

***Case No COMP/M.6917 - FSI/ MERIT/  
YILDIRIM/ CMA CGM***

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**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 25/06/2013

***In electronic form on the EUR-Lex website under  
document number 32013M6917***



## EUROPEAN COMMISSION

Brussels, 25.6.2013  
C(2013) 4131 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.6917 – FSI/ MERIT/ YILDIRIM/ CMA CGM  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 24 May 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Fonds Stratégique d'Investissement ("**FSI**", France), Merit Corporation ("**Merit**", Lebanon) and Yildirim Holding ("**Yildirim**", Turkey) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over **CMA CGM** (France) by way of purchase of shares (hereinafter the "**Transaction**")<sup>2</sup>.

#### **1. THE PARTIES TO THE TRANSACTION**

- (2) **FSI** is an investment fund that acquires minority shareholdings in listed and non-listed companies operating in various sectors and especially in environmental services, telecommunications, construction, infrastructure, hotels, industry, etc. FSI is controlled

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 153, 31.05.2013, p.6.

by the French public group Caisse des Dépôts et Consignations ("**CDC**"). **CDC** indirectly<sup>3</sup> controls **SNCM** which is active in the sector of maritime shipping services.

- (3) **Merit** is a holding company which does not have activity of its own in Europe besides providing auditing services for CMA CGM. Merit is controlled by CMA CGM's founder and CEO, Mr. Jacques Saadé, and his immediate family.
- (4) **Yildirim** is a joint stock company active in five main sectors: coal and metal, production and sale of fertilizer, mining and ferroalloys, shipping and ship buildings, and port management. Yildirim is owned and controlled by its founders, the Yildirim family.
- (5) **CMA CGM** is active in the sector of maritime shipping services, in particular containerised liner shipping and stevedoring services.
- (6) FSI, Merit and Yildirim are collectively referred to as the "**Notifying Parties**" and CMA CGM and SNCM as the "**Parties**".

## 2. THE TRANSACTION

- (7) Since 2011, CMA CGM is jointly controlled by Merit and Yildirim<sup>4</sup>.
- (8) Pursuant to the Investment Agreement, FSI shall proceed with an investment of USD 150 million in CMA CGM, through the subscription of bonds redeemable into ordinary shares to be issued by CMA CGM<sup>5</sup>. FSI's subscription was subject to an additional investment by Yildirim of USD 100 million through the subscription of bonds redeemable in preference shares representing on a fully diluted basis 4% of CMA CGM's share capital<sup>6</sup>. Consequently, *post* Transaction, Merit, Yildirim and FSI will respectively hold 68%, 24% and 6% of the share capital of CMA CGM.<sup>7</sup>
- (9) Decisions on the strategic commercial behaviour of CMA CGM, [...], require the approval of each of Merit, Yildirim and FSI<sup>8</sup>. In addition, FSI enjoys veto right on any investment in excess of [...]<sup>9</sup>. Therefore, FSI has de facto a say on [...].
- (10) Given these veto rights, CMA CGM will be jointly controlled by Merit, Yildirim, and FSI. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. UNION DIMENSION

- (11) The undertakings concerned CDC, CMA CGM<sup>10</sup> and Yildirim have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>11</sup>. At least two of them

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<sup>3</sup> CDC and Veolia Environnement jointly control Veolia Transdev, which, in turn, controls SNCM.

<sup>4</sup> The change from sole control by Merit to joint control by both Merit and Yildirim over CMA CGM was notified to the following competition authorities: China (clearance obtained on 27 December 2010), Cyprus (clearance obtained on 7 December 2010), Italy (clearance obtained on 22 December 2010), Turkey (clearance obtained on 23 December 2010) and Ukraine (clearance obtained on 14 December 2010).

<sup>5</sup> See [...].

<sup>6</sup> See [...].

<sup>7</sup> The remaining [...].

<sup>8</sup> See [...].

<sup>9</sup> See [...]. Yildirim also enjoys veto right on significant financial investments in excess of [...].

have a Union-wide turnover in excess of EUR 250 million<sup>12</sup>. Only CDC, but not CMA CGM and Yildirim, achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State (France). Therefore, the notified concentration has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

#### **4. MARKET DEFINITION**

- (12) CMA CGM provides short-sea Ro-Ro shipping services<sup>13</sup> from Marseille to Oran/Mostaganem (once a week), Marseille to Tunis (three times a week) and Marseille to Casablanca (once a week).
- (13) SNCM mainly provides short-sea passenger shipping services from Marseille to Corsica (three times a week), Sardinia (up to twice a week from April to October), Algeria (once a week to the port of Alger) and Tunisia (once a week to the port of Tunis). Essentially off season, SNCM also carries cargo on these lines.
- (14) CMA CGM is also engaged in the upstream market for provision of terminal services, i.e. cargo handling (or stevedoring services consisting of loading and unloading of vessels) and cargo storage.

