



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



Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/09/27/2021

**Decision¹ of the Eighty-First (81st) Committee Responsible
for Initial Determination Regarding the Proposed Merger
involving DP World Logistics FZE and Imperial Logistics
Limited**

ECONOMIC SECTOR: Logistics and Transport

20th February 2022

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

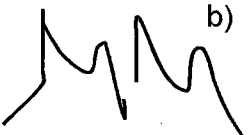
Introduction and Relevant Background

1. On 18th October 2021, the COMESA Competition Commission (the "**Commission**") received a notification involving DP World Logistics FZE ("**DP World Logistics**") as the acquiring undertaking and Imperial Logistics Limited ("**Imperial Logistics**") as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (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

DP World Logistics (the Acquiring undertaking)

4. DP World Logistics is a company incorporated in the Jebel Ali Free Zone, the United Arab Emirates and has as registered address, 5th Floor, LOB 17, Jebel Ali Free Zone, P.O. Box 17000 Dubai, United Arab Emirates. DP World Logistics is controlled by DP World Limited ("**DP World**"), which is a multinational logistics company specialising in port terminal operations, maritime services, free trade zones and cargo handling and logistics services, which relates to the discharging and loading of vessels and related activities. DP World and its subsidiaries are collectively referred to as the "**Acquiring Group**".
5. The Acquiring Group owns, operates, and manages marine container terminals and other port infrastructure located across six continents. The Acquiring Group's terminals handle general and bulk cargo, roll-on/roll-off, load-on/load-off vessels, and passengers.
6. The parties further submitted that the Acquiring Group provides various supply chain solutions, including:
 - a) marine services at both Acquiring Group and non-Acquiring Group operated ports²;
 - b) vessel operations for roll-on/roll-off ferries, short-sea and feeder services³;


² The parties have submitted that this business unit provides marine solutions to offshore energy, port services and cargo transport. It also includes ship repair and specialised ship-build services.

³ The parties have submitted that feeder services consist of loading or unloading containers from a large ship which cannot access a port to smaller vessels called "feeders" or "feeder ships".

- c) port-based and inland industrial parks and economic zones offering real estate products and related services needed to support a variety of industrial and logistics activities⁴; and
 - d) logistics services, including multimodal transport solutions, freight forwarding services, cargo and container handling services, warehouse management, and other supply chain solutions.
7. The parties submitted that the Acquiring Group's customers are mostly shipping lines with other customers spread relatively uniformly across industries.
8. Further, the parties submitted information on the activities of the Acquiring Group in the Common Market as follows:

Djibouti

- a. The Acquiring Group, through its group company Jafza International FZE has a minority (40%) shareholding in Djibouti Dry Port FZCO. The latter is the owner of the Djibouti Free Zone. Jafza International FZE manages the Djibouti Free Zone in terms of a management services agreement.
- b. The Djibouti Free Zone contributes to creating a welcoming business environment for investment and regional trade in Djibouti. The Djibouti Free Zone includes: a 31-hectare site close to Djibouti's ports and airport; warehousing facilities with integrated office units; serviced land plots with utilities; and hangars designed to accommodate aid cargo.
- c. The DP World Group only provides free zone management services in Djibouti and does not provide container terminal services in Djibouti.

Egypt

- d. The Acquiring Group operates the Ein El Sokhna Port, in Egypt. The Ein El Sokhna port is positioned below the southern entrance to the Suez Canal on the Red Sea. The port handles a wide range of bulk commodities (sugar, iron ore, coal, pet coke, clinker, dolomite, urea, grains and silica sands), and general or breakbulk cargo. In Egypt, the acquiring group provides ports and terminal services. This includes the handling and storing of containers, bulk, general or breakbulk cargo. The Sokhna container terminal is a facility within the Ein El Sokhna Port. The container terminal's primary function is to transfer containerised cargo between different modes of transportation, e.g., rail or truck transportation and maritime transport.
- e. The parties further submitted that a new entity, DP World Egypt, has been formed to offer customs clearance, transportation, and similar services in Egypt but has not commenced operations yet.

⁴ The parties have submitted that the Acquiring Group develops industrial parks with optimal eco-systems to accelerate trade through best-in-class infrastructure.

