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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/04/12/2023

Decision¹ of the Ninety-Sixth (96th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of Joint Control by EMIF II Holding I B.V. and Hassan Allam Utilities B.V. over Cairo Airport Cargo Company S.A.E.

ECONOMIC SECTOR: Aviation



28 August 2023

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the “**COMESA Treaty**”);

Having regard to the COMESA Competition Regulations of 2004 (the “**Regulations**”), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the “**Rules**”);

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State;

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States’ economies through the attainment of full market integration;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

determines as follows:

Introduction and Relevant Background

1. On 1 June 2023, the Commission received a notification for approval of the proposed acquisition of joint control by EMIF II Holding I B.V. (“**EMIF**”) and Hassan Allam Utilities B.V. (“**HAU**”) of Cairo Airport Cargo Company S.A.E. (“**CACC**”), pursuant to Article 24(1) of 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

EMIF

4. EMIF, a Dutch private limited company, is a newly established special purpose vehicle, which is 100% owned by a fund managed by Emerging Markets Infrastructure Fund II K/S, acting by its manager A.P. Moller Capital P/S, which is controlled by an affiliate of A.P. Møller Holding A/S, the parent company of the A.P. Moller group of companies (the “**APM Group**”). The APM Group offers ranges of services such as container liner shipping, container terminal services, inland transportation, inland services, supply chain management services, harbour towage, reefer container manufacturing, and freight forwarding.
5. Within the Common Market, the APM Group operates in all the Member States except Eritrea.

HAU

6. HAU, a Dutch private limited company, is an investment and development company for green energy, water-related opportunities, logistics and social infrastructure that address the underserved market and growing demand for infrastructure in Egypt and the region.
7. HAU is majority owned by Hassan Allam Holding B.V., which is wholly owned by Hassan Allam Holding S.A.E. (“**HAH**”, and together with its subsidiaries, the “**HAH Group**”). The HAH Group is one of the largest privately owned companies in Egypt and the Middle East/North Africa region with over 80 years of experience in the fields of engineering, procurement and construction, building materials, and utilities led by over 35,000 employees.
8. HAU is one of the two divisions in HAH Group while engineering and construction is the other division. The engineering and construction division includes the engineering, procurement and construction (“**EPC**”) division, which focuses on large scale complex projects, and a building material division which supports the EPC division as well as exports material.
9. Within the Common Market, HAH Group operates only in Egypt.

HAU Logistics B.V (“HL” or the “Joint Venture Company”)

10. HL, a special purpose vehicle established under Dutch law for purposes of this transaction, is a private limited liability company having its official seat in Amsterdam, the Netherlands. Currently, it is a wholly owned subsidiary of HAU. HL is an existing 13.1% shareholder in CACC through which the transaction will be implemented.

CACC

11. CACC is an Egyptian joint stock company which operates out of a cargo facility based in Cairo International Airport extending over an area of 173,400 sqm.



12. CACC has established a series of state-of-the-art import, export and express cargo terminals that represent a new era of advanced logistics operations in the Egyptian market.
13. Within the Common Market, CACC is only active in the provision of air cargo handling services in Egypt only.

Jurisdiction of the Commission

14. 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 USD 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 USD 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.

15. The merging parties have operations in more than two COMESA Member States. The parties' combined annual turnover in the Common Market exceeds the threshold of USD 50 million and the parties derived turnover 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 turnover 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

16. The notified transaction entails the acquisition by EMIF and HAU of joint control over CACC.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

17. The CID noted that the acquiring group, through the APM Group, is active in shipping, port terminal operation, towage, energy, freight forwarding and logistics. The APM Group, through AP Møller-Mærsk A/S ("**APMM**") subsidiary, Maersk Logistics & Services Egypt



Ltd., is active, to a very limited extent, in air freight forwarding in Egypt. The CID also noted that CACC is active in the provision of air cargo handling services in Egypt. Accordingly, the CID observed that there is a vertical overlap in the activities of the acquirer and the target. The CID focused its assessment on these vertically related activities.

