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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/12/36/2023

**Decision¹ of the 106th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed Merger
involving Avia Solutions Group (ASG) PLC and AirExplore,
s.r.o.**

ECONOMIC SECTOR: Aviation



04 May 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 7 February 2024, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Avia Solutions Group (ASG) PLC (“**Avia**” or “**the acquirer**”) and AirExplore, s.r.o. (“**AirExplore**”), pursuant to Article 24(1) of the Regulations.
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

Avia (the Acquirer)

4. Avia is a public limited company incorporated under the laws of Ireland. Avia is involved in the provision of aviation supporting services; aviation logistics and distribution services; and aircraft trading and portfolio management. In the Common Market, Avia provides a number of services including air charter brokerage services; aircraft and business jet maintenance, repair and overhaul (MRO); pilot and crew training; and wet/ACMI (aircraft, crew, maintenance and insurance) leasing services. In the Common Market, Avia is active in the Democratic Republic of Congo (**DRC**), Egypt, Ethiopia, Kenya, Libya, Madagascar, Mauritius, Seychelles, Tunisia and Zambia.

AirExplore (the Target)

5. AirExplore is a limited liability company established and organized under the laws of Slovak Republic. AirExplore is active in the provision of wet/ACMI leasing services for passenger air transport with a fleet of Boeing 737-800 aircraft. In the Common Market, AirExplore was active in Sudan until March 2023. The parties have submitted that the target had not operated in the Common Market since March 2023 but has entered into contract for the provision of wet leasing services for one aircraft to a customer in the DRC for the period from November 2023 to March 2024.

Jurisdiction of the Commission

6. 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 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.*



7. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived turnover of more than the threshold of USD 50 million in the Common Market and they each derived turnover of more than USD 10 million in the Common Market. In addition, the parties did not derive more than two-thirds of their respective aggregate turnover in one and the same Member State. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

8. The transaction concerns the acquisition by Avia of ownership interest in AirExplore corresponding to a fully paid-up contribution of all sellers into the registered capital of the target in the amount of 100%.
9. The parties submitted that both the acquirer and the target are active in the wet leasing services for passenger air transportation market. According to the parties, the addition of the target's fleet to the acquiring group's fleet will not have any meaningful or significant impact on the relevant market.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

10. Paragraph 7 of the Commission's Guidelines on Market Definition states that a ***"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use"***.
11. At the time of notification, the parties submitted that the acquirer was active in the provision of the following services in the Common Market: Brokerage – Air charter brokering services, aircraft maintenance, repair and overhaul, business jet maintenance, repair and overhaul services, pilot and crew training, passenger charter services, aircraft ground handling and fuelling and wet/ACMI leasing services for passenger air transportation. On 9 April 2024, the parties clarified that in the Common Market, Avia's wet/ACMI leasing service providers generated revenue only from:
 - a) incentives, which are revenues earned from the Charter Incentive Program² introduced by Egypt in a bid to promote its tourism industry; and

² The parties have submitted that the Charter Incentive Program has been introduced by Egypt in a bid to promote its tourism industry.



- b) commissions and damages compensation which are revenues generated by the Acquirer's subsidiaries from local ground handling service providers rather than operation of aircraft.
12. The parties submitted that the target is active in the provision of wet/ACMI leasing services for passenger air transportation market in the Common Market.
13. Leases in aviation sector are common as they allow an airline to increase its capacity without having to incur significant financial costs, in order to serve a destination more frequently or to serve new destination. Leases are as with any other lease agreement, time bound, the duration of which varies between short-term (typically three months or less), medium term (between 3 months and one year) and long term (more than one year)³. The reason why an aircraft is being leased will determine the duration of that lease. For instance, if aircrafts are required to meet an unforeseen surge in demand or as a replacement for some flights, an airline will opt for a short-term lease. If the airline has delayed deliveries of its own aircrafts, then it is likely to opt for medium-term lease and if the airline wishes to offer new routes, then it is likely to opt for a long-term lease⁴.
14. The CID has previously considered⁵ two types of aircraft leasing arrangements, namely operating lease and finance lease where each are distinct based on how fully the risks and rewards attached to the ownership of the asset have been transferred to the lessee from the lessor. The aircraft operating lease arrangement is a short-term agreement for use and possession of an aircraft by the lessee for a specified period where the lessee has no expectation of acquiring legal ownership of the aircraft once the lease payments are made. On the other hand, finance lease is a long-term agreement where there is an option for the lessee to acquire the aircraft at the end of the lease period.
15. Further, the CID has previously segmented aircraft operating lease into three types of arrangements: dry leasing, wet leasing, and damp lease⁶. In the aviation sector, dry lease refers to the provision of the aircraft only to the lessee, without any crew. The operational responsibility of the aircraft, its maintenance and insurance falls on the lessee. Dry leases are typically opted for by large airline which have the operational capacity but lack aircrafts.
16. Wet lease refers to a leasing contract through which one airline leases to another, an aircraft along with the crew, maintenance and insurance ("ACMI")⁷. Under the wet lease agreement, therefore, the owner of the aircraft takes charge of its