Rwanda

- f. The Acquiring Group manages the Kigali Logistics Platform, a facility that has been operational since September 2018 and is focused on warehouse services related to the import of cargo into Rwanda. The parties further submitted that the facility also provides limited inland container depot, cargo handling, trucking and logistics services.
- g. The Kigali Logistics Platform must be distinguished from a container terminal found alongside a seaport where containers are loaded on and off vessels (e.g. the container terminal operated by the DP World Group in Egypt), explaining that any container handling services are incidental to the central business conducted at the Kigali Logistics Platform. The facility primarily provides warehousing and related services. For example, the facility receives a container from the port in Mombasa, Kenya, removes the cargo and prepares it for onward transport into East Africa. The container is then repacked with any export cargo or returned empty to the port.
- h. The parties further submitted that the container handling services provided by the acquiring group from the Kigali Logistics Platform are insignificant and incidental.

Imperial Logistics and its subsidiaries (the "Target Group")

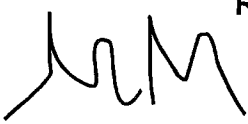
9. The parties have submitted that the Target Group is an established transport and logistics provider in various African countries including the Common Market, a provider of contract logistics and freight services in Europe and the United Kingdom, and also a provider of route-to-market solutions, through comprehensive channel strategies that integrate sourcing, sales, distribution and marketing.
10. The Target Group's activities can be separated into two overarching solutions:
 - a. ***Market access services to various retail and pharmaceutical customers*** located in the Common Market, including transporting of products. The market access business operates mainly in sub-Saharan Africa. Market access provides route-to-market solutions, enabling clients to reach their customers and end consumers through comprehensive channel strategies that integrate sourcing, sales, distribution and marketing. As part of these functions, the Target Group takes ownership of the principal's inventory, as well as responsibility for the entire order to cash function. Within the Target Group's market access division, it has two main sub-segments: (i) healthcare; and (ii) consumer.
 - b. ***Logistics services***, which includes *inter alia* freight management and contracts logistics. Through its logistics operations, the Target Group manages the movement of products on behalf of its clients between specified locations (where the products are sourced to specified destinations), combining different transportation modes (road, river, rail, air and ocean) and types. The parties

submitted that contract logistics services encompass warehousing, distribution and synchronisation management provided as dedicated or multi-principal services. To reduce their time-to-market, improve customer service and mitigate risk, the Target Group integrates its logistics functions into its client's end-to-end supply chain. Within its logistics offering, Imperial provides freight forwarding services. The Target Group manages multiple supply chain functions for its clients and offers logistics activities across Africa, including road freight, contract logistics, and lead logistics provider services.

11. In the Common Market, the Target Group mainly focuses on the wholesaling of Fast-Moving Consumer Goods (“**FMCG**”) consumer and healthcare goods to a variety of retailer and pharmaceutical outlets located in each of the respective Member States. Further, Imperial Logistics recently acquired two companies active in the Common Market⁵, namely:
 - a. Lift Logistics Holdco – the company provides integrated end-to-end cross-border transportation services ranging from transport to port agency services, storage, as well as in-transit warehousing services in the minerals and fertiliser markets. It is primarily active in the transportation services of minerals, fertilizer (bulk and bagged), mining related products (equipment, machinery and minerals), agricultural products (tobacco leaves) as well as general cargo and other minerals between Mozambique, Zimbabwe, Zambia and South Africa. Its transport services for goods are provided across countries along the North/South corridor between the Durban port in South Africa and Zambia, as well as along the Beira corridor and a network of transport routes between Beira port in Mozambique and Zambia using the flatbed trucks; and
 - b. Deep Catch Holdings Namibia Proprietary Limited – the company provides transportation services and supply of temperature-controlled FMCG to wholesale and retail customers in DRC, Malawi and Zambia - using multi-temperature vehicles that have different cooling systems. To a limited extent, it also transports and supplies ambient FMCG to wholesale and retail customers in Zambia and Zimbabwe.

Jurisdiction of the Commission

12. 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:



⁵ The CID granted unconditional approval to both transactions on 6th December 2021, having considered the low market shares of the merging parties in the relevant markets and the strong presence of competitors, which made competition concerns unlikely

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.

