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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/03/09/2021

Decision[1] of the Seventy-Eighth (78th) Committee Responsible for Initial Determination Regarding the Proposed Merger Involving AerCap Holdings N.V. and GE Capital Aviation Services

ECONOMIC SECTOR: Aviation

3rd September 2021

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 27th May 2021, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed merger involving AerCap Holdings N.V. ("**AerCap**") and GE Capital Aviation Services ("**GECAS**"), 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. The Committee Responsible for Initial Determinations, referred to as the CID, is established pursuant to Article 13(4) of the Regulations. The decision of the CID is set out below.

The Parties

AerCap (the Acquiring undertaking)

4. AerCap is a European-based commercial jet aircraft lessor incorporated under the laws of the Netherlands with its registered address at AerCap House, 65 St. Stephen's Green, Dublin D02 YX20, Ireland. AerCap also has offices in Shannon, Los Angeles, Singapore, Amsterdam, Shanghai, Abu Dhabi, Seattle and Toulouse. It is active on a worldwide basis and listed on the New York Stock Exchange.

5. AerCap's primary business is to acquire aircraft and lease them to airlines on a worldwide basis, primarily through operating leases. AerCap also provides the following activities:

    i. Sale of used aircraft;

    ii. Provision of services that are ancillary to its trading activities, such as aircraft asset management, corporate administrative services and cash management services for aircraft owners/lessors; and

    iii. To a very limited extent and only on an ad hoc basis, engine leasing.

6. AerCap does not have any incorporated subsidiaries within the Common Market but nonetheless operates as follows:

Table 1: AerCap's nature of activities in the Common Market

Member State	Name of Firm	Nature of activities
Egypt	Ross Leasing Ltd; Westpark 1 Aircraft Leasing Ltd; AerCap Ireland Ltd; Sierra Leasing Limited; International Lease Finance Corporation; AerCap Ireland Capital Designated Activity Company; Shrewsbury Aircraft Leasing Limited (trading as AerCap); Cesium Funding Limited; ILFC Aircraft 78B-38799 Inc.; Diadem Aircraft Limited; Diadem	Operating lease

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	Aircraft Inc.; Tantalum Funding Limited; ILFC Aircraft 32A-10072 Inc.	
Ethiopia	Flying Fortress Ireland Leasing Limited (trading as AerCap); Ballysky Aircraft Ireland Limited (trading as AerCap); Celtago Funding Limited; Blowfish Funding Ltd.; Goldfish Funding Limited; Iridium Funding Ltd; Scandium Funding Limited; Platinum Aircraft Leasing Limited; AerCap Ireland Capital Designated Activity Company; AerCap Global Aviation Trust; Tantalum Funding Limited	Operating lease
Mauritius	Scandium Funding Limited	Operating lease
Tunisia	ILFC Ireland Limited (trading as AerCap)	Operating lease

GECAS (the target undertaking)

7. GECAS is a company incorporated under the laws of Ireland with its registered office at Aviation House, Shannon Co. Clare Ireland V14 AN29. GECAS is controlled by General Electric ("**GE**"), a multinational, diversified manufacturing, technology and services company that is incorporated under the laws of the State of New York, United States of America. GE's common stock is listed on the New York Stock Exchange, its principal market, and certain non-US exchanges including the London Stock Exchange and Euronext Paris.

8. GECAS is active in the global commercial aircraft leasing and financial industry, offering a broad array of leasing and financing products and services for commercial aircraft, turboprops, engines, helicopters and materials.

9. It was submitted that GECAS provides services in the following COMESA Member States: through the following directly and/or indirectly controlled firms: Egypt, Ethiopia, Kenya, Mauritius and Tunisia.

Jurisdiction of the Commission

10. 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 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,

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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.

11. The merging parties have operations in more than two COMESA Member States. The parties' combined asset in the Common Market exceeds the threshold of USD 50 million and they each derive asset 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 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

12. In terms of the proposed transaction, it was submitted that on 9th March 2021, AerCap entered into an agreement with GE under which AerCap will acquire 100% shareholding of GECAS. As part of the composite transaction, GE will also acquire a minority 46% non-controlling shareholding of AerCap. It was submitted that AerCap's acquisition of GECAS will create a diversified aviation lessor with positions across aircraft, engine and helicopter leasing, and related activities, which will be a strategic partner to customers globally.

