



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



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/2/3/2023

**Decision¹ of the Ninety-Sixth (96th) Meeting of the Committee
Responsible for Initial Determinations Regarding the Proposed
Acquisition of control by Drake Asset Management Jersey
Limited over Palma Ibdar Aviation Limited**

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 2 May 2023, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of a merger involving Drake Asset Management Jersey Limited (“**Drake**” or the “**acquiring undertaking**”) and Palma Ibdar Aviation Limited (“**Palma**” or the “**target undertaking**”), 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

Drake (the acquiring undertaking)

4. Drake, with its principal business address at IFC 5, St. Helier, JE1 1ST, Jersey, is currently under the sole control of Falko Regional Aircraft Opportunities Fund II LP (“**Falko Fund II**”). Falko Fund II is a limited partnership established under the laws of Jersey with its registered address at IFC 5, St. Helier, JE1 1ST, Jersey. Falko Fund II’s strategy is focused on growing its portfolio of funds and aircraft under management and the continued development of products and services in support of its aircraft lease management activity.
5. Falko Fund II, in turn, is ultimately controlled by Chorus, Aviation Inc. (“**Chorus**”), a company incorporated under the laws of Canada. Chorus is a global aircraft leasing and aviation services public company listed on the Toronto Stock Exchange.
6. Within the Common Market, the acquiring undertaking is active in aircraft leasing services in Ethiopia and Kenya through its controlled entities as presented in Table 1 below:

Table 1: List of Drake controlled entities in the Common Market

Member State	Name of Subsidiary	Business activities
Ethiopia	Galway Aircraft Leasing Limited	Aircraft Leasing
	Commuter Aircraft Leasing 2017 VII Limited	Aircraft Leasing
Kenya	Galway Aircraft Leasing Limited	Aircraft Leasing
	Newgrange Aircraft Leasing Limited	Aircraft Leasing

Palma (the target undertaking)

7. The target undertaking is a company incorporated and registered in the British Virgin Islands, with its principal business address at HBCS Chambers, Rodus Building, Road Reef Marina, Road Town, Tortola, British Virgin Islands.
8. Within the Common Market, the target undertaking is active in aircraft leasing services in Ethiopia only through its controlled entities as presented below²:
 - (a) **Palma Ibdar Lease Q400-01 Ltd** - a company incorporated and registered in the British Virgin Islands with company number 1802611 whose registered office is at Rodus Building, Road Town, Tortola, British Virgin Islands;
 - (b) **Palma Ibdar Lease Q400-02 Ltd** - a company incorporated and registered in the British Virgin Islands with company number 1802613 whose

² Parties’ submission as Exhibit C: Confidentiality of information claimed by the merging parties.



registered office is at Rodus Building, Road Town, Tortola, British Virgin Islands;

(c) **Palma Ibdar Lease Q400-03 Ltd** - a company incorporated and registered in the British Virgin Islands with company number 1802615 whose registered office is at Rodus Building, Road Town, Tortola, British Virgin Islands; and

(d) **Palma Ibdar Lease Q400-04 Ltd** - a company incorporated and registered in the British Virgin Islands with company number 1802617 whose registered office is at Rodus Building, Road Town, Tortola, British Virgin Islands.

Jurisdiction of the Commission

9. 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.*
10. The undertakings concerned together have operations in two or more Member States. The undertakings concerned have a combined annual asset value in excess of the threshold of USD 50 million in the Common Market. In addition, the parties each held an asset value of more than USD 10 million in the Common Market and they did not hold 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

11. The proposed transaction entails that Drake will acquire sole control over the entire issued share capital of Palma. As rationale for the proposed merger, it was



submitted that it would allow Falko Fund II to grow its leasing business and provides multiple opportunities to maximize returns on the target's aircraft assets.