13. The merging parties have operations in more than two COMESA Member States. The parties' combined annual asset value in the Common Market exceeds the threshold of USD 50 million and they each hold asset value of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide asset value 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

14. The notified transaction involves DP World Logistics acquiring all of the issued and to be issued ordinary shares in Imperial Logistics (other than such ordinary shares held by subsidiaries of Imperial Logistics) through a scheme of arrangement in terms of section 114 of the South African Companies Act, No. 71 of 2008. As a result of the notified transaction, Imperial Logistics will be directly owned and controlled by DP World Logistics. Hence, through the notified transaction, DP World Logistics will acquire the sole control of Imperial Logistics.

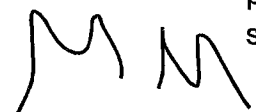
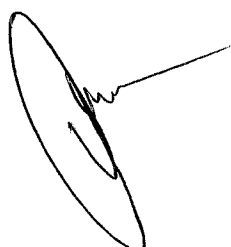
Competitive Assessment

Relevant Markets

Relevant Product Market

15. The Acquiring Group's main operations in the Common Market involve the provision of container terminal services. The CID noted that container terminal services accounted for 55% of its global revenue in the financial year 2020⁶. While

⁶ DP World Investor Presentation, April 2021, page 10. Accessed at <https://www.dpworld.com/-/media/project/dpwg/dpwg-tenant/corporate/global/media-files/investor-relations/financials-and-presentation/investor-presentations/2021/dp-world-investor-presentation-apr-2021-v2.pdf?rev=f0f8e8e9fcae42558ab7ad659b8ef3b6>, on 17th December 2021.

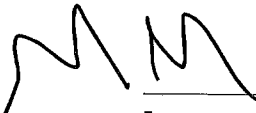


DP World is not active in the logistics segment in the Common Market, the CID noted that logistics accounted for 30% of its global revenue.

16. The Target Group's activities in the Common Market relate mostly to the provision of transportation services to various retail and pharmaceutical customers, and to a lesser extent, the provision of freight forwarding and contract logistics services. The CID considered that the transaction is not capable of having any material impact on the target's activities in the provision of wholesale transportation services, in view of the clear lack of overlap with DP World's operations. The CID thus focused on the target's activities in relation to freight forwarding and contract logistics, which are part of the broader supply chain within which DP World operates.

Container Terminal Services

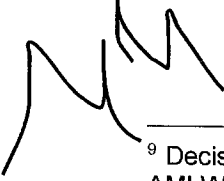
17. The CID noted that provision of container terminal services by terminal operators such as DP World involves the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo⁷. Container terminal services are input services to container liner shipping.
18. Further that 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
 - 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 to onward movement to another more distant market⁸.
19. The CID considered the parties submission that the container terminal services provided by the Acquiring Group in the Common Market relate to hinterland traffic and such services are provided in Egypt. The CID noted that while the above may suggest that the container terminal services can comprise of submarkets, in view of the absence of the target's operations at this level of the supply chain, the CID considered that the product market could be construed generally, for purposes of this transaction, as the market for container terminal services.


⁷ Cases M.7523 – CMA CGM/OPDR, paragraph 63
https://ec.europa.eu/competition/mergers/cases/decisions/m7523_985_2.pdf accessed 16th November 2021

⁸ Cases M.8330 – Maersk Line/HSDG, paragraph 29
https://ec.europa.eu/competition/mergers/cases/decisions/m8330_1036_3.pdf

Contract Logistics vs Freight Forwarding

20. The CID noted that the target is active in the provision of contract logistics services and freight forwarding services. The CID has previously identified separate markets for contract logistics services and freight forwarding services⁹. 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”*¹⁰. 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.
21. The CID further noted that contract logistics services, on the other hand, merge traditional logistics with supply chain management processes. The services are comprehensive and are offered across the production through to distribution value chain and do not simply entail the moving of goods. Contract logistics move goods through the production line, warehousing, distribution plan, inventory management and final distribution. In *UPS/TNT Express*¹¹, the European Commission (EC) defined contract logistics services as *“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. This part of the supply chain has as its focal point the provision of warehousing and management of the flow of goods for customers”*¹².
22. The CID further noted the core distinction between contract logistics and freight forwarding is that freight forwarders are not involved in the customers’ supply chain as is the case in contract logistics. They observed that the latter comprises additional activities such as parts supply, inventory control, product tracking, order picking, management, time lined delivery, quality checking, information technology and account management, as well as value-added services such as assembly and installation upon delivery, reverse logistics and sequencing¹³. Additionally,



