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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/04/09/2023

**Decision¹ of the 102 Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed Joint
Venture involving Hutchison Ports Sokhna Limited, CMA
Terminals SAS, and Golden Chance Investment Enterprise
Limited**

ECONOMIC SECTOR: Maritime



6 December 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the “**COMESA Treaty**”);

Having regard to the COMESA Competition Regulations of 2004 (the “**Regulations**”), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the “**Rules**”);

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 24 July 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Hutchison Ports Sokhna Limited (“**HSPL**”), CMA Terminals SAS (“**CMAT**”), and Golden Chance Investment Enterprise Limited (“**Golden Chance**”), pursuant to Article 24(1) of the Regulations. The notified transaction related to the proposed establishment of a full function joint venture, to be jointly controlled by HSPL, CMAT, and Golden Chance.
2. 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. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

HPSL

4. HPSL is a company incorporated under the laws of England and Wales. HPSL is an indirect subsidiary of Hutchison Ports. The latter is a member of the Hutchison Ports Group ("**HPG**"), a leading global developer and operator of container terminals and provider of associated logistical services. HPG is an operating division of CK Hutchison Holdings Limited, a multinational conglomerate headquartered in Hong Kong, incorporated in the Cayman Islands and listed on the Stock Exchange of Hong Kong Limited. It has four core businesses: ports and related services, retail, infrastructure and telecommunications (together the "**Hutchison Group**").
5. Within the Common Market, the Hutchison Group provides container terminal services in Egypt only. Additionally, the Hutchinson Group has export sales of salt into Kenya.

CMAT

6. CMAT is a company incorporated under the laws of France. CMAT is an indirect subsidiary of CMA CGM (headquartered in France). CMA CGM offers a range of services related to sea transportation, including container liner shipping and port terminal services. CMA CGM is also active within freight forwarding and contract logistics services through its wholly owned subsidiary CEVA Logistics and provides, through its wholly owned subsidiary CMA CGM Inland Services, a limited range of ancillary supply chain management services. Further, CMA CGM also recently launched CMA CGM Air Cargo and started providing air freight transportation services.
7. In the Common Market, CMA CGM is active in all Member States except in Comoros, Eritrea and Eswatini. The activities of CMA CGM in the Common Market are presented in Table 1 below:



Table 1 – Operations of CMA CGM in the Common Market²

Member State	Activities
Burundi	Customs clearing and freight forwarding
Democratic Republic of Congo	Customs clearing and freight forwarding / logistics
Djibouti	Container liner shipping
Egypt	<ul style="list-style-type: none"> • Container liner shipping (shipping agency) • Freight forwarding / logistics • Trading (real estate-activities related to CMA CGM's Alexandria office)
Ethiopia	<ul style="list-style-type: none"> • Container liner shipping • Customs clearance, warehousing and Freight forwarding / logistics
Kenya	<ul style="list-style-type: none"> • Container liner shipping • Customs clearance, warehousing, cargo consolidation • Freight forwarding / logistics
Madagascar	Container liner shipping
Malawi	<ul style="list-style-type: none"> • Customs clearance • Freight forwarding and logistics
Mauritius	<ul style="list-style-type: none"> • Container liner shipping • Freight forwarding / logistics
Rwanda	<ul style="list-style-type: none"> • Container liner shipping • Customs clearance and freight forwarding
Sudan	Container liner shipping
Tunisia	<ul style="list-style-type: none"> • Container liner shipping • Logistics
Uganda	<ul style="list-style-type: none"> • Container liner shipping • Custom clearance/ freight forwarding/ warehousing
Zambia	<ul style="list-style-type: none"> • Container liner shipping • Customs clearance, warehousing, cargo handling and freight forwarding/logistics
Zimbabwe	<ul style="list-style-type: none"> • Container liner shipping • Customs clearance and freight forwarding / logistics

² Confidential information claimed by merging parties



Golden Chance

8. Golden Chance is a company incorporated under the laws of Hong Kong. Golden Chance is a wholly owned subsidiary of COSCO SHIPPING Ports Limited ("CSPL"), a leading ports operator listed on The Stock Exchange of Hong Kong and a member of a group of companies ultimately controlled by China COSCO Shipping Corporation Limited ("COSCO"). COSCO is incorporated in the People's Republic of China and its activities include cargo shipping, logistics, ship building and repairing, ship management services, marine engineering, terminal operations, and related financial and IT services.
9. In the Common Market, COSCO provides cargo shipping services and logistics services and is active in DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Seychelles, Sudan, Tunisia and Uganda.

The proposed Joint Venture Company

10. The proposed joint venture company ("JV") will be established in Egypt via an England and Wales special purpose vehicle holdings company, the Red Sea Container Terminals Overseas Limited ("HoldCo") and an Egyptian joint-stock company, the Red Sea Containers Terminals Company S.A.E. ("Project Co"). HoldCo will control ProjectCo that will develop, use, manage, operate, exploit and maintain a container terminal on vacant land within the boundaries of the Port of Ain Sokhna in Egypt.

