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Antwerp, October 1, 2023

Your ref.:
Our ref.: Euronav nv / Frontline

Dear sir,

Re.: EURONAV NV / FRONTLINE

I was asked, on behalf of Euronav nv, to deliver an independent opinion on (i) the chances of success of the arbitration proceedings initiated by Euronav against, among others, Frontline, and (ii) the potential damages that Euronav could claim in these proceedings.

The following opinion is based on the documents transmitted to me, namely:

i. The Combination Agreement (CA);
ii. The Termination Letter d.d. 9 January 2023;
iii. The Euronav Request for Arbitration;
iv. The Emergency Arbitral Award;
v. The Euronav draft Statement of Claim;
vi. The FTI Report d.d. 20 July 2023;
vii. The Preliminary legal analysis by JonesDay;
viii. Pre- and postcontractual synergy documents.

1. Analysis of the claim of Euronav that the termination of the CA was unlawful

1. In its Termination Letter, Frontline mentioned the following termination grounds:

- The Tender Offer Filing Conditions have not been satisfied or waived on or before 31 December 2022 as required by the CA, since the Consideration Shares have not been approved for listing on Euronext Brussels and NYSE;
- The Tender Offer Filing Conditions have not been satisfied or waived on or before 31 December 2022 as required by the CA, since Euronav has not resolved the change in control issues;
- The Merger Conditions are not capable of satisfaction, since CMB has accumulated 25% of voting rights in Euronav, and parties have not been able to agree on an alternative transaction structure to achieve the Combination.

The validity of these termination grounds under Belgian law will be examined below.[1]

1.1. Lack of listing approval of the Consideration Shares

2. According to article 5.3.1 (f) of the CA, the obligation of Frontline to proceed with the Tender Offer Filing and the obligation of Euronav pursuant to Clause 3.2.8 was conditional upon the approval of the Consideration Shares[2] for listing on the regulated market of Euronext Brussels, OSE and NYSE, subject to the Tender Offer Completion.

According to article 14.1 (a) iv of the CA, the CA may be terminated by either party if the Tender Offer Filing Conditions have not been satisfied (or waived) in accordance with this Agreement on or before 31 December 2022.

It is not disputed that per 31 December 2022, the Consideration Shares had not been approved for listing on the regulated market of Euronext Brussels and NYSE.

From the combined reading of these provisions follows *prima facie* that the CA could indeed be lawfully terminated by Frontline.

3. Upon closer analysis, however, the validity of this position seems doubtful.

Under article 1134, paragraph 3 of the (old) Civil Code, contracts must be enforced in good faith. Pursuant to Article 1135, contracts bind not only to what is expressly provided for therein, but also to all the consequences that equity, custom or law assign to the obligation, according to its nature.

The theory of good faith implies that in the performance of their contract, the parties should behave as is expected of reasonable contracting parties, according to the requirements of reasonableness and fairness. In light of this, the legal doctrine often distinguishes between the

[1] According to article 19.1 of the CA, this Agreement and any non-contractual obligations arising out of or in connection with it, the relationship between the Parties and the conduct of any negotiations for the transactions contemplated herein shall be governed by, and construed in accordance with, the laws of Belgium.

[2] I.e. the new shares that Frontline would have had to issue in exchange for Euronav shares pursuant to the Tender Offer.

complementary function and the moderating function of good faith. The moderating or limiting function of good faith implies that a contracting party is prohibited from exercising the rights arising from the contract in a manner contrary to what can be expected of a reasonable contracting party. This moderating effect corresponds to the prohibition of abuse of rights. The complementary effect of good faith implies a duty of cooperation and a duty of loyalty for the parties in the performance of their contract.[3]

The termination of the CA by Frontline on account of a lack of listing approval, seems in violation of the obligation to execute the contract in good faith, on two grounds:

- Even though the CA does not stipulate this explicitly, it can be argued that the general duty to act in good faith implies that the lack of listing approval cannot be invoked as a termination ground if this lack of listing was willfully caused by the actions or the inactions of the terminating party herself. Euronav has argued that "*in the period between the Agreement Date and 31 December 2022, FRONTLINE did not take the actions reasonably necessary or appropriate to ensure registration and/or listing of the Tender Offer Consideration Shares on Euronext Brussels, OSE and NYSE upon completion of the Tender Offer. Contrary to Belgian law (and ironically), FRONTLINE is now using its own failure to comply with the CA to assert termination of the CA*".[4] Under the CA, it was indeed the contractual obligation of Frontline to "*take such actions deemed reasonably necessary or appropriate to proceed with Tender Offer Filing and ensure registration and/or listing of the Tender Offer Consideration Shares on Euronext Brussels, OSE and NYSE*".[5] If Euronav could successfully establish before the arbitration tribunal that the lack of listing approval was caused by the inactivity of Frontline (which is a factual issue that I am not able to assess based on the documents at my disposal), it could convincingly argue that Frontline cannot in good faith invoke this lack of listing approval as a ground for termination, in spite of the literal wordings of the CA that makes no distinction depending on the cause of the non-approval.