12. According to the merging parties, the proposed merger will not raise any competition concerns in any relevant market nor be contrary to public interest within the Common Market due to the following reasons:
 - a. the aircraft leasing market, where the merging parties are active, is a global market;
 - b. the merging parties' combined market share for aircraft leasing in the Common Market is very low (below 5%); and
 - c. there are a number of competitors with greater market shares in the Common Market that will remain active following the implementation of the proposed transaction.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

13. According to the COMESA Guidelines on Market Definition of 2019 (the "**Market Definition Guidelines**"), "*a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use*".³
14. Both Drake and Palma are active in the aircraft leasing market; accordingly, there is a horizontal overlap in the aircraft leasing market.

Provision of aircraft leasing services

15. Aircraft leasing is an aspect of the commercial aviation industry which is part of aircraft financing whereby an airline operator leases aircrafts from a party furnishing the aircraft (lessor) under a lease for a specific period. *Lease is an agreement by a person (the lessor) to furnish an aircraft to another person (the lessee) to be used for compensation or hire purposes for a specified period or a defined number of flights while lessor is the party furnishing the aircraft under a lease which is the party using the aircraft under the provisions of a lease*⁴. Aircraft leasing is the renting of an aircraft, or part thereof, for a specific period without buying it under leasing arrangement⁵. The lease is a legal agreement between the lessor and lessee where

³ Paragraph 3.1 of the Market Definition Guidelines.

⁴ Paragraphs from 2.1-2.3, Indian Civil Aviation Manual, dated August 2017. Available at <file:///C:/Users/HP/Downloads/cap3200.pdf>, accessed on 23 May 2023.

⁵ <https://www.contractsounsel.com/t/us/aircraft-lease>, accessed on 23 May 2023.



the former agrees to provide the airplane to the latter for a set period of time in exchange for regular payments called rents or lease payments.

16. The CID has previously considered⁶ that there are two types of aircraft leasing arrangements, namely operating lease and finance lease where each is distinct based on how fully the risks and rewards attached to the ownership of the asset have been transferred to the lessee from the lessor. The aircraft operating lease arrangement is a short-term agreement for use and possession of an aircraft by the lessee for a specified period where the lessee has no expectation of acquiring legal ownership of the aircraft once the lease payments are made. On the other hand, finance lease is a long-term agreement where there is an option for the lessee to acquire the aircraft at the end of the lease period.
17. Aircraft operating lease can further be segmented into three types of arrangements: dry leasing, wet leasing, and damp lease⁷.
18. Dry leasing is a lease arrangement whereby a lessor provides an aircraft without crew, maintenance services and insurance to the lessee. In contrast to dry-leasing services, wet-leasing is an arrangement whereby a lessor provides an aircraft with entire crew to the lessee for a specified period or a defined number of flights⁸. Wet leasing is a short-term transaction between two airlines, which lasts usually for less than two years while dry leasing arrangements typically last upwards of two years.⁹
19. It was further noted that wet lease agreements and dry lease agreements differ according to several points such as the responsibilities of the lessor and lessee, and the commercial risk. In wet leasing, the lessor operates flight, provides aircraft, crew, maintenance and insurance services, and the lessee pays operating fees to the lessor. The lessee is further responsible for selling and distributing tickets, owning the slots and bearing commercial risks such as setting fares. On the other hand, in dry leasing, the lessor leases only the aircraft, and the lessee pays the lessor for lease. The lessee is responsible for operating the flight, providing the crew, maintenance and insurance services through leasing companies and aircraft manufacturers, selling and distributing tickets, and bearing commercial risks such as setting fares.
20. Damp Lease can be considered a hybrid form of wet lease and dry lease, whereby a lessor provides an aircraft with partial crew to the lessee. For instance, an airline might have free cabin crew available but lack the engineering personnel to cover the maintenance operations. So, a damp lease will be preferable for an airline which

⁶ See para 20, case no. CCC/MER/6/29/2022 - MBC Aviation Capital Limited of 100% shares of Goshawk Management Limited, decision dated 27 September 2022.

⁷ <https://sassofia.com/blog/aircraft-lease-types-and-options-full-wet-acmi-dry-damp/>, accessed on 23 May 2023.

⁸ <https://developer.cirium.com/apis/data/codeshare-and-wet-lease-relationships>, accessed on 23 May 2023.