Relevant Markets

Relevant Product Market

13. It was noted that the merging parties are both active in aircraft financing in the form of aircraft operating leasing particularly dry-leasing. It was also noted that parties are engaged in aircraft trading, lease management services and aircraft engine leasing.

14. For purposes of the competitive assessment of the current transaction, the CID focused on following:

Aircraft financing

15. The CID noted that financing entails the sourcing of aircraft by airlines either through, aircraft purchase using own cash reserves; finance leases, operating leases or sale-and-lease back. It was observed that aircraft financing can be categorised as a single broad market since the different forms of finance ultimately seek to assist airlines source aircraft. The CID recalled that the Commission's previous decision in the ***AerCap/ILFC***[2] merger where aircraft financing was identified as a single separate product market.

16. The CID noted that competitive constraints exist amongst the various options of aircraft financing which may affect airlines' choice of which option of sourcing aircraft (i.e., financing aircraft) to opt for. It was noted that airlines may shift towards aircraft leasing if faced with financial challenges for outright purchase of new aircraft. Further, airlines may shift from aircraft ownership towards sale-and-leaseback to avoid associated costs and risk for ownership while at the same time ensuring that they free up capital which may support

[2] See Case File: No. CCC/MER/101/2014

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operations. For instance, in the wake of the COVID-19 pandemic the Chief Executive Officer of Sky Leasing reports that, *"We have seen airlines that haven't traditionally used the lessors change in a major way, utilising it now to fund deliveries. JetBlue, for example, had not done a sale-leaseback transaction for the better part of 13 years prior to closing the deal with us..."*[3].

17. The CID observed that the purchase of aircraft using own cash reserves is often from Original Equipment Manufacturers (OEMs) such as Airbus and Boeing, in the case of new aircraft, or from purchase second-hand aircraft sellers in the case of used aircraft. It was noted that such purchase involves substantial amount of funds which may average over US$ 100 million for new aircraft, depending on the model of the aircraft, engine choice, and extent of customisation[4]. Further, purchase of new aircraft tends to be costly given that delivery of the aircraft is not immediate and may take up to of 2 – 3 years for the aircraft to be built and delivered. Meanwhile as the airline waits for delivery, it is required to make pre-delivery payments to the OEMs which may be financed through bank debt or purchase-and-leaseback with an operator. Thus, purchase of new aircraft is capital intensive, as such airlines may opt for alternatives to sourcing aircraft.

18. The CID noted that while aircraft financing may be considered as a single broad market, the individual forms of aircraft financing can be construed as separate markets given the unique and different characteristics that each comprises. It was noted that the purchase of new aircraft from Original Equipment Manufacturers (OEMs) may involve substantial amount of funds. The average prices of aircraft are over US$ 100 million depending on the model of the aircraft, engine choice, and extent of customisation[5]. Further, the timeline for delivery of new aircraft from OEMs is not immediate and may take up to 2 – 3 years. It may also require airlines to honour pre-delivery payments to the OEMs while the airline continues to operate its commercial business. CID therefore observed that new aircraft purchase is capital intensive and costly for airlines to opt for and this can be a basis for distinct with other forms of aircraft financing and may limit the extent of substitution.

19. The CID noted that finance leasing, as a form of aircraft financing, is distinct given that airlines lease aircraft using funds from a lender such that ownership of aircraft is transferred to the lessee at the end of the lease term. Finance leasing also carries a risk of repossession by the lender if the airline defaults on payments under the lease which is different in the case of new aircraft purchase.

20. The CID noted that operating lease entails a scenario where a lessor leases an aircraft to a lessee under certain terms and conditions and the ownership of the airline is retained by the lessor and the aircraft is returned after the term of the lease. An operating lease is preferred by those airlines having insufficient funds for aircraft purchase and those urgently looking for

[3] Victoria Tozer-Pennington (2021), "The Aviation Industry Leaders Report 2021: Route to Recovery", published by Aviation News Ltd, page 34

[4] See https://www.boeing.com/company/about-bca/#/prices

[5] See https://www.boeing.com/company/about-bca/#/prices

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an aircraft to immediately increase operational capacity; take advantage of seasonal surge in demand or to avoid disruption in operations occasioned by strikes. Operating lease thus present unique features which may not be addressed by purchase a new aircraft which is costly and may not address immediate airline needs. Lastly, sale-and-leaseback entails be sale of an aircraft by the owner to a leasing company and the simultaneous entry into a leasing agreement with lessors for the same aircraft. Sale-and-leaseback enables a lessor to acquire an aircraft with a lease attached to it and it gives the airline an opportunity to acquire the aircraft through an operating lease and free up resources which can be re-invested into its business, or to discharge existing debt or for investment purposes.