Jurisdiction of the Commission

11. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM\$ 50 million; and*
- b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COM\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*



12. The undertakings concerned have operations in two or more Member States. The merging parties derive combined turnover of more than the threshold of USD 50 million in the Common Market and they each derive turnover of more than USD 10 million in the Common Market. In addition, the parties do not derive more than two-thirds of their respective aggregate COMESA-wide turnover from one and the same Member State. The notified transaction is therefore a notifiable transaction to the Commission within the meaning of Article 23(5)(a) of the Regulation.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

13. It is noted that in the Common Market:
- a) the Hutchinson group primarily provides container terminal services;
 - b) the COSCO group provides cargo shipping and logistics services;
 - c) the CMA CGM group provides container terminal services, container liner shipping, customs clearing, freight forwarding, warehousing, trading in real estate, and cargo handling services; and,
 - d) the JV will provide container terminal services.
14. Thus, the JV parent companies and the JV offer services which are linked to each other. Container liner shipping companies, logistics providers and freight forwarders require container terminal services as input to provide their services in the downstream markets.

Container Terminal Operation Services

15. The provision of container terminal services by terminal operators involves the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo³.
16. Container terminal services have traditionally been segmented according to traffic flows as follows:
- a) hinterland traffic, that is containers transported directly onto/from a container vessel from/to the hinterland (via barge, truck or train), and

³ 82nd CID Decision regarding the Proposed Joint Venture involving SAS Shipping Agencies Services Sàrl, Kenya Ports Authority and Kenya National Shipping Lines Limited (the "KNSL decision") and 90th CID Decision regarding the Proposed Merger involving SAS Shipping Agencies Services Sàrl and Bolloré Africa Logistics SAS (the "Bolloré Decision").



- b) transshipment traffic, that is, containers destined for onward transportation to other ports or other vessels. Transshipment traffic involves both feeder movements, where containers are moved from a deep-sea vessel to a short-sea vessel serving adjacent markets; and relay movements, where containers are moved from one ocean-going vessel to another ocean-going vessel for onward movement to another more distant market⁴.
17. The parties submitted that the JV will provide mainly hinterland container terminal traffic services and minimal container terminal transshipment services from another location in Egypt. In view of the intended activities of the JV, the assessment focussed on the provision of hinterland container terminal traffic services.

Container liner shipping services

18. Both the CMA CGM and COSCO groups are active in the provision of container liner shipping services in the Common Market.
19. The container liner shipping industry comprises of shipping companies transporting containerized goods overseas via regular liner services as their core activity. A liner service is a fleet of ships, with common ownership or management, which provide a fixed service, at regular intervals, between designated ports, and offer transport to any goods in the hinterland served by those ports and ready for transit by their sailing dates.
20. Container liner services can be distinguished from non-liner shipping services (i.e. charter, tramp, specialised transport) based on the regularity and frequency of the service. A tramp service is a ship that has no fixed routing or itinerary or schedule and is available at short notice to load any cargo from port to port. Customers demand scheduled transport in order to meet production runs and delivery deadlines, which makes demand substitution less effective between liner and non-liner services.
21. Furthermore, the use of containerised transportation can be considered separate from other non-containerised transport such as transport by bulk vessel. The non-container/bulk cargo services (also referred to as general cargo or break-bulk cargo) includes all types of break-bulk goods (i.e., goods that must be loaded individually and not in containers). Container-liner shipping is said to have a low degree of substitutability with non-containerised cargo/bulk cargo because the type of transported cargo and of vessels used are generally different⁵. For example, goods such as vehicles, and forest products such as paper and board - can be carried on bulk vessels specially designed for such cargoes.

⁴ See the KNSL and Bollore decisions.

⁵ See the KNSL Decision.



22. The CID has previously defined a relevant product market for container liner shipping consisting of the provision of regular, scheduled services for the carriage of cargo by container⁶, distinct from the markets of non-liner shipping; non-containerised transport; and roll-on/roll-off shipping.
23. Further, a segmentation can be made for deep-sea vessels. Deep-sea shipping refers to the maritime transport of goods on intercontinental routes crossing oceans as opposed to short sea shipping which cover shorter distances⁷. Deep sea shipping therefore involves vessels that are larger with a higher capacity as compared to short sea vessels. Given that the JV will provide container terminal services for deep-sea vessels, the product market is considered as the provision of deep-sea liner shipping services.
24. The CID has previously held that distinct product markets⁸ can be identified for certain goods which require refrigeration, and this could be limited to refrigerated (reefer) containers only or could include transport in conventional reefer (refrigerated vessels). The CID considered that for the transportation of certain perishable items, which require to be done on lower temperature to preserve their freshness, non-reefer containers are not substitutable for reefer containers. Nonetheless, on the supply side, there exists supply side substitutability given that a liner can carry both non-reefer containers and reefer containers subject to the vessel having the necessary infrastructure and power generation capacity.
25. It was previously noted that where the share of reefer containers in relation to all containerised cargo is below 10% in both directions, a single market can be considered for containerised liner shipping services, as the ships have in general more reefer facilities than is actually used. Carriers will therefore be able to shift volume from transport of non-reefer containers to reefer containers in the short term and without significant additional costs. On the other hand, on routes where there is a high share of transport in reefer containers in relation to all containerised cargo in one direction and relatively low shares in the other direction, the situation on the supply side can be different.
26. The parties submitted that the CMA CGM group has a market share of [30-40]% for reefer containers from Egypt to Far East⁹ and [10-20]% from Far East to Egypt¹⁰; while COSCO group has a market share of [0-10]% from Egypt to Far

⁶ *Ibid.*

⁷ See the Bollore Decision.

⁸ *Ibid.*

⁹ Confidential information claimed by merging parties.

¹⁰ Confidential information claimed by merging parties.



East¹¹ and [0-10]% from Far East to Egypt¹². The foregoing suggests that a separate market for reefer container liner shipping services could be defined in relation to the Egypt-Far East route.