  In this respect, an analogy could be made with the potestative condition. The potestative condition under which an obligation is entered into makes it null and void insofar as its fulfillment depends solely on the will of the committing party.[6] The underlying idea is that in that case the contracting party commits to nothing, so that the core of what constitutes a legal commitment is missing.[7] The same can be said of a clause under which a party's own non-performance entitles him to unilaterally terminate the contract.

- Furthermore, it could be argued that the lack of listing approval per 31 December 2022, regardless of its cause, cannot in good faith lead to the termination of the CA per 9 January 2023. Abuse of law consists in the exercise of a right in a manner manifestly beyond the limits of the exercise of that right by a prudent and thoughtful person; this is the case, *inter alia*, when the prejudice caused is disproportionate to the advantage sought or obtained by the right holder.[8] It could be argued that terminating a complex contract that

[3] F. VERMANDER, "De aanvullende werking van het beginsel van de uitvoering te goeder trouw van contracten in de 21ste eeuw: inburgering in de rechtspraak, weerspiegeling in de wetgeving en sanctionering", *TBBR* 2004, afl. 10, 572-582; H. BOCKEN, "De goede trouw bij de uitvoering van verbintenissen", *RW* 1989-90, 1041-1049

[4] Request for arbitration p. 38 n° 98.

[5] Art. 3.2.4.

[6] Cass. 25 November 1988, *Arr.Cass*. 1988-89, 373.

[7] A. DE BOECK, "Zuiver potestatieve voorwaarden in het licht van de artikelen 1174 en 1178 BW: een blik op huidig en komend recht", *TBBR* 2018, afl. 6, 319.

[8] Cass. 27 April 2022, C.19.0435.N.

envisages the merger of two companies in three distinct steps[9] over a period of several years, the first step having already been completed, on the rather trivial ground that the listing approval deadline (a condition for initiating the second step) had been missed by a mere nine days, is disproportionate and constitutes an abuse of rights, and that a simple extension of the contractual deadline for the listing approval would have been a more reasonable approach.

In light of these considerations, it is my opinion that the first ground for termination is rather unconvincing, and that there is a reasonable chance that the arbitral tribunal will reject this ground for termination.

1.2. Change of control issues

4. According to article 5.3.1 (g) of the CA, the obligation of Frontline to proceed with the Tender Offer Filing and the obligation of Euronav pursuant to Clause 3.2.8 was conditional upon the resolution, in a manner satisfactory to each Party, of any potential change in control issues in respect of any material contract or other material arrangement to which Euronav or Frontline is a party.

According to article 14.1 (a) iv of the CA, the CA may be terminated by either party if the Tender Offer Filing Conditions have not been satisfied (or waived) in accordance with this Agreement on or before 31 December 2022.

5. Euronav contests the existence of change of control issues per 31 December 2022. It maintains that it has provided all required waivers of the change of control provisions to its financing agreements to Frontline, and that as to the bonds, it has ensured that a revolving credit facility in place can absorb any potential exercise of put options without any impact on the balance sheet, liquidity, or leverage.[10]

This, too, is to a large extent a factual issue. That being said, the duty to act in good faith comes in to play here as well. The condition of a matter being resolved "*in a manner satisfactory to each Party*" does not give a contracting party a blank check to unreasonably maintain that an issue has not yet been adequately settled. If Euronav could indeed establish that the change of control issues were indeed, in all reasonableness, 'resolved' per 31 December 2022, so that Frontline is acting in bad faith by claiming to be dissatisfied for the purpose of article 5.3.1 (g) CA, this would lead to the conclusion that the termination on this ground was unlawful.

Furthermore, even if Frontline was within its rights to be dissatisfied with the resolution of the change of control issues per 31 December 2022, it could again be argued that terminating a complex contract that envisages the merger of two companies in three steps over the period of several years, on the ground that the deadline for resolving the change of control issues (a condition for initiating the second step) had been missed by a mere nine days, is disproportionate and constitutes an abuse of rights (especially if it could be shown that Euronav had already taken

[9] Being (i) the relocation of Frontline from Bermuda to Cyprus, (ii) a public tender offer by which Frontline would seek to acquire at least 50% + 1 of the shares of Euronav, and (iii) a squeeze-out or a merger. Only the first step has been completed.

