DECISION NO. 2024-CC-01 OF JANUARY 31, 2024
ON THE ACQUISITION OF EXCLUSIVE CONTROL
OF BOLLORÉ LOGISTICS SE AND ITS SUBSIDIARIES BY CMA CGM S.A.

The Polynesian Competition Authority,

Having regard to the notification file sent to the Polynesian Competition Authority (hereinafter "the Authority") on October 02, 2023, registered under number 23/0019 C and declared complete on the same day, concerning the acquisition of exclusive control of Bolloré Logistics SE and its subsidiaries by CMA CGM S.A. ;

Having regard to the Polynesian Competition Code, and in particular articles LP. 310-1 to LP 310-10;

Having regard to the other documents in the file;

Considering the following:

I. <u>THE COMPANIES INVOLVED AND THE TRANSACTION</u>

A. THE COMPANIES CONCERNED

1. **Bolloré Logistics SE** (hereinafter *"**Bolloré Logistics**"* or "***the target***") is a European company specializing in freight forwarding and logistics services. Through its international network, Bolloré Logistics offers air, sea and land freight organization services, as well as various logistics services such as value-added warehousing, packaging and distribution solutions. The company operates through its 153 subsidiaries in France (32% of group sales), Europe (56% of group sales), and the rest of the world, notably in the Asia-Pacific zone (25% of group sales) and to a lesser extent in the Middle East/South Asia zone (2% of group sales). In 2022, Bolloré Logistics achieved sales of 7.2 billion euros.

2. Bolloré Logistics is currently controlled by the Bolloré group. The Bolloré group holds more than [90-100%] of Bolloré Logistics' capital, with Tamaris holding the remaining [0-10%].

3. In French Polynesia, Bolloré Logistics only organizes the transport of goods (sea and air), and mainly manages import flows, mainly from mainland France. However, the target company is not active in the logistics services sector, and does not offer land freight organization services.

4. Bolloré Logistics also holds a minority stake of [20-30%] in Transit et Transport International Tahiti (hereinafter "**TTI**"), a freight forwarder active in the French Polynesia freight forwarding market.

5. **CMA CGM S.A.** (hereinafter "**CMA CGM**" or "the notifying party") is the parent company of the CMA CGM group. The group is mainly active in the container shipping and port handling sectors. Through its subsidiary CEVA Logistics S.A. (hereafter *"**CEVA**"*), CMA CGM is also active in the organization of air, sea and inland freight transport, as well as logistics services. In French Polynesia, CEVA is only marginally involved in the organization of freight transport. CMA CGM's fleet of around 600 vessels operates on 257 shipping lines, serving 420 of the world's 521 commercial ports.

6. In French Polynesia, CMA CGM provides territorial continuity between French Polynesia and mainland France via its weekly "Panama Direct Line" (PAD) service. It also provides a direct connection between French Polynesia and the West Coast of America via its "PCX - Pacific Coast Express" (PSIANL) service.

7. CMA CGM is currently owned by Merit ([70-80%]), Yildirim ([20-30%]), Bpifrance ([0-10%]) and [0-10%] by individuals. CMA CGM is exclusively controlled by Merit, a holding company owned by the Saadé family.

B. THE OPERATION

8. **The transaction under review** involves the acquisition of exclusive control of Bolloré Logistics and its direct and indirect subsidiaries by CMA CGM. On completion of the transaction, CMA CGM will own 100% of Bolloré Logistics shares, currently held by Bolloré and Tamaris.

9. In the last financial year (2022), the companies concerned reported the following sales:

Geographical area	CMA CGM	Bolloré Logistics
World	8892 billion CFP francs	859 billion CFP francs
French Polynesia	> 1 billion CFP francs	> 1 billion CFP francs

10. The notified transaction crosses the control thresholds set out in I of article LP. 310-2 of the French Polynesian Competition Code and, as such, is subject to prior authorization by the Autorité, in accordance with the provisions of articles LP 310-3 et seq. of the French Competition Code relating to economic concentrations.

II. THE MARKETS CONCERNED

11. Bolloré Logistics and CMA CGM, through its subsidiary CEVA, simultaneously organize freight transport in French Polynesia.

12. The notifying party is also present in the freight transport market sector, where it is mainly active in the maritime transport of containerized goods. CMA CGM has also begun to provide air freight services through its dedicated subsidiary CMA CGM Air Cargo (hereafter "**CCAC**"), but CCAC is not active to or from French Polynesia. The air freight market will therefore not be examined. As for Bolloré Logistics, it is not active in freight transport.

13. The Authority will therefore examine the markets for the maritime transport of goods by container (**A.**) and the market for the organization of freight transport (**B.**) in turn.

A. THE MARKETS FOR SEA FREIGHT TRANSPORT BY CONTAINER

1. THE SERVICE MARKET

14. Both the French Competition Authority (hereinafter "**AdlC**")[1] and the European Commission (hereinafter "**Commission**")[2] have recognized the existence of a containerized maritime freight transport market, distinct from the market for non-scheduled maritime transport services or maritime transport services for bulk goods.

15. Containerized sea freight involves the provision of regular, scheduled services for the transport of containerized goods, and is therefore distinct from non-scheduled sea freight (*tramp* shipping

[1] See, in this respect, AdlC decision no. 19-DCC-170 of September 17, 2019 relating to the acquisition of exclusive control of Société de Manutention et de Consignation Maritime by Terminal Investment Limited, paragraph 7 and AdlC decision no. 13-D-15 of June 25, 2013 relating to practices implemented in the maritime freight transport sector between Europe and the French West Indies.

[2] See, in this respect, Commission Decision of July 25, 2022, *CMA CGM / GEFCO*, M.10733, paragraph 26, of April 29, 2022; Commission Decision of April 24, 2022, *Hapag-Lloyd/Eurogate/Eurogate Container Terminal Wilhelmshaven*, paragraph 51; Commission Decision of February 6, 2019, *CMA CGM/CEVA*, M.9221, paragraph 26.

or specialized transport). In addition, the use of containers (of various sizes and, where applicable, temperature-controlled) differentiates it from other non-containerized transport (e.g. bulk transport)[3] .

16. AdlC and the Commission also distinguish between *short-sea* and *deep-sea* routes[4] . Unlike *deep-sea* maritime container transport, *short-sea* maritime container transport involves the provision of intra-regional transport services, usually coastal[5] .

17. In its decision *CMA CGM / Dubreuil*[6] , the Polynesian Authority had already noted that CMA CGM was present on several container freight services to and/or from French Polynesia:

- **The PAD** ("Panama Direct Line") **service**: a regular shipping service operated by CMA CGM linking Australia and New Zealand to Europe, via the United States, the Caribbean, French Polynesia and New Caledonia. This service is operated by CMA CGM and Marfret via a ship-sharing agreement. It relies on a fleet of 13 container ships, 12 of which belong to CMA CGM. The service has been running weekly since 2022.
- **The PCX** ("Pacific Coast Express") **service**: a regular shipping service operated by ANL, a subsidiary of the CMA CGM group, linking Australia and New Zealand to the west coast of North America, via Polynesia. This service is operated by ANL, Hapag-Lloyd and MSK *via* a ship-sharing agreement. It relies on a fleet of 9 vessels, including 3 owned by ANL**.**
- **The Tahiti service** is a regular shipping service operated by a third-party shipping company: Neptune Pacific Direct Line ("NPDL"), on which ANL, a subsidiary of the CMA CGM group, has a slot charter agreement, enabling it to complete its shipments from the port of Auckland to Papeete.

18. The question of the exact delimitation of these markets can be left open, insofar as, whatever segmentation is chosen, the conclusions of the competitive analysis remain unchanged. In the present case, the competitive analysis will be carried out on the *deep-sea* container shipping market in French Polynesia, given that the notifying party is only active on this market.

2. THE GEOGRAPHIC MARKET

19. Firstly, according to AdlC's decision-making practice[7] and the European Commission's[8] , *deep-sea shipping* market segments are traditionally examined on the basis of routes linking two geographical areas defined by a wide range of ports served at both ends, which may correspond to very large geographical areas (e.g. Northern Europe or North America).

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3 See, for example, the above-mentioned Commission decisions: *CMA CGM / GEFCO*, paragraph 26; *COSCO Shipping/OOIL*, paragraph 11; *Hapag-Lloyd/United Arab Shipping Company*, paragraph 10.