27. In line with its previous practice, the CID considered that the relevant market is the market for the provision of container liner shipping services, with a potential segmentation for reefer containers.

Freight Forwarding Services

28. Freight forwarding entails "*the organisation of transportation of items (including activities such as customs clearance, warehousing, ground services etc.) on behalf of customers according to their needs*"¹³. Freight forwarding facilitates international trade by ensuring that internationally traded goods move from point of origin to point of destination and arrive at the right place and time; in good condition; and at the most economical costs. Freight forwarders do not own any part of the network they use, but they normally hire transportation capacity from third parties for the transportation of shipments.
29. It is noted that within the freight forwarding market, narrower markets could potentially exist. For instance, freight forwarding can be grouped into domestic and international freight forwarding or according to the mode of transport (air, land and sea)¹⁴. It was argued in a previous case that the different modes of transport ultimately compete with each other in the provision of a door-to-door multimodal transport service and the CID has previously held that such services can be provided as complements to secure an ultimate door-to-door service¹⁵. It was further observed that transport operators within the Common Market do not appear to compete on an intra-COMESA door-to-door multimodal transport market¹⁶. The CID held that it is likely that for certain routes, sea freight forwarding services and air freight forwarding services would not constitute effective substitutes in terms of connectivity, access to and through national border (particularly in areas facing political instability), costs and travel time¹⁷.

¹¹ Confidential information claimed by merging parties.

¹² Confidential information claimed by merging parties.

¹³ Case COMP/M.4045 DB / BAX Global, Case COMP/M.3971 Deutsche Post / Exel, Case COMP/M.3603 UPS / Melto, M.3496 TNT Forwarding Holding / Wilson Logistics, Case COMP/M.3155 Deutsche Post / Securicor, Case COMP/M.2908 Deutsche Post / DHL and Case COMP/M.1794 Deutsche Post / Air Express International quoted in the 82nd CID Decision regarding the Proposed Joint Venture involving SAS Shipping Agencies Services Sàrl, Kenya Ports Authority and Kenya National Shipping Lines Limited

¹⁴ See the KNSL Decision.

¹⁵ See the Bollore Decision.

¹⁶ *Ibid.*

¹⁷ *Ibid.*



30. Based on the above reasoning therefore, considering that the CMA CGM group and COSCO group provide sea freight forwarding services in the Common Market, a distinct market has been identified for sea freight forwarding services.

Logistics Services

31. Logistics services, also referred to as contract logistics services, refer to *“the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements”*¹⁸.
32. The CID previously held¹⁹ that there are indications that the contract logistics services market could be further segmented into different sub-markets considering the type of service. The good being stored or transported determine the logistics required, where the storage and transportation of perishable and fragile items require different logistics such as freezers and refrigerated trucks. Similarly, the storing and transportation of hazardous items requires special logistics, for instance, due to specific legislation, need for specialised infrastructure including storage facilities and tankers, investment in staff training and equipment, specialised knowledge and experience. The CID further noted that logistics services suppliers are generally able to serve all type of customers, without distinguishing according to the types of goods transported. Suppliers are able to provide and adapt to various logistical set-up even if they do not own the required assets (such as freezers and/or refrigerated trucks) which can be leased from other third parties on a need's basis. It was held that no segmentation of the contract logistics services market is required depending on the demand of the customer, as the particular needs of the customers do not act as any constraint on suppliers, and the logistical requirements/equipment being easily available, are also not a significant barrier for suppliers. Consistent with its previous approach, for purposes of this transaction, the CID considered that a broad market for logistics services can be adopted.
33. Based on the foregoing assessment and without prejudice to the CID's approach in similar future cases, the relevant product markets are considered as the:
- a) **provision of hinterland traffic container terminal services;**
 - b) **provision of container liner shipping services, with potential segmentation for reefer containers;**
 - c) **provision of sea freight forwarding services; and**
 - d) **provision of logistics services.**

¹⁸ Case No COMP/M.6059 - Norbert Dentressangle/ Laxey Logistics Notification of 14/02/2011, paragraph 9.

¹⁹ 76th Decision of the Committee Responsible for Initial Determination Regarding the Proposed Merger Involving IVY 2 Investments VCC and PIL Holdings Pte. Ltd.



Relevant Geographic Market

The provision of hinterland traffic container terminal services

34. The CID has previously determined that the relevant geographic market for hinterland traffic container terminal services is likely to be narrow²⁰ having regard to the required hinterland connectivity to effectively facilitate container cargo flows from the foreland to hinterland²¹ and would be defined by the catchment area of ports which the container terminal generally services²².
35. The parties submitted that the proposed JV will only compete with several other major container terminals located in Egypt that provide hinterland services.
36. The CID noted that the parent companies are also involved in the provision of container terminal services in Egypt. HPSL operates container terminals in Alexandria Port and El Dekheila Port, which are both on the Mediterranean Sea and is developing a container terminal inside the Abu Qir Naval Base, also situated on the Mediterranean sea, and will soon commence development on a port at Alexandria. The CID further observed that CMA CGM group [REDACTED] and that COSCO has 20% non-controlling ownership in a container terminal at the East Port Said Port in Egypt.
37. The parties submitted that due to the respective locations of the ports in Ain Sokhna, Alexandria, El Dekheila, their respective customers have entirely different requirements and focus on different containerized liner shipping trade lines. The parties further submitted that due to the Suez canal usage fees, the port of Sokhna's focus is almost entirely dedicated to the handling of hinterland traffic between Egypt and East Africa, the Gulf countries, India, South East and Far East Asia and Oceania. The parties also submitted that as Sokhna is located on the Gulf of Suez, i.e. Red Sea side of the Suez Canal (as opposed to the Mediterranean), it would not be active on any market for container terminal services for hinterland and transshipment relating to container line shipping services to/from Egypt and the Mediterranean, European, West African or trades with North/Central and South America, as the costs of sending such traffic through the Suez Canal would be prohibitive.
38. From the information gathered, it appears that the cargo route determines the port at which a container liner shipping company will call to in Egypt. The Port of Ain

²⁰ See the KNSL Decision.

