

September 2018

Ports and Free Zone Infrastructure in the Republic of Djibouti: Public Notice

DP World Ltd. gives notice that its Concession Agreement to operate the Doraleh Container Terminal in Doraleh, Djibouti, awarded by the Government of Djibouti to Doraleh Container Terminal S.A., or DCT, a joint venture controlled by DP World, remains legally binding on the Government and in full force and effect.

The Concession Agreement conferred on DCT the right to operate the port, which it designed, developed and built, and in turn DP World was mandated to manage the port. The Agreement also gave DCT and DP World exclusive rights to build and operate any other container ports and free zones in Djibouti.

On 22 February 2018, the Government of Djibouti unlawfully seized control of the Terminal, forced DP World employees to leave the country and purported to terminate the Concession Agreement by passing certain executive decrees.

DP World and DCT have commenced a new arbitration against the Government of Djibouti due to this unlawful seizure and purported termination at the London Court of International Arbitration (LCIA). By an Award delivered on 31 July 2018, the Sole Arbitrator (who is an English Queen's Counsel and a Professor of Law, based in Switzerland) has ruled in favour of DP World and DCT. The Award states that notwithstanding the Djiboutian Law on Strategic Infrastructure Contracts and the executive decrees issued by the President of Djibouti targeting DCT, the Concession Agreement remains valid and binding. The Tribunal recognised the parties' contractual freedom to agree to English law as the governing law of the Concession Agreement. English law does not permit a State to use its domestic law to try to escape from its contractual obligations.

Furthermore, the Concession Agreement was also upheld in 2017 as a valid and binding contract under English law, by another distinguished tribunal of arbitrators (one a former member of the United Kingdom Supreme Court, another a member of the English Court of Appeal, and the third a leading Queen's Counsel and independent arbitrator). That arbitration was commenced by the Government against DP World and DCT making false allegations of corruption against DP World in an attempt to invalidate the Concession Agreement. The Tribunal dismissed those allegations entirely, ruling that the deal was fair and reasonable for the Government and has brought tens of millions of dollars in benefit to Djibouti.

In a related proceeding, the High Court of England & Wales agreed that the Concession Agreement had been a great financial success for Djibouti and rejected any allegations of bribery made by the Government. The decision of the High Court was confirmed by the Court of Appeal of England & Wales.

This week, the High Court of England & Wales granted an injunction restraining Djibouti's port company, Port de Djibouti S.A. from acting inconsistently with its joint venture agreement with DP World or attempting to remove DP World's nominated directors from the Board of the joint venture company, which DP World controls pursuant to the parties' agreements.

The Concession Agreement gives DCT and DP World complete exclusivity over container handling facilities within the territory of Djibouti. Moreover, another Concession Agreement between the Government and DP World signed in 2004 mandates that any new port of free zone facility within the territory of Djibouti can only be developed with the consent of DP World, should DP World choose not to develop such facility itself.

There have been reports that the Government of Djibouti is contracting with other companies to build and operate other port and free zone facilities in Djibouti in violation of DP World and DCT's exclusivity rights. DP World and DCT are the lawful holders of rights in respect of the ownership and operation of the container shipping terminal at Doraleh, Djibouti. There have been successive judicial findings to that effect. DP World is also the lawful holder of an exclusive right to develop other ports and free zones within the territory of Djibouti.

By this public notice, DP World and DCT hereby inform and caution members of the ports and logistics industry, the shipping industry and the public in general that they will pursue all available legal recourse, including claims for injunctive relief and damages, against any person or entity that seeks to interfere or otherwise violate DP World and DCT's lawful rights with respect to Doraleh Container Terminal, and other ports and free zone facilities in the territory of Djibouti.

For DP World Ltd