⁹ Decision 1 of the Seventy-Second (72nd) CID Regarding the Merger between CEVA Logistics AG and AMI Worldwide Limited, dated 4th September 2020.

¹⁰ 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

¹¹ Decision of the European Commission M.6570, UPS/TNT Express.

¹² *Ibid*, paragraph 31.


¹³ European Commission Case No COMP/M.2411 - AUTOLOGIC/TNT/WALLENIUS/CAT JV, paragraph 15.

customers rarely enter into long term contractual arrangements with freight forwarders but procure services by placing orders on a case-by-case basis.

23. The CID noted that, within both the freight forwarding market and the contract logistics market, narrower markets could potentially exist. For instance, freight forwarding could be grouped into domestic and international freight forwarding or according to the mode of transport (air, land and sea)¹⁴; whereas contract logistics services could be segmented by type of good handled or the industry serviced. However, for the purposes of this transaction, given that the acquirer is not active in these markets in the Common Market, the CID considered that narrower markets need not be defined as any alternative market definition will not alter the competitive assessment with respect to contract logistics and freight forwarding.
24. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as follows:
- a. Container terminal services market;
 - b. Contract logistics market; and
 - c. Freight forwarding market.

Relevant Geographic Market

25. With respect to the container terminal market, the CID considered that the geographic scope for transshipment services could be broader than national and would be defined by the catchment area of ports which the container terminal generally serves; whereas for hinterland traffic, the geographic market is likely to be narrower having regard to the required hinterland connectivity to effectively facilitate container cargo flows from the foreland to hinterland. Having regard to the parties' operations in the Common Market, which are limited to Egypt, the CID concluded that the container terminal market is national in scope.
26. In line with previous decisional practice¹⁵, the CID considered that the respective markets for contract logistics and freight forwarding market are likely to be COMESA-wide. Whilst it is noted that customers may tend to prefer providers from their home country, the majority of freight forwarders and contract logistics providers 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.


¹⁴ European Commission Case COMP/M.4746 Deutsche Bahn / EWS, Case COMP/M.4045 DB / BAX Global, Case COMP/M.3971 Deutsche Post / Exel and Case COMP/M.1794 Deutsche Post / Air Express International.

¹⁵ Decision of the Seventy-Sixth (76th) Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving IVY 2 Investments VCC and PIL Holdings Pte. Ltd

Conclusion of Relevant Market Definition

27. For the purposes of assessing the proposed transaction only, and without prejudice to future cases, the CID has identified the relevant markets as follows:
- the national markets for container terminal services in Egypt;**
 - the provision of contract logistics services within the Common Market; and**
 - the provision of freight forwarding services within the Common Market.**

Market Shares and Concentration

28. The CID observed that the DP World describes itself as a global leader in container terminal operations, managing a capacity of 93 million twenty-foot equivalent units (TEUs)¹⁶. According to the Drewry Maritime Research 2020 Annual Report, DP World was among the top 5 global port operators and had an estimated world market share of 8.7% in 2019. Its main competitors included China Cosco Shipping (13.7%), PSA International (10.6%), APM Terminals (10.5%), and Hutchinson Port Holdings (10.3%). In Africa, it has an estimated market share of 6% measured by throughput¹⁷.
29. The CID further observed that in the Common Market, DP World operates the Sokhna port in Egypt. As of 2016, it is reported that the port had three berths, an annual capacity of 1.1m twenty-foot equivalent units (TEUs) and accounted for 25% market share in Egypt¹⁸. It is further reported that on 1st November 2021, DP World Sokhna started the operations of a second basin which added a further capacity of 750,000 TEUs annually¹⁹. The CID considered the market shares provided by the parties on DP World and its competitors in Egypt, per Table 1 below.