²¹ Decision of the 81st Committee Responsible for Initial Determinations Regarding the Proposed Merger involving DP World Logistics FZE and Imperial Logistics Limited

²² See the Bollore Decision.



Sokhna appears to serve shipping routes which are to the East of Egypt. The parties confirmed submitted that for hinterland traffic between Egypt and East Africa, the Gulf countries, India, South East and Far East Asia and Oceania, [REDACTED]

39. The parties further submitted that the Port of Ain Sokhna is ideally situated for hinterland traffic destined for and originating from Cairo due to its proximity with the Cairo city²³.
40. The CID considered that the different container terminals located within one port or port region are used interchangeably by container liner shipping companies. For this reason, it was observed that the industry considered the Port of El Dekheila, which is located approximately 17 kms away from the Port of Alexandria, as one with the Port of Alexandria²⁴. It is observed that Port of Ain Sokhna is located approximately 355 kms from Port of Alexandria.
41. In view of the foregoing, the CID was of the view that there exists limited substitutability between the Port of Ain Sokhna and the other different ports located on the Mediterranean Sea. The CID thus considered that the geographic market for the provision of hinterland traffic container terminal services is limited to the JV's port of operation, that is Ain Sokhna.

Container Liner Shipping Services

42. The CID has traditionally defined the geographic scope of container liner shipping services on the basis of the legs of trade²⁵, defined by the range of ports that are served at each end of the service. Each trading route can have specific characteristics depending on the volumes shipped, the types of cargo transported, the ports served and the length of the journey from the point of origin to the point of destination²⁶. From a demand perspective, a trading route is unlikely to be viewed as interchangeable with a different route. Moreover, market conditions on the two directions (legs) of a trade can be different, in particular in case of trade imbalances or different characteristics of the products shipped, a distinction can thus be made between the two directions (legs) of a trade.
43. The routes which are affected by the transaction are:
 - a) Egypt-Far East,

²³ Meeting with the Egyptian Competition Authority, CMA CGM and COSCO.

²⁴ Meeting with the Egyptian Competition Authority and HPG.

²⁵ Decision of the Seventy-Third (73rd) Committee Responsible for Initial Determination dated 12th November 2020 Regarding the Joint Venture involving Bollore Africa Logistics, Nippon Yusen Kabushiki Kaisha, Toyota Tsusho Corporation

²⁶ See the European Commission decision in Case No COMP/M.7268 - CSAV/ HGV/ KÜHNE MARITIME/ HAPAG-LLOYD AG, paragraph 23.



- b) Far East-Egypt
- c) Egypt-Middle East
- d) Middle East-Egypt
- e) Egypt-East Africa; and
- f) East Africa-Egypt.

Sea Freight Forwarding

44. In previous decisions, the CID considered that the market for sea freight forwarding services is likely to be at least national in scope, and possible COMESA-wide²⁷. Whilst it is noted that customers may tend to prefer providers from their home country, the majority of freight forwarders are global players with local offices or registered agents in a number of countries, including in the Member States. The presence of such a selection of providers gives customers varying options of providers that can facilitate movement of their goods within the Common Market and beyond.
45. In *Bollore/MSC*, the CID noting that the market for sea freight forwarding is likely to be national in scope and possibly COMESA-wide. The CID however assessed the markets for sea freight forwarding on an intra-COMESA country pair basis having regard to the vertical links raised by the transaction. In the current case, given the vertical links from the transaction, the CID has also focussed its assessment on country pairs, namely, Egypt and Kenya namely where the sea freight forwarding services of [REDACTED] CMA CGM group overlap.

Logistics Services

46. In line with its previous approach, the CID considered²⁸ that the market for logistics services is likely to be the Common Market as the competition dynamics surrounding the provision of logistics services go beyond the boundaries of a single country since the players compete with other international providers. Providers of this service are mainly global players with local offices or registered agents in a number of countries, including in some Member States. The presence of such a selection of providers gives customers varying options of providers that can facilitate movement of their goods within the Common Market and beyond. Therefore, from a demand perspective, substitution is likely between sourcing contract logistics services locally and sourcing from the global market.
47. However, for the sake of convenience, customers in the Common Market are likely to prefer benefitting from the advantage of geographic proximity and opt for locally registered providers and will prefer engaging the services of regional providers as

²⁷ See the KNSL Decision.

²⁸ Decision of the 76th Committee Responsible for Initial Determination Regarding the Proposed Merger Involving IVY 2 Investments VCC and PIL Holdings Pte. Ltd



opposed to those operating outside the region. For the purposes of this transaction, the precise geographic market can be left open as the outcome of the assessment in the logistics market will not be altered under any alternative market definition.