³ <https://airlinesconnection.com/aircraft-leasing> accessed 1 March 2024

⁴ *Ibid*

⁵ Decision of the Eighty-sixth decision of the Committee for Initial Determinations regarding Proposed Transaction between SMBC Aviation Capital Limited and Goshawk Management Limited

⁶ Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited

⁷ Case M.9062 - Fortress Investment Group / Air Investment Valencia / JV



operational responsibility. The lessor operates the flights using its own air operator certificate and resources, for which it receives an income from the lessee which is usually a fixed price per "block hour". The parties submitted that block hours refer to the hours measured from the moment an aircraft first moves under its own power, including taxi time, for the purposes of flight until the aircraft is docked at the next point of landing and its power is shut down. Under a wet lease agreement, the lessee will fly the aircraft under its own code, determines its own ticket prices and provides passenger and ground handling services.

17. Damp Lease can be considered a hybrid form of wet lease and dry lease, whereby a lessor provides an aircraft with partial crew to the lessee. For instance, an airline might have free cabin crew available but lack the engineering personnel to cover the maintenance operations. So, a damp lease will be preferable for an airline which wish to lease the aircraft, pilot, insurance and maintenance personnel, but does not need the additional cabin crew⁸.
18. On the demand side therefore, there is likely to be a distinction between the different types of leases for aircraft, such that wet lease is likely to constitute a distinct product market from the other types of available leases. A customer requiring the services of a wet lease is not likely to in the event of a 5 to 10% increase in the price of wet lease switch to a dry lease as the characteristics and intended use of a wet lease would make it unsuitable for a dry lease. The CID has previously considered that an airline with excess crew but with aircraft shortage will not opt for wet lease since it will incur additional cost of maintenance and crew. The CID noted from a supply perspective that swiftly shifting from wet leasing to dry leasing or vice versa might not be easily given the differences in the risks and costs that are involved such as crew, maintenance services and insurance⁹.
19. Given that the overlapping activities of the merging parties relate only to the provision of aircraft wet leasing market segment, this has been considered as the relevant market for the assessment of the proposed transaction.
20. The CID has held that aircraft leasing services can be further sub-divided according to the aircraft size (seat capacity) into large aircraft and regional aircrafts¹⁰. The CID considered the decisional practice of the European Commission in the Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited, though the precise market definition was left open since no concern found, that the market for the provision of dry leasing services should be segmented according to aircraft size (seat capacity) between regional aircraft (aircraft with around 30-100 seats and a range

⁸ Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited

⁹ Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited

¹⁰ *ibid.*



of less than 2000 nautical miles) and large commercial aircraft (aircraft with more than 100 seats and a range greater than 2000 nautical miles), for reason of their technical characteristics, price, intended end-use and seat capacity differences. The CID observed that an airline would choose the aircraft type to be deployed on a specific route portfolio according to the actual or expected demand on a route to be able to operate on a profitable basis. The CID noted from the parties' submissions that they are both engaged in the provision of single aisle aircrafts. Single aisle aircraft, more commonly known as narrow body aircraft, are smaller-type aircraft that is often used to operate short-haul international flights and domestic flights¹¹. The seating capacity of a narrow body aircraft can vary from 4 to 300 passengers, depending on the type of abreast seating design¹².

21. The parties submitted that in the year 2022, the target provided wet leasing services to a single customer through 1-3 aircraft at a time as follows:
 - i. Boeing 737-800 aircraft, authorised to carry 176 passengers (168Y+8C premium economy seats);
 - ii. Boeing 737-800 aircraft, authorised to carry 176 passengers (168Y+8C premium economy seats); and
 - iii. Boeing 737-800 aircraft, authorised to carry 176 passengers (168Y+8C premium economy seats).
22. In view of the above and considering that the target is active in the provision of wet lease for large aircrafts of 100+ seats, the CID considered that the relevant product market is the **market for the supply of wet lease services for large aircraft**.

Relevant Geographic Market

23. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising "***...the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas***"¹³.
24. The parties have submitted that the geographic market for aircraft wet-leasing services may be considered to be world-wide or at least regional.
25. The CID has previously considered¹⁴ the geographic market for the broader aircraft leasing market as a global market given that aircraft can be easily sourced

¹¹ <https://www.alternativeairlines.com/narrow-body-aircraft>

¹² *Ibid.*

¹³ Paragraph 8

¹⁴ Decision of the Eighty-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Transaction between SMBC Aviation Capital Limited and Goshawk Management Limited



without requiring major costly modifications and aircrafts are a homogenous product which are generally standardised to allow common operation and maintenance across jurisdiction.

