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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/03/07/01/JB

**Decision¹ of the Nineteenth Meeting of the Committee Responsible for
Initial Determination Regarding the Proposed Merger between DSV A/S
and UTi Worldwide Inc**

ECONOMIC SECTOR: Freight Forwarding

7th March, 2016 – Johannesburg, South Africa

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 12th December 2015, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification for approval of a merger between DSV A/S (hereinafter referred to as "DSV") and UTi Worldwide Inc (hereinafter referred to as "UTI").
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations (hereinafter referred to as "the Regulations"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed 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 of Initial Determination (hereinafter referred to as "the CID") noted that the Commission has jurisdiction on mergers primarily with a regional dimension. This therefore means that mergers that do not meet the regional dimension requirement should be assessed by the Member States concerned. Article 23(3)(a) establishes the regional dimension requirement when it provides that:

"This Article shall apply where both the acquiring firm and the target firm or either the acquiring firm or target firm operate in two or more Member States".

4. Further, regional dimension is met where the merging parties satisfy the merger notification thresholds prescribed under Rule 4 of the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Method of Calculation which stipulates 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\$² 50million; 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 more than two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State".

5. In the case under consideration, the parties have operations in the following Member States:

² One COM\$ is equivalent to one US\$

- Burundi
- DRC
- Egypt
- Ethiopia
- Kenya
- Rwanda
- Malawi
- Mauritius
- Uganda
- Zambia
- Zimbabwe

6. The foregoing shows that the parties have operations in more than two Member States and therefore satisfies Article 23(3)(a) of the Regulations. Further that the parties have a combined turnover of more than COM\$ 50 Million and each has a turnover of more than COM\$ 10 million in the Common Market. This therefore means that the Commission has jurisdiction to review the merger.

The Parties

DSV

7. DSV is a global non-asset based freight forwarding and logistics company active in road/land, air and sea freight-forwarding services as well as logistics solutions services in approximately 75 countries. It is a company listed on the Nasdaq Copenhagen Stock Exchange and is therefore not controlled by any firm.

UTi

8. UTi is an international non-asset based supply chain services and solutions company that provides services through a global network of freight forwarding offices and contract logistics and distribution centres in approximately 60 countries. UTi also provides other supply chain management services, including customs brokerage, consulting, coordination of purchase orders and customized management services. UTi is listed on the Nasdaq Copenhagen Stock Exchange and is therefore not controlled by any firm.

Nature of the Transaction

9. In terms of the proposed transaction, DSV will acquire, through its wholly owned subsidiary Louvre Acquisition co, Inc, 100% of the issued shares in UTi.

Competition Analysis

10. The CID defined the relevant product market as freight forwarding. The relevant geographical market was defined as Zambia. The CID established that the transaction is not likely to result in an appreciable effect on trade between Member States and hence is not likely to frustrate the single market objective of the Treaty Establishing the Common Market for Eastern and Southern Africa.

Determination

11. The CID determined that the merger is not likely to substantially prevent or lessen Competition in the Common Market and is compatible with the Treaty Establishing the Common Market.
12. The CID however observed that it is the policy of the Government of the Republic of Zambia through its Industrialisation and Job Creation Strategy to safeguard public interest such as job losses in all merger transactions. The CID therefore decided to approve the transaction on condition that:
 - (i) The Parties maintain the existing contracts and legal obligations entered into by UTi and DSV with local contractors for a period of one year in Zambia from the date of approval of this transaction.
 - (ii) The Parties ensure that no existing jobs at the operational level are lost in Zambia by virtue of the transaction for a period of one year from the date of approval unless such is done under Voluntary separation and in strict adherence to the Zambian labour laws.
13. This decision is adopted in accordance with Article 26 of the COMESA Competition Regulations.

Dated this 7th day of March, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Georges Tirant (Member)