Conclusion of Relevant Market Definition

48. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the relevant markets were construed as the provision of:
- a) **Container terminal services for hinterland traffic served by the port of Ain Sokhna in Egypt;**
 - b) **Deep sea container liner shipping services (with potential segmentation for reefer container liner shipping services) on the following routes:**
 - i. **Egypt – Middle East**
 - ii. **Middle East – Egypt**
 - iii. **Egypt – Far East**
 - iv. **Far East – Egypt**
 - c) **Sea-freight forwarding services in a geographic market which is at least national in scope, with focus on the following intra-COMESA country pair involving Kenya and Egypt; and**
 - d) **Logistics services in a geographic market which is at least national in scope.**

Market Shares and Concentration

Container Terminal Market

49. There is currently only one existing container terminal at the Port of Ain Sokhna, which is DP World. The parties submitted that the JV's intended capacity comprises a very small portion of the total capacity of the Port of Ain Sokhna, which is approximately TEU 1,750,000 per annum and once operational, the JV will represent not more than [10-20]%²⁹ of the total TEU throughput capacity of the Port of Ain Sokhna at the commencement of the JV.
50. The CID observed that the transaction will bring a new entrant in the provision of container terminal services at the Port of Ain Sokhna when the latter port is being served by DP World only. The JV's parent companies or the JV itself are not presently operational at the Port of Ain Sokhna. The transaction will therefore not

²⁹ Confidential information claimed by merging parties.



result in any direct increase in market concentration. Additionally, the JV's market share is ■■■% which is significantly lower than the current operator at the Port of Ain Sokhna. However, the CID also considered the characteristics of the container terminal to be operated by the JV at the Port of Ain Sokhna to determine whether it may have particular features which would make it an essential terminal for its customers notwithstanding its relatively lower market share in terms of capacity.

Container Liner Shipping Services

51. The parties submitted the estimated market shares of the CMA CGM group and COSCO group and their competitors in the market for container liner shipping services in Egypt per Table 2 below. The combined market shares of the parent companies amount to [10-30]% in the market for container liner shipping services in Egypt. Further, at the Port of Sokhna, for the year 2022, COSCO group had a hinterland container volume of [50,000-100,000] TEU and CMA CGM group had a hinterland container volume of [50,000-100,000] TEU. Considering the capacity of the Ain Sokhna Port, COSCO group has a container volume of [0-10]% whereas CMA CGM group has a container volume of [0-10]%.

Table 2: Approximate Market Shares of the parties for container liner shipping services in Egypt³⁰

Supplier	Estimated Market Share (%)
Maersk Line	[20-30]
MSC	[10-20]
CMA CGM	[10-20]
Hapag-Lloyd	[0-10]
Cosco	[0-10]
Zim	[0-10]
Others	[20-30]

52. The parties further provided the following market shares for the year 2022 for the provision of dry and reefer containers on the route of Egypt to/from Far East, per tables 3 and 4 below. It is noted that on both legs, the merging parties account for a significant part of the market, in particular in relation to the reefer submarket.

Table 3: Market Shares of the parties for container liner shipping services for dry and refer containers for the route Far East to Egypt

Supplier	Market share for dry containers (%)	Market shares for reefer container (%)
CMA CGM	[10-20]	[10-20]
Maersk	[10-20]	
MSC	[10-20]	

³⁰ Confidential information claimed by merging parties.



COSCO	[0-10]	[0-10]
ONE	[0-10]	
Hapag-Llyod	[0-10]	

Table 4: Market Shares of the parties for container liner shipping services for dry and reefer containers for the route Egypt to Far East

Supplier	Market share for dry containers (%)	Market shares for reefer container (%)
CMA CGM	[20-30]	[30-40]
Maersk	[10-20]	
Hapag-Llyod	[0-10]	
MSC	[0-10]	
ONE	[0-10]	
COSCO	[0-10]	[0-10]

Sea freight forwarding market

53. The parties submitted that the [REDACTED] and its market shares for the year 2022 [REDACTED]; whereas the market shares of CMA CGM group for sea freight forwarding services were estimated to be approximately [0-10]% in Egypt and [0-10]% in Kenya.
54. The transaction would not result in any market share accretion in this relevant market. However, given that the market for sea freight forwarding is vertically linked to the container terminal market and container liner shipping services, the CID assessed whether the transaction may give rise to vertical effects.

Logistics Services market

55. The parties submitted that the [REDACTED] only and its market shares [REDACTED]. Given the nature of the JV and the fact that this market is also vertically linked to the container terminal market and container liner shipping services, the CID assessed whether the vertical links could lead to a significant distortion, prevention or restriction of competition.
56. The market for container liner shipping services is likely to require massive capital investment for the purchase or lease of the shipping vessels. However, this market is usually characterised by many international players. The route being served by a container shipping liner company is also not an insurmountable barrier to entry given that the licensing requirements are not prohibitive. However, access to efficient container terminal services constitute a critical element for container shipping liner companies. In particular, the drafts of berths, and the ship to shore equipment provided by the container terminal services provider is important to determine the efficiency of a container liner company. Discriminatory access to



efficient container terminals can thus be a barrier to entry and expansion to container liner shipping companies.

Consideration of Vertical Effects

57. As noted above, there are vertical links between the parties' operations in the upstream markets for container terminal services on the one hand and (i) downstream market for container liner shipping services; (ii) the downstream market for freight forwarding services; and (iii) the downstream market for logistics.