⁹ <https://www.aerotime.aero/articles/30191-dry-lease-versus-wet-lease#:~:text=However%2C%20the%20airline%20has%20no,last%20upwards%20of%20two%20years>, accessed on 21 June 2023.



wish to lease the aircraft, pilot, insurance and maintenance personnel, but does not need the additional cabin crew.¹⁰

21. From the demand perspective dry leasing, wet leasing and damp leasing services are distinct and therefore separate markets depending on customers' different needs. For instance, an airline with excess crew but with aircraft shortage will not opt for wet lease since it will incur additional cost of maintenance and crew. It is further noted from supply perspective that swiftly shifting from wet leasing to dry leasing or vice versa might not be easy given the differences in the risks and costs that are involved such as crew, maintenance services and insurance. Therefore, the CID concluded that substitution is not likely to occur amongst these services notably because of their different characteristics from both demand and supply side perspective.
22. Given that the overlapping activities of the merging parties relate only to the provision of aircraft dry leasing, the CID considered this as the relevant market for the assessment of the proposed transaction.
23. The market for dry leasing services can be further segmented according to the aircraft size (seat capacity) into large aircraft and regional aircrafts. The European Commission ("EC") has previously considered¹¹, though the precise market definition was left open since no concern found, that the market for the provision of dry leasing services should be segmented according to aircraft size (seat capacity) between regional aircraft (aircraft with around 30-100 seats and a range of less than 2000 nautical miles) and large commercial aircraft (aircraft with more than 100 seats and a range greater than 2000 nautical miles), for reason of their technical characteristics, price, intended end-use and seat capacity differences. The EC¹² further considered, though left open, that a distinction would be made between small regional aircraft with 30-50 seats and large regional aircraft with 70-90+ seats since an airline would choose the aircraft type to be deployed on a specific route portfolio according to the actual or expected demand on a route to be able to operate on a profitable basis. It was noted from the parties' submission that both the acquiring and target undertakings are active in the provision of dry aircraft leasing which typically seats 78 – 90 passengers in a single-class arrangement.
24. In view of the above and considering that the merging parties are both active in the regional aircraft of a seat capacity between 70 and 90+, the CID has assessed the effects of the transaction in **the market for dry leasing services for regional aircraft.**

¹⁰ See para 22 of case no. CCC/MER/6/29/2022 - MBC Aviation Capital Limited of 100% shares of Goshawk Management Limited, decision dated 27 September 2022.

¹¹ See paragraphs 215-219 of Case M.9287 – Connect Airways/Flybe, decision dated 05/07/2019.

¹² Ibid.



Relevant Geographic Market

25. The COMESA Competition Commission Guidelines on Market Definition define the relevant geographic market in Paragraph 8 as follows:
- “The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas”.*
26. The CID observed that the geographic scope for aircraft dry leasing is likely to be global since most aircraft dry leasing companies are active and compete at global level. For instance, the key¹³ players in the broader global aircraft leasing market, namely Air Lease Corporation, Aviation Capital Group, Avolon Aerospace Leasing Ltd, BBAM LLC, Boeing Capital Corporation, BOC Aviation, CIT Aerospace, Inc., Dubai Aerospace Enterprise (DAE) Ltd., BBAM LLC, Flying Leasing Limited, GE Capital Aviation Services, International Lease Finance Corporation, Nordic Aviation Capital, Goshwak Aviation Limited, AerCap, Sumitomo Mitsui Finance, and Leasing Co. Ltd, operate on a global level
27. Aircraft dry lessors such as the merging parties can easily reach their customers anywhere across the globe given the nature of aircraft which can easily be transported across geographic boundaries. It was noted that West Jet Encore, Jazz Aviation LP, Horizon Air, SpiceJet, Sunstate Airlines and Ethiopian Airlines are the top six regional aircraft operators sourcing their aircraft from global lessors under the aircraft dry leasing framework¹⁴.
28. The CID has previously considered¹⁵ the geographic market for the broader aircraft leasing market as a global market given that aircraft can be easily sourced without requiring major costly modifications and aircrafts are a homogenous product which are generally standardised to allow common operation and maintenance across jurisdiction. Similarly, the EC, in **Connect Airways/Flybe**¹⁶, considered that the geographic market for the provision of aircraft dry-leasing market was worldwide since majority of the airlines responded to its market definition explained that they purchase aircrafts under dry-leasing arrangements worldwide. Accordingly, and noting that the outcome of the assessment will not be affected under any alternative market definition, the aircraft dry leasing market has been construed as worldwide.

