COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/08/33/2024

Decision[1] of the 111th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by African Drybulk Limited of Incorp Limited

ECONOMIC SECTOR: Transport and logistics

28 October 2024

COMESA COMPETITION COMMISSION
2 0 OCT 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 11 September 2024, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed acquisition by African Drybulk Limited ("**ADL**" or the "**primary acquiring firm**") of Incorp Limited ("**Incorp**", or the "**primary target firm**"), 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.

COMESA COMPETITION COMMISSION
20 OCT 2024

The Parties

ADL (the "primary acquiring firm")

4. ADL is a company incorporated in Mauritius. ADL is a special purpose vehicle established for the purpose of facilitating the proposed transaction and does not conduct any business activities.

5. ADL is indirectly controlled and wholly owned by a fund managed by African Infrastructure Investment Managers ("AIIM"), a private equity firm headquartered in Johannesburg, South Africa. AIIM, in turn, is solely controlled by Old Mutual Alternative Investment Holdings Proprietary Limited ("**OMAI**"), a subsidiary of Old Mutual Limited ("**Old Mutual**"). The Old Mutual Group[2] is a diversified African financial services group that offers a broad spectrum of financial solutions to retail and corporate customers across key markets in 14 countries. Old Mutual is the ultimate holding company for a number of subsidiaries operating across various lines of business in the financial services industry, including amongst others, life assurance products, short term insurance, savings, property, asset management, banking and lending.

6. The parties submitted that AIIM develops and manages private equity infrastructure funds designed to invest long-term institutional unlisted equity in African infrastructure projects. AIIM actively manages investments in East, West and Southern Africa and has assets under management of USD 2.8 billion. With offices across South Africa, Nigeria, Kenya and Cote d'Ivoire, AIIM has a thorough understanding of the African business environment and extensive experience spanning a range of infrastructure asset classes (including toll roads, renewable energy, power generation, ports and communication infrastructure assets).

7. The parties submitted that AIIM manages private equity investments made by OMAI through the following funds in the COMESA Common Market:

   (i) The IDEAS Managed Fund ("**IDEAS**"), which is a domestic infrastructure equity fund that invests in economic infrastructure (such as roads and railways), social infrastructure (such as housing and public private partnerships) and renewable energy infrastructure (such as solar and wind projects) in the Southern African Development Community region. IDEAS has investments in Zambia and Zimbabwe.

   (ii) African Infrastructure Investment Fund 2 ("**AIIF2**"), which is a pan-African infrastructure Fund with a diversified portfolio across multiple sectors and countries. AIIF2 has investments in Rwanda and Zambia.

   (iii) African Infrastructure Investment Fund 3 ("**AIIF3**"), which targets infrastructure investments in the power, transport and midstream energy sectors across sub-

[2] The parties have submitted that the Old Mutual, all firms controlled (whether directly or indirectly) by Old Mutual, collectively the "Old Mutual Group"

Saharan Africa. AIIF3 has investments in the Democratic Republic of Congo ("**DRC**"), Kenya, Rwanda and Zambia. Relevant for the purposes of the Proposed Transaction is AIIF3's controlling interest in African Ports & Corridors Holdings ("**APCH**"), particularly, through DSM Corridor Group ("**DCG**") and Central African Corridor Company ("**CACC**"). In the COMESA Common Market:

a. DCG provides rail services in Zambia and the DRC. The line ends at Kapiri Mposhi (Zambia), which acts as a logistics hub for both Zambian and the DRC cargo imported and exported via the port of Dar es Salaam, Tanzania. The parties further submitted that DCG handles dry bulk at the port of Dar es Salaam in Tanzania (approximately, 0.8 million[3] metric tons in 2023).

b. CACC was established to develop an inland logistics terminal at Kapiri Mposhi in Zambia in partnership with the Tanzania Zambia Railway Authority ("**Tazara**"). The terminal serves as an extended gateway to the Dar es Salaam port and facilitates consolidation of backhaul rail cargo volumes to allow for improved efficiency, cost and turnaround time in using the Tazara rail line.

(iv) AIIF4, which targets investments in the digital infrastructure, energy transition and mobility and logistics across sub-Saharan Africa. AIIF4 has investments in the DRC, Kenya and Zambia.

8. In the Common Market, the investment funds and/or vehicles controlled by AIIM and Old Mutual have activities in the DRC, Kenya, Eswatini, Malawi, Rwanda, Uganda, Zambia, and Zimbabwe.

Incorp (the "primary target firm")

9. Incorp is a private company limited by shares incorporated in the Republic of Mauritius. Incorp is the holding company of Bulkstream Limited ("**Bulkstream**"). Incorp, Bulkstream, and all firms controlled (whether directly or indirectly) by Incorp comprise the Target Group.