A. Container Terminal Services and Container Liner shipping services

58. Container liner shipping companies require access to container terminals to be able to offer their services. Container terminal services are therefore an essential input to container liner shipping companies. The CID considered whether post the transaction, the joint venture will have the ability and incentive to restrict access to its container terminal services, either totally or partially, to CMA CGM and COSCO, in a manner which will significantly lessen competition in the market for container liner shipping services (input foreclosure); and/or whether CMA CGM and COSCO will have the ability and incentive to stop purchasing the services of competing container terminal services in a manner which will significantly lessen competition in the market for container terminal services (customer foreclosure).

Input Foreclosure

59. [REDACTED]

60. The Concession Agreement provides that the JV "shall manage, operate and maintain its facilities in the Concession Area and the Grantor shall manage, operate and maintain its facilities in the Port on a common user basis open to all shipping lines, shippers, receivers, and forwarders which may be handled by the Port and the Container Terminal. Without prejudice to the Concessionaire's rights under Clauses 7.2(i) and 14 on tariffs, the Concessionaire and the Grantor shall refrain from any unfair or discriminatory practices against users of the Port of the Container Terminal or against persons wishing to avail themselves of the services offered at the Port by the Concessionaire or the Grantor, as the case may be".

61. The CID observed that the [REDACTED]



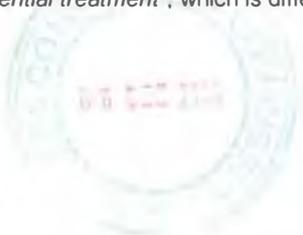
[REDACTED]

62. The parties submitted, *inter alia*, that³²:

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]
- d) The Concession Agreement limits the extent of any preferential treatment that could be afforded. Clause 7.2 of the Concession Agreement states that “as long as it is in the interest of the performance or operations of the Container Terminal, the Concessionaire may give preference in treatment to any person, liner or ship-owners, including in the priority of docking or decreasing tariffs”. The Concession Agreement therefore clearly permits preferential treatment, in so far as this is in the interests of the performance or operations of the JV.
- e) [REDACTED]
- f) [REDACTED]

³¹ Confidential information claimed by merging parties.

³² The parties further submitted that the concern relating to preferential treatment has been adequately addressed by the Concession Agreement. The parties consider that this approach is in line with similar projects which the CID unconditionally cleared on the basis of non-discrimination provisions in the concession agreements (See Case CCC/MER/06/17/2020 *Joint Venture involving Bollare Africa Logistics, Nippon Yusen Kabushiki Kaisha, Toyota Tsusho Corporation*). The CID observed that with regard to the case cited by the parties, the decision records the parties' confirmation that “NYK (one of the JV partners) will receive services from East Port Said on an arm's length basis and will not be accorded any preferential treatment”, which is different from the case at hand.



g) The JV is subject to competition law going forward; to the extent that its business practices threaten competition in the future (a risk the parties consider to be remote), such laws would adequately address any such risks.

63. The CID was satisfied that the terms of the Concession Agreement is intended to prevent against any unfair or discriminatory practices against users of the Port of the Container Terminal or against persons wishing to avail themselves of the services offered at the Port; coupled with the submissions by the merging parties confirming that any preferential treatment provided to any person will need to be in the interest of the performance of the JV. Further, in an event that the parties were to engage in unfair preferential pricing post-merger, the Commission and/or the national competition authority, as applicable, would still be able to intervene through other provisions of their respective competition laws.

Customer Foreclosure

64. For customer foreclosure to be a concern in the market for the container terminal services, COSCO and CMA CGM group should be important customers in the market for container liner shipping services for the routes identified above. As noted above, at the Port of Sokhna, Cosco group accounted for an overall [0-10]% of the total capacity in 2022 whereas CMA CGM group accounted for [0-10]% of the total capacity. The COSCO and the CMA CMG groups therefore do not represent significant customers.

65. In the narrower market for reefer container liner shipping services, on the route of Egypt to Far East, the CMA CGM group is a significant customer with a market share of [30-40]% in 2022. Nonetheless, the volumes accounted for by CMA CGM at Port of Ain Sokhna, being the relevant market, remain insignificant. The CID was of the view that customer foreclosure is not likely because the remaining customers represent a significant customer base of [60-70]%, on which the competitor to the JV can tap.

B. Sea freight forwarding and Container Terminal Services

66. Sea freight forwarders require access to container terminals to be able to provide their services in the downstream market. This includes access to the container dockyard and other relevant areas within the port area to import or export products by sea on behalf of their customers. The CID considered whether the JV might have the incentive and ability to restrict access of the competitors of CMA CGM from its container terminal services or engage in discriminatory prices or trade conditions to the competitors, thus resulting in total or partial foreclosure of those competitors by raising their costs. The CID considered that the JV is not likely to have an incentive to engage in such a strategy considering [REDACTED]

[REDACTED]

71. The CID further noted that Clause [REDACTED] provides for Restrictions on sharing Commercially Sensitive Information, as follows:

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

72. The CID observed the submissions made the parties that they “would, in the ordinary course, put in place appropriate measures to address this risk, and to ensure compliance with the SHA, as they are required to do so under applicable competition laws, and that in practice, the terminal services businesses of CMA and COSCO are organised in a separate division within their respective companies, which is distinct from their container liner shipping activities”.



