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Common Market for Eastern  
and Southern Africa

Case File No. CCC/MER/02/05/2019

**Decision<sup>1</sup> of the Fifty-Seventh (57<sup>th</sup>) Committee Responsible for Initial Determination Regarding the Joint Venture involving Bollore Transport & Logistics Kenya Limited, Nippon Yusen Kabushiki Kaisha, and Toyota Tsusho Corporation**

**ECONOMIC SECTOR:** Transport and Logistics

19<sup>th</sup> June 2019

<sup>1</sup> 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

*Best file T.P.D*

### *Information and Relevant Background*

1. On 19<sup>th</sup> February 2019, the COMESA Competition Commission (hereinafter referred to as the "Commission") received a notification for approval of a joint venture involving Bolloré Transport & Logistics Kenya Limited ("BTLK"), Nippon Yusen Kabushiki Kaisha ("NYK"), Toyota Tsusho Corporation ("TTC"), and Bolloré NYK Auto Logistics Ltd. ("BNYK" or the "Joint Venture Company").
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 prescribed 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*

#### ***BTLK***

4. It was submitted that BTLK is a multimodal logistics company offering sea, air, and land freight forwarding, dry port operations, and value-added warehousing services. BTLK's headquarters are located in Nairobi, Kenya. In the Common Market, BTLK is active in the following Member States: Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Kenya, Madagascar, Malawi, Rwanda, Sudan, Uganda, Zambia, and Zimbabwe.

#### ***NYK***

5. It was submitted that NYK, a company duly organized and existing under the laws of Japan, was established in 1885 through the merger of Japan's two leading shipping companies. NYK is based in Tokyo and has regional headquarters in London, New York, Singapore, Hong Kong, and Sao Paulo. In the Common Market, NYK is active in the following Member States: Burundi, the Democratic Republic of Congo, Kenya, Malawi, Rwanda, and Zambia through 3<sup>rd</sup> party agencies.

#### ***TTC***

6. It was submitted that TTC, a company duly organized and existing under the laws of Japan, is a general trading company with leading presence in East African countries in the field of automotive logistics, projects & industrial equipment, agricultural equipment, chemical and fertilizer industry. It has global automotive business network, experience in vehicle logistics, and focuses on developing new business designs including energy and infrastructure, agriculture, and ICT. In the Common Market, TTC is active in the

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following Member States: the Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia, and Zimbabwe.

#### *Nature of the Transaction*

7. As a result of the Joint Venture, BNYK was incorporated in Kenya on 18<sup>th</sup> January 2017 following the signing of a Memorandum of Understanding among BTLK, NYK and TTC on 29<sup>th</sup> June 2016 and subsequently a joint venture agreement ("JVA") dated 16<sup>th</sup> September 2016. Under the JVA, the parties agreed to jointly form BNYK whose objective was the provision of inland transportation, bonded storage (CFS, vehicle distribution centre, etc.), distribution, value-added services (pre-delivery inspection, maintenance, accessory fitment, painting, washing, etc.) and customs clearances services in relation to any vehicles both new or used arriving at Mombasa port or any other ports in Kenya and any vehicles manufactured and/or assembled in Kenya.
8. The CID observed that the joint venture company was a full function joint venture performing on a lasting basis all the functions of an autonomous economic entity and therefore the joint venture constituted a merger within the meaning of Article 23 of the Regulations.

#### *Competition Analysis*

9. The CID defined the relevant markets as follows:
  - a) provision of general logistics services in Kenya;
  - b) sale of vehicles globally; and
  - c) provision of maritime vehicle transportation to Kenya.
10. The CID observed that the transaction is not likely to raise significant competition concerns due to the absence of horizontal overlaps between the activities of the parties in the relevant markets. The CID also observed that the market for the sale of vehicles, is characterised by presence of global competitors which will continue to give competitive pressure to the joint venture company.

#### *Determination*

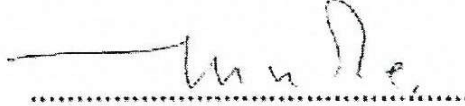
11. The CID determined that the merger is not likely to substantially lessen and prevent competition in the Common Market or any substantial part of it. Consequently, the transaction is not likely to negatively affect trade between Member States. The CID therefore approved the transaction.

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

Dated this 19<sup>th</sup> day of June, 2019

Handwritten signature of Commissioner Patrick Okilangole in black ink, written over a dotted line.

Commissioner Patrick Okilangole (Chairperson)

Handwritten signature of Commissioner Brian Lingela in black ink, written over a dotted line.

Commissioner Brian Lingela

(Member)

Handwritten signature of Commissioner Thembelihle Dube in black ink, written over a dotted line.

Commissioner Thembelihle Dube

(Member)