10. The Target Group is a provider of cargo handling, terminal operation and logistics services in respect of bulk commodities to local millers and global commodity trading houses and aims to grow the economies of the East African countries in which it operates (i.e., Kenya and Uganda). The Target Group's diverse team of professionals steers its operations through seaport, rail, land and warehousing logistics, ensuring operations remain optimised for cargo integrity, speed and cost efficiency.

11. In the Common Market, the Target Group is based in and has physical assets in Kenya and Uganda only and its operations are primarily in Kenya and Uganda. On a limited basis, it also provides services to clients based in the broader geographic area in the

[3] Confidentiality of information claimed by the parties.

COMESA COMPETITION COMMISSION 20 OCT 2024

East and Central African region; however, these services are provided out of Kenya and/or Uganda.

12. The parties submitted that the Target Group renders services through two main segments, namely:

(i) **Cargo Handling and Terminal Operation -** comprises:

a) **Dry-Bulk Services -** Bulkstream operates a dry-bulk terminal at the port of Mombasa and utilises the Standard Gauge Railway ("**SGR**"), the Meter Gauge Railway ("**MGR**") and road to move bulk to its inland terminals in Embakasi (Nairobi, Kenya) and onward to Jinja (Uganda) via Naivasha using the MGR and road.

b) **Liquid Bulk Services** - Bulkstream discharges, stores and delivers edible liquid bulk (vegetable and palm oil). The oil is also transported by SGR, MGR and road to Bulkstream's liquid bulk terminal in Embakasi (Nairobi, Kenya).

(ii) **Logistics -** comprises:

a) **Multi-Modal Transportation -** through multi-modal transportation using rail and road, Bulkstream offers customers an efficient and economical solution for all goods, specialising in bulk, break bulk, containerised and oversized cargo.

b) **Clearing & Forwarding -** Bulkstream offers guaranteed and cost-saving clearing and forwarding solutions for sea, air, road and rail import and exports. Bulkstream also specialises in direct release and delivery of cargo.

c) **Warehouse Stock Management System -** Bulkstream offers facilities for warehousing, stock management systems, re-bagging, repacking, storage and distribution solutions.

d) **Project Cargo & Specialised Heavy Lifting Services -** Bulkstream offers end-to-end logistics for project cargo, including containerised, high value, abnormal loads and roll-on/roll-off cargo, operating strategic storage yards, heavy lift transport fleet and handling equipment.

Jurisdiction of the Commission

13. 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:*

COMESA COMPETITION COMMISSION
20 OCT 2024

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".*

14. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived asset value of more than the threshold of USD 50 million in the Common Market and they each derived an asset value of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The CID 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

15. The proposed transaction concerns the acquisition by African Infrastructure Investment Managers ("**AIIM**"), through ADL, of a controlling interest in Incorp.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

16. 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***".

17. The CID noted that the Acquiring Group is active mainly in fund management, banking, saving and investment services, insurance services and financial advisory services. The Acquiring Group, to a limited extent, is also active in cargo handling at the port of Dar es Salaam and rail transportation in the DRC and Zambia. The Target Group is a provider of cargo handling & terminal operations, warehousing and logistics services in Kenya and Uganda.

18. The CID observed that there is horizontal overlap in the activities of the parties to the proposed transaction given both parties are generally active in the cargo and logistics services. The CID, thus, focused its assessment of the relevant product market in this area.

COMESA COMPETITION COMMISSION 20 OCT 2024

The provision of cargo handling services

19. The provision of cargo handling services encompasses a range of activities, including the loading, unloading, storage, and land-side handling of containerized and non-containerised cargo for inland transportation.[4]

20. The Target Group provides dry and liquid-bulk handling services at the Port of Mombasa, utilizing the Standard Gauge Railway, the Meter Gauge Railway, and road transport to move bulk goods from the port to its inland terminals located in Embakasi (Nairobi, Kenya) and further to Jinja (Uganda) via Naivasha.

21. Dry bulk and liquid bulk cargo handling involve the transportation and management of different types of bulk commodities, distinguished on the physical characteristics of the cargo. Dry bulk cargo refers to unpackaged, non-liquid, and non-containerized goods such as grains, minerals, coal, and iron ore, which are typically transported in bulk carriers. In contrast, liquid bulk cargo, which includes both edible and non-edible liquids as well as hazardous and non-hazardous substances, is transported in specialized tankers.[5] These tankers are purpose-built to facilitate the efficient loading, transport, and unloading of liquid cargo. The CID observed that this was an indication of the possible further segmentation of cargo handling services to dry bulk and liquid bulk cargo handling services. The CID considered that such segmentation was justifiable given the limitations in switching from provision of dry bulk to liquid bulk services would require investments in the necessary infrastructure to facilitate provision of such services. For instance, the CID considered that shifting from dry bulk cargo to liquid bulk cargo would require investments in tankers or relevant storage facilities to handle liquid cargo.

