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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/06/16/2023

Decision[1] of the Ninety-Eighth (98th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Creation of a Full-Function Joint Venture by Trafigura Group PTE Limited, Mota-Engil SGPS SPA and Vecturis S.A.

ECONOMIC SECTOR: Transportation

12 October 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 2 May 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Trafigura Lobito Investments PTE Ltd (“**Trafigura**”), ME Lobito SGPS LDA (“**Mota-Engil**”) and Vecturis S.A. (“**Vecturis**”), pursuant to Article 24(1) of the Regulations. The proposed transaction relates to the acquisition of joint control by Trafigura and Mota-Engil, alongside a third-party minority shareholder, Vecturis, over a full-function joint venture.

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

Trafigura (the JV parent)

4. Trafigura is a subsidiary of Trafigura Group Pte Ltd, the main holding company of the "**Trafigura Group**". The Trafigura Group describes itself as a global leader in the physical commodities industry specialising in the oil, minerals and metals markets.

5. The Trafigura Group move physical commodities around the globe connecting producers of commodities (miners, smelters, oil and gas producers, refineries and power generators) with consumers. As of December 2022, it supplies 32 different oil and petroleum products, 31 different metals and minerals and has a renewal energy portfolio with a 2.8GW generation capacity. In addition to its product offering, the Trafigura Group's Shipping and Chartering Division operates a freight service for its in-house oil, metal and mineral traders and for third-party clients.

6. The Trafigura Group holds interests in a number of industrial and financial assets including: Impala Terminals (which owns and operates a variety of port, logistical, storage and transportation assets globally); Nyrstar (an international producer of critical metals and minerals); Puma (a global energy supplier); TFG Marine (a joint venture operating in the global bunker fuel market); Nala Renewables (a 50:50 joint venture between the Trafigura Group and IFM Investors that invests in on-shore wind, solar and power storage projects) and Galena Asset Management (a wholly-owned investment subsidiary, managed by the Trafigura Group, through which the Trafigura Group and third-party investors are able to invest in assets on an equal basis).

7. Table 1 below sets out the products and/or services provided by the Trafigura Group, per COMESA Member State:

Table 1: Products/services provided by the Trafigura Group in the Common Market

Member State	**Products / service provided**
Burundi	Oil and petroleum products
DRC	Oil and petroleum products, metals and minerals, and logistics and storage
Egypt	Coal, shipping
eSwatini	Oil and petroleum products
Ethiopia	Oil and petroleum products
Libya	Shipping and marine logistics
Malawi	Oil and petroleum products
Mauritius	Shipping and marine logistics
Rwanda	Oil and petroleum products
Somalia	Oil and petroleum products

Sudan	Shipping and marine logistics
Tunisia	Oil and petroleum products
Zambia	Oil and petroleum products, logistics and storage
Zimbabwe	Oil and petroleum products

Mota-Engil (the JV parent)

8. Mota-Engil is a subsidiary of Mota-Engil SGPS S.A. ("**Mota-Engil SGPS**"), the main holding company of the Mota-Engil Group. The Mota-Engil Group is a multinational company focused on construction and infrastructure management in the segments of engineering and construction, environment, transport concessions and energy. The Mota-Engil Group is ranked in the top 30 largest European construction groups and has over 38,500 employees across 24 countries in Europe, Africa and Latin America.

9. The Mota-Engil Group's engineering and construction business centres around the construction of large infrastructure projects such as roads, airports, ports, dams, buildings, railway, electromechanics, foundations and geotechnics, and mining services.

10. Table 2 below sets out the products and/or services provided by the Mota-Engil Group, per COMESA Member State:

Table 2: Mota-Engil Group's sales in the Common Market[2]

Member State	**Products / service provided**
Burundi	None
Comoros	None
DRC	None
Djibouti	None
Egypt	None
Eritrea	None
eSwatini	None
Ethiopia	None
Kenya	Public works and/or construction works contractor
Libya	None
Madagascar	None
Malawi	Public works and / or construction works contractor
Mauritius	None
Rwanda	Public works and / or construction works contractor
Seychelles	None
Somalia	None

[2] The parties submitted that historically, the Mota-Engil Group has generated turnover from its gold mining operations in Zambia. However, these operations have now ceased. In 2022, the group's turnover in Zimbabwe was from the sale of the remaining assets that the group held in Zimbabwe.

