures or a general description.

BML

Information and Relevant Background

1. On 13th November 2019, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a merger involving Marinvest S.r.l. ("**Marinvest**"), Ignazio Messina & C. S.p.A. ("**IM**") and RORO Italia S.r.l ("**RORO Italia**").

2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the "**Regulations**"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. The Committee Responsible for Initial Determination (the "**CID**") established that the parties operate in more than one COMESA Member State and they meet the required prescribed merger notification thresholds. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

Marinvest (the Acquirer)

4. The parties have submitted that Marinvest forms part of the MSC Mediterranean Shipping Company S.A. ("**MSC**"), in turn belonging to the MSC group which is active, at a global level, in cargo maritime transport, port handling activities, logistics, as well as in passenger maritime transport and the cruise sector. In the Common Market, the MSC group is active only in cargo maritime transport, specifically container-liner services, in the following Member States: Djibouti, Egypt, Kenya, Libya, Madagascar, Malawi, Mauritius, Sudan, Tunisia, Zambia, and Zimbabwe.

IM (the Target)

5. The parties have submitted that IM is a shipping company that provides regular liner services connecting the Mediterranean to Africa, the Middle East and the Indian subcontinent. In the Common Market, IM's activities are limited to Ro-Ro shipping services and container-liner services, in Djibouti, Egypt, Ethiopia, Kenya, Libya, Sudan, Tunisia, and Uganda.

RORO Italia (the Target)

6. The parties have submitted that RORO Italia S.r.l is a special purpose vehicle and does not have any operations in the Common Market.

Nature of the Transaction

7. The parties have submitted that the notified transaction relates to the proposed acquisition by Marinvest of a 49% stake in IM and a 52% stake in RORO Italia, with the balance of the shares in each entity continuing to be held by the seller, Gruppo Messina S.p.A.

Competition Analysis

8. The CID defined the relevant markets as the provision of container-liner services within the following trade routes:

BML

a) COMESA – Europe (which includes North Africa ("**NAF**") - Mediterranean ("**MED**") and East Africa ("**EAF**"));
b) Europe – COMESA (which includes MED-NAF and MED-EAF);
c) Rest of Africa ("**ROA**") – COMESA (which includes EAF- South Africa ("**SAF**"));
d) COMESA – ROA (which includes SAF-EAF);
e) East Africa – Mediterranean ("**EAF-MED route**");
f) Mediterranean – East Africa ("**MED-EAF route**");
g) Mediterranean – North Africa ("**MED–NAF route**");
h) North Africa – Mediterranean ("**NAF–MED route**");
i) East Africa – South Africa ("**EAF-SAF route**"); and
j) South Africa – East Africa ("**SAF-EAF route**").

9. The CID observed that the relevant markets are moderately to highly concentrated and the merging parties enjoy significant market shares in some of the relevant markets, notably the SAF-EAF and EAF-SAF routes where the merging parties are the two largest players pre-merger. The CID was concerned that as a result of the market share accretion, the proposed transaction is likely to lead to unilateral effects on the SAF-EAF and EAF-SAF routes.

10. To address the concerns identified by the CID, the parties submitted undertakings to ensure that IM continues to operate on these routes independently of the acquiring group post-merger, through ring-fencing of their operations on the EAF-SAF and SAF-EAF routes; and to ensure that no merger specific retrenchments occur within a period of two years by virtue of this transaction.

Determination

11. The CID determined that the undertakings submitted by the merging parties adequately addressed the concerns identified. The CID therefore approved the transaction with the undertakings submitted by the parties as follows:

"2. Application

Except where otherwise apparent from the context, the conditions will relate only to the East African Operations of MSC and IM.

3. Employment Condition

3.1 There will be no merger specific retrenchments at the IM East Africa Business for a period of two years post-transaction.

3.2 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separations 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 transaction; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

BMC

4. Ring-fencing Condition

4.1 The IM East Africa Business will be kept separate from the MSC East Africa Business and no steps will be taken to integrate or otherwise align the activities or conduct of IM and MSC's respective East African Operations.