73. On 3rd December 2023, the parties submitted that in the interests of goodwill and cooperation, they are open to providing an undertaking to the Commission that information barriers will be established within CMA and COSCO to prevent the exchange of competitively sensitive information between their respective container terminal operations and their container liner shipping businesses in Egypt. The parties will also provide a summary of the relevant barriers to the Commission within three months of the implementation of the Proposed JV. The CID considered that such an undertaking would be sufficient to curtail any incentives by the merging parties to engage in the exchange of commercially sensitive information, and would supplement the restrictions on the sharing of confidential information already contained in the SHA,

Ancillary Considerations

74. The Concession Agreement provides certain restrictions in relation to future developments at the Port of Ain Sokhna³⁴, as follows:

*The Grantor (being the General Authority for Suez Canal Economic Zone, which has been established in Egypt by Presidential Decree No. 330 of 2015 as amended, as well as Decree No. 2282 of 2015) undertakes to the Concessionaire (being Project Co) that it shall not, and shall procure that no other governmental or other entity shall, throughout the Concession Term (term of 30 years), solicit, tender, accept negotiate the development or construction of new container berth, quay or any other new infrastructure for container terminal operations after the Agreement Date within the Port save for the Container Terminal (a “**Proposed Development**”), unless:*

- a) The Grantor shall procure that, before any offer is considered or sought to tender, permit or other consent is issued in respect of the Proposed Development, that the Concessionaire is given a right of first refusal to accept the terms and conditions suggested by the Grantor for the Proposed Development (the “**Right of First Refusal**”);*
- b) If the Concessionaire expresses interest within three (3) months from receipt of the Grantor’s Notice of the Proposed Development, the Parties shall enter into exclusive negotiations in respect of the Proposed Development, which shall continue for less than three (3) months from the date of the expression of interest;*
- c) In the event that the Concessionaire elects not to exercise its Right of First Refusal, the Grantor or the Competent Authority may discuss the*

³⁴ Paragraph 10.2 of the Concession Agreement. Confidential information claimed by the merging parties



Proposed Development with third parties provided that the Grantor shall procure that prior to the Grantor (or the competent authority if the Grantor is not the competent authority) concluding a binding agreement with respect to a Proposed Development with a third party, the following is complied with:

- i. The Concessionaire is promptly notified of the terms and conditions based on which the Grantor is to conclude an agreement for the Proposed Development with the relevant third party ("**Development Terms**") and that the Concessionaire is granted the right to match such terms (the "**Right to Match**").*
- ii. If the Concessionaire exercises its Right to Match within thirty days from receipt of the Grantor's notice with the Development Terms, the Grantor shall grant the Concessionaire such Proposed Development at the Development Terms.*
- iii. In the event that the Concessionaire elects not to exercise its Right to Match, the Grantor (or the competent entity) may conclude an agreement for the Proposed Development with the third party on terms no more favourable to the concessionaire of the Proposed Development than the Development Terms.*
- iv. The Grantor confirms that the Development Terms shall in no event be more favourable than the terms reflected in this Agreement and applicable at the time.*
- v. The Grantor undertakes to procure compliance with this Clause by any other governmental or other entity that may (now or in the future) have jurisdiction over the Port or any part thereof.*

75. While the parties claimed that the right of refusal clause is not uncommon in large scale infrastructure, it was confirmed that DP World, who operates at the Port of Ain Sokhna does not have a similar clause in its Concession Agreement.

76. Whilst the CID was of the view that any future developments at the Port of Ain Sokhna should ideally be awarded to operators through a competitive process, it was also mindful that the restriction on the construction of new container terminals at the Port of Ain Sokhna during the term of the Concession Agreement may be justifiable in view of the significant investments being made by the merging parties. The CID however observed that the implementation of Clause 10.2 could result in significant distortion of competition in the container terminal services market in the long run as a result of the JV having preferential treatment in the consideration of future developments, particularly in view of the fact that there exists another competitor currently operating at the Port of Ain Sokhna.



77. Additionally, the Right to Match may raise serious coordination concerns whereby the JV would have access to the terms and conditions and other sensitive commercial information of potential competitors, such as their potential financial strength, their solvency, access to finance and pricing strategy.
78. The CID noted the attempts made by the Commission to strike off Clause 10.2 should be deleted from the Concession Agreement, noting the position that the competition restrictions arising from the Clause significantly are not necessary to the achievement of its intended benefits and would more likely than not lead to the distortion of competition in the container terminal market at the Port of Ain Sokhna.
79. On 23rd November 2023 and 3rd December 2023, the merging parties made various submissions contesting the jurisdiction of the Commission on the review of the Concession Agreement.
- a) The Concession Agreement amounts to legislation that properly falls outside of the jurisdiction of the Commission. The Concession Agreement is not an agreement between the Parties, but rather a regulatory act entered into by the General Authority of the Suez Canal Economic Zone (the "Authority"). This act was approved by the Cabinet of Ministers in Egypt and has further taken the form of legislation approved by the Parliament in Egypt by virtue of Law No. 1 of 2023. The Parties respectfully submit that the COMESA Competition Regulations do not empower the Commission to procure the amendment of national laws. Such matters are properly left to the legislatures of the COMESA Member States.
- b) The entry into the Concession Agreement by the Proposed JV is not of itself subject to the merger control jurisdiction of the Commission. The agreement that leads to and governs the formation of the Proposed JV is the Shareholders' Agreement between the Parties. To the contrary, the Concession Agreement does not govern the establishment of the Proposed JV. It is not appropriate or indeed permissible for the Commission to seek to secure amendments to the Concession Agreement via the merger control process.
- c) The Concession Agreement cannot be amended unilaterally by the Parties to the transaction.
- d) [REDACTED]



██████ In addition, Clause 37 of the Concession Agreement provides that *"if for any reason any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith to agree to one or more provisions which may substitute such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision."* The CID therefore observed that it is possible for Clause 10.2 to be declared inapplicable within the Common Market, and for the rest of the agreement to remain in force.