##### **A. Horizontal overlaps: the market for short-sea Ro-Ro shipping services**

###### *1. Product market definition*

- (15) For the purpose of the Transaction, the Notifying Parties submit that the relevant product market is the market for short-sea Ro-Ro shipping services, with a possible distinction between Ro-Ro and Ro-Pax vessels<sup>14</sup>. In any event, they consider that the market definition may be left open since the Transaction would not significantly impede effective competition under any possible product market definition.
- (16) The Notifying Parties' views are in line with previous Commission's decisions<sup>15</sup> and have been broadly confirmed respondents to the market investigation.
- (17) For the purposes of the present case, there is no need to take any firm view as to the exact product market definition as no competition concern arises under any possible segmentation.

###### *2. Geographic market definition*

- (18) The Notifying Parties put forward that the geographic dimension of short-sea Ro-Ro shipping services must be defined in the same way as for containerized liner shipping

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<sup>10</sup> Merit only achieves turnover through CMA CGM.

<sup>11</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>12</sup> Namely [...].

<sup>13</sup> For the purpose of this case, "Ro-Ro" (Rolling-on/Rolling-off) is defined as the services offered with vessels which take on cargo via a loading ramp fitted as part of the vessel.

<sup>14</sup> For the purpose of this case, "Ro-Pax" is defined as the services offered with vessels carrying both passengers and cargo.

<sup>15</sup> See Cases COMP/M.6305 – *DFDS/C.RO Ports/Älvsborg*, 2 April 2012, recitals 19 *et seq.*, COMP/M.5756 – *DFDS/Norfolk*, 17 June 2010, recitals 11 *et seq.*

services, namely on the basis of single trades, defined by the range of ports which are served at both ends of the service. Consequently, they submit that the relevant geographic market could be defined as trades from Southern Europe (i.e. Portugal, Italy, Spain, and Southern part of France) to Maghreb (i.e. Morocco, Algeria, Tunisia and Libya) and back. However, taking a more conservative approach, the Notifying Parties consider a narrower market restricted to the port of Marseille only, and consider that ultimately the exact geographic scope can be left open.

- (19) The Notifying Parties' views are in line with previous Commission's decisions.<sup>16</sup> In particular, in the *CMA CGM/Delmas* case<sup>17</sup>, the Commission considered a market defined as trade from South Europe to other non-European areas (such as Maghreb) and back. Eventually, it assessed the effects of the transaction on a unidirectional Southern Europe-Maghreb trade<sup>18</sup>.
- (20) For the purposes of the present case, there is no need to take any firm view as to the exact geographic market definition as no competition concern arises under any possible segmentation.

## **B. Vertical links: the short-sea Ro-Ro terminal services**

### *1. Product market definition*

- (21) The Notifying Parties consider that the relevant market is the general market for short-sea Ro-Ro terminal services. They also suggest that terminal services for passengers, passengers with cars and pure Ro-Ro cargo require different infrastructures. In any event, they consider that the market definition may be left open since the Transaction would not significantly impede effective competition under any possible product market definition.
- (22) In its practice, while ultimately leaving open the market, the Commission contemplated in particular the possible segmentation of the terminal services between (i) short sea and deep sea terminal services and (ii) terminal services for Ro-Ro vessels and terminal services for Lift-on/Lift-off ("Lo-Lo"<sup>19</sup>) vessels<sup>20</sup>.
- (23) For the purposes of the present case, there is no need to take any firm view as to the exact product market definition as no competition concern arises under any possible segmentation.

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<sup>16</sup> See Cases COMP/ COMP/M.6305 – *DFDS/C.RO Ports/Älvsborg*, 2 April 2012, recitals 16 *et seq.*, COMP/M.5756 – *DFDS/Norfolk*, 17 June 2010, recitals 18 *et seq.*

<sup>17</sup> See Case COMP/M.3973 - *CMA CGM/Delmas*, 1 December 2005, recitals 8 and 11.

