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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/06/24/2024

**Decision¹ of the 110th Meeting of the Committee Responsible
for Initial Determinations Regarding the Proposed Merger
involving Brookfield CL Holdings LLC, Castlelake Group
Topco, L.P. and Castlelake Group GP, LLC**

ECONOMIC SECTOR: Aviation



20 October 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 12 July 2024, the COMESA Competition Commission (the “**Commission**”) received a notification for approval of the merger involving the indirect joint acquisition of Castlake, L.P (“**Castlake**”) by Brookfield CL Holdings LLC (“**CL Holdings**”) and Castlake Management Aggregator, LLC (“**Castlake Aggregator**”), 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

The Acquiring Firm

CL Holdings

4. Brookfield CL Holdings LLC (“**CL Holdings**”) is the primary acquiring firm. CL Holdings is incorporated under the laws of Delaware and is a newly established entity for the purposes of the transaction. As it is a newly established entity, CL Holdings has no activities in the Common Market and globally.
5. CL Holdings is indirectly controlled by Brookfield Corporation (“**Brookfield**”). Brookfield is a global asset manager headquartered in Toronto, Canada that offers a range of public and private investment products and services and is co-listed on the New York and Toronto stock exchanges under the symbol BN. Brookfield’s investment focus is on real estate, infrastructure, renewable power and private equity.
6. CL Holdings does not have any activities or operations in the Common Market². The parties have submitted that some of the subsidiaries of Brookfield operate in the Common Market³. The subsidiaries of Brookfield which operate in the Common Market are listed in Table 1 below⁴. The parties have clarified that CL Holdings does not exercise control over any of the subsidiaries listed in Table 1 below⁵.

Table 1 – Subsidiaries of Brookfield operating in the Common Market

Entity	Description of activities
[REDACTED]	An entity of [REDACTED], which is a provider of scaffolding and related services to industrial and commercial markets.
[REDACTED]	Investment holding company which has activities in the real estate sector.
[REDACTED]	Holding Company
[REDACTED]	Holding Company
[REDACTED]	Global construction company
[REDACTED]	An entity of [REDACTED] which manufactures running gear, and provides axles, chassis,

² Confidential information claimed by merging parties.

³ Confidential information claimed by merging parties.

⁴ Confidential information claimed by merging parties.

⁵ Confidential information claimed by merging parties.

⁶ [REDACTED]. Confidential information claimed by merging parties.

⁷ [REDACTED]. Confidential information claimed by merging parties.



	and other components for trailers, RVs, and towable equipment manufacturers.
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7. Brookfield exercises joint control over Oaktree Capital Group, LLC⁸, a global investment management company (“Oaktree”). [REDACTED]

8. Oaktree’s investment focus is on corporate credit, private equity, real assets and listed equities. The parties submitted that Oaktree is active in aircraft leasing globally [REDACTED] and the parties further submitted that these Oaktree holdings have limited activities in the Common Market.

9. The parties submitted that Oaktree is active in the Common Market as follows¹¹:

- a) [REDACTED] is active in Ethiopia, Kenya, and Madagascar, and
- b) [REDACTED] is active in Kenya.

10. Brookfield and Oaktree are collectively referred to as the “Acquiring Group”.

11. In the Common Market, the acquiring group operates in all Member States except Comoros and Eritrea. ¹²

⁸ The Commission notes that in March 2024, Oaktree Capital Group, LLC changes its name to Brookfield Oaktree Holdings, LLC.

⁹ Confidential information claimed by the merging parties.

¹⁰ Confidential information claimed by the merging parties.

¹¹ Confidential information claimed by the merging parties.

¹² Confidential information claimed by the merging parties.



The Target Firms

Castlelake Group TopCo, L.P. (“Castlelake TopCo”)

12. Castlelake TopCo is a limited partnership incorporated under the laws of Delaware, USA.

Castlelake Group GP, LLC (“Castlelake GP”)

13. Castlelake GP is a limited liability company incorporated under the laws of Delaware, USA. Castlelake GP indirectly controls Castlelake, L.P. (“**Castlelake**”).
14. Castlelake is a US-based, global alternative investment firm. Castlelake is focused on asset-based investments in (i) aviation where it primarily provides financing, leasing and servicing solutions for commercial aviation assets; (ii) real assets where it primarily invests in real estate, real estate related assets, infrastructure, as well as sub- and non-performing loans; and (iii) private specialty finance where it primarily invests in diversified portfolios of consumer finance receivables and loans, small and medium-sized businesses loans, and also conducts other forms of finance and leasing globally. Castlelake has offices in North America, Europe and Asia.
15. Castlelake has very limited operations in the Common Market and is only active in one COMESA Member State, namely Egypt.¹³ In Egypt, Castlelake was active in FY23 as a provider of aircraft leasing services to [REDACTED] customer, namely [REDACTED].¹⁴

Jurisdiction of the Commission

16. 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*

¹³ Confidential information claimed by the merging parties

¹⁴ Confidential information claimed by merging parties



two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State”.