[10] Request for arbitration p. 60 n° 174-175.

significant steps to resolve these issues), and that a simple extension of the contractual deadline for the resolution of these issues would have been a more reasonable approach.

In light of these considerations, it is my opinion that the second ground for termination is equally unconvincing, and that there is a reasonable chance that the arbitral tribunal will reject this ground for termination.

1.3. Blocking minority by CMB

6. According to article 5.4.1 (d) of the CA, the Merger Completion was conditional upon the parties' respective shareholders' meetings having resolved, with the legally required quorum, to approve all necessary corporate resolutions to give effect to the Merger.

According to article 5.4.4 of the CA, each Party shall keep the other Parties advised of the progress towards the satisfaction of the Merger Conditions and shall promptly notify the other Party if it becomes aware of any matter that shall cause any of the Merger Conditions not to be capable of satisfaction. In such case, the Parties shall meet and in good faith discuss and negotiate and use their best efforts in trying to agree on an alternative transaction structure with the aim to achieve the Combination.

According to article 14.1 (a) ii of the CA, the CA may be terminated by either party if the Parties have not reached an agreement on an alternative structure to complete the Relocation and/or the Combination, in accordance with, inter alia, Clause 5.4.4.

7. It is not disputed between the parties that CMB has acquired 22.929% of the issued shares, and more than 25% of the voting rights, allowing it, should it wish, to pursue a blocking of the merger. Nor is it disputed between the parties that CMB has indeed expressed its intention to block a Merger vote.

Nevertheless, it seems to me that the aforementioned articles cannot be viewed in isolation from article 12.6 of the CA, that stipulates that "*for the avoidance of doubt, without prejudice to Clauses 10.2 and 11.2 and without prejudice to Clause 14.1(a)(x), no action of CMB shall give any right to any Party to terminate this Agreement*". This clause seems to have been inserted because the parties foresaw difficulties regarding CMB already at the time of the conclusion of the CA. The clause seems unambiguous in that it prevents Frontline from invoking the acquisition of a blocking minority by CMB.

It is my opinion that the third ground for termination is therefore the least convincing, and that there is a good chance that the arbitral tribunal will reject this ground for termination.

8. In its Request for arbitration, Euronav has raised other arguments besides article 12.6 of the CA to contest this termination ground. For example, it has argued that the "*hypothetical impossibility*" of the merger "*can now, prior to the Tender Offer, not be applied as it only becomes relevant following a Tender Offer where the parties further pursue the Merger*".[11] This, however, seems not very convincing to me. Frontline could reasonably argue that under the CA, the parties intended a combination of Euronav with Frontline, to be accomplished in three consecutive steps

[11] Request for arbitration p. 47 n° 143.

(relocation, tender offer, merger or squeeze-out), so that, insofar it became clear that the third step would be impossible to materialize, this impossibility could indeed be raised as a ground for termination even if the second step was yet to be taken. At any rate, article 14.1 (a) ii of the CA has not been made conditional upon the completion of the relocation and/or the tender offer.

Euronav has furthermore argued that "*the CA clearly shows that a scenario of the Tender Offer without Merger (or full Combination) as "endpoint" of the CA was indeed possible*".[12] It is for the arbitrators to assess the common intention of the contracting parties, yet it seems to me that Frontline could reasonably argue that a merger or squeeze-out was indeed the envisaged 'endpoint'. This could reasonably be inferred from, inter alia, article 14.1 (a) vii of the CA, by which any party could terminate the agreement if they failed to agree on alternative reorganisations or corporate actions by Euronav *for the purpose of achieving the Combination*.

Finally, Euronav has argued that "*the impossibility of satisfaction of the Merger Condition is incorrect. Although CMB has expressed its intention to block a Merger vote, it is not certain that it would retain such position following a Tender Offer through which a large majority of the EURONAV shareholders express their support for the Merger and to which CMB would be put in a position to abuse its minority position*".[13] This too seems rather unconvincing in light of CMB's repeated public statements along with its building of a blocking minority.

Whilst these alternative arguments do not seem entirely convincing, this does not affect the strength of the argument based on article 12.6 of the CA which would suffice to reject the third ground for termination.