Sudan	None
Tunisia	None
Uganda	Public works and/or construction works contractor
Zambia	Road Construction

Lobito Atlantic Holdings SGPS, LDA ("LAH") (the Joint Venture Company)

11. LAH is a Portuguese-incorporated entity owned 49.5% each by Trafigura and Mota-Engil, with the remaining one percent owned by Vecturis[3].

12. LAH will act exclusively as the holding company for Lobito Atlantic Railway, S.A. ("**LAR**"), a special-purpose vehicle with majority of shareholding owned by LAH. LAR has been established for the exclusive purpose of entering into a concession agreement with the Republic of Angola for the operation of the Lobito-Luau railway line and associated infrastructure along the Lobito Railway Corridor in Angola (the "**Concession Agreement**"). Pursuant to the Concession Agreement, LAR will repair, maintain and operate the railway line for the purposes of transporting goods and passengers within Angola and between the Angolan port city of Lobito and surrounding areas, such as the Copperbelt region of Zambia and the DRC.

13. In addition, Trafigura Holding SARL and Mota-Engil own a second entity, Lobito Atlantic International SARL ("**LAI**").

14. LAI will act exclusively as the marketing company for LAR's cross-border operations, entering into, for example, end-to-end transport contracts with international customers seeking to import and export goods to and from the DRC via the Lobito port in Angola.

Jurisdiction of the Commission

15. 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:*

[3] Vecturis is a private railway operator providing transport services worldwide for passengers, mining products and commercial cargo. Vecturis' operations cover all aspects of the railway activity including transportation of mining products, general freight and passenger services, infrastructure rehabilitation and maintenance, new track laying, rolling stock rehabilitation and servicing, maintenance and enhancement of signalling and telecom facilities. Vecturis has no presence in the Common Market.

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 USD 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 USD 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.*

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

Details of the Merger

17. The transaction concerns the proposed acquisition of joint control by Trafigura and Mota-Engil over the Joint Venture. On 7 November 2022, Trafigura, Mota-Engil and Vecturis entered into a shareholders' agreement in respect of a new jointly controlled entity, LAH. LAH will act exclusively as the holding company for LAR which has been established for the exclusive purpose of entering into a concession agreement with the Republic of Angola for the operation of the Lobito-Luau railway line and associated infrastructure along the Lobito Railway Corridor in Angola.

18. The Joint Venture will be a full function joint venture as contemplated in the COMESA Merger Assessment Guidelines, as it will be an autonomous economic entity, with independent management and the assets and resources necessary to operate on a lasting basis independently from its parents.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

19. The Joint Venture will repair, maintain and operate the Lobito-Luau railway line and associated infrastructure along the Lobito Railway Corridor. Specifically, it will:

    a. provide domestic freight transport services in Angola;

    b. provide a cross-border freight transport service between Angola, Zambia and the DRC; and

c. provide a passenger transport service along the main Lobito-Luau axis hub, responsibility for which will be delegated to Caminho de Ferro de Benguela.

20. It is noted that there is no overlap between the activities of the joint venture and those of Mota-Engil. On the other hand, the Trafigura Group currently utilises rail freight services between the DRC and Angola. The Trafigura Group has been subcontracting the use of these rail freight services and will cease to do so upon the implementation of the Proposed Joint Venture. The Trafigura Group also utilises rail freight services (via sub-contractor arrangement) between the DRC and Zambia.

Freight Transport

21. Freight transport refers to the physical movement of goods by using own (i.e., owned or leased) equipment including ancillary services to this end. Freight transport may be regarded as an input for freight forwarding. It has been held that not all modes of transport are generally substitutable to each other in view of the geographic situation of the customer as well as the specific characteristics of the goods to be transported[4]. In ***Deutsche Bahn/EWS***, the market investigation established that "*different modes of transport have different characteristics in relation to prices and cost structures, timing and geographic availability. Whether goods are transported by air, sea, road, rail, inland waterway or pipeline appears in fact to be a complex function of many variables, depending on the customer is location, the type of good (weight, size, value, other qualities), the quantities to be shipped, the destination of the goods, timing and any other requirements. There are indications that rail presents certain characteristics which may make it most suitable/economically feasible for the transport of goods under certain conditions, i.e., in particular for bulk and heavy goods (coal, iron, oil), larger amounts and longer distances and customers with rail access*".[5]

22. The CID considered that the same characteristics are likely to apply in the Common Market. For a consumer to effectively switch between transport modes, the other modes of transport must be equally suited to transport the desired volume or type of goods and further, the consumer should have access to the mode (e.g., access to inland waterway or short sea shipment). The CID considered that there are enough indications to support the finding of a distinct market for the transport of goods by rail[6].