- 17. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived a turnover of more than the threshold of USD 50 million in the Common Market and they each derived a turnover of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The Commission was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

- 18. Through the transaction, Brookfield (through CL Holdings) and Castlelake Management Aggregator, LLC (“**Castlelake Aggregator**”)¹⁵, will acquire¹⁶:
 - a) certain economic interests in Castlelake Group TopCo, L.P. [REDACTED]; and
 - b) certain governance rights and economic rights in [REDACTED] general partner, [REDACTED], which [REDACTED].¹⁷

- 19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁸

- 20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁹

- 21. The board of directors of Castlelake GP will be comprised of²⁰:

¹⁵ Castlelake Aggregator is a limited liability company incorporated under the laws of Delaware, US. The parties have submitted that Castlelake Aggregator is a newly formed entity set up for the purposes of this transaction. (Confidential information claimed by the merging parties.)
¹⁶ Confidential information claimed by the merging parties.
¹⁷ Confidential information claimed by the merging parties.
¹⁸ Confidential information claimed by the merging parties.
¹⁹ Confidential information claimed by the merging parties.
²⁰ Confidential information claimed by the merging parties.



a) [REDACTED]; and

b) [REDACTED].

22. [REDACTED]
[REDACTED]
[REDACTED].²¹

23. Notwithstanding these rights, Brookfield (through CL Holdings) has been afforded
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²²

24. The CID therefore noted that post-transaction, Castlelake will be indirectly jointly controlled by Brookfield and Castlelake Aggregator.

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²³

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

26. Paragraph 7 of the Commission's Guidelines on Market Definition states that a ***“relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use”***.

27. The CID noted that the acquiring group through Oaktree is active in dry aircraft leasing for passenger and cargo aircrafts globally. [REDACTED]
[REDACTED] and Castlelake provide dry leasing services for passenger and cargo aircrafts globally while [REDACTED] provides dry leasing services for passenger aircrafts globally. In the Common Market, however, the acquiring group

²¹ Confidential information claimed by the merging parties.

²² Confidential information claimed by the merging parties.

²³ Confidential information claimed by merging parties.



through [REDACTED] and [REDACTED], is active in the provision of dry leasing services for passenger aircrafts only²⁴.

28. The CID also noted that Castlake is similarly active globally in the provision of dry leasing services for passenger and cargo aircrafts. In the Common Market, it provides dry leasing services for passenger aircrafts only.
29. The CID further noted that both the acquiring group and the target operate in the real estate sector. The CID observed potential overlaps in the activities of the merging parties in the real estate sector. The CID noted that while Brookfield has a global property portfolio of assets under its management, the activities of Castlake in the real estate sector are limited to [REDACTED] [REDACTED]²⁵. Castlake does not have any activity in the real estate sector in the Common Market. The CID has previously determined that the geographic scope of real estate market is national and even local²⁶. The CID observed that Brookfield and Castlake are both active, to a limited extent, in hotel accommodation services in [REDACTED]. The CID has previously considered that the geographic scope for short term accommodation services market is local within a Member State²⁷.
30. For purposes of this transaction, the CID focussed on the activity of overlap, being the provision aircraft leasing services for passenger aircrafts.
31. Airlines often resort to leases in aviation sector as leases provide an airline a quick and cheap solution to increase its capacity, without having to incur significant financial costs, in order to serve a destination more frequently or to serve new destination. Leasing is typically in the form of an agreement which is time bound, the duration of which varies between short-term (typically three months or less), medium term (between 3 months and one year) and long term (more than one year)²⁸. The reason why an aircraft is being leased will determine the duration of that lease. For instance, if aircrafts are required to meet an unforeseen surge in demand or as a replacement for some flights, an airline will opt for a short-term lease. If the airline has delayed deliveries of its own aircrafts, then it is likely to opt for medium-term lease and if the airline wishes to offer new routes, then it is likely to opt for a long-term lease²⁹.