21. In view of the foregoing, the CID noted that broad aircraft financing market can be categorised into narrower markets such as purchase of new aircraft, operating leasing, finance leasing and sale and lease-back. It was observed that the alternative options are different on the basis of characteristics which may limit the extent of substitution. For instance, outright purchase of aircraft tends to be capital intensive given the huge cost of aircraft and since an airline is required to make pre-delivery payments to the OEM while the aircraft is being manufactured. This would require the airline to have enough funds to honour the payments and simultaneously ensure continued operations which also entail expenditures. The scenario is different under operating lease where the capital requirement is lower and the airline is able to pay for the cost of the lease as it operates the airline. It was also observed that sale-and-leaseback gives the airline the opportunity to free-up capital by selling its aircraft and still ensure continued operation by virtue of leasing back the aircraft it has sold. Financing through external debt is also different as this has a connotation of the airline incurring debt.

22. The CID therefore concluded that aircraft financing can be sub-divided into narrower markets on the basis of the highlighted differences in the characterises and the markets are not likely to be substitutable. The CID noted that within the Common Market, the parties are both active in the provision of operating lease through dry leasing as such considered the market further as follows:

23. The CID noted that operating leases can be categorised into three main types namely: wet lease, dry lease and damp lease. It was noted that wet lease entails the leasing of the aircraft with accompanying pilot, cabin crew including maintenance and insurance services[6]. Further, dry lease entails the leasing of an aircraft without any crew and maintenance personal but instead the airline uses its own crew and maintenance to operate the aircraft while damp lease has a mixture of both dry and wet leases whereby an airline has a cabin crew but has no aircraft and no maintenance personnel. Thus, the airline may enter into a damp lease and thus obtain an aircraft with a pilot, maintenance and insurance as part of the lease except for the cabin crew.

24. It was observed that from a demand perspective, the three forms of operating leases are distinguishable and can be categorised in separate markets given that airlines' needs for each

[6] https://www.aerotime.aero/23164-aircraft-leasing-explained, accessed 25th July 2021 at 4:46pm

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is likely to be different. Airlines looking to lease an aircraft are likely to distinguish among these three forms of operating leases. For instance, an airline with excess crew and maintenance capacity is not likely to opt for a wet lease and bear the additional cost of crew and maintenance. The airline is therefore more likely to opt for a dry lease and use its own crew and maintenance on the leased aircraft. It was therefore be concluded that operating lease comprises narrower markets namely wet leasing, dry leasing and damp leasing.

25. **In view of the foregoing, the CID defined the relevant product market as aircraft financing through operating dry lease**

Aircraft trading

26. The CID noted that aircraft trading entails the sale of aircraft which leasing companies embark on as part of their aircraft fleet management and as a way to ensure their fleet retains the age and profile fit for their commercial strategies. It was noted that aircraft are sold from the existing fleet of aircraft of the leasing companies which were either acquired from OEMs or from airlines through sale-and-leaseback arrangements. Aircraft trading is seen as a means of supporting the leasing operations in the sense that it enables leasing companies to raise funds which can be re-invested into the leasing business by supporting purchases of new aircraft.

27. The CID considered that aircraft trading constitutes a separate market from the market of aircraft financing given the unique and different intended purposes. It was noted that aircraft trading aims at disposing an aircraft while aircraft finance seeks to assist airlines acquire aircraft to support commercial operations.

28. The CID concluded that substitution is unlikely between aircraft trading and aircraft financing and therefore construed aircraft trading a separate market.

29. **In view of the foregoing, the CID defined the relevant market as aircraft trading.**

Aircraft lease management services

30. The CID noted that aircraft lease management services seek to support and protect an aircraft owner's asset and its value by ensuring careful technical management[7]. It was noted that a lease management services provider supports the owner of the aircraft to monitor the systems and components of the aircraft on their behalf thereby ensures compliance by the operator of its maintenance obligations, thus ensuring the asset maintains its value.

31. The CID considered that lease management services can be deem different from the aircraft financing or aircraft trading on account of differences in the nature of the actives and goals. The CID observed that lease management services are ancillary services to aircraft leasing and aircraft trading.