Table 1: Market Share Estimates of providers of Container Terminal Services in Egypt

| Name of Provider | Estimated Market Shares (%) |
|---|------------------------------------|
| DP World | [15-25] |
| Damietta Container & Cargo Handling Co | [10-20] |
| Alexandria Container & Cargo Handling Company | [15-25] |

¹⁶ DP World Investor Presentation, April 2021, page 15. Accessed at https://www.dpworld.com/-/media/project/dpworld/dpworld-tenant/corporate/global/media-files/investor-relations/financials-and-presentation/investor-presentations/2021/dp-world_investor-presentation_apr-2021-v2.pdf?rev=f0f8e8e9fcae42558ab7ad659b8ef3b6, on 17th December 2021.

¹⁷ Source: Drewry Maritime Research.

¹⁸ Daily News Egypt, 'Egypt is very promising and has a sizeable economy: DP MENA senior vice president', published on 27 December 2016. Accessed at <https://dailyfeed.dailynewsegyp.com/2016/12/27/egypt-promising-sizeable-economy-dp-mena-senior-vice-president/>, accessed on 17th December 2021.

¹⁹ Daily New Egypt, 'DP World Sokhna plans to expand its logistics services outside port area by 2022: CEO', published on 9 December 2021. Accessed on <https://dailynewsegyp.com/2021/12/09/dp-world-sokhna-plans-to-expand-its-logistics-services-outside-port-area-by-2022-ceo/>, on 17th December 2021.



| | |
|--|---------|
| Hutchison Port Holdings - Alexandria International Container Terminals | [20-30] |
| APM Terminals - Suez Canal Container Terminal | [0-10] |
| Port Said Container & Cargo Handling Co | [0-10] |

30. The CID noted that the market shares of DP World in the above market would not be affected by the transaction given that the Target Group did not have operations in Egypt.
31. With respect to the Target Group, the parties submitted the following market share estimates as per Table 2 below in the broad logistics market in Kenya and Zimbabwe respectively.

Table 2 – Market share estimates (Logistics services segment)

| Member State | Entity | Estimated Market Shares (%) |
|--------------|-----------------------------|-----------------------------|
| Kenya | Bolloré Logistics | [0-5] |
| | Kuehne + Nagel | [0-5] |
| | Imperial Logistics | [0-5] |
| | DSV | [0-5] |
| | Freight Forwarding Services | [0-5] |
| | Others | [90-100] |
| Zimbabwe | Imperial Logistics | [0-10] |
| | Cedar Logistics | [0-10] |
| | Pote Transport | [0-10] |
| | Swift/Unifreight | [0-10] |
| | Other | [90-100] |

32. The CID noted that the target's market share in the broad logistics market is relatively insignificant at national level and is expected to be similarly modest within the Common Market. The parties further submitted that on best estimates, the target's market shares in the narrower freight forwarding services market in Kenya will be <[0-5]%. The CID noted that the market is very competitive with the presence of global competitors such as Bolloré Africa Logistics, DHL Global Forwarding, Kuehne Nagel, and DSV operating in both relevant markets. Further, the transaction is not capable of leading to any market share accretion in the relevant markets, given that the parties did not operate in the same market pre-merger.

33. The CID noted that the parties' activities complement each other along the supply chain. The CID was concerned that the transaction may allow DP World Logistics to leverage Imperial Logistics' long-term relationships with cargo owners, thereby potentially restricting cargo owners in their choice of logistics providers and foreclosing competing logistics providers. However, the small market shares of the merging parties in their respective markets remove the ability and incentive on their part to foreclose their rivals. The CID thus found no concern of vertical foreclosure.

Third-Party Views

34. Submissions were received from Kenya, Zimbabwe, Egypt, Mauritius, Eswatini, Zambia and Malawi which views did not raise any concerns, given that the parties do not operate in the same Member State.

Determination

35. Based on the foregoing reasons, 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.
36. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 20th day of February 2022


.....
Commissioner Deshmuk Kowlessur (Chairperson)


.....
Commissioner Mahmoud Momtaz


.....
Commissioner Islam Tagelsir Ahmed Alhasan