¹³<https://www.researchandmarkets.com/reports/5261977/aircraft-leasing-market-share-size-trends-and#:~:text=Who%20are%20the%20key%20companies,LLC%20and%20Flying%20Leasing%20Limited>, accessed on 24 May 2023.

¹⁴ See page 14 of Appendix 3- Annexure E.

¹⁵ See para 44 of case no. CCC/MER/6/29/2022 - MBC Aviation Capital Limited of 100% shares of Goshwak.

¹⁶ Para 221 of Case M.9287 – Connect Airways/Flybe, decision dated 05/07/2019.



Conclusion on Relevant Markets

29. Based on the foregoing assessment, and without prejudice to the CID’s approach in similar future cases, the relevant market has been identified as **the global market for the provision of dry leasing services for regional aircrafts.**

Market shares and Concentration

30. The estimated market shares of the merging parties and those of their top competitors for the provision of aircraft dry leasing services in Ethiopia and Kenya (being the Member States where the parties operate) were submitted as per Table 1 below.

Table 2 – Estimated market shares of main players in the provision of aircraft dry leasing services, in terms of fleet value, in the Ethiopian and Kenyan market¹⁷

Company Name	Pre-merger %	Post-merger %
AerCap	[30-40]	[30-40]
Carlyle Aviation Partners	[0-10]	[0-10]
ABL Aviation	[0-10]	[0-10]
Clover Aircraft Leasing	[0-10]	[0-10]
Jackson Square Aviation	[0-10]	[0-10]
<i>Chorus Aviation, Inc./ Falko Regional Aircraft Limited and its subsidiaries acquiring undertaking</i>	[0-10]	[0-10]
<i>Palma Ibdar Aviation Limited and its subsidiaries (target undertaking)</i>	[0-10]	
Other players	[40-50]	[40-50]
Total	100	100

31. The CID observed that the merging parties have strong competitors in the Ethiopian and Kenyan aircraft dry leasing market, such as AerCap, Carlyle Aviation Partners, and ABL Aviation. A consideration of the three-firm concentration ratio indicates that pre- and post-merger is 45.68%, showing that the market is not concentrated and there will be no significant change in market structure post-merger. The parties have relatively insignificant market shares (with the acquiring undertaking holding [0-10]% and the target holding [0-10]%) and post-merger, their combined market share will be [0-10]%.
32. In the global market, AerCap, GECAS and Avolon are the top three players in the market for aircraft dry leasing, in terms of number of aircraft, as presented in Table 2 below. Further, a consideration of the market shares for the top three players

¹⁷ Confidential information.



(being AerCap, GECAS and Avolon) indicates that this market is not concentrated at 19.2%, indicating the global market for aircraft dry leasing is competitive.

Table 6: Estimated global market shares of key players in aircraft dry leasing as of 1 March 2021¹⁸

Name of Entity	Market share by number of aircraft
AerCap	[0-10]%
GECAS	[0-10]%
Avolon	[0-10]%
BBAM	[0-10]%
SMBC	[0-10]%
Nordic	[0-10]%
ICBC	[0-10]%

33. In the broader global aircraft leasing market, AerCap, SMBC Aviation, Avolon, Air Lease Corporation and ICBC Leasing are the top five competitors in terms of number of aircrafts. The top 30 competitors in the global aircraft leasing are presented in Table 3 below. The merging parties (Falko and Aergo) are ranked at 15 and 24 with 251 and 158 aircrafts, respectively.