22. **In view of the foregoing, the CID defined the relevant product market as the provision of cargo handling services for bulk and liquid cargo**.

The provision of logistics services

23. The CID noted that the logistics services offered by the Target Group include:

    a) Multi-Modal transportation – efficient and economical transport via rail and road, specializing in bulk, break bulk, containerized, and oversized cargo.

    b) Clearing & forwarding – guaranteed and cost-effective clearing and forwarding for sea, air, road, and rail imports and exports, with expertise in direct cargo release and delivery.

COMESA COMPETITION COMMISSION
2 0 OCT 2024

[4] See Case M.9093 - DP World Investments / Unifeeder, para. 11.

[5] https://www.clarksons.com/glossary/types-of-cargo-ships-clarksons-ultimate-guide/, accessed on 24 October 2024.

c) Warehouse stock management – warehousing, stock management systems, re-bagging, repacking, storage, and distribution services.

d) Project cargo & specialized heavy lifting – end-to-end logistics for project cargo, including containerized, high-value, abnormal, and roll-on/roll-off loads, with strategic storage and heavy-lift equipment.

24. The CID observed that these services can be categorised under contract logistics services, defined as "*the part of the supply chain process that plans, implements, and controls the efficient and effective flow and storage of goods, services, and related information from the point of origin to the point of consumption to meet customer requirements*"[6].

25. The CID further noted the potential for further segmentation within the contract logistics services market based on the specific types of services demanded, particularly when such services are not substitutable from the demand side perspective. For instance, a customer requiring cross-border logistics services would not utilize the services of a domestic logistics service provider. The nature of the goods being transported also dictates the logistics requirements; for example, perishable and fragile items necessitate specialized logistics services such as refrigerated trucks.

26. Similarly, hazardous materials demand specific logistics services due to regulatory compliance, the need for specialized infrastructure like storage facilities and tankers, and relevant in staff expertise and equipment, along with specialized knowledge and experience. Nevertheless, it is observed that "logistics services suppliers are capable of serving all types of customers without differentiating based on the types of goods transported"[7].

27. The CID further observed that suppliers are able to provide and adapt to various logistical set-up even if they do not own the required assets (such as refrigerated trucks) which can be leased from other third parties on a need's basis[8].

28. For the purposes of this transaction, the CID considered that segmentation of the contract logistics services market is unnecessary, as the particular needs of customers do not impose significant constraints on suppliers, and the required logistical resources and equipment are readily available and do not present substantial barriers for suppliers. The CID therefore construed the relevant product market as the provision of contract logistics services.

---

[6] Case No COMP/M.6059 - Norbert Dentressangle / Laxey Logistics Notification.

[7] Case No COMP/M.1895 - Ocean Group / Exel (NFC), paragraph 9.

[8] A similar reasoning was observed in the European Commission's case involving Ocean Group / Exel (NFC) where the authority noted that contract logistics are often awarded after bidding process and that competitors are able to easily adapt to the requirements of the tenders.

29. Based on the foregoing assessment and without prejudice to its approach in similar future cases, the CID determined the relevant product markets as:

a) the provision of cargo handling services for dry and liquid bulk cargo; and

b) the provision of contract logistics services.

Relevant Geographic Market

30. Paragraph 8 of the Market Definition defines the relevant geographic market as follows:

"The relevant geographic market comprises 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".

31. Regarding the provision of cargo handling services market, the CID considered that the geographic scope for such services is likely to be national in scope. The CID observed that the services are required and provided at a designated port and the delivery of the goods is intended for a particular country, in the current case Kenya and Uganda. The CID considered that customers are likely to procure such services from their suppliers within their geographic territory as sourcing a supplier from outside their geographic boundaries may not be a timely and cost-effective option for the customer.

32. The limitation of the geographic scope of the market to national was further justified by the fact that a cargo services provider, Incorp in the current case, ought to have the supporting inland facility and infrastructure, namely a dry port terminal, warehouses and other infrastructures necessary for handling the dry bulk and liquid bulk cargo. The CID noted that Incorp, through Bulkstream, owned physical inland handling and storage terminal assets in the Embakasi Special Economic Zone in Nairobi, Kenya. Embakasi is home to the Inland Container Depot, often referred to as the "dry port," serving as a major land port terminal. This area encompasses a significant portion of the Nairobi-Mombasa Highway and hosts a cargo station on the Mombasa-Nairobi Standard Gauge Railway, which enhances freight connectivity to the region.

33. Consequently, the CID defined the relevant geographic market for cargo handling services as encompassing Kenya, and Uganda—countries served by the Port of Mombasa and where the Target Group has set up the supporting infrastructure to its provision of cargo handling services for dry bulk and liquid bulk cargo.