[4] European Commission (EC) Case No COMP/M.5480 - DEUTSCHE BAHN/ PCC LOGISTICS, para 18.
[5] EC Case No COMP/M.4746 - DEUTSCHE BAHN /ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS (EWS), para 14.
[6] The EC has considered further segmentation of the rail freight transport market into single wagon trains and block trains (on the basis that single wagon services require more complex organisation structure, a larger network, and a sufficient scale of operations) but has ultimately this open.

Passenger Transport

23. The CID considered that likewise, it is possible to distinguish between rail services and other modes of passenger transport, on the basis of geographic availability, fares, and distances covered, which would make such modes of passenger transport not substitutable but rather complementary.

24. Given that the merging parties do not offer any other form of passenger transport, the question whether rail services constitute a distinct market can be left open.

Relevant Geographic Market

25. It has been held that the existing technical, procedural barriers (e.g. lack of interoperability, homologation requirements for locomotives, national safety certificates) and the need for specially trained staff (with language skills and licences) to provide cross-border services justify a national geographic market for rail freight transport.

26. There is a possibility, however, of becoming larger than national in particular on certain international routes being part of a corridor or having special characteristics due to the market liberalization and the removal of barriers. Corridors can be seen as highways, offering multiple stops on the way. The transaction concerns mainly the Lobito-Luau axis hub. From a demand side perspective, a particular corridor would not be substitutable to another. In addition, from a supply perspective, corridor freight arrangements are more complex they require the compliance with the regulatory and technical framework in each Member State which is part of the journey. The CID therefore considered that the Lobito-Luau corridor constitutes the appropriate relevant geographic market for purposes of this assessment.

Conclusion of Relevant Market Definition

27. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets have been identified as the:

    a) Rail freight transport along the Lobito-Luau corridor; and

    b) Rail passenger transport along the Lobito-Luau corridor.

Market shares and Concentration

28. The CID observed that for both rail freight and passenger transport on the Lobito-Luau corridor, there would only be one operator serving the entire corridor, being the joint venture company. It is noted that such monopolistic structures are typical of rail markets. Nonetheless, the transaction will also create a potential new competitor along the stops on the corridor.

29. In relation to the cross-border freight transport services between Angola and the DRC, the parties submit that SLS Trading, a third-party logistics provider, is the Joint Venture's competitor; whereas in the market for cross-border freight transport services between the DRC and Zambia, potential competitors include Africa Global Logistics, Polytra Africa SSC, Reload Logistics DMCC and SLS Trading.

30. Given the lack of significant competitive overlaps arising from the transaction, an extensive analysis of the barriers to entry is not necessary. It is nonetheless noted that barriers to market entry for the provision of cross-border freight transport services can be significant and include the following:

    a) access to and the costs associated with the required railway infrastructure (including access to the relevant railway line and to suitable warehousing facilities);

    b) significant operational experience being needed to provide such services;

    c) access to market intelligence and customer contacts; and

    d) the operational costs associated with operating and maintaining rail freight services along a particular route.

31. The CID considered that entry into the relevant markets is unlikely to occur on a likely and sufficient basis to constitute an effective source of competition for the existing players.

32. Nonetheless, while the transaction will establish a key operator on the Lobito-Luau corridor, the transaction is the result of a concession agreement granted by the Government of Angola to the merging parties for purposes of developing the corridor and promoting cross-border freight and passenger transport. As a result, notwithstanding the fact that the merging parties will have a significant market position post-merger in the relevant market identified, it is noted that the transaction will result in the creation of a new freight transportation option between DRC and Zambia. There are no indications that the transaction could give rise to unilateral effects as it will establish a new cross-border service which was not available pre-merger, and thus consumers may turn to prior existing services if the merging parties were to attempt to engage in anti-competitive practices.

33. Notwithstanding the concentrated nature of rail transport markets, the CID noted that the transaction will not lead to a removal of a competitor on the market and there are no indications of materialisation of such coordinated effects as a result of the proposed transaction.

Consideration of Third-Party Views

34. The CID considered submissions from the national competition authorities of Eswatini, Malawi, Mauritius, Seychelles and Zambia, which confirmed that the

transaction was not likely to raise competition and public interest concerns post-merger. This is consistent with the CID's findings, as discussed above.

Determination

35. Based on the circumstances of the case and having regard to the foregoing assessment, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID, therefore, approved this transaction.

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

Dated this 12th day of October 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**