26. The CID noted that both merging parties supply wet lease services from outside the Common Market. Further, that wet lease services are imported into the Common Market. For instance, Fastjet Zimbabwe in Zimbabwe has taken delivery of the first of three 30-seater E120s wet-leased from South Africa's Sahara African Aviation¹⁵; SkyUp MT (U5, Malta International) will wet-lease two A320-200s over the Summer 2024 season to boost airline capacity from in Egypt¹⁶; while, FlyEgypt has signed a three-month wet-lease contract in December 2016 with Slovakian ACMI/Charter specialist Go2Sky¹⁷.
27. Accordingly, and noting that the outcome of the assessment will not be affected under any alternative market definition, the market for the supply of wet lease services for large aircraft has been construed as global.

Conclusion of Relevant Market Definition

28. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID has identified the relevant market as the **global market for the supply of wet lease services for large aircraft**.

Market Shares and Concentration

29. The parties submitted that the size of the global aircraft ACMI/wet-leasing market was estimated to be around USD 4230 million. The parties have identified around 30 airlines as their competitors for the provision of wet lease in the European Continent only. The parties submitted that there are hundreds of ACMI/wet-leasing service providers capable to service customers in the Common Market.
30. The parties submitted that as ACMI - Wet/ACMI leasing services for passenger air transportation contracts are not public and transactions are carried out worldwide between private business entities, the acquirer does not have data to assess Acquirer's and/or Target's market share based on transactions volume and/or value.
31. The CID observed that the main providers of aircraft leasing services globally include BBAM, Aviation Capital Group, GECAS, Air Lease Corporation, SMBC Aviation Capital, AerCap, DAE Capital, Avion Express, Heston Airlines and Nordic Aviation Capital.

¹⁵ www.ch-aviation.com/news/125207-fastjet-zimbabwe-wet-leases-e120s-for-new-domestic-routes accessed 1 March 2024

¹⁶ www.ch-aviation.com/news/136227-skyup-mt-wet-leases-two-a320s-for-egyptian-bases accessed 1 March 2024

¹⁷ www.timesaerospace.aero/news/air-transport/flyegypt-wet-leases-a320-from-almasria accessed 1 March 2024



32. Notwithstanding the absence of information on markets shares in the narrower markets identified by the CID, it is observed that the acquirer has a fleet of [100-150] Airbus single aisle aircrafts (approximately 1% of all 10,785 comparable Airbus single aisle aircraft registered by Airbus as "Aircraft in Operation" worldwide)¹⁸. Subsidiaries of the acquirer operate a total of [30-40] additional Boeing single aisle aircraft. The parties thus submit that the total % market share of Avia in market segment of single-aisle (narrow-body) aircraft with 100-200 seats is likely significantly falls below 1%.
33. Further, the target has a fleet of only [0-10] passenger Boeing 737-800 single aisle aircraft. As a result, the CID is of the view that the market share accretion from the transaction will be insignificant, and there will thus be no material change to the market structure.
34. The parties have submitted that barriers to entry are relatively low for airlines already operating scheduled, franchise or charter services, since they already possess the necessary resources for the provision of wet leasing services. The parties further submitted that for a new airline wishing to enter the market for wet leasing services, the barriers to entry are lower than those for entering the market for scheduled passenger air transport services, given that there is no need to have customer-facing services (e.g. sales and marketing services).
35. The CID is of the view that for existing players, the main barrier to entry is likely to be finance given the capital-intensive nature of acquiring crafts and that specialised expertise and skills are also required. The minimum capital requirement may constrain the number of new aircraft lessors entering the market and the swiftness within which such entry occurs. It is however noted that timely entry into the relevant market through acquiring rights in an existing aircraft for its leasing business is possible as evidenced, for instance, by the 2021 Carlyle Aviation Partners' acquisition of AMCK, AerCap's acquisition of GECAS and the 2022 SMBC Aviation Capital's acquisition of Goshawk, and the 2023 acquisition by Drake Asset Management Jersey Limited of Palma Ibdar Aviation Limited. Despite the existence of some barriers, it is noted that the merging parties have insignificant market shares and thus the change in the market structure post-merger will be insignificant and as a result, barriers to entry in the relevant market would not be heightened by the current transaction.
36. Given the market shares of the parties are small and considering that the relevant market is characterised by the presence of numerous stronger rivals, the transaction is therefore unlikely to result in the creation or strengthening of a dominant position which could lead to unilateral effects. The CID noted that the main customers of aircraft wet leasing are airline companies which are

¹⁸ Accessible at: www.airbus.com/en/products-services/commercial-aircraft/market/orders-and-deliveries



sophisticated customers likely to have countervailing buying power and this will also eliminate any risks of competitive harm arising from this transaction.

Consideration of Third-Party Views

37. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of DRC, Egypt, Kenya, Mauritius, Seychelles and Zambia which confirmed the absence of competition and public interest concerns.

Determination

38. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
39. The CID, therefore, approved the transaction.
40. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 04th day of May 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