The provision of freight forwarding services

18. Freight forwarding services entail services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods and collecting or procuring payment or documents relating to the goods².
19. It involves transportation of goods from one destination to another, based on customer demands. It has been defined as the organisation of transportation of items (including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs³. Freight forwarders provide logistics services as an intermediary between the shipper and the carrier, typically on international shipments.
20. Freight forwarders undertake the transportation of goods from the shippers to receivers for a charge covering the entire transportation, and, in turn, make use of the services of other transportation establishments as instrumentalities in effecting delivery⁴. They provide their services by acting as a link between companies that pick-up goods, ship them via different modes of transportation such as air, sea or land and deliver them to their final destinations.
21. Therefore, the CID observed that freight forwarding can be segmented as air freight forwarding, sea freight forwarding and land freight forwarding since all modes of transport cannot be considered as generally substitutable in view of the geographic situation of the customer as well as the specific characteristics of the goods to be transported. In line with its previous decisional practice, the CID observed that narrower markets could potentially exist within freight forwarding market according to the means of transportation, though the market was left open as a result of no competition concerns⁵.
22. The CID observed that air freight forwarding, sea freight forwarding, and land freight forwarding are distinct logistics services that specialize in transporting goods via different modes of transportation. Each type of forwarding service has its unique characteristics and advantages, catering to specific shipping requirements.

² Explanatory Note to the Revision of and Guidelines for the Usage of FIATA Model Rules for Freight Forwarding Services, para 2.1, available at <https://fiata.org/n/model-rules-on-freight-forwarding-services-update/>, accessed on 19 June 2023.

³ See para 32, Case M.9319 - DP WORLD / P&O GROUP

⁴ <https://siccode.com/sic-code/4731/arrangement-transportation-freight-cargo>, accessed on 19 June 2023.

⁵ Decisions of the Eighty-Fifth (85th) Committee Responsible for Initial Determinations Regarding the Merger between CEVA Logistics Headoffice B.V. and Trans East Africa AG, paragraph 15, dated 22nd August 2022.



23. Further, distinctions can be observed depending on means of supply. For instance, air freight forwarding involves the transportation of goods via airplanes while Sea freight forwarding involves the transportation of goods via ships and vessels. On the other hand, land freight forwarding involves the transportation of goods overland via trucks, trains, or other ground transportation vehicles. Air transport is ideal for long distances requiring urgent and quick delivery while land transportation works well to deliver goods to more remote locations, whereas sea freight is best for companies requiring a large shipment to carry their burden⁶.
24. The CID noted that the different types of freight forwarding can also be used to transport unique type of cargo. For instance, air freight is the fastest type of freight and particularly appropriate for transporting goods requiring quick delivery and valuable items such as perishable goods, high-value items, electronics, pharmaceuticals, and other time-critical shipments (and which are neither too heavy nor too bulky) while sea freight is the most cost-effective means of choice for heavy or bulky goods and large quantities of cargo⁷. On the other hand, land freight is used for various types of cargo, including consumer goods, industrial equipment, and perishable items within a country or region. From cost perspective, Air freight is generally more expensive than sea or land freight due to the speed and efficiency it offers.
25. To this end, the CID observed that air freight forwarding, sea freight forwarding, and land freight forwarding can be categorised as separate market segments given the nature of products transported, means of transportation and the price of the services.
26. The CID considered that since the acquirer is active only in the air freight forwarding services, the relevant product market for purposes of assessing the proposed transaction is provision of air freight forwarding.
27. From the above analysis, the CID considered the relevant product market as the **provision of air freight forwarding services**.

The provision of air cargo handling services

28. Air cargo refers to transporting goods and products via aircraft, either in passenger aircraft cargo holds or cargo-only aircraft. It entails the range of tasks and activities involved in the efficient and safe handling of cargo shipments transported via air. Such services include activities at the airport such as receiving and delivering cargo, building cargo pallets, x-ray scanning of outbound cargo, clearing import and export cargo, and loading and unloading aircraft⁸. Further, activities such as preparing for storage, short-medium-term storage, preparations for shipment and other customer clearance for efficient and smooth functioning of the cargo delivery are also part of air cargo handling services.

⁶ <https://dhl-freight-connections.com/en/solutions/comparison-of-the-types-of-freight/>, accessed on 19 June 2023.

⁷ Ibid.

⁸ <https://thedocs.worldbank.org/en/doc/8402314368994792080190022009/original/AirTransportAirCargoSummary.pdf>, June 2023.



29. The main objective of air cargo handling services is to ensure that cargo is properly managed, loaded, and unloaded during its journey from the shipper to the consignee while adhering to strict safety and security standards. The CID noted that air cargo handling enables businesses to move goods quickly and efficiently over long distances, ensuring timely delivery and access to markets worldwide⁹. Such services are typically provided by specialized companies known as air cargo handlers or airfreight handling agents.
30. From the above analysis, the CID considered the relevant product market as **the provision of air cargo handling services**.