4 See, for example, Commission Decision *CMA CGM/GEFCO*, cited above, paragraph 28; Commission Decision of April 29, 2022, *Hapag-Lloyd/Eurogate/Eurogate Container Terminal Wilhelmshaven*, M.10522, paragraph 52; Commission Decision of October 6, 2023, *CMA CGM/CEVA*, M.9221, paragraph 27; Commission Decision of April 10, 2017, *Maersk Line/HSDG*, M.8330, cited above, paragraph 19.

5 See, in particular, the above-mentioned *Maersk Line/HSDG* Commission decision, paragraph 18.

6 Autorité decision of December 10, 2020, *CMA CGM / Dubreuil Aéro*, case n°2020-CC-02, paragraph 23.

7 AdlC decision no. 19-DDC-170, paragraph 9.

8 See Commission decisions *CMA CGM/GEFCO*, cited above, paragraph 31; *HapagLloyd/Eurogate/Eurogate Container Terminal Wilhelmshaven*, cited above, paragraph 55; *CMA CGM/CEVA*, cited above, paragraph 32; *Maersk Line/HSDG*, cited above, paragraph 15.

20. Furthermore, the Commission considers that the two directions of the same route constitute distinct geographic markets, due to the differences in competitive dynamics between the two directions of the same route[9] . For example, the carriers active on each direction of the same route may be different, as may the products transported or the prices charged.

21. In the aforementioned *Dubreuil / CMA CGM* case, the Autorité had already envisaged these geographical delimitations, without however expressing an opinion on the exact definition of the market[10] . However, the Authority noted that this approach, which leads to very large geographical areas being considered as a single relevant geographic market, is subject to the condition that the local infrastructure is sufficient to allow transport to continue by other means (e.g. road, rail or inland waterways)[11] .

22. For example, the Commission recognized that the European Economic Area and North America had sufficient infrastructure to be considered as a single geographic area[12] , whereas transport infrastructure across Asia, South America and Africa had been considered insufficient to consider these areas as part of a single relevant geographic market[13] .

23. When the local infrastructure is not sufficiently developed, the Commission defines a relevant geographic market limited to a single country[14] . In the *Iberia/British Airways* case[15] , it defined a relevant geographic market for Central America, South America and Africa on a country-by-country basis.

24. In this case, the information gathered during the investigation highlights the difficulty of considering French Polynesia as part of an Oceania/Pacific zone, which would have sufficient local infrastructure to consider it as a single relevant geographic market.

25. In its opinion on *import mechanisms*, the Autorité had already noted that French Polynesia constitutes a special geographical area due to its insularity and geographic isolation, including from its Oceania neighbors. The Authority noted that Polynesia is *"located 18,000 km from mainland France and more than 4,000 km from the major cities in the Pacific zone (Auckland, Honolulu and Sydney)*"[16] .

26. Finally, the Oceania region is predominantly maritime, linked by sea services without other common infrastructure such as roads, railroads and inland waterways, comparable to the infrastructure available in Europe or North America, which could provide sufficient local transport infrastructure to enable the continued transport of goods by multiple means of transport to French Polynesia.

27. Secondly, French Polynesia has developed privileged links with Metropolitan France and the European Union, and remains little integrated into the main trade flows in Oceania. In its opinion on *import mechanisms*, the Polynesian Authority already noted that mainland France is French Polynesia's main supplier, followed by the European Union, which together account

[9] Commission decision *Delta Airline / Virgin Group / Virgin Atlantic*, cited above, paragraphs 77 and 81.

[10] Decision of the Autorité *CMA CGM / Dubreuil Aéro* cited above, case n°2020-CC-02, paragraph 30.

[11] Commission decision of March 22, 2017, *Qatar Airways / Alisarda / Meridiana*, M.8361, paragraph 39.

[12] Commission decision of June 20, 2013, *Delta Air Lines/ Virgin Group/ Virgin Atlantic*, M.6828, paragraph 80.

[13] Commission decision of July 14, 2010, *Iberia / British Airways*, M.5747, paragraph 42.

[14] Commission decision *Delta Airline / Virgin Group / Virgin Atlantic*, paragraph 80.

[15] Commission decision, *Iberia / British Airways*, op. cit., paragraph 42.

[16] Opinion no. 2019-A-02 of September 19, 2019 on import and distribution mechanisms in French Polynesia, paragraph 29. The island of Tahiti is 4600 km from Nouméa, 4000 km from Auckland and 6119 km from Sydney.

for 42% of import flows[17] . Conversely, French Polynesia's trade with its major neighbors in the Oceania-Pacific zone, Australia and New Zealand, accounted for just 10% of its imports[18] .

28. In addition, French Polynesia has autonomous jurisdiction over foreign trade, and imposes various import taxes and other customs formalities on states in the Oceania-Pacific region. French Polynesia is not party to the main free trade agreements in force in the region, such as the Pacific Island Countries Trade Agreement ("*PICTA*")[19] , the Pacific Agreement for Closer Economic Relations ("*PACER +*")[20] , but does have the status of an "*associated*" territory of the European Union[21] *via* its status as an Overseas Country and Territory ("*OCT*").

29. It is clear from the above that French Polynesia has a number of specific features that distinguish it from the rest of the Oceania/Pacific region. Consequently, the Authority considers it appropriate to adopt a narrower geographic market segmentation than the Oceania/Pacific zone[22] .

30. The competitive analysis will therefore be carried out on the *deep-sea* container shipping market, defined by the continent of departure (America, Europe, Asia, Oceania) and the point of arrival (French Polynesia).

B. TRANSPORT ORGANIZATION MARKETS

1. SERVICE MARKETS

31. In the *Dubreuil / CMA CGM* case[23] , the Autorité recognized the existence of a freight forwarding market distinct from the freight transport market. In addition, the decision-making practice of AdlC[24] and the Commission[25] defines the activity of *freight forwarding* as the organization of the transport of goods, which may include, in addition to the transport itself,

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17 *Ibid*, paragraph 41.

18 *Ibid*, paragraph 41.

19 The PICTA is a free trade agreement set up in 2001 to liberalize trade and goods between the Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

20 PACER + is a free trade agreement set up in 2017 and signed by Australia, New Zealand and eight Pacific island countries: the Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga and Tuvalu.

21 See in particular Council Decision (EU) 2021/1764 of October 5, 2021 on the association of the overseas countries and territories with the European Union.

22 In this respect, it may be noted that the New Caledonian Competition Authority recently adopted a similar approach, limiting the relevant geographic market for freight transport to the territory of New Caledonia in its examination of the CMA CGM / Bolloré Logistics case (Cf. ACNC Decision no. 2023-DCC-11 of December 27, 2023 relating to the acquisition of sole control of SE Bolloré Logistics by SA CMA CGM, paragraph 62).

23 Decision of the Autorité *CMA CGM / Dubreuil Aéro* cited above, case n°2020-CC-02, paragraph 31.

24 See, in this regard, AdlC decisions n°18-DCC-127 of July 30, 2018 relating to the acquisition of exclusive control of the company Alpha Direct Services by the company Log'Hopp, paragraph 22 and n°13-DCC-133 of September 26, 2013 relating to the acquisition of exclusive control of a business of the company Daher International by the Norbert Dentressangle group, paragraph 7.

25 See, in this respect, the above-mentioned Commission decisions: *CMA CGM/GEFCO*, M.10733, paragraph 10; *CMA CGM/CEVA*, M.9221 paragraph 10; *COSCO Shipping/OOIL*, M.8594 paragraph 23; *Hapag-Lloyd/United Arab Shipping Company*, M.8120, paragraph 26 and Commission decision of March 29, 2022, *A.P. Moeller-Maersk/Senator International*, M.10559, paragraph 9; Commission decision of September 6, 2021, *DFDS / HSF Logistics Group*, M.10216, paragraph 11.

various other services such as customs clearance or warehousing, on behalf of customers according to their needs.

32. The Authority[26] , AdlC[27] and the Commission[28] have considered a segmentation of the market for the organization of freight transport according to (i) the national or international nature of the transport and (ii) the mode of transport used (air, sea or land).