[7] See http://www.relaer.aero/services/aircraft-asset-management/aircraft-asset-management, assessed on 28th July 2021 at 1:33hrs

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32. **In view of the foregoing, the CID construed lease management services as a separate market.**

Aircraft engine leasing

33. The CID observed that aircraft engine leasing entails the leasing of aircraft engines for use on another aircraft. The CID considered that aircraft engine leasing constitutes a separate activity from aircraft leasing, lease management services or aircraft trading and substitution with any of these products is not possible given the differences in the nature of the products/services.

34. In view of the above and for purposes of the competitive assessment of the transaction, the CID construed aircraft engine leasing as a separate relevant product market.

Relevant Geographic Market

35. The CID considered that the identified relevant product markets are global markets given that competition in the market takes places on a global scale. It was noted that the key players including the merging parties are global players whose customers (airlines) operate across the globe. For instance, in 2020 the following providers with their corresponding portfolio were noted[8]: AerCap Holdings N.V. (1022 aircraft), GE Capital Aviation Services (989), Avolon (578), BBAM (516), Nordic Aviation Capital (483); and SMBC Aviation Capital (473). Further, the major aircraft lessees are international airlines which operate across the globe namely: Air France, American Airlines, China Southern, IAG, Delta, GOL, Emirates and Qatar Airways.

36. The CID noted that aircraft financing through operating dry leasing is unlikely to be limited by national or regional boundaries since aircraft can easily be transported across borders. Further, evidence of the global nature of the market can be seen from the fact that airlines are not constrained to national or regional market when sourcing aircraft, they are able to engage global players.

37. The CID further considered that aircraft finance is global given that aircraft are standard and homogenous and do not require major costly modifications in order to operate across jurisdictions. The CID therefore considered that substitution across jurisdictions was possible. The CID also observed that leasing companies have operations across different regions of the globe, including the Common Market and this signals that the relevant geographic market is beyond national and likely to be global.

38. **In view of the foregoing and without prejudice to the future cases, the CID determined the following relevant markets:**

    a) **The global market for aircraft financing through operating dry leasing;**

    b) **The global market for aircraft trading;**

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[8] See Victoria Tozer-Pennington (2021), "The Aviation Industry Leaders Report 2021: Route to Recovery", published by Aviation News Ltd, page 35

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c) **The global market for aircraft lease management services; and**

d) **The global market for aircraft engine trading.**

Competitive Assessment

39. The CID noted the following global estimated market shares of the parties and their main competitors in the for aircraft operating dry-leasing:

Table 3: Estimated global market shares of key players in aircraft operating dry leasing as at 1st March 2021

Name of Entity	Market share by number of aircraft	Market share by market value of leased aircraft
AerCap	[5-10]%	[5-10]%
GECAS	[5-10]%	[5-10]%
Avolon	[0-5]%	[5 – 10]%
BBAM	[0-5]%	[5 – 10]%
SMBC	[0-5]%	[5 – 10]%
Nordic	[0-5]%	n/a
ICBC	[0-5]%	[0 – 5]%

40. The CID also noted that as at March 2021, the estimated regional and global market value for the aircraft leasing and aircraft financing were the following:

a) the estimated aircraft market value of the global aircraft financing market is US$ [650,000,000,000 – 700,000,000,000] and the estimated volume is [30,000 – 35,000] aircraft;
b) the estimated market value of the global aircraft leasing market is US$ [300,000,000,000 – 350,000,000,000] and the estimated volume is [10,000 – 15,000] aircraft;
c) the estimated market value of COMESA market in relation to aircraft financing market is US$ [12,500,000,000 – 13,000,000,000] and the estimated volume is [500 – 1000] aircraft; and
d) the estimated value of COMESA market in relation to aircraft leasing is US$ [6,500,000,000 – 7,000,000,000] and the estimated volume is [100 – 500] aircraft.

41. The CID noted that competition in the global market of aircraft financing through operating dry leasing is likely to thrive post-merger given that the parties combined market share will be low and the market share is characterised by alternative providers. According to table 3 above, the merged entity will have a combine estimated market share by aircraft volume of 10% - 20%. Thus, the remainder of the market will continue to be serviced by the merged entity's competitors. The CID noted that the position is also consistent with the submission from the Competition Commission Mauritius that the merged entity's market share will be

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less than 20%. The CID also noted that despite AerCap and GECAS being amongst the top lessors, they face competition from other players as presented in table 4 below.

