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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/06/17/2020

Decision[1] of the Seventy-Third (73rd) Committee Responsible for Initial Determination Regarding the Joint Venture involving Bollore Africa Logistics, Nippon Yusen Kabushiki Kaisha, Toyota Tsusho Corporation

ECONOMIC SECTOR: Port Terminal Services

12th November 2020

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 15th July 2020, the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a notification for approval of a joint venture involving Bollore Africa Logistics ("**BAL**"), Nippon Yusen Kabushiki Kaisha ("**NYK**"), Toyota Tsusho Corporation ("**TTC**").

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 prescribed 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

BAL

4. It was submitted that BAL is a holding company which holds interests in companies which implement and develop activities of international transport and logistics and ports terminal operator. In COMESA, BAL has subsidiaries in Burundi, Comoros, the Democratic Republic of Congo (the "DRC"), Djibouti, Egypt, Ethiopia, Kenya, Madagascar, Malawi, Rwanda, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

NYK

5. It was submitted that NYK, a company duly organized and existing under the laws of Japan, was established in 1885 through the merger of Japan's two leading shipping companies. NYK is based in Tokyo and has regional headquarters in London, New Jersey, Singapore, and Shanghai. NYK is a provider of shipping services with a shipping fleet of approximately 710 vessels. Within the Common Market, NYK only has business operations in Kenya and has certain turnover in Ethiopia, where it conducts its business activities in Ethiopia through a third-party agency.

TTC

6. It was submitted that TTC, a company duly organized and existing under the laws of Japan, is a general trading company with leading presence in East African countries in the field of automotive logistics, projects & industrial equipment, agricultural equipment, chemical and fertilizer industry. TTC is active in the following Member States: the DRC, Djibouti, Egypt, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia, and Zimbabwe.

Nature of the Transaction

7. Under a Shareholders Agreement dated 19th December 2019, the parties agreed to jointly form the Joint Venture Company named “Suez Canal Automotive Terminal” (**SCAT**), duly organized under the laws of Egypt, whose objective is to operate a Roll-On/ Roll-Off terminal and the most advanced value-added services (pre-delivery inspection, maintenance, accessory fitment, painting, washing, etc.) and the customs clearance services for any car dealers in Egypt in relation to any vehicles arriving at East Port Said in Egypt and/or all vehicles parts arriving at East Port Said in Egypt in order to be assembled in Egypt.

Competition Analysis

8. The CID defined the relevant markets as follows:
   a. provision of Roll-On/ Roll-Off terminal services for vehicles in Egypt; and
   b. provision of Roll-On/ Roll-Off shipping services for vehicles to and from Egypt.

9. The CID observed that the market structure of the Roll-On/ Roll-Off terminal services market would be materially affected post-merger with the introduction of the joint venture company. However, the CID considered that the transaction would introduce more competition in the market.

10. The CID observed that the transaction would give rise to potentially vertically affected markets as a result of the vertical link between the RO-RO terminal activities to be carried out by the joint venture company and the RO-RO shipping activities of NYK. The CID considered whether the joint venture partners may have the ability and incentive, through SCAT, to foreclose rival Ro-Ro shipping companies from providing shipping services to customers in Egypt by foreclosing access to SCAT or providing reduced quality of service to NYK’s competitors.

11. The CID noted that the Concession Agreement entered into between the General Authority for Suez Canal Economic Zone and the joint venture partners provides that the joint venture company should “*except for the priority and preferential berthing that may be authorised in terms of guidelines issued by the Concessioning Authority from time to time, manage and operate the Project Facilities and Services on a first come-first serve basis, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof provided that this restriction shall not prevent the Concessionaire from engaging in selective Tariffs discounting or rebating in order to optimize the Concessionaire’s sustainable profitability in accordance with Good Industry Practice*”.

12. The CID also took into consideration the parties’ submissions that “*NYK will receive services from East Port Said on an arm’s length basis and will not be accorded any preferential treatment*”.

13. In light of the above, the CID was satisfied that it is unlikely that the joint venture partners would have the ability to engage in foreclosure strategy post-merger.

Determination

14. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID concluded that the transaction was not incompatible with the COMESA Treaty objective of single market integration. The CID therefore approved the transaction.

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

Dated this 12th of November 2020

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Commissioner Brian M. Lingela (Chairperson)

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Commissioner Michael Teklu Beyene **Commissioner Islam Tagelsir Ahmed Alhasan**