33. The notifying party considers that these segmentations of the freight forwarding market are not relevant, insofar as (i) most of the operators on this market, i.e. *freight forwarders*, provide both national and cross-border services, and do not specialize in a particular segment (sea, air or land), and (ii) the demand from their customers (known as "shippers") obliges operators on this market to offer a combination of these different modes of transport, in order to meet all their customers' requirements, whether by sea, air or land, air or land) and where (ii) demand from their customers (known as "shippers") obliges operators in this market to offer a combination of these different modes of transport, in order to meet all their customers' requirements, so that they do not generally specialize in one mode or another.

34. In the case in point, the Autorité considers that there is no need to settle the question, since the conclusions of the competitive analysis in the case in point remain unchanged, whatever the delimitation adopted.

2. GEOGRAPHIC MARKETS

35. The Commission[29] and AdlC[30] consider that the market for the organization of freight transport is at least national in scope, particularly given the existence of language and regulatory barriers, but do not rule out a broader definition.

36. In the *Dubreuil / CMA CGM* case[31] , the Authority defined the relevant market for the organization of freight transport as including "*in any event Polynesia as a whole*". The exact definition of the geographic market was left open.

37. In the present case, the notifying party considers that the market for organizing freight transport is at least regional, i.e. encompassing the Australasian and Oceania territories, since the main transport organizers are active internationally, either through branch offices or by marketing their services cross-border via a network of agents. In addition, many customers manage their relationships with transport organizers on a regional or global basis, rather than at national or island level.

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26 Decision of the Autorité *CMA CGM / Dubreuil Aéro* cited above, case n°2020-CC-02, paragraph 32.

27 AdlC *Alpha Direct Services / Log'Hopp* decisions cited above, case no. 18-DCC-127, paragraph 23; no. 13-DCC-133 - Daher International cited above, paragraph 8; and the Autorité's *CMA CGM / Dubreuil* Aéro decision cited above, case no. 2020-CC-02, paragraph 32.

28 See, in this respect, the above-mentioned Commission decisions: *CMA CGM/GEFCO*, M.10733, paragraph 12; *A.P. MoellerMaersk/Senator International*, M.10559, paragraph 13; *DFDS / HSF Logistics Group*, M.10216, paragraph 12.

29 See, for example, Commission Decision of December 22, 2005, *Deutsche Bahn / Bax Global*, M.4045, paragraph 9; Commission Decision of June 12, 2009, *Deutsche Bahn / PCC Logistics*, M.5480, paragraph 15; Commission Decision of July 14, 2010, *Geodis / Giraud*, M.5877, paragraph 24.

30 AdlC decision no. 13-DCC-02 relating to the creation of a joint venture by Routière de l'Est Parisien and Compagnie Maritime Marfret, paragraph 14 and AdlC decision no. 9-DCC-40 of September 4, 2009 relating to the acquisition by Geodis of Cool Jet sales agencies, paragraphs 14 and 15.

31 Decision of the Autorité *CMA CGM / Dubreuil Aéro* cited above, case n°2020-CC-02, paragraphs 34 and 35.

38. French Polynesia has its own tax jurisdiction, by virtue of its autonomous status within the French Republic[32] . As already emphasized in the opinion on *import mechanisms*[33] , French Polynesia has introduced local regulations governing foreign trade, establishing duties on entering and leaving the territory, including a number of tariff protections (customs duties, import taxes) and non-tariff protections (quotas and import bans), all of which constitute administrative formalities to be managed in order to access the Polynesian market.

39. For example, several import taxes apply specifically to products entering Polynesia (customs duties, import VAT, local development tax ("TDL"), hydrocarbon taxes, etc.). While products from mainland France and the European Union benefit from preferential customs treatment, they are nonetheless subject to Polynesian customs regulations.

40. Consequently, French Polynesia's fiscal autonomy makes it impossible to consider the territory as a single relevant market with mainland France, due to the distance separating the Polynesian territory and the existence of customs barriers between mainland France and French Polynesia. The Authority therefore considers it necessary to consider mainland France and French Polynesia as two separate relevant markets for the organization of transport.

41. Furthermore, the fact that French Polynesia is not part of a customs union with the other countries of Oceania would appear to be an obstacle to defining a relevant market that would include both French Polynesia and some of its Pacific neighbors, or even the whole of the Oceania/Pacific zone.

42. During the market test, the competitors and customers questioned indirectly confirmed this geographical delimitation by indicating that the largest volumes handled by forwarding agents in French Polynesia come from Europe, which confirms that transit and customs clearance activities vis-à-vis Europe account for a larger share of their business.

43. Given French Polynesia's autonomous customs jurisdiction and its lack of customs integration with the other Pacific states, the market for the organization of freight transport is geographically limited to the territory of French Polynesia[34] .

44. The competitive analysis will therefore be carried out in the context of the market for the organization of freight transport in French Polynesia.

[32] Article 74 of the Constitution; organic law n°2004-192 of February 27, 2004 on the autonomous status of French Polynesia.

[33] Opinion no. 2019-A-02, paragraphs 71 et seq.

[34] In this respect, it may be noted that the New Caledonian Competition Authority recently adopted a similar approach, limiting the relevant geographic market for the organization of freight transport to the territory of New Caledonia in its examination of the *CMA CGM / Bolloré Logistics* case (ACNC decision no. 2023-DCC-11 of December 27, 2023 relating to the acquisition of exclusive control of SE Bolloré Logistics by SA CMA CGM, paragraph 51).

II. COMPETITIVE ANALYSIS

45. Under article LP. 310-1 of the French Competition Code, the examination of a merger must determine whether it is likely *to* "*substantially harm competition or create a monopoly situation prejudicial to the interests of consumers*".

46. Insofar as the parties are simultaneously active on the market for the organization of freight transport, the transaction is likely to produce horizontal effects (**A.)**. In addition, the transaction is also likely to produce vertical effects (**B.**) insofar as CMA-CGM is present, upstream, on several markets for the maritime transport of goods by *deep-sea* container, and Bolloré Logistics is present on the market for the organization of freight transport, downstream of the value chain.

47. The transaction is not likely to give rise to conglomerate effects, since it does not enable the new entity to extend or strengthen its presence in a related market either upstream or downstream in the value chain.

A. ANALYSIS OF HORIZONTAL EFFECTS

48. Horizontal mergers can significantly impede competition, in particular by creating or strengthening a dominant position, in two main ways:

- by removing significant competitive pressure on one or more companies, which would then have greater market power, without having to coordinate their behavior (non-coordinated effects);
- by changing the nature of competition in such a way that companies which previously did not coordinate their behavior would now be much more likely to do so and raise their prices or otherwise undermine effective competition.

49. In accordance with the AMF Guidelines, a relevant market is deemed to be affected if the combined market share of the merging companies active on that market reaches at least 25%[35]
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50. Bolloré Logistics and CMA-CGM, through its subsidiary CEVA, simultaneously organize freight transport in French Polynesia. An examination of the market shares of the parties to the merger gives an initial indication of the potential horizontal effects of the merger. Given the very low volumes of goods transported from French Polynesia (exports), the competitive analysis will not take these volumes into account in the present analysis.

51. An estimate of the market shares of the parties to the transaction, and of their main competitors on the market for the organization of freight transport is presented in the table below.

Table 1: Estimated market share (by volume) of Bolloré Logistics and its main competitors in 2022 on the freight forwarding market in French Polynesia (import)
in French Polynesia (import)

[35] Guidelines on the scope and procedure of merger control, paragraph 144.

Forwarding agent	Market share 2022
Bolloré Logistics Polynesia	[20-30%]
CEVA (CMA CGM)	[0-10%]
New entity	[20-30%]
DHL Polynesia	[20-30%]
SIFA Group	[0-10%]
Logistique Transit Polynésie (LTP)	[0-10%]
Hesnault Group	[0-10%]
TTI	[0-10%]
Geodis Polynesia	[0-10%]
Phoenix International	[0-10%]
Other(s)	[10-20%]
Total	100%

52. This estimate was confirmed by the forwarding agents interviewed, who consistently ranked Bolloré Logistics among the market leaders.

53. In French Polynesia, the transport organization market is characterized by the dominance of two leading players: Bolloré Logistics and DHL, which also have a worldwide network. The rest of the market is shared by a number of players, including national companies such as SIFA and Hesnault, as well as local companies such as Logistique Transit Polynésie, which are not part of a national or multinational group.

54. Following the transaction, the new entity's market shares will remain largely unchanged, with an estimated volume market share of [20-30%], taking into account the negligible activity of CEVA Logistics, CMA CGM's dedicated subsidiary, in French Polynesia in 2022. The increment in Bolloré Logistics' market share resulting from the integration with CEVA Logistics is less than 10%.

55. In addition, the new entity will continue to face competition from several major players in the sector, some of which are national or international operators, such as DHL, SIFA, Hesnault and Geodis.

56. It follows from the above that the transaction is not likely to harm competition through horizontal effects on the market for the organization of freight transport in French Polynesia.

B. ANALYSIS OF VERTICAL EFFECTS

57. A merger with vertical effects is generally likely to generate efficiency gains and promote competition (through the integration of complementary activities, internalization of double margins, reduced transaction costs, better organization of the production process, etc.).

58. However, the vertical integration of a company can also restrict competition by making it more difficult to gain access to markets in which the new entity will be active, or even by excluding competitors or penalizing them by increasing their costs. This is known as "foreclosure". Such a situation increases the market power of the new entity, enabling it to raise prices or reduce production quantities or quality.

59. Competition authorities generally distinguish between two forms of market "foreclosure". The first occurs when the merger is likely to exclude upstream competitors by restricting their access to sufficient customers (customer foreclosure). The second occurs when the merger is likely to increase the costs of downstream competitors by restricting their access to an important input (input foreclosure).

60. The likelihood of the transaction distorting competition through vertical effects depends on the parties' ability to effectively restrict competitors' access to its services or reduce their outlets, the parties' incentive to implement such a strategy, and the effects of this strategy on the relevant markets. In practice, these three criteria are closely linked.

61. In this case, as the parties to the transaction are present on markets that constitute two links in the freight transport value chain, the notified transaction is likely to generate vertical effects, some of which may give rise to competition concerns. The resulting entity will take the form of an integrated group, with CMA CGM on the upstream end of several *deep-sea* container transport markets, and Bolloré Logistics and CEVA on the downstream end of the freight transport organization market.

62. Conversely, the transaction is unlikely to generate vertical effects in the air transport sector, as CMA CGM is not active in the upstream markets for air freight to or from French Polynesia.

63. Consequently, the Authority will examine the position of the parties to the transaction on the markets for the transport of goods by *deep-sea* containers to and from French Polynesia (**1)**, on the market for the organization of freight transport (**2**), as well as the risks of foreclosure of access to customers (**3)**, the risks of foreclosure of access to inputs (**4)** and access to certain confidential information (**5**) raised by the notified transaction.

1. CMA CGM'S POSITION IN THE UPSTREAM *DEEP-SEA* CONTAINER SHIPPING MARKETS

64. Upstream, CMA CGM is active on several *deep-sea* container freight routes between French Polynesia and the world's main continents. Each of these routes constitutes a relevant market, and can be summarized as follows:

- Four routes from French Polynesia (export) to Oceania, Asia, America and Europe.
- Four routes to French Polynesia (import) and from Oceania, Asia, America and Europe.

65. The Authority will examine CMA CGM's position on each of these routes from French Polynesia (***a***) and to French Polynesia (***b)*** in turn.

a. Routes from French Polynesia (export)

Table 2: Estimated market share by volume (Twenty-Foot Equivalent Units, hereafter "TEU") for CMA CGM and competing carriers on the various routes from French Polynesia in 2022

	CMA CGM shares	**No. 1 competitor shares**	**Competitor shares n°2**	**Competitor shares n°3**	**Competitor shares n°4**	**Competitor shares n°5**
French Polynesia - Europe	[80-90%]	**Marfret** [0-10%]	**Neptune PDL** [0-10%]	/	/	/
French Polynesia - America	[30-40%]	**Maersk / Hamburg South** [60-70%]	**Swire** [0-10%]	/	/	/
French Polynesia - Asia	[90-100%]	**Kyowa** [8-10%]	**Swire** [0-10%]	**ONE** [0-10%]	/	/
French Polynesia - Oceania	[30-40%]	**Neptune PDL** [10-20%]	**Swire** [10-20%]	**MSC** [10-20%]	**Maersk / Hamburg South** [10-20%]	**PIL** [0-10%]

66. On routes from French Polynesia to America and Oceania, the notifying party has a relatively large market share ([30-40%] to America and [30-40%] to Oceania), but faces competition from several ocean carriers with larger market shares, such as Maersk/Hamburg South (estimated market share of [60-70%] to America), or competitors likely to exert significant competitive pressure, such as Neptune PDL, Swire or MSC to Oceania.

67. Conversely, on routes to Asia and Europe, CMA CGM operates a virtual monopoly, with market shares of [90-100%] from French Polynesia to Asia and [80-90%] to Europe.

68. These two routes therefore present a strong asymmetry in favor of CMA CGM, which could use its position on the upstream freight transport market to strengthen the position of the new entity, resulting from CEVA and the acquisition of Bolloré Logistics, on the downstream market for the organization of freight transport.

69. However, such a strategy does not seem likely to change the current structure of the downstream freight forwarding market. Indeed, export volumes from French Polynesia are very low (529 TEU in 2022) compared with the volumes handled by operators active in the organization of freight transport in French Polynesia.

70. By way of illustration, volumes on routes to Asia and Europe represent around 2.6% of all goods transported to and from French Polynesia in 2022.

71. Under these conditions, it should be noted that sea freight volumes to Asia or Europe are not likely to have a significant impact on the structure of the market for the organization of freight transport in French Polynesia, despite CMA CGM's particularly high market shares on these two routes. The upstream volumes concerned appear insufficient to enable the new entity to

implement a foreclosure of the market for the organization of sea freight transport in French Polynesia.

72. Consequently, it is not necessary to consider these export routes further in the context of the present examination of the merger.

b. Routes to French Polynesia (import)

73. For import flows to French Polynesia, the Authority will examine CMA CGM's position on each of the routes from America, Oceania, Asia and Europe.

➢ ***Routes to French Polynesia from America, Oceania and Asia***

74. On routes from America, Oceania and Asia, the notifying party has a low to moderate market share (estimated at [10-20%] from Oceania, [10-20%] from Asia and [20-30%] from America), and CMA CGM faces competition from several ocean carriers with larger market shares, such as Maersk/Hamburg South (estimated market share of [30-40%] from America), or Neptune PDL (estimated market share of [20-30%] from Asia and [40-50%] from Oceania), or from competitors likely to exert significant competitive pressure, such as Kyowa or Swire.

75. The market shares of CMA CGM and its main competitors for sea freight to French Polynesia are shown below.

Table 3: Estimated market share by volume (TEU) for CMA CGM and competing carriers on the various routes to French Polynesia in 2022

	CMA CGM shares	No. 1 competitor shares	Competitor shares n°2	Competitor shares n°3	Competitor shares n°4	Competitor shares n°5
America - French Polynesia	[20-30%]	**Maersk / Hamburg South** [35-40%]	**Swire** [20-30%]	**Marfret** [0-10%]	**Matson** [0-10%]	**ONE** [0-10%]
Asia - French Polynesia	[10-20%]	**Neptune PDL** ,[20-30%]	**Kyowa** [10-20%]	**Maersk / Hamburg South** [10-20%]	**ONE** [10-20%]	**ASEANPAC** [0-10%]
Oceania - French Polynesia	[10-20%]	**Neptune PDL** [40-50%]	**Maersk/ Hamburg South** [10-20%]	**Swire** [0-10%]	**PIL** [0-10%]	**ONE** [0-10%]

76. In accordance with the Autorité's guidelines, it is unlikely that a company with a market share of less than 25% would be able to foreclose a downstream or upstream market. Indeed, the vertical integration of a company, or its reinforcement, can only harm competition when it holds, on one or more of the markets concerned, substantial market power that can serve as a lever on the upstream and/or downstream market.

77. It is therefore highly unlikely that the new entity will be able to leverage a market share of less than 25% on each of the routes shown in the table, and a market share of [20-30%] on the market for the organization of freight transport in French Polynesia.

78. The proposed transaction is therefore not likely to significantly alter the competitive structure of the market for the organization of freight transport on routes from Asia, America and Oceania to French Polynesia.

➢ ***Route to French Polynesia from Europe***

79. On the route between Europe and French Polynesia, CMA CGM has a market share of [60-70%] on the upstream freight market.

Table 4: Estimated market share (by volume) of CMA CGM and competing carriers on the deep-sea container freight market between Europe and French Polynesia in 2022

Route	CMA CGM	Marfret	MSC	Swire	Other	Total
Europe - French Polynesia	[60-70%]	[30-40%]	[0-10%]	[0-10%]	[0-10%]	100%

80. CMA CGM is also a member of a *vessel sharing agreement* (*VSA*) with Marfret for its *Panama Direct Line* service.

81. In this respect, the notifying party submits that a vessel-sharing agreement consists of sea carriers operating vessels jointly on a given route, but without any coordination on prices, joint marketing or revenue sharing.

82. However, it should be remembered that the European Commission's decision-making practice is to take into account the total market shares of the members of a VSA, reflecting the more limited competitive pressure that the shipping line's partners exert on them[36] : "*a member of a consortium, even if it carries a limited volume, can have a significant influence on the consortium's operational decision concerning the characteristics of the service provided, in particular its level of capacity*"[37] .

83. Consequently, in the present case, the effects of the merger must be assessed both on the basis of CMA CGM's market share, but also taking into account the existence of a VSA between CMA CGM and Marfret under which the parties to the agreement agree on important parameters having a moderating effect on competition, such as the fixing of respective capacities and the sailing plan.

84. Conversely, the part of the market over which CMA CGM has no influence, i.e. carriers outside VSA, will be considered to be in full competition with CMA CGM[38] .

[36] See in particular European Commission decision of December 5, 2017, *COSCO Shipping / OOIL*, M.8594, paragraph 33, European Commission decision of April 29, 2016, *CMA CGM / NOL*, M.7908, paragraph 28.

[37] Commission decision *CMA CGM / NOL*, paragraph 28.

[38] See Commission decision *COSCO Shipping / OOIL*, cited above, paragraph 33.

Table 5: Estimated market shares (by volume) in 2022 of the VSA parties on the PAD service and of competing carriers on the route from Europe to French Polynesia

Roads	CMA CGM	Marfret	VSA parties combined	Open market
Europe - French Polynesia	[60-70%]	[30-40%]	[90-100%]	[0-10%]

85. In this configuration, the free market represents [0-10%] of volumes to French Polynesia. Moreover, these are the cumulative volumes of 4 different players, including MSC and Swire. Conversely, the cumulative share of volumes transported by the VSA between CMA CGM and Marfret on the PAD amounts to almost [90-100%] in 2022.

86. It is clear from the above that CMA CGM has very significant market shares in the upstream market for the transport of goods by *deep-sea* containers from Europe to French Polynesia.

2. Bolloré Logistics' position in the downstream market for the organisation of freight transport

87. In the above-mentioned *CMA/Dubreuil* decision, the Autorité noted that the freight forwarding market is highly fragmented worldwide. The main players in the market are companies specializing in the organization of freight transport, as well as vertically integrated carriers such as CMA CGM. On a global scale, for example, the main freight forwarders are Kuehne+Nagel (estimated market share [10-20%]), CMA CGM subsidiary CEVA (estimated market share [10-20%]), DHL Global Forwarding ([0-10%]) and Bolloré Logistics ([0-10%]).

88. As described above (§53 and 54), in French Polynesia, the market structure for the organization of sea freight transport is similarly characterized by the existence of a relatively fragmented market with two leading players: Bolloré Logistics and DHL, which have a global reach. The rest of the market is shared by a multitude of players.

89. According to the Authority's estimates, Bolloré Logistics is currently the market leader in the organization of freight transport in French Polynesia, which is confirmed by the hearings of forwarding agents, who consider Bolloré Logistics to be one of the market leaders in French Polynesia.

90. It is clear from the above that, after completion of the notified transaction, the new entity will be a vertically integrated player in the sea freight transport and organization of freight transport businesses. In addition to its dominant position on the Europe-French Polynesia route, the new entity would become the leading player in the downstream market for organizing transport to and from French Polynesia, by integrating the current market leader.

91. We now need to look at the possible foreclosure scenarios that the new entity could implement once the transaction has been completed.

3. <u>ON THE RISK OF LOCKING IN ACCESS TO CUSTOMERS</u>

92. A first form of foreclosure could arise once the merger has been completed, as the new entity could exclude upstream competitors by restricting their access to sufficient downstream customers (customer foreclosure).

93. In this hypothesis, the new entity resulting from the transaction could decide to source freight transport services on the Europe-French Polynesia route exclusively from CMA CGM and refuse to use CMA CGM's competing carriers on this route, in order to reduce their commercial outlets.

94. However, such a scenario seems unlikely. In fact, CMA CGM's competitors on the Europe-French Polynesia route have sufficient alternative outlets to the new integrated entity in the downstream market for the organization of freight transport.

95. Although Bolloré Logistics occupies an important place on the market for the organization of freight transport, with the group's market share reaching [20-30%] in 2022, most of the transport organization market will remain competitive and beyond the control of the new integrated entity. As a reminder, DHL, Bolloré Logistics' main competitor, has a market share of [20-30%], and all competitors on this market collectively account for [70-80%] of the market.

96. In the event of such a foreclosure by the new entity, its upstream competitors would still have access to more than [70-80%] of the downstream market for organizing freight transport. The existence of large-scale alternative outlets therefore makes such a risk of customer foreclosure implausible. In fact, none of the forwarding agents contacted during the market test mentioned any such concerns about the transaction.

97. In view of these factors, the Authority considers that the transaction is not likely to give rise to a risk of foreclosure of access to downstream customers for shipping lines competing with CMA CGM.

4. <u>ON THE RISK OF LOCKING IN ACCESS TO INPUTS</u>

98. A second possible form of foreclosure occurs when the merger is likely to hinder or foreclose downstream competitors' access to an important input (input foreclosure), thereby reducing their ability and/or incentive to compete.

99. Given CMA CGM's dominant position on the Europe-French Polynesia route, it is conceivable that, once the transaction has been completed, the new entity will be in a position to implement a strategy of total or partial foreclosure of inputs (in this case, the transport of goods by *deep-sea* containers) on the downstream market for the organization of transport.

100. The Authority will examine the hypothesis of a total foreclosure of the freight transport organization market (***a***), followed by a partial foreclosure of the market by the new entity (***b)***.

a. <u>On the hypothesis of a total foreclosure of the market for the organization in French Polynesia</u>

101. In order to examine the likelihood of an input foreclosure scenario, it is necessary to consider whether the new entity would, post-merger, have the ability to significantly foreclose access to inputs; whether the incentives to do so are sufficient; and whether the foreclosure strategy would have a significant effect on the downstream market in question.

102. A situation of total foreclosure could materialize through a total refusal by CMA CGM to supply competing forwarding agents on the Europe - French Polynesia route. In this scenario, all sea freight managed by CMA CGM on the Europe-French Polynesia route would be handled exclusively by the new entity created by CEVA and the acquisition of Bolloré Logistics.

103. The Authority considers that such a strategy of total market foreclosure is implausible, given that the new entity will not have sufficient capacity to absorb the transfer of CMA CGM's entire range of shipping services on the Europe-French Polynesia route.

104. In addition, on the other routes to French Polynesia (such as the America - Polynesia, Asia - Polynesia or Oceania - Polynesia routes, which together account for around [50-60%] of volumes in the market for the organization of freight transport in French Polynesia), CMA CGM faces competition from major carriers. If such a complete foreclosure strategy were implemented by CMA CGM, the forwarders excluded by these foreclosure practices could shift their demand to the shipping lines competing with CMA CGM on these other routes. While the transfer of freight forwarder demand would probably be imperfect in this case, due to the low substitution capacity of the PAD service, it would nevertheless appear that the complete disruption of supply on one shipping line would not mean the complete disruption of supply to competing freight forwarders on the downstream market.

105. On other routes to French Polynesia, CMA CGM faces competition from competitors larger than CMA CGM itself, such as Maersk / Hamburg South and Swire on the route from America, for example (see table 3 above).

106. Consequently, the Authority considers that the notified transaction is not likely to result in a total foreclosure of the market for the organization of freight transport in French Polynesia.

b. ***<u>On the hypothesis of a partial foreclosure of the transport organization market in French Polynesia</u>***

107. A situation of partial foreclosure could materialize through discriminatory treatment organized by the new entity against freight forwarders competing in the freight forwarding market. Such a strategy could take the form of CMA CGM granting less advantageous commercial conditions (e.g. prices, volumes, quality of service, etc.) to the new entity's competitors, thereby undermining their competitiveness in the freight forwarding market vis-à-vis the new integrated entity. This type of partial market foreclosure could dissuade rivals from entering or expanding in the market, or even encourage them to exit.

108. In order to examine the likelihood of an input foreclosure scenario, the Authority has considered whether the new entity will, post-merger, have the ability to significantly foreclose access to inputs (i); whether its incentives to do so will be sufficient (ii); and whether this foreclosure strategy could have a significant effect on the downstream market in question (iii).

i. ***On the new entity's ability to foreclose access to inputs***

109. In order to assess the new entity's capacity to foreclose, the Autorité evaluated the market power of the new entity, the ability of current or potential competitors to react, and the countervailing power of buyers.

➢ ***The market power of the new entity***

110. According to the notifying party, its market shares are limited on the Europe-Oceania route, and that the carrier is constrained by competitive pressure from other ocean carriers on the other routes to French Polynesia. The Autorité points out that this position ignores the market

definition applicable in this case, which is based on routes linking the various continents to French Polynesia.

111. As indicated *above*, CMA CGM has a market share of [60-70%] on the upstream market for the transport of goods from Europe to French Polynesia. Given the existence of a VSA to operate the PAD service between CMA CGM and Marfret, the free market represents only [0-10%] of volumes to French Polynesia. This figure represents the part of the market over which CMA CGM has no influence, and represents the combined volumes of 4 different players, including MSC and Swire. Conversely, the cumulative share of volumes carried by the VSA between CMA CGM and Marfret on the PAD is [90-100%] in 2022.

112. Of the 13 vessels assigned to the PAD service, CMA CGM operates 12 and Marfret just one. Furthermore, the ship-sharing agreement can be unilaterally revoked by either party within 3 months, leaving CMA CGM free to end its collaboration with Marfret, which would instantly lose most of its transport capacity to French Polynesia. All these elements show that CMA CGM dominates the VSA with Marfret.

113. In addition, the characteristics of shipping services on the Europe-French Polynesia route contribute to increasing the market power held by CMA CGM. In particular, the PAD service, which transports goods on a weekly basis from Europe to French Polynesia, is a particularly important service for forwarding agents, who are active in the downstream market for the organization of goods transport in French Polynesia. The PAD service alone accounts for 42% of the volumes handled by freight forwarders in the French Polynesia freight market, and is the preferred route for importing goods from mainland France and Europe.

114. In fact, as previously indicated, mainland France is French Polynesia's main supplier (27.2% of imports in 2017), followed by the European Union (15.4% of imports in 2017), and these imports from mainland France are above all goods that are widely consumed locally, requiring regular supplies for Polynesian distributors, such as agri-food products, closely followed by intermediate goods, then consumer goods and capital goods[39] .

115. The information gathered during the merger review also shows that the PAD service offers distinct advantages over the MSC service (the only alternative service linking Europe and French Polynesia)[40] . The PAD service is a direct maritime line (i.e., without transshipment) between Europe and French Polynesia, with a transit time of 30 days and a weekly departure. In contrast, MSC's *Australia Express* service connects Europe with Australia via the Suez Canal in around 40 days. The goods are then transshipped on the "*Oceania Loop 1*" service between Sydney and Papeete in around 25 days. Transport times are therefore significantly longer than for the PAD service, with transit times in excess of 60 days.

116. In terms of demand, substitutability between the direct PAD service and the route with transshipment operated by MSC appears very limited[41] . Most customers surveyed still prefer direct service to services with transshipment. In particular, direct service appears to be the only possible choice for transporting perishable products, and generally for products whose transit time needs to be as short as possible. What's more, the safety and reliability of a direct service

[39] Institut de la statistique de la Polynésie française, *Bilan du commerce extérieur en 2021*, https://www.ispf.pf/publication/1357.

[40] MSC provides a service to French Polynesia, linking Europe to Australia via the Suez Canal in around 40 days with the "*Australian Express*" service. Cargoes bound for French Polynesia are then unloaded and transshipped onto other vessels bound for French Polynesia via the "*Oceania Loop 1*" service, linking Sydney to Papeete in around 25 days.

[41] AdlC decision no. 13-D-15 of June 25, 2013 concerning practices implemented in the maritime freight transport sector between Northern Europe and the French West Indies.

are far superior to those of a service including transshipments, pointing to characteristics that are difficult for competitors to reproduce.

117. Generally speaking, short transit times mean better inventory management and more secure supply of goods. As one "shipper" customer explains: "*A famous pasta brand decided to go via MSC rather than PAD, which meant it took over 3 months to arrive in Polynesia, with stock-outs here in store, as we were used to working just-in-time on the direct service. It was then decided to reload the containers on the PAD to ensure a regular flow with Polynesia (no significant storage capacity here)*".

118. Given CMA CGM's dominant position, and its near-monopolistic position when VSA is taken into account, the new entity will therefore have substantial market power on the upstream market for sea freight transport between Europe and French Polynesia, giving it the ability to significantly influence the pricing and supply conditions of the new entity's competitors on the downstream market for the organization of freight transport.

119. Consequently, access to the PAD service is a critical element for downstream companies and, *ultimately,* end customers who wish to benefit from the features offered by the PAD service for their products from Europe.

➢ ***The ability of current or potential competitors to react***

120. *As for current competitors on the Europe - French Polynesia route,* the only other carrier with capacity on the PAD service is Marfret, which operates the service jointly with CMA CGM.

121. However, Marfret operates only one of the 13 vessels allocated in the VSA to carry out the rotations, and has limited capacity on the PAD vessels. Furthermore, five of the six forwarders interviewed at[42] indicated that Marfret would not be able to absorb the volumes of forwarders on the Europe - French Polynesia route, in the event of a conflict between the forwarders and CMA CGM. As one forwarder put it: "[t]*he big competitive problem is that forwarders are dependent on a single shipping line (CMA-CGM) on the Europe - Polynesia route, so we have no alternative and can't turn to other carriers. Marfret is too small an operator*". In addition, the vessel-sharing agreement can be unilaterally revoked by either party within 3 months, giving CMA CGM the power to terminate the collaboration with Marfret.

122. Marfret's capacity on the PAD service therefore remains low, with no prospect of being significantly increased independently of CMA CGM in the coming years.

123. Consequently, it is not conceivable that demand from downstream freight forwarders could shift massively to Marfret's capacities in the event that CMA CGM were to implement a foreclosure strategy following the transaction.

124. *With regard to potential competition*, our examination of the merger shows that the likelihood of new competitors entering the market for the maritime transport of goods from Europe to French Polynesia is low, given the existing barriers in this sector.

125. Several freight forwarders mentioned the possibility that MSC might strengthen its position on the Europe-French Polynesia route by launching, for example, a transshipment-free service in direct competition with the PAD service, but no concrete indication of this was found during our examination of the transaction.

[42] In addition, the 6ème person interviewed did not comment on the question posed.

126. Several ocean carriers, such as Maersk and Seatrade, have tried in the past to enter the route and compete with CMA CGM. These attempts ended in failure. As one forwarder put it: "*Seatrade was the last carrier to exit the Polynesian market a few years ago. It left overnight*".

127. To date, only vessels with capacities well below transport industry standards are able to enter the port of Papeete. These are vessels capable of carrying volumes of 2400 TEU or less. This limit on the capacity carried per vessel, combined with the relatively low volumes transported, constrains the economic profitability of serving French Polynesia and can act as a barrier to entry.

128. A Polynesian importer commented: "*At present, only vessels of 2400 TEU or less can enter the port of Papeete. This is a fundamental point in the carriers' equation when deciding whether or not to stop in French Polynesia. With ships this small, Polynesia's attractiveness is low, but if work were to begin tomorrow on enlarging the pass, the cards would be reshuffled*".

129. It is clear from the above that current competition (MSC and Marfret) and potential competition are particularly weak when compared with CMA CGM's capacity on the Europe - French Polynesia route.

➢ ***The counterweight of buyers***

130. The competition authorities consider that if buyers are powerful, they will be able to counter the effects of any foreclosure strategy by the integrated company resulting from the merger, for example, by encouraging the development of new competitors. For example, if a downstream company's clientele values a range of products (including different brands), it will need to maintain a diversified supply from different upstream suppliers.

131. In this case, as mentioned above, the transport organization market is characterized by an atomicity of demand, with no concentration of countervailing buyer power around one or two major players. This characteristic is reinforced by the fact that freight forwarders have no credible alternative to the PAD service for their supplies from Europe, due to the pressure of demand from "shipper" end-customers who wish to take advantage of the characteristics of the PAD service operated by CMA CGM and Marfret.

132. It is clear from all these factors that the new entity will have a high degree of capacity to foreclose access to sea freight transport on the Europe-French Polynesia route, due to CMA CGM's market power on the upstream freight transport market, the limited ability of current and potential competitors to react, and the limited countervailing power of buyers on the downstream freight transport organization market.

ii. Incentives to block access to the new entity's inputs

133. The ability to foreclose access to inputs is not sufficient to establish the likelihood of partial foreclosure of the downstream market. The next step is to determine whether the incentives to foreclose are sufficient.

134. The notifying party believes that it will have no ability to foreclose other transport organizers' access to containerized sea freight services to French Polynesia, since Bolloré Logistics currently holds a limited position in the market for organizing freight transport, and does not currently have the capacity to absorb all of CMA CGM's transport capacity.

135. In the context of a partial foreclosure of the market, this argument cannot be sustained. It is not a question of the new entity absorbing all of CMA CGM's transport capacity on the Europe-French Polynesia route, but only part of CMA CGM's transport capacity formerly managed by the new entity's downstream competitors. Furthermore, it seems entirely realistic that the new entity would be able to absorb the transfer of part of the demand from downstream end-

customers, who would turn away from forwarding agents, victims of the foreclosure strategy put in place.

136. In the event of a partial input foreclosure, it seems quite plausible that CMA CGM would reduce the price charged to its downstream subsidiary in the freight forwarding market, and/or make it more difficult for competing downstream companies to access the commercial conditions applied, in order to divert demand (the end customers "shippers") to the benefit of the new entity. This will be a profitable strategy once the margin and/or additional demand captured downstream is greater than the price reductions on upstream shipping services granted to the CMA CGM subsidiary.

137. The responses to the market test confirmed that such a scenario is considered credible by the freight forwarders competing with the new entity. Similarly, all those interviewed, i.e. the 5 forwarding agents and one "*shipper*" customer, all raised concerns about preferential tariff treatment by the new entity, *post-operation*. During the market test, 4 of the 5 forwarding agents interviewed had already identified this risk.

138. These companies fear that the new entity will use its market power in the upstream maritime freight transport market to favor its subsidiary present in the downstream markets, and that it could eventually substantially strengthen its market shares downstream. Such a strengthening of the new entity on the markets for the organization of freight transport in French Polynesia would be all the more likely as, on this market, Bolloré Logistics already enjoys a position of market leader.

139. Some of the companies interviewed also expressed concern about the possibility of offering preferential treatment to the new entity for transport volumes on the Europe-French Polynesia route. This strategy of partial foreclosure could, for example, take the form of priority sale of available volumes on CMA CGM vessels to the new entity rather than to its forwarding competitors, or priority loading of the new entity's volumes onto vessels during peak traffic periods, such as before Christmas. As one forwarder put it, once the new entity is created: "*CMA-CGM will have all the power and will do what it wants, given that there is no other carrier for forwarders to fall back on*".

140. Following the transaction, the new entity would benefit from a significant advantage in terms of access to end customers on the market for organizing freight transport to and from French Polynesia, by proposing an integrated global offer on the Europe service, by far the most important in terms of volume to French Polynesia.

141. In view of all these factors, it appears that the new entity will have incentives to implement a strategy of blocking access to freight transport services on the Europe-French Polynesia route for the new entity's downstream competitors, through preferential treatment of its own subsidiary to enable it to obtain lower prices and/or additional volumes vis-à-vis its forwarding competitors.

iii. On the significant effect on the downstream market for the organization of freight transport

142. In order to examine the likelihood of an input foreclosure scenario, the Autorité examined whether the new entity's post-merger foreclosure strategy would have a significant effect on the downstream market for organizing freight transport.

143. As mentioned *above*, the PAD service alone represents 42% of the total volume handled downstream on the market for the organization of maritime transport in French Polynesia in 2022. The implementation of practices to foreclose access to the PAD service is likely to

significantly hinder competition on the market for the organization of maritime freight transport in French Polynesia, and to create potential foreclosure effects on the new entity's competitors.

144. The effects of this foreclosure strategy would not have the same impact on all players in the sector. Freight forwarders integrated into a multinational group, such as DHL or Geodis, consider themselves in a position to face reprisals on other markets in order to respond to the foreclosure strategy of the new entity. Conversely, smaller players who do not have the bargaining power of multinational groups, but who together represent around [30-40%] of the downstream market, would be the most exposed to such a foreclosure strategy: "[d]*ue to their weak bargaining power, small freight forwarders will be the most impacted, and this will unbalance the competitive playing field for them. Larger forwarders, such as DHL, will have the capacity to respond on a global scale, but once again, large forwarders will want to enter into conflict with CMA for small volumes concerning Polynesia. This will give Bolloré an advantage in a small market, since they will be integrated with the biggest forwarder for the country*.

145. In addition, these lock-in practices on the PAD service would be all the more problematic in that they could contribute to raising freight transport prices, by increasing the costs of the forwarding agents targeted by these practices, which would exert upward pressure on their selling prices, with an *ultimate* impact on the end consumer.

146. As already mentioned, the PAD service is by far the most important maritime link for supplying French Polynesia. A possible increase in the cost of sea freight on the Europe-French Polynesia route could make a negative contribution to the problem of high living costs in overseas France, a major concern for island economies such as New Caledonia and French Polynesia, as already highlighted by the Caledonian Competition Authority in its review of the *CMA CGM / Bolloré Logistics* transaction[43] .

147. Given the new entity's very strong position on the upstream market for the Europe - French Polynesia service, and the absence of any significant countervailing power capable of curbing any foreclosure strategy on the part of the new entity, the Autorité considers that the merger is likely to harm competition, through vertical effects, on the market for the organization of freight transport.

5. On the risk of access to certain confidential information of freight forwarding competitors

148. The vertical integration enabled by the transaction could also give the new entity a competitive advantage *through* privileged access to confidential information resulting from negotiations between forwarding competitors and CMA CGM concerning quotations for a given customer, or alternatively within the framework of a call for tenders.

149. Indeed, when negotiating price quotations between CMA CGM and forwarders, CMA CGM systematically asks forwarders to share the name of the end customer on whose behalf the forwarder wishes to reserve these volumes. This information is therefore very sensitive, since it enables the ocean carrier to hold a significant amount of information (identity of the end customer concerned, volume requested and price offered by CMA CGM) on important parameters of competition on the downstream market of the organization of the transport market in French Polynesia.

[43] Caledonian Competition Authority decision no. 2023-DCC-11 of December 27, 2023, paragraph 162.

150. Three of the six freight forwarders interviewed confirmed the new entity's ability to access prices negotiated between CMA CGM and competing freight forwarders in French Polynesia.

151. Under these conditions, the Authority considers that there is a plausible risk of confidential information being passed on within the new entity, relating to negotiations between CMA CGM and competing freight forwarders concerning shipping service offers. Several parameters of downstream competition between forwarders could be affected, namely the identity of the end customers concerned by the quotation, the prices offered by CMA-CGM to forwarders, and the volumes involved.

152. This information could be shared with the downstream subsidiary competing with forwarding agents in the freight forwarding market, so that it can position itself vis-à-vis the forwarding agents concerned and canvass the end customer concerned.

153. In response to the competition concerns expressed by the Autorité, the notifying party proposed commitments to remedy the risks identified during the examination of the transaction.

III. PROPOSED COMMITMENTS

154. In a letter received on January 8, 2024, the notifying party formulated a proposal for commitments, based on II of article LP 310-5 of the French Competition Code.

A. PROPOSED COMMITMENTS

155. The notifying party proposed a so-called "structural" commitment (as opposed to "behavioral" commitments) designed to address the risk of vertical anti-competitive effects, in particular by blocking access to CMA CGM's shipping services on the Europe-French Polynesia route by the new entity's competitors in the downstream freight forwarding market.

156. This structural commitment consists of the sale of Bolloré Logistics' maritime business, corresponding to all of Bolloré Logistics Polynesia's activities in organizing the maritime transport of goods, as well as the activities of Bolloré Logistics France relating to French Polynesia, which take the form of a list of customers transferable to the purchaser of the sold Bolloré Logistics activities.

157. The scope of the divested business will nevertheless include two exceptions (hereinafter together referred to as "the excluded global customers") enabling CMA CGM to offer maritime freight transport organization services:

- a limited list of Bolloré Logistics' current multi-destination customers. These customers currently represent less than 10% of the company's sales to or from French Polynesia;
- to non-limited multi-destination customers, on condition that the sales made with each of these customers to or from French Polynesia are less than 25% of the total sales made between this customer and CMA CGM.

158. Behavioral remedies reinforce the structural commitment and its implementation. Six behavioral commitments have been proposed by the notifying party to reinforce the structural commitment and its implementation. They aim to :

1) preserve the viability, market value and competitiveness of the divested business;
2) to ensure that the divested business is kept separate from the business retained after the transaction, and that the key personnel of the divested business have no connection with the business retained by CMA CGM, and vice versa;
3) to take all necessary measures to ensure that CMA CGM cannot collect business secrets, know-how, commercial information or any other information of a confidential or protected nature concerning the transferred business;
4) non-solicitation of key personnel, non-competition with the divested business and non-repurchase of the divested business. In this respect, CMA CGM :
    - undertakes, for a period of 3 years, not to solicit and to ensure that its subsidiaries do not solicit essential personnel transferred with the divested business;
    - undertakes, for a period of 5 years, not to provide, and to ensure that its subsidiaries do not provide, services for the organization of maritime transport of goods to or from French Polynesia, with the exception of excluded global customers;

- may not, for a period of 10 years, acquire direct or indirect influence over all or part of the divested business, unless the Authority has first established that the structure of the market has changed in the meantime in such a way that CMA CGM's lack of influence over the divested business is no longer necessary to eliminate any serious doubts as to the effects of the merger on competition. This commitment also covers TTI-Tahiti, in which Bolloré Logistics S.E. currently holds [20-30%] of the share capital.

5) enable potential buyers to carry out *due diligence* on the divested business;

6) submit written reports on potential buyers for the divested business, and information on the process and progress of negotiations with these potential buyers, to the AMF and the monitoring trustee.

159. In addition, the following terms of application are proposed:

Two separate agents have been appointed to oversee :

1) of all these commitments, according to the usual terms and conditions (appointment, mission, remuneration, revocation, etc.Dec);
2) control of the divestment to ensure that the divested business is managed as a separate, transferable entity from the activities retained by CMA CGM.

A review clause enabling the Authority to :

3) grant an extension of the time limits provided for in the undertakings; and/or
4) waive, modify or replace, in the event of exceptional circumstances, one or more commitments.

B. ASSESSMENT OF PROPOSED COMMITMENTS

1. ANALYSIS CRITERIA

160. When commitments are proposed, the competition authorities check that they meet several criteria:

1) they must be effective, i.e. they must effectively remedy the identified infringements of competition;
2) their implementation must not raise any doubts, which implies that they are drafted in a precise, unambiguous manner, and that the operational procedures for carrying them out are sufficiently detailed;
3) their implementation must be rapid, as competition is not preserved until they are completed;
4) they must be verifiable. To this end, the parties must include a control mechanism in their letter of commitment, enabling the Authority to verify that they have actually been fulfilled.

161. Structural measures can be supplemented by behavioral measures designed to regulate the competitive behavior of the company resulting from the operation.

2. ON THE PROPOSED COMMITMENTS

162. The Authority considers that the merger raises a risk of foreclosing freight forwarders' access to CMA CGM's maritime container transport services on the route linking Europe to French Polynesia.

163. In other words, the competition problem stems from CMA CGM's upstream position on the Europe-French Polynesia shipping route. The effects of any foreclosure strategy would therefore be localized downstream on the market for organizing transport in French Polynesia.

164. A sale of Bolloré Logistics' shipping business would therefore address the risk identified by the Autorité that CMA CGM would take advantage of its upstream position to unduly favor the new entity's activity on the downstream market for the organization of freight transport.

165. In this respect, CMA CGM is proposing the sale of Bolloré Logistics' entire maritime business in French Polynesia, without limiting it to the Europe-French Polynesia route, which will ensure the viability and competitiveness of the business covered by the structural commitments.

166. In this way, the disposal of the divested business will effectively remedy the competition problem identified.

167. On the one hand, the new entity's complete withdrawal from maritime activities in French Polynesia removes the entire vertical link between CMA CGM and Bolloré Logistics. This eliminates any risk of foreclosure, since the new entity would no longer have any activities of its own on the downstream market linked to the upstream market in which CMA CGM holds a dominant position.

168. On the other hand, the withdrawal of the new entity from the organization of maritime transport activity ensures that there will be no adverse impact on other markets concerned but not raising competition concerns, and thus also contributes to the preservation of the efficiency gains it brings about. This is particularly the case since the proposed commitments do not concern Bolloré Logistics' air transport organization business in French Polynesia, nor Bolloré Logistics' non-controlling minority stake in TTI Tahiti[44] . Insofar as they have no link with the upstream freight transport market and do not allow Bolloré Logistics to operate on the downstream maritime market (in the absence of any right to influence the competitive behavior of TTI Tahiti), the Authority considers that these activities are not necessary either to remedy the identified competition problem or to ensure the viability and competitiveness of the divested business.

169. In this respect, the proposed structural commitments are amply detailed, in precise and unambiguous terms.

170. In addition, the proposed structural commitment is reinforced by the notifying party's related undertakings not to :

- to solicit and ensure that its subsidiaries do not solicit essential personnel transferred with the divested business, for a period of 3 years;
- to provide and ensure that its subsidiaries do not provide, for a period of 5 years, services to organize the maritime transport of goods to or from French Polynesia, with the exception of certain clearly identified customers;

[44] It should be noted that the shares in TTI-Tahiti are not held by Bolloré Logistics Polynésie but by Bolloré Logistics.

- acquire, for a period of 10 years, direct or indirect influence over all or part of the divested business (unless modified by the Authority).

171. These undertakings, linked to the commitment to sell, guarantee that the latter will be effective over time, enabling the future buyer to perpetuate the business that is the subject of the sale, and to preserve the existence of effective competition in the market for the organization of maritime freight transport services.

172. It should also be noted that the vast majority of respondents to the market test considered that the commitment to divest Bolloré Logistics' entire maritime business in French Polynesia was capable of remedying the competition concerns relating to the risk of foreclosure of freight forwarders' access to the maritime container transport services offered by CMA CGM on the route linking Europe to French Polynesia.

173. In addition, the responses to the market test showed that a large majority of respondents considered the commitment not to buy back Bolloré Logistics' divested business in French Polynesia for a period of 10 years to be sufficient and proportionate to address the risk of harm to competition identified, thus confirming the position of the Autorité.

174. With regard to the undertaking not to offer maritime freight transport services to or from French Polynesia for a period of 5 years (with the exception of global customers excluded), the Authority considers this period to be proportionate, as it will enable the purchaser to continue to develop the divested business on a long-term basis under preserved competitive conditions similar to those enjoyed by Bolloré Logistics.

175. Lastly, with regard to CMA CGM's minority stake (after the transaction) in TTI Tahiti, the CMA CGM's minority stake in TTI Tahiti, the Authority considers that CMA CGM's commitment (i) to limit any risk of exchange of confidential information from TTI Tahiti to CMA CGM, and (ii) to offer shipping services to TTI Tahiti on non-discriminatory terms, will remedy the risks of blocking freight forwarders' access to CMA CGM's container shipping services.

176. It follows from the above that the Autorité considers the proposed commitments to be justified, proportionate and sufficiently effective to remedy the identified risks of harm to competition.

177. Consequently, the Autorité considers that the proposed commitments are likely to remove the anti-competitive effects of the notified transaction.

DECIDES :

Sole article: The operation notified under number 23-0019 C is authorized subject to the commitments described in paragraphs 156 et seq. above and annexed to this decision.

Deliberated on the oral report of Frédéric Paillusson and Maxime Hebting, respectively *Deputy General Rapporteur* and *Rapporteur*, by Johanne Peyre, *Chairman*, Léopold Biardeau, Pierre Frébault and Ingrid Izquierdo, *full members*.

The Chairman

Johanne Peyre