<sup>18</sup> The Commission looked at the effects of the transaction on a Southern Europe-Maghreb market separately from the south bound and north bound perspective.

<sup>19</sup> "Lo-Lo" vessels have been defined as vessels which use dock mounted cranes to lift and stack containers on vessels.

<sup>20</sup> See Cases COMP/M.5756 – *DFDS/Norfolk*, 17 June 2010, recitals 26-29; COMP/M.6305 – *DFDS/C.RO Ports/Älvsborg*, 2 April 2012, recital 11 *et seq.*

## 2. *Geographic market definition*

- (24) The Notifying Parties submit that the geographic scope of the market for short-sea Ro-Ro terminal services could be defined as the entire Mediterranean coast, including Barcelona and Genoa ports. However, taking a more conservative approach, the Notifying Parties consider a narrower market restricted to the port of Marseille only. Ultimately, the Notifying Parties argue that the exact geographic scope may be left open, as the transaction cannot be considered as triggering any significant impediment to competition under any plausible market definition.
- (25) In its previous practise, the Commission assessed the effects of the transaction (i) on a market limited to the port where was located the terminal subject of the transaction and (ii) on a market encompassing the catchment area of ports in a certain range<sup>21</sup>.
- (26) For the purposes of the present case, there is no need the take any firm view as to the exact product market definition as no competition concern arises under any possible segmentation.

## 5. COMPETITIVE ASSESSMENT

- (27) On 22 October 2012, CDC signed a preliminary agreement with Veolia Environnement to enter into discussions regarding the reorganization of Veolia Transdev's share capital and the related reorganization of SNCM's share capital structure. Subsequently, CDC would acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Veolia Transdev, with the exception of SNCM, by way of modification of its current shareholding. The reorganization of Veolia Transdev's share capital is subject to the prior sale of Veolia Transdev's 66% shareholding in SNCM to Veolia Environnement.<sup>22</sup> In this situation, the Transaction would not bring about any material merger specific effect. However, the Commission has investigated the competition effects of the current Transaction as the above-mentioned operation has not been completed yet.

### A. **Horizontal overlaps**

- (28) CMA CGM and SNCM's activities overlap on the following narrow markets: (i) the unidirectional short-sea Ro-Ro shipping services on the Marseille-Tunis lane and (ii) the unidirectional short-sea Ro-Ro shipping services on the Marseille-Algiers/Mostaganem/Oran lane.
- (29) The market shares of the different companies on the market for short-sea freight shipping services carried on Ro-Ro vessels in 2012 on the lanes (i) from Marseille to Tunis, and (ii) from Marseille to Algiers/Mostaganem/Oran are as follows:

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<sup>21</sup> See Cases COMP/M.6305 – *DFDS/C.R.O. Ports/Älvsborg*, 2 April 2012, recitals 16-18, COMP/M.5756 – *DFDS/Norfolk*, 17 June 2010, recitals 28 and 29.

<sup>22</sup> See Case COMP/M.6794 – *Caisse des dépôts et consignations/Veolia Transdev*, 26 April 2013, footnote 5.

**Table 1: Marseille – Tunis (2012 - in volume)**

	Marseille → Tunis	Tunis → Marseille
<b>CMA CGM</b>	[20-30]%	[20-30]%
<b>SNCM</b>	[0-5]%	[0-5]%
<b>Combined</b>	<b>[20-30]%</b>	<b>[20-30]%</b>
<b>Cotunav</b>	[40-50]%	[50-60]%
<b>DFDS - LD Lines</b>	[20-30]%	[20-30]%

*Source: Form CO*

- (30) Table 1 reflects that the combined market shares of Parties will be up to [20-30]% (on the Marseille-Tunis lane) with a negligible increment ([0-5]%) on both segments. Additionally, *post* Transaction, the Parties will face a competitive constraint by other credible market players such as the state-owned Tunisian operator Cotunav and DFDS - LD Lines.<sup>23</sup>

**Table 2: Marseille – Algiers/Mostaganem/Oran (2012 – in volume)**

	Marseille→ Algiers/Mostaganem/Oran	Algiers/Mostaganem/Oran → Marseille
<b>CMA CGM</b>	[20-30]%	[40-50]%
<b>SNCM</b>	[5-10]%	[0-5]% <sup>24</sup>
<b>Combined</b>	<b>[20-30]%</b>	<b>[40-50]%</b>
<b>CNAN MED</b>	[20-30]%	[20-30]%
<b>NISA</b>	[10-20]%	[10-20]%
<b>Marfret</b>	[10-20]%	[10-20]%
<b>Neptune Lines</b>	[5-10]%	[5-10]%
<b>Nolis</b>	[0-5]%	[0-5]%

*Source: Form CO*

- (31) Table 2 reflects that the combined market shares of Parties will be no more than [20-30]% on the Marseille-Algiers/Mostaganem/Oran lane with an insignificant increment of [5-10]%, while on the Algiers-Mostaganem-Oran/Marseille lane, the combined market shares would reach [40-50]% but with no merger-specific increment<sup>25</sup>. In addition, other competitors such as the well-established state-owned Algerian shipping company CNAN MED, as well as NISA, Marfret and Neptune Lines will continue to exert a significant competitive constraint on the Parties *post* Transaction<sup>26</sup>.

<sup>23</sup> Even though the Marseille – Tunis lane is operated by CMA CGM within a Vessel Sharing Agreement ("VSA") with DFDS – LD Lines, CMA CGM and DFDS – LD Lines market their services separately, as each company retains its own customers and has its own tariffs. In any event, taking into consideration the marginal increment brought about by the Transaction as well as the fact that the Parties will continue facing a significant competitive constraint from the state-owned Tunisian operator Cotunav, the existence of a VSA on the Marseille – Tunis lane does not change the conclusion of the competitive assessment of the Transaction.

<sup>24</sup> [...].

<sup>25</sup> If a line-by-line market delineation had to be made, for instance Marseille – Algiers and Marseille – Oran/Mostaganem, the Transaction would not give rise to any overlap with respect to the Parties' activities towards/from Algeria.

<sup>26</sup> On both lanes, respondents to the market investigation broadly confirmed the positions of the market participants.

### *Closeness of competition*

- (32) CMA CGM offers only pure short-sea Ro-Ro services while SNCM's main activity on both lanes is to provide passenger transport and incidentally short-sea Ro-Ro shipping services. SNCM provides short-sea Ro-Ro shipping services essentially off season, namely from September to June. The market investigation confirmed that CMA CGM and SNCM are not each other's closest competitor. According to [a customer]: "*CMA CGM and SNCM are not competitors at all*"<sup>27</sup>. Likewise, [a customer] indicated that: "*SNCM and CMA CGM are not active on the same markets. SNCM mostly provides services to passengers*"<sup>28</sup>, whereas, as mentioned by [a customer]: "*CMA CGM does not provide any Ro-Pax services*"<sup>29</sup>.
- (33) Additionally, since 2009, new regulatory constraints impose a general prohibition to deliver new vehicles to the Algiers port. Therefore, CMA CGM does not serve anymore the Algiers port while SNCM only serves this port in Algeria.

### *Possibilities of switching short-sea Ro-Ro shipping company*

- (34) It appears from responses to the market investigation that there is no brand loyalty with respect to short-sea Ro-Ro shipping services and customers switch from one operator to another quite easily<sup>30</sup>. Additionally, the shipping contracts are either quite short-term (less than one year) or concluded on the spot, as confirmed during the market investigation<sup>31</sup>.
- (35) Moreover, most market participants confirmed that most of the Parties' customers multi-source from alternative companies and hence have a fall-back solution should the combined entity increase its prices *post* Transaction. For instance, [a customer] indicated that: "*On the Marseille-Mostaganem lane, [a customer's name] uses each of the four companies which are active on this lane, in order to take advantage of competition between them*"<sup>32</sup>.

### *No elimination of an important competitive force*

- (36) First of all in terms of capacity, due to its Ro-Pax nature, SNCM dedicates only a small fraction of its capacities to the freight transport. Hence, on the basis of data provided by

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27 See the minutes of the conference call with [a customer] 2 May 2013: "[...] CMA CGM et la SNCM ne sont pas du tout en concurrence", paragraph 3.

28 See the minutes of the conference call with [a customer] on 29 April 2013: "Pour [a customer's name], la SNCM et CMA CGM ne sont pas sur les mêmes marchés. La SNCM offre des services pour les passagers [...]", paragraph 14.

29 See the minutes of the conference call with [a customer] on 30 April 2013: "CMA CGM ne fait pas du tout de Ro-Pax [...]", paragraph 8.

30 See the minutes of the conference call with DFDS – LD Lines on 31 May 2013: "Un client des services Ro-Ro peut changer facilement de prestataire" ("A customer can easily switch from one operator to another"), paragraph 7.

31 See the minutes of the conference call with [a customer] on 2 May 2013: "Il n'y a donc pas de contrats d'une durée particulière, tout se fait au coup par coup" ("There are no specific terms for the contracts, which are concluded on the spot"), paragraph 16.

32 See the minutes of the conference call with [a customer] on 2 May 2013: "[a customer's name] utilise sur la ligne Marseille-Mostaganem les quatre compagnies qui y sont présentes afin de faire jouer la concurrence entre tous les prestataires", paragraph 4.



the Parties, SNCM's capacity devoted to cargo in terms of linear meters amounted to [0-5]% on the Marseille-Algiers/Mostaganem/Oran lane and to only [0-5]% of the total capacity on the Marseille-Tunis lane in 2012. Second, SNCM gives priority to the boarding of passengers over goods. SNCM does not in principle offer Ro-Pax services in July nor August, as the demand from passengers is high enough to completely fill their vessels. As stated by [a customer]: "*SNCM gives priority to passengers. If there are more passengers than expected, the trucks will not be loaded onto the vessel*"<sup>33</sup>. Therefore, as confirmed by market participants, this creates a degree of uncertainty for shippers who therefore tend to favour pure Ro-Ro shipping companies.

- (37) Therefore, the Commission concludes that, given the small increment arising from SNCM's short-sea Ro-Ro shipping activities, the strong presence of other competitors, the easiness of switching between short-sea Ro-Ro shipping service suppliers for customers, the lack of closeness of competition as well as the absence of elimination of an important competitive force, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for short-sea Ro-Ro shipping services or any of its segments on the lanes from Marseille to Tunis and *vice versa* and from Marseille to Algiers/Mostaganem/Oran and *vice versa*.

## **B. Vertical links**

- (38) On March 2013, independently from the Transaction, CMA CGM acquired sole control over Marseille Manutention which operates the *Terminal Roulier Sud*, which provides short-sea Ro-Ro terminal services in the port of Marseille.
- (39) SNCM operates solely its own terminals in the Marseille port, where it outsources the handling of its cargo to [...] – as opposed to the handling of passengers, which it internalizes.<sup>34</sup>
- (40) First, on a segment for "pure" short- sea Ro-Ro terminal services, Marseille Manutention enjoys quite a limited market position ([10-20]%) while on an overall market for Ro-Ro terminal services Marseille Manutention has an even smaller market share (*ca.* [5-10]%) . *Post* Transaction, there would be a number of credible players on the upstream segment for "pure" short-sea Ro-Ro terminal services, as well as on the broader upstream market for overall short-sea Ro-Ro terminal services<sup>35</sup>. In addition, there would be no vertical link between the Parties' activities, since SNCM exclusively operates Ro-Pax vessels whereas Marseille Manutention only provides "pure" Ro-Ro terminal services. In addition, it seems that SNCM could hardly become a customer of Marseille Manutention since the handling of Ro-Pax vessels requires a dedicated infrastructure, as well as

<sup>33</sup> See the minutes of the conference call with [a customer] on 29 April 2013: "*L'avantage est donné aux passagers, qui seront ainsi prioritaires sur les remorques : s'il y a davantage de passagers que prévu initialement, les remorques resteront à quai*", paragraph 7.

<sup>34</sup> Whilst SNCM does not provide any cargo terminal services to third parties, it provides terminal services for passengers for [a customer's name] and [a customer's name] vessels in the port of Marseille. In any case, the Transaction does not lead to any overlap on the Ro-Pax terminal services segment as CMA CGM does not provide any passenger terminal services in Marseille.

<sup>35</sup> The Parties would face *post* Transaction a competitive constraint from Socoma (which holds Socoman and Intramar Roro), from Compagnie Méridionale de Manutention, a subsidiary of Compagnie Méridionale de Navigation, and from Nicolas Frères.

appropriate regulatory approvals. Finally, the market investigation did not yield any concern. Therefore, the Commission considers that the Transaction would not give rise to any risk of input foreclosure.

- (41) Second, the increment brought about by SNCM on the downstream market for short-sea Ro-Ro shipping services is comprised between 0 and 5%. Furthermore, SNCM operates its own terminal. Therefore, the Commission therefore considers that the Transaction would not give rise to any risk of customer foreclosure.

## **6. CONCLUSION**

- (42) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.
- (43) The present decision is adopted without prejudice to applicable State Aid rules.

*For the Commission,  
(signed)  
Michel BARNIER  
Member of the Commission*