34. In respect of the market for contract logistics services, the CID considered that the geographic scope is likely to be COMESA-wide. This is because the competition dynamics surrounding the provision of contract logistics services go beyond the boundaries of a single country since the players compete with other international providers.

35. Providers of contract logistics services are mainly global players with local offices or registered agents in several countries, including in Member States. For instance, the CID observed that the Target Group's competitors in this market included, inter alia: Abu Dhabi Ports; DP World, Imperial; MSC; CMA CGM; Maersk, CEVA; Agility; OHL International; DSV; Expeditors International of Washington; DB Schenker; Kuehne + Nagel; Bollore Africa Logistics; Panalpina World Transport; Sinotrans; C.H. Robinson Worldwide; Nippon Express; Dachser; CJ Logistics; Hellmann Worldwide Logistics; and GEODIS.

36. However, the CID considered that customers in the Common Market are likely to prefer providers from their home country and opt for locally registered providers and will prefer engaging the services of regional providers as opposed to those operating outside the region. 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.

37. The CID therefore considered that substitution is likely between sourcing contract logistics services locally and sourcing from the global market. For purposes of the proposed transaction, the CID considered that the geographic scope of contract logistics services was at least the Common Market.

Conclusion of Relevant Market Definition

38. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant markets as:

a) the provision of cargo handling services for bulk and liquid bulk cargo in Kenya and Uganda, and

b) the provision of contract logistics in the Common Market.

Market Shares and Concentration

39. The determination of market shares and concentration provides a first indication of whether a change in market structure could create or facilitate the exercise of market power. Market power is defined as the ability of a firm profitably to increase and sustain the price of a product above competitive levels or restrict output or reduce product quality independently of its competitors, customers, and consumers. The Commission is unlikely to find concern in non-horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market shares post-merger of the new entity concerned in each of the markets concerned is below 30% and the sum of the market shares of the top three firms is less than 70%.[9]

40. The CID noted the submission of the parties that the port of Mombasa is a large, sheltered natural harbour made up of Port Kilindini, Port Reitz, the Old Port, Port Tudor

[9] The COMESA Merger Assessment Guidelines paragraph 8.9.

and the whole of the tidal water surrounding Mombasa Island. The port is managed by the Kenya Ports Authority ("KPA"), which both owns and operates the port facilities.

41. The CID observed the presence of multiple operators and licensees at the port of Mombasa, including Bulkstream. Further, other players who offer stevedoring and other multi-cargo port handling services out of Mombasa include KPA, Multiport International Limited, Portside Freight Terminal Limited, Ruman Ship Contractors Limited, Express Shipping Limited and Interglobe Services Limited (amongst others).

42. The CID also noted that the Acquiring Group does not have any activities relating to the provision of cargo handling services at the port of Mombasa, as such, there will be no accretion in market share and the competitive status quo will be unaffected post-merger.

43. Therefore, given the absence of the overlap, the CID considered that the proposed transaction is not likely to raise any competition concerns in Kenya and Uganda in respect of the cargo handling services market.

44. From the perspective of the contract logistics market, the CID observed that there are numerous players in the clearing and forwarding market. The CID noted the submission by the parties that of the list of competitors and their market shares as presented in Table 1 below.

Table 1: Estimated market shares of the Target Group and its top competitors in the provision of transportation services in Kenya and Uganda [10]

Competitors	***Estimated market shares***
General Cargo Services	[redacted]%
Ripe Freight Services	[redacted]%
Weston Logistics Ltd	[redacted]%
AGL (K) Ltd	[redacted]%
Delray Services Ltd	[redacted]%
Alcordia Logistics	[redacted]%
Bulkstream (Target Group)	[redacted]%
Total	[redacted]

45. The CID assessed that the Target Group holds a [redacted]% market share in the relevant market for the transportation services in Uganda and Kenyan market together. Similarly, its top six competitors such as General Cargo Services, Ripe Freight Services, Weston Logistics Ltd, AGL (K) Ltd, Delray, Services Ltd, and Alcordia Logistics also holds same [redacted]% market share each.

46. The CID considered that contract logistics market is fragmented with a diverse range of competitors with numerous players holding small markets.

[10] Confidentiality of information claimed by the parties.

COMESA COMPETITION COMMISSION 28 OCT 2024

47. Further, the CID observed that there would be no change in the existing market structure post-merger in view of the absence of overlap pre-merger and that the merged entity would continue to face competition from the existing competitors.

Consideration of Third-Party Views

48. Submissions were received from the national competition authorities of Kenya and Malawi which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

49. 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.

50. The CID, therefore, approved the transaction.

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

Dated this 28th day of October 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah