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PRESS RELEASE

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Takeover of Bolloré Logistics by CMA CGM: The Authority conditions completion of the transaction on the divestment of Bolloré Logistics' Polynesian shipping activities.

<https://autorite-concurrence.pf/wp-content/uploads/2023/04/2023.03.31-2023-PAC-01-Mesures-conservatoires-Viti-Onati-VF.pdf>

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Key Points

The Polynesian Competition Authority (APC or the Authority) clears a merger subject to the resale of assets. This will ensure that the market structure for the organisation of freight transport in French Polynesia remains competitive.

In 2023, the Bolloré Group signed an agreement to sell 100% of its subsidiary Bolloré Logistics to the CMA CGM Group. For CMA CGM, this is a global operation worth 4.65 billion and represents the Group's largest internal growth operation since its creation Group since its creation in 1978 <https://www.bolloré.com/bollo-content/uploads/2023/07/2023-07-11-signature-contrat-de-cession-de-bolloré-logistics-a-cma-cgm.pdf>. This transaction can only be completed once the necessary



approvals have been obtained from the relevant authorities in the various jurisdictions concerned, including the APC.

On 2 October 2023, CMA CGM S.A. notified its transaction to the APC.

After examining the transaction, the APC gave its conditional approval. This acquisition raised the risk of blocking freight forwarders' access to the container shipping services offered by CMA CGM on the route between Europe and French Polynesia, with the consequent risk of an increase in the price of these services and its impact on the selling price of goods to consumers.

In order to remedy the competition risks identified, CMA CGM has undertaken structural and behavioural commitments. CMA CGM has undertaken to divest Bolloré Logistics' ocean freight organisation activities for French Logistics' ocean freight activities in French Polynesia to a buyer approved by the APC. This clearance decision constitutes an effective and proportionate response to the competition problems identified, taking account of the interests of the parties.

International cooperation

The transaction was notified to a number of competition authorities, including the APC, the New Caledonian Competition Authority and the European Commission. Its review has been the subject of effective cooperation between these authorities.

The parties to the transaction

Bolloré Logistics SE (Bolloré Logistics) is a European company specialising in the provision of transport and logistics services. Through its international network, Bolloré Logistics organises air, sea and land transport and provides a range of logistics services such as value-added warehousing, packaging and distribution solutions. The company operates through 153 active subsidiaries in France, Europe and the rest of the world, particularly in the Asia-Pacific region and, to a lesser extent, in the Middle East/South Asia.

In French Polynesia, Bolloré Logistics only organises the transport of goods (sea and air) and mainly manages import flows from mainland France. It is not active in logistics services and does not offer land transport organisation services. It also holds a minority stake in the capital of Transit et Transport International Tahiti (TTI), a freight forwarder active in the organisation of freight transport in French Polynesia.

CMA CGM S.A. (CMA CGM) is the parent company of the CMA CGM Group. The Group is mainly engaged in container shipping and port operations. CMA CGM is also active in the organisation of air, sea and inland freight transport and logistics services through its subsidiary CEVA Logistics S.A. (CEVA). In French Polynesia, CEVA only organises freight transport, which is very marginal. CMA CGM's fleet of some 600 vessels operates on 257 routes and serves 420 of the world's 521 commercial ports.

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

The Authority has identified a high risk that competitors will be squeezed out, to the detriment of competition that would benefit freight forwarders and ultimately consumers.

Transport organisation is the process of getting goods to their destination on behalf of a shipper. Transport organisers or forwarders provide services (which may include, in addition to the transport itself, various other services such as customs clearance or warehousing, on behalf of customers according to their needs). They do not specialise in a particular segment (sea, air or land) and use carriers. Transport and transport organisation activities are therefore complementary.

The competitive analysis showed that the merged entity would have a strong ability to foreclose access to maritime transport services on the Europe-French Polynesia trades due to the market power of CMA CGM on the upstream freight transport market, the low responsiveness of actual and potential competitors and, finally, the limited countervailing power of customers on the downstream freight transport organisation market.

The Authority examined CMA CGM's position on each of the routes to and from French Polynesia. CMA CGM holds a dominant position, if not a virtual monopoly, on the upstream market for the transport of goods by deep-sea container from Europe to French Polynesia. Goods from Europe account for more than 40% of imports into French Polynesia and are mainly goods that are widely consumed locally and require regular supply to Polynesian distributors.

These include food products, closely followed by intermediate goods, consumer goods and capital equipment goods.

By integrating the current market leader, the new entity would have added to its dominant position on the Europe-French Polynesia route the position of leading player on the downstream market for the organisation of transport to and from French Polynesia. This would have given it significant influence over the pricing and supply conditions of its competitors on the transport organisation market. After the transaction, it could have given preferential treatment to its own subsidiary in order to obtain lower prices and/or additional volumes from its competitors in the transport organisation market.

Such behaviour would have undermined the competitiveness of the merged entity's competitors in the market for the organisation of transport and could have deterred competitors from entering or expanding in the market, or even encouraged them to leave.

Given the market power that the new entity would have had after the transaction, the risk of an increase in the price of services and its impact on the selling price of goods to consumers could not be ruled out.

The competitive analysis also revealed the absence of any significant countervailing power capable of constraining a foreclosure strategy. The pressure exerted on CMA CGM by potential competitors was therefore insufficient.

The Authority therefore concluded that the notified transaction was likely to harm competition through vertical effects on the market for the organisation of freight transport.

Risk of access to certain confidential information of competitors in the freight transport sector.

The vertical integration created by the transaction would also have given the merged entity a competitive advantage through privileged access to confidential information resulting from negotiations between competitors in the shipping industry and CMA CGM on offers for a given customer or, alternatively, in the context of a tender.

This information could have been passed on to the downstream subsidiary, which competes with the freight forwarders on the market for the organisation of freight transport, with a view to positioning itself against the freight forwarders concerned and winning the end customer in question.

Structural remedies: The divestiture of Bolloré Logistics' maritime activities in French Polynesia.

In order to remove the competition concerns identified, the parties have undertaken to divest the maritime activities of Bolloré Logistics, corresponding to all the maritime freight organisation activities of Bolloré Logistics Polynesia, as well as the activities of Bolloré Logistics France relating to French Polynesia, in the form of a customer list to be transferred to the purchaser of the divested activities of Bolloré Logistics.

The sale of this business will provide an effective and proportionate solution to the competition problems identified.

On the one hand, the complete withdrawal of the new entity from maritime activities in French Polynesia eliminates the entire vertical link in question between CMA CGM and Bolloré Logistics. It therefore eliminates any risk of foreclosure, as the new entity will no longer have its own activities on the downstream market linked to the upstream market on which CMA CGM holds a dominant position.

Secondly, the scope of the commitments is limited to the organisation of maritime transport and does not cover Bolloré Logistics' organisation of air transport in French Polynesia or Bolloré Logistics' non-controlling minority stake in TTI Tahiti. In so far as they have no link with the upstream freight transport market and do not enable Bolloré Logistics to operate on the downstream maritime transport market (in the absence of any right to influence competitive behaviour), the APC considers that these activities are not necessary either to remedy the competition problem identified or to ensure the viability and competitiveness of the divested business.

This limitation of the scope of the business covered by the commitments ensures that the commitments will not have any potentially harmful effects on the other markets concerned, which do not give rise to competition concerns, and thus also helps to preserve the efficiencies generated by the transaction.

However, the scope of the divested business will include two exceptions which will allow CMA CGM to offer maritime freight organisation services without affecting the competitiveness of the divested business (in particular in view of the volumes involved and the non-competition obligations imposed on CMA CGM under the commitments):

- a limited list of current multi-destination customers of Bolloré Logistics;
- to non-limited multi-destination customers, provided that the turnover generated with each such customer to or from French Polynesia is less than 25% of the total turnover generated between that customer and CMA CGM.

Behavioural remedies to reinforce the structural commitment and its implementation.

The structural commitment sets out the criteria for the approval of the purchaser (independence, resources, skills, regulatory approvals, etc.) and is reinforced by additional behavioural commitments designed to ensure that the divestiture commitment is effective over time and to enable the future purchaser to continue the business that is the subject of the divestiture and to preserve the existence of effective competition in the market for services relating to the organisation of maritime freight transport.

In addition, these commitments are accompanied by implementation arrangements, including the use of two separate trustees appointed to monitor each of them:

- all these commitments in accordance with the normal procedures (appointment, remuneration, dismissal, etc. in accordance with the standard clauses set out in the national authority's guidelines on merger control);
- monitoring of the transfer to ensure that the transferred business is managed as a separate, transferable entity from the business retained by CMA CGM.

Finally, a review clause allows the Authority to

- grant an extension of the deadlines set out in the commitments; and/or
- to withdraw, modify or replace one or more of the commitments in exceptional circumstances.

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