Table 31 – Market Size of top 30 larger global aircraft leasing companies in terms of their number of aircrafts¹⁹

Company Name	Total Portfolio	On Order	Est Portfolio Value (\$mn)	2022 Rank
AerCap	1,906	423	47,213	1
SMBC Aviation Capital	728	220	23,281	2
Avolon	599	219	17,193	3
Air Lease Corporation	530	408	19,895	4
ICBC Leasing	492	139	14,281	5
BBAM	465		14,262	6
BOC Aviation	438	210	15,256	7
Carlyle Aviation Partners	427	20	7,370	8
DAE Capital	420		10,161	9
Aviation Capital Group	364	107	9,373	10
Nordic Aviation Capital	340	34	2,594	11
CDB Aviation	282	176	8,794	12
Bocomm Leasing	275	90	8,223	13
Aircastle	259	16	4,284	14
Falko (acquiring group)	251		2,074	15
Castlelake	211		3,825	16
Jackson Square Aviation	204	21	7,136	17

¹⁸ See Paragraph 39, Case File No. CCC/MER/03/09/2021, decision dated 3rd September 2021.

¹⁹ See Victoria Tozer-Pennington (2023), "Aviation Leaders Report 2023: New Horizons", published by Aviation News Ltd, page 39. Available at <file:///D:/2023%20Budget%20yr%20Merger%20Cases/Mengistu/Palma%20Drake/reffs/aviation-leaders-report-2023-new-horizons.pdf>, accessed on 25 June 2023.



Company Name	Total Portfolio	On Order	Est Portfolio Value (\$mn)	2022 Rank
AVIC International Leasing	195		5,716	18
ORIX Aviation	188		4,434	19
Macquarie AirFinance	187	48	2,431	20
China Aircraft Leasing Company	182	242	4,197	21
CES International Financial Leasing	169		6,778	22
Boeing Capital Corp	163	14	1,159	23
Aergo Capital (target group)	158		2,748	24
CMB Financial Leasing	158	60	5,069	25
Cargo Aircraft Management	140		2,366	26
China Southern Air Leasing	137		4,312	27
FTAI Aviation	136		1,488	28
Aero Capital Solutions	134		1,433	29
CCB Financial Leasing	132	110	3,914	30

34. The CID further noted that Ethiopian Airlines currently has []²⁰ regional aircrafts (leased under the dry leasing arrangement) which it operates regionally around Ethiopia and neighbouring countries out of an overall operating fleet of []²¹. The Airline leased []²² aircrafts from the acquirer and []²³ aircrafts from the target of these regional aircrafts, with the remaining majority being leased from other competitors. It is therefore considered that competition will continue to thrive at the global level. The merging parties are not among the largest global aircraft lessors and thus customers of the merging parties will have alternative lessors from whom they can source aircrafts through dry leasing arrangements.
35. In the narrower regional aircraft dry leasing market, significant changes to the market structure are likewise unlikely as a result of the transaction given the presence of strong rivals such as Nordic Aviation Capital, (with 477 regional crafts), GECAS (with 225 regional crafts), and Avmax Aircraft Leasing (with 130 regional crafts)²⁴, which will continue to impose competitive pressures on the merging parties.
36. As noted above, the transaction will not result in the merged entity becoming a dominant player in the global market for regional aircraft dry leasing, with an estimated post-merger market share of [0-10]% in the Common Market. Further, the global market for regional aircraft dry leasing is characterised by the presence of many players with bigger market shares than the merged entity. Thus, the proposed

²⁰ Confidential information.

²¹ Confidential information.

²² Confidential information.

²³ Confidential information.

²⁴ <https://www.statista.com/statistics/692811/regiona-fet-turboprop-aircraft-lessors-fleet-value/>, accessed 22 July 2023.



transaction will not result in the creation or strengthening of a dominant position for the merged entity that could allow it to engage in unilateral conduct in the market.

Consideration of Third-Party Views

37. Submissions were received from the competent authorities of Kenya and Ethiopia which confirmed that the transaction is not likely to substantially prevent or lessen competition in the Common Market or be contrary to the public interest, in line with the CID's findings as set out above.

Determination

38. Based on the circumstances of the case and having regard to the foregoing assessment, 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 in the foreseeable future. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID, therefore, approved this transaction.
39. 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