4.2 The day-to-day affairs and business of IM's East African Operations shall be managed by IM, in accordance with its business trading policies and practices as at the Implementation Date, except as may be necessary to comply with any changes in applicable law or good industry practice.

4.3 The IM East Africa Business shall exercise, in its sole discretion, final and determinative power regarding the strategic marketing and/or pricing policies of IM's East African Operations and will operate the East African Operations in the Ordinary Course of Business independently of MSC.

4.4 MSC and IM shall ensure that none of the MSC representatives (or representatives of MSC affiliate companies) appointed to the board of directors of IM shall be engaged in the direct day-to-day management of the IM East Africa Business.

4.5 MSC and IM shall ensure that no Competitively Sensitive Non-Public Information of the IM East Africa Business are discussed at IM board meetings unless the MSC board representatives (or representatives of MSC affiliate companies) first recuse themselves from such discussion.

4.6 MSC and IM shall establish "information barriers" between the operations of the IM East Africa Business, on the one hand, and MSC, on the other hand, so as to ensure that:

4.6.1 Information barriers exist in relation to Competitively Sensitive Non-Public Information of the IM East Africa Business (as determined by IM, acting reasonably in its discretion) and that of MSC (i.e. in order to prevent any flow of such information between IM and MSC). These barriers may consist of both physical and procedural measures, as determined by IM, acting reasonably in its discretion; and

4.6.2 All members of the board of IM who obtain lawful access to the IM East Africa Business' Competitively Sensitive Non-Public Information shall retain same in secret and confidentially other than for use as permitted in terms of the Shareholders Agreement.

4.7 IM, acting reasonably in its discretion, can establish any other practical and/or operational measures necessary to maintain the segregation of the IM East Africa Business' Competitively Sensitive Non-Public Information from that of MSC, as

BML

well as the independent operation of IM's East African Operations. These measures shall not impede MSC (or MSC affiliate companies): (i) to comply with its reporting and/or disclosure obligations under any applicable law; and/or (ii) to obtain legal or other professional advice; and/or (iii) to legitimately protect its rights as a shareholder in IM.

4.8 For the avoidance of doubt, nothing in the above Conditions will prevent or otherwise limit the ability of IM and MSC to integrate their operations outside of East Africa. This includes any initiatives to engage in joint purchasing or other input procurement initiatives from Global Suppliers, even if such initiatives have an impact on the procurement activities of IM's East African Operations.

4.9 In addition, nothing in the above Conditions will prevent or otherwise limit the ability of IM and MSC to enter into consortia agreements,[2] or to enter into arm's length agreements for the provision of inland operational services (including but not limited to cargo handling and warehousing, cargo inland transportation or containers logistics (i.e. storage, repairs or positioning)).

5. Duration

5.1 The Employment Condition will apply for a period of two years from the Closing Date.

5.2 The Ring-fencing Condition will apply for as long as MSC has a stake in IM.

6. Monitoring of compliance with the conditions

6.1 MSC and IM shall produce an annual report which details their compliance with the conditions contemplated in paragraphs 3 and 4 above. Such report will be submitted to the Commission within one month of each anniversary of the Approval Date and will be accompanied by affidavits or declarations attesting to the accuracy thereof by directors of MSC and IM respectively.

6.2 The affidavit must be submitted to the following CCC e-mail address: *compcom@comesa.int*

7. General

IM or MSC may at any time, on good cause shown, apply to the CCC for the Conditions to be lifted, revised or amended".

[2] Consortia agreements being agreements between shipping companies relating to the joint operation of liner shipping services which are pro-competitive and widely accepted as such by competition authorities around the world.

BML

12. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 22nd of December, 2019

....

Commissioner Brian M. Lingela (Chairperson)

....

Commissioner Islam Tagelsir Ahmed Alhasan