83. As regards the parties' submissions that a remedy seeking the alteration of the Concession Agreement would lie outside the Commission's jurisdiction, it is recalled that the Regulations apply to all economic activities, whether conducted by public or private individuals. In this respect, the CID considered that any restrictive covenant which is incorporated in an agreement for purposes of executing economic activities on a market, irrespective of whether such agreement has been concluded with a public body, and which is capable of affecting trade between Member States, falls under its jurisdiction.
84. The CID therefore considered that the parties' assertions on the lack of jurisdiction of the Commission, and competition authorities in general, on concession agreements is misdirected. It is observed that in the EU, for instance, because of the resulting loss in competition arising from exclusive concession agreements, there is in place a Directive guiding the application of the Treaty on the Functioning of the European Union on concession agreements of a cross-border nature³⁵. In Bulgaria, the law on concessions were amended to involve the Competition Protection Authority throughout the concession granting process, giving it a quasi-judicial function of review and powers to suspend potential bidders for not complying with competition rules³⁶.
85. The contractual provisions in the concession agreement are directly relevant to competition law enforcement. They apply to factors that have implications for revenues and costs, and which are parameters of competition in a competitive market, such as pricing, geographic coverage, capacity/volume and quality. As a result, it is undisputed that competition authorities are rightly mandated to assess

³⁵ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance

³⁶ [https://one.oecd.org/document/DAF/COMP/GF\(2019\)12/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2019)12/en/pdf), Examples of competition enforcement issues and interventions by various competition authorities on concession agreements in further documented in the OECD Background Note on 'Competition for-the-market: Advocacy & Enforcement in Concessions', available at [https://one.oecd.org/document/DAF/COMP/GF\(2019\)7/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2019)7/en/pdf)

the implications of contractual obligations which fundamentally undermine the integrity of competition in the market for which a concession is awarded.

86. Contrary to the parties' claim, it is observed that the Concession Agreement is directly linked to the merger as it provides the terms and conditions for the conduct of the Joint Venture, which is at the core of the merger agreement. It is further observed that the Concession Agreement is a Schedule to the Shareholders' Agreement, which, as the parties have acknowledged, governs the formation of the Joint Venture. It is therefore critical in assessing the Shareholders' Agreement, to also consider the impact of obligations contained in accompanying agreements.
87. The CID further finds it concerning that sophisticated commercial operators such as the merging parties would bind themselves for a duration of thirty years without the possibility of a flexible mechanism allowing the adaptation of the Concession Agreement to external unforeseen circumstances over such a long period without going through rigid procedures stated above.
88. In view of the foregoing, the CID observed that the legal framework governing alterations to the Concession Agreement in the present case is irregular and overly burdensome, such that any proposed amendments may not occur in a timely or proportionate manner to address the concerns identified by the Commission. Further, the CID is satisfied that the Commission would still have jurisdiction to investigate any potential anti-competitive effects which may arise from the implementation of Clause 10.2 of the Concession Agreement.
89. The CID observed that there is a possibility for the transaction to enhance competition at the Port of Ain Sokhna by introducing a new provider of container terminal services when presently there is only one such provider, which would ultimately benefit the port's customers and consumers in the absence of any anti-competitive conduct. The CID considered that there is, thus, a need to regulate the merging parties' behaviour post-merger to ensure the potential benefits of the transaction are not offset by the potential anti-competitive effects.

Consideration of Effect on Trade between Member States

90. The transaction raises concerns of a risk of exchange of commercially sensitive information in the container liner shipping market and distortion of competition in the container terminals market, which could limit the establishment or expansion of other providers in the Common Market. Given that the container terminals at Port Ain Sokhna provide access to and from the Egyptian market for particular routes, anticompetitive conduct which restricts or distorts access to the port could affect the pattern of trade within the Common Market.



Consideration of Third-Party Views

91. The CID considered submissions from the national competition authorities of Kenya, Rwanda, Mauritius, Zambia, Zimbabwe, Malawi, Seychelles, Ethiopia, which did not raise any concerns in relation to the transaction. The CID also noted the submissions from Egypt that it has no concerns with regards to the transaction. However, for reasons set out in this decision, the CID held that there are potential competition concerns which are likely to arise from the transaction.

Determination

92. Based on the circumstances of the case and having regard to the foregoing assessment, the CID determined that the merger is likely to substantially prevent or lessen competition in the Common Market or a substantial part of it
93. The CID, hereby approves the merger subject to following conditions:
- a) The merging parties shall comply with the undertaking that COSCO and CMA CGM will, respectively, establish information barriers designed to prevent the disclosure of competitively sensitive information between their respective container terminal operations and their container liner shipping services in Egypt. Within a period of three months from the implementation of the Proposed JV, the merged entity shall submit to the Commission a report setting out the necessary practical steps taken by it to establish the abovementioned information barriers; and,
 - b) The Commission reserves the right to initiate an investigation where it has reasonable grounds to believe that the implementation of Clause 10.2 of the Concession Agreement has or is likely to result in a substantial prevention, restriction or distortion of competition within the Common Market.
94. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 6th day of December 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