Relevant Geographic Market

31. The CID noted that given the global nature of trade and commerce, companies often ship goods to and from various parts of the world. Air freight forwarding services are designed to cater to this global demand, and thus companies in this industry need to have a strong global presence to effectively serve the needs of their clients across different parts of the world. The CID considered the geographic market for the provision of air freight forwarding service as global in scope since airfreight transportation is a cross border service and carriers tend to provide airfreight transportation services between airports across the world.
32. Further, the CID noted that air freight forwarding companies often have a global presence either through their offices, subsidiaries, agents, or partnerships in multiple countries to facilitate the smooth movement of cargo. The companies work with airlines, customs authorities, and other relevant parties to ensure timely and secure transportation of goods. Further, air freight forwarding companies are not confined to national borders but offer their services on a global scale where multi-national customers can source the service from global providers through global tenders or third parties.
33. The CID noted that air freight forwarding providers such as Ethiopian Cargo & Logistics Services provides its services to its global customers in over 66 global destinations in Africa, the Gulf, the Middle East, Asia, Europe, and North America¹⁰. The CID noted that the Acquiring Group through Maersk Logistics was among the top 50 global air freight forwarders in 2022 that provide air freight forwarding services globally¹¹. The CID further noted that through arrangements with other carriers, air freight service providers may also offer airfreight services to or from other airports which are not served by their own aircraft or freight for which they do not have available capacity. The CID considered that it is likely that a customer can swiftly switch from one air freight forwarder to another as far as the air freight forwarder is able to lease air cargo spaces from any airlines or use its own air

⁹ <https://www.inboundlogistics.com/articles/types-of-air-cargo/>, 19 June 2023.

¹⁰ <https://cargo.ethiopianairlines.com/index/ethiopian-airlines-transport-over-50-million-covid-19-test-kits-from-south-korea>, accessed on 21 July 2023.

¹¹ <https://www.unitexlogistics.com/en/?m=home&c=View&a=index&aid=169>, accessed 29 June 2023.



cargo. Thus, the CID considered that the geographic scope of the air freight forwarding market as global.

34. With respect to the air cargo handling services, the CID observed that the target provides services at Cairo International Airport. The CID considered that, to provide its services, an air cargo handler requires to obtain authorisation and have warehouses, equipment and personnel at the airport. These licensing and facilities requirements are mainly attributed on a single airport basis; thus the geographic scope is likely to be limited to the specific airport. The CID further considered that customers are likely to opt for providers that have a local presence since air cargo handling services mainly involve physical handling of goods and storage facilities. The CID concluded that the geographic market for air cargo handling services cannot extend beyond a single airport.
35. In view of the above, the CID considered that the geographic scope for the air cargo handling services to be Cairo International Airport, in Egypt.
36. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets were identified as the follows:
 - a) **The global provision of air freight forwarding services; and**
 - b) **The provision of air cargo handling services at Cairo International Airport in Egypt.**

Market Shares and Concentration

37. The CID noted that there are several significant global players in the air freight forwarding including Kuehne+Nagel, DHL Supply Chain and Global Forwarding, DSV, DB Schenker, Expeditors, USP Supply Chain Solutions, Nippon Express, Sinotrans, Kintetsu World Express and Bollore Logistics¹². The acquirer, through APM Group, is not among the top 25 global airfreight forwarders and does not have a strong presence in this market. Further, APM Group's market share for air freight forwarding in Egypt is estimated to be below 1%. The CID considered that, post-merger, the market shares of the acquirer will remain the same given the absence of horizontal overlap between parties in the relevant markets.
38. With respect to the air cargo handling services, the CID noted that the market in Egypt is highly concentrated with three (3) key players, with the target having a market share of [20-30]%. The CID noted that the merging parties are in different markets in Egypt and thus the transaction is not likely to result in a change in the market structure of the air cargo handling market given the absence of horizontal overlaps in the parties' activities pre-merger. Therefore, the pre-merger market shares of the target will remain the same post-merger.

¹² <https://www.aircargonews.net/freight-forwarder/top-25-airfreight-forwarders-kuehnenagel-takes-top-spot-from-dhl/>, accessed on 27 June 2023.



39. In any event, the CID noted that the transaction is not capable of leading to any market share accretion in the air cargo handling market, given that the acquirer is not active in the air cargo handling market, pre-merger.

Consideration of Third-Party Views

40. Submissions were received from the national competition authorities of Egypt, Eswatini, Ethiopia, Kenya, Mauritius, Rwanda, Seychelles, and Zimbabwe which submitted that the transaction was not likely to raise competition and public interest concerns. This is consistent with the CID's assessment, as presented above.

Determination

41. 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.
42. The CID, therefore, approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 28th day of August 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