²⁴ Confidential information claimed by merging parties

²⁵ Confidential information claimed by merging parties

²⁶ For instance, the 109th meeting of the Committee Responsible for Initial Determinations regarding the Proposed Acquisition of Control by General Atlantic Partners, L.P. of Actis Holdings S.à r.l.

²⁷ 81st Committee Responsible for Initial Determinations Regarding the Regarding the Proposed Merger involving Mkutano Limited and Elgon Road Developments Limited

²⁸ <https://airlinesconnection.com/aircraft-leasing> accessed 1 August 2024

²⁹ *Ibid*



32. The CID in its decisional practice³⁰, has considered two types of aircraft leasing arrangements, namely operating lease and finance lease where each are 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. Thus, in line with its decisional practice, the CID considered aircraft operating lease and aircraft finance lease as separate product markets.
33. The CID further noted that there exist different products which are offered to different customers under aircraft operating lease arrangements³¹. Accordingly, the CID has previously segmented aircraft operating lease into three types of arrangements: dry leasing, wet leasing, and damp lease³².
34. Dry lease refers to the provision of the aircraft only to the lessee, without any crew. The operational responsibility of the aircraft, its maintenance and insurance falls on the lessee. Dry lease is typically opted for by large airline which have the operational capacity but lack aircrafts. The CID noted that the parties provide only dry lease for passenger aircrafts.
35. Wet lease refers to a leasing contract through which one airline leases to another, an aircraft along with the crew, maintenance and insurance (“ACMI”)³³. Under the wet lease agreement, therefore, the owner of the aircraft takes charge of its operational responsibility. The lessor operates the flights using its own air operator certificate and resources, for which it receives an income from the lessee which is usually a fixed price per “block hour”. The parties submitted that block hours refer to the hours measured from the moment an aircraft first moves under its own power, including taxi time, for the purposes of flight until the aircraft is docked at the next point of landing and its power is shut down. Under a wet lease agreement, the lessee will fly the aircraft under its own code, determines its own ticket prices and provides passenger and ground handling services.

³⁰ Decision of the Eighty-sixth decision of the Committee for Initial Determinations regarding Proposed Transaction between SMBC Aviation Capital Limited and Goshawk Management Limited and Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

³¹ Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

³² Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited and Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

³³ Case M.9062 - Fortress Investment Group / Air Investment Valencia / JV



36. 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. A damp lease will be preferable for an airline which wish to lease the aircraft, pilot, insurance and maintenance personnel, but does not need the additional cabin crew³⁴.
37. On the demand side therefore, there is likely to be a distinction between the different types of leases for aircraft, such that dry lease is likely to constitute a distinct product market from the other types of available leases. A customer requiring the services of a dry lease is not likely to in the event of a 5 to 10% increase in the price of dry lease switch to a wet lease as the characteristics and intended use of a wet lease would make it unsuitable for a dry lease. The CID has previously considered that 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. The CID noted from a supply perspective that swiftly shifting from dry leasing to wet leasing or vice versa might not be easily given the differences in the risks and costs that are involved such as crew, maintenance services and insurance³⁵.
38. Given that the overlapping activities of the merging parties relate only to the provision of aircraft dry leasing market segment, this has been considered as the relevant market for the assessment of the proposed transaction.
39. The CID has held that aircraft leasing services can be further sub-divided according to the aircraft size (seat capacity) into large aircraft and regional aircrafts³⁶. In the Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited, the CID determined 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 EC³⁷ 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

³⁴ Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited and Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

³⁵ Decision of the Ninety-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Acquisition of control by Drake Asset Management Jersey Limited over Palma Ibdar Aviation Limited and Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

³⁶ *Ibid.*

³⁷ *Ibid.*



operate on a profitable basis. The CID noted that the parties are involved in the provision of dry leases for aircrafts. The CID considered that the market for aircraft dry leasing in this transaction should also be segmented according to the type of aircraft being leased.

40. The CID noted that the acquiring group has dry leased passenger aircrafts with a capacity of [REDACTED] and [REDACTED] seats in Kenya and of aircrafts of respectively [REDACTED] and [REDACTED] seats in Madagascar and Ethiopia while the target firms have dry leased passenger aircrafts of [REDACTED] seats in Egypt³⁸. The CID has previously considered that an aircraft of 100+ seats is deemed as large aircrafts³⁹.
41. In view of the above and considering that the target is active in the provision of dry lease for passenger aircrafts of more than 100 seats, the CID deemed the relevant product market as the **market for the supply of dry lease services for large passenger aircraft**.

Relevant Geographic Market

42. Paragraph 8 of the Market Definition defines the relevant geographic market 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”.

43. The parties submitted that the geographic market for aircraft wet-leasing services may be considered to be world-wide or at least regional.
44. The CID noted the parties’ submissions on the geographic market. The CID has previously considered⁴⁰ 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.
45. The CID noted that both merging parties supply dry lease services from outside the Common Market. The CID further noted that dry lease services are imported into

³⁸ Confidential information claimed by merging parties

³⁹ Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.

⁴⁰ Decision of the Eighty-sixth meeting of the Committee Responsible for Initial Determinations Regarding Proposed Transaction between SMBC Aviation Capital Limited and Goshawk Management Limited and Decision of the 106th Committee for Initial Determinations regarding the Proposed Merger involving Avia Solutions Group (ASG) PLC and AirExplore, s.r.o.



the Common Market. Accordingly, and noting that the outcome of the assessment will not be affected under any alternative market definition, the market for the supply of dry lease services for large passenger aircraft has been construed as global.

Conclusion of Relevant Market Definition

46. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant market as the **global market for the supply of dry lease services for large passenger aircraft.**

Market Shares and Concentration

47. The parties submitted that estimated market shares of the merging parties and their competitors in the in relation to the global market for the provision of dry aircraft leasing services by volume (include all types of aircraft, i.e., wide-body, narrow-body, regional and turboprop aircraft⁴¹) per Table 7 below:

Table 7: Estimated Market Shares for the global market for the provision of dry aircraft leasing services for the year 2023⁴²

Provider	Volume	Market Shares (%)
AerCap	[1,650 – 1,850]	[10 – 15]
SMBC Aviation Capital	[650 – 850]	[5 – 10]
Avolon	[450 – 650]	[5 – 10]
Air Lease Corporation	[450 – 650]	[0 – 5]
ICBC	[450 – 650]	[0 – 5]
Castlelake	[150 – 350]	[0 – 5]
Brookfield (through Oaktree)	[150 – 350]	[0 – 5]

48. The CID noted from the above table that the parties will have a combined market share of [0 – 5] %. The CID further noted that the main providers of aircraft leasing services globally include GECAS, BBAM, Nordic Aviation Capital, Air Lease Corporation, DEA Capital, SMBC Aviation Capital, AerCap, amongst others and the global aircraft leasing market is fragmented. The CID further noted that AerCap is likely to be the largest global provider of aircraft leases, including dry leases.
49. The CID considered information on the Top 10 global aircraft leasing companies as at January 2024 as per Table 8 below⁴³.

⁴¹ Confidential information claimed by merging parties.

⁴² Confidential information claimed by merging parties.

⁴³ <https://kpmg.com/ie/en/home/insights/2024/01/fs-aviation-leaders-report-2024/lessors-dominate-fs-aviation.html> accessed 7 October 2024



Table 8: Number of aircrafts per Top 10 aircraft leasing company

Provider	Single Aisle	Twin Aisle	Regional Jet	Turbo
AerCap	1,425	301	87	16
SMBC Aviation Capital	667	75	-	-
ICBC Leasing	433	55	39	-
Air Lease Corporation	429	133	2	-
Avolon	455	124	7	-
BBAM	375	112	-	-
Aviation Capital Group	369	15	-	-
BOC Aviation	368	93	-	-
Carlyle Aviation Partners	344	38	-	-
Bocom Leasing	265	32	6	-

50. The CID noted from the above table that merging parties do not feature among the top 10 providers of aircraft leases. The CID further noted that the market being global in scope, it has numerous players.
51. The CID noted that the transaction will result in a market share accretion. However, the CID held the view that the market share accretion from the transaction will be insignificant, and there will thus be no material change to the market structure.

Consideration of Third-Party Views

52. Submissions were received from the national competition authorities of DRC, Egypt, Eswatini, Kenya, Libya, Malawi, Mauritius, Seychelles and Zimbabwe which did not raise any concerns in relation to the transaction. This is consistent with the CID's assessment, as presented above.

Determination

53. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.



54. The CID, therefore, approved the transaction.

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

Dated this 20th day of October 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah

