



COMESA Competition Commission
Kang'ombe House, 5th Floor-West Wing
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 (0) 1 772 466
Email- compcom@comesa.int



Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/08/36/2019

Decision¹ of the Sixty-Eighth (68th) Committee Responsible for Initial Determination Regarding a Merger Involving Rail Africa Ltd, Africa Rolling Stocks Solutions Limited and GPR Leasing Africa

ECONOMIC SECTOR: Rail Transportation

23rd December 2019

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Information and Relevant Background

1. On 20th September, 2019 the COMESA Competition Commission (hereinafter referred to as the "**Commission**") received a merger Involving Rail Africa Ltd ("**RailCo**"), Africa Rolling Stocks Solutions Limited ("**ARSS**") and GPR Leasing Africa ("**GPR**").
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the "**Regulations**"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. The Committee Responsible for Initial Determination (the "**CID**") established that the parties operate in more than one COMESA Member State and they meet the required prescribed merger notification thresholds. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

RailCo (the "Acquiring undertaking")

4. It was submitted that the acquiring undertaking, RailCo, is new company incorporated for purposes of the proposed transaction and is currently a wholly-owned subsidiary of Sealyle International Ltd ("Sealyle") whose address is 13A King George V Avenue, Floreal, Mauritius. The acquiring undertaking is involved in the leasing of rolling stock in the Common Market.

ARSS and GPR (the "Target Undertakings")

5. It was submitted that one of the target undertakings, ARSS, is a wholly-owned subsidiary of Sealyle International Ltd ("Sealyle"), which is incorporated in Mauritius and Trans-Zambezi Rolling Stock Solutions Limited ("TZRS") a company incorporated in Zambia and directly or indirectly controlled by ARSS.
6. It was submitted that the other target undertaking comprises, GPR, a company incorporated in Mauritius. It has been submitted that both targets are involved in the leasing of rolling stock in the Common Market.

Nature of the Transaction

7. The parties submitted that PRIF Afrivest Ltd ("PRIF") and Grindrod Mauritius ("Grindrod") own all of the shares and loan accounts in GPR. Further, Sealyle owns all of the shares and loan accounts in ARSS which subsequently owns shares and loan accounts in TZRS. It has been submitted that in terms of the transaction, the shareholders of ARSS and GPR wish to combine and jointly control these businesses through a single holding company incorporated in Mauritius namely, Railco. The parties have submitted that in order to give effect to the proposed transaction, the shareholders of ARSS and GPR will transfer their shares in ARSS and GPR to RailCo.



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Once RailCo has acquired 100% of the shares of ARSS and GPR (the "Target Shares") the issued shares in RailCo will be held and beneficially owned as follows: (i) PRIF: 25%; (ii) Grindrod: 30.6%; and (iii) Sealye: 44.4%. Further, PRIF, Grindrod and Sealye will each jointly control RailCo by virtue of minority protections that will be afforded to each in terms of the shareholders' agreement.

Competition Analysis

8. The CID defined the relevant the markets as the market for the provision of rolling stock leasing solutions in the Common Market.
9. The CID observed that the transaction will result in the consolidation of market shares, however, the market concentration would be insignificant and not likely to raise competition concerns. The CID further observed that the relevant market is characterised by numerous competitors.

Determination

10. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market or any substantial part of it. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID approved the transaction unconditionally.
11. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 23rd December, 2019



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Commissioner Brian M. Lingela (Chairperson)



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Commissioner Islam Tagelsir Ahmed Alhasan