Table 4: Top 30 Leasing Companies (ranked by number of aircraft)[9]

Manager	Total Portfolio	On Order	Est. Portfolio Value (USD million)	Current Rank
AerCap	1022	288	29,732	1
GECAS	989	253	19,377	2
Avolon	516		18,250	3
BBAM	578	240	18,368	4
Nordic Aviation Capital	482	72	4,573	5
SMBC Aviation Capital	473	223	16,670	6
ICBC Leasing	457	108	15,785	7
BOC Aviation	404	135	15,929	8
Air Lease Corporation	396	369	16,085	9
DAE Capital	365		8,737	10
Aviation Capital Group	336	67	8,678	11
Aircastle	280	25	4,664	12
BoComm Leasing	249	30	7,916	13
CDB Aviation	240	137	7,280	14
Carlyle Aviation Partners	232		2,761	15
Castlelake	227		3,414	16
ORIX Aviation	207		5,462	17
Macquarie AirFrance	191	52	2,952	18
Boeing Capital Corp	182	23	1,394	19
Goshawk	182	40	5,690	20
Jackson Square Aviation	181	30	6.365	21
AVIC International Leasing	154		4,807	22
China Aircraft Leasing Company	142	247	3,769	23
Standard Charter Aviation Finance	134		3,739	24
AMCK Aviation	131	20	3,243	25
Cargo Aircraft Management	114		1,468	26
Falko	111		1,087	27

[9] See Victoria Tozer-Pennington (2021), "The Aviation Industry Leaders Report 2021: Route to Recovery", published by Aviation News Ltd, page 35

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CMB Financial Leasing	109		3,761	28
GTLK – State Transport Leasing Company	106	1	2,158	29
Chorus Aviation Capital	99	1	1,252	30

42. The CID observed that the proposed transaction is unlikely to raise competition concerns since the market for aircraft dry-leasing is fragmented and likely to remain competitive post-merger. It was noted that 200 providers of aircraft operating dry-leases globally and the leasing market has become more fragmented over the past 20 years with the number of lessors growing from 96 to over 200. It was also noted that the market share of the top 10 lessors decreased from around 75% to around 41% while the market share of the top 5 lessors decreased from around 60% to 26%. Thus, the merged entity is likely to face strong competition from numerous competitors active in aircraft dry-leasing.

43. The CID noted that competition will continue to thrive even in the Common Market where the estimated volume for aircraft leasing is 238 aircraft out of which the number of aircraft leased by the parties is small. It was noted that Ethiopian Airlines leases 11 aircraft from AerCap and 4 from GECAS out of a total of 57 leased aircraft and an overall fleet of 112 aircraft respectively. Egyptair leases 14 aircraft from AerCap and 5 from GECAS out of a total of 28 leased aircraft and an overall fleet of 90 aircraft respectively. Thus, the majority of the aircraft leases in the Common Market are not with the parties and this is likely to continue post-merger.

44. The CID also considered that due to the COVID-19 pandemic, there is an oversupply of aircrafts in the leasing market due to most airlines scaling down on operations. The CID noted the parties' submission that the share of non-utilized aircraft for lessors has increased from around 5% in March 2019 to around 8% in March 2021 which has also resulted into an oversupply of aircraft worldwide and this is likely to place downward pressure on lease prices. The oversupply on the market will prevent aircraft lessors, including the parties, from raising prices for aircraft operating leases above a competitive level. Thus, competition is expected to continue thriving in the market for aircraft leasing.

45. The CID considered that competition concerns are also unlikely to arise in aircraft trading given the presence of strong competition from other lessors, aircraft manufacturers, airlines and financial investors who may seek to trade in aircrafts.

46. The CID also considered that competition concerns are unlikely in the aircraft engine trading market since the parties' operations are minimal given their marginal overlap.

47. The CID noted that the transaction is unlikely to raise competition concerns in the market for lease management services due to the presence of alternative providers such as other lessors

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and entities whose primary business is the provision of aircraft remarketing and management services to aircraft owners.

Third-Party Views

48. Submissions were received from the Egyptian Competition Authority, the Competition Authority of Kenya, the Competition Commission (Mauritius), and the Trade Competition and Consumer Protection Authority (Ethiopia).

49. The submissions were consistent with the conclusion that the transaction is not likely to raise competition concerns.

Determination

50. 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.

51. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 3rd day of September 2021

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Commissioner Brian M. Lingela (Chairperson)

Ruparanganda
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Commissioner Ellen Ruparanganda