2. Analysis of possible relief

9. The foregoing shows that Euronav has a reasonable chance of succeeding on the merits, in the sense that the legality of the three grounds for termination invoked by Frontline in its termination letter is subject to serious dispute. The question therefore rises as to the relief that can be sought by Euronav.

2.1. Specific performance

10. In its request for arbitration, Euronav has sought to condemn the opposing parties to comply with their respective obligations under the CA and to order the specific performance of the CA by each Respondent of its respective obligations, under a financial penalty by day of non-compliance.[14]

11. The legality under Belgian law of specific performance as a form of relief for the unlawful termination of a contract is, however, disputed. Supreme Court case law both in Belgium and France seems to indicate that even an irregular termination terminates the contract irrevocably,

[12] Request for arbitration p. 49 n° 148.

[13] Request for arbitration p. 51 n° 153.

[14] Request for arbitration p. 62 n° 184.

with the judge being unable to order continued performance of the contract.[15] Specific performance is limited to the contractual obligations that already existed and were due before the (even unlawful) termination.[16] It can, however, not extend beyond that.

Under the CA, this would mean that specific performance cannot lead to the forced execution of the second (tender offer) and third (merger or squeeze-out) step, since these steps were not yet due at the time of the termination. Indeed, the tender offer filing conditions were not yet met, with at any rate the listing approval of the Consideration Shares not yet having been obtained as required under article 5.3.1 (f) of the CA.

It should however be noted that the aforementioned Supreme Court position is heavily criticized in Belgian doctrine.[17] Euronav may find support in this criticism to pursue its claim for specific performance anyhow.

2.2. Damages

12. In the event of culpable breach of a contractual obligation, the debtor is obliged to compensate the damage caused to the creditor as a result. The purpose of this compensation obligation is to put the creditor, as far as possible, in the hypothetical situation in which he would have found himself had the breach not occurred. Compensation should not impose a greater burden on the debtor.[18]

13. The question thus raises as to what the situation would be in which Euronav would have found itself had the unlawful termination not occurred. There are many uncertainties that complicate answering this question.

First, it is not at all certain that, absent the unlawful termination of the CA, the second step (tender offer filling) would effectively have occurred. The unlawful termination per 9 January 2023 does not affect the fact that at that time, the approval for the listing of the Consideration Shares had yet to be obtained, so that this tender offer filing condition was not yet fulfilled.[19] Furthermore, there exists some discussion between the parties as to the resolution of the change of control issues, which was another tender offer filing condition.[20] Euronav will want to establish before the arbitral tribunal that these tender offer filing conditions would at any rate have been fulfilled if the CA had not been unlawfully terminated, yet it is likely that Frontline will dispute that claim.

In this sense, there seems to be an opportunity loss. The existence of an opportunity does not require certainty of acquiring the hoped-for result. The injured party may thus obtain damages for the loss of an opportunity even if, but for the error, the hoped-for result would not have been

[15] Cass. 9 March 1973, *Arr.Cass*. 1973, 671, in which it was held that "*since unilateral termination entails the immediate nullification of the contract, it makes recourse resort to forced performance, be it by equivalent, legally impossible so that it only can give rise to compensation for proven damage*". See extensively S. DE REY and S. STIJNS, "Sancties wegens wanprestatie: kroniek van de recentste evoluties", *TBBR* 2022, 8-9.

[16] Cass. 4 May 2020, S.19.0075.F.

[17] See a.o. e F. VERMANDER, *De opzegging van overeenkomsten*, Antwerp, Intersentia, 2014, 940-941; P. WÉRY, "*L'agencement des sanctions dans le contentieux de l'inexécution contractuelle*" in S. STIJNS en P. WÉRY (eds.*), Le juge et le contrat/De rol van de rechter in het contract*, Bruges, die Keure, 2014, 465-466; S. DE REY, *Herstel in natura*, Bruges, die Keure, 2019, n° 928.

[18] Cass. 3 October 2019, C.17.0621.N.

[19] Article 5.3.1 (f) of the CA, see also *supra*.

[20] Article 5.3.1 (g) of the CA, see also *supra*.

obtained with certainty. In compensation for the loss of an opportunity to acquire an advantage or avoid a disadvantage, only the economic value of the lost opportunity is eligible for compensation. This value cannot consist of the full amount of the ultimate disadvantage or advantage lost. The judge should consider the degree of probability of the favorable outcome of the opportunity when estimating damages.[21] Typically, this takes the form of a formula 'a x b' whereby 'a' is the full value of the hoped-for result and 'b' is the percentage probability that this hoped-for result would have materialized.

Second, under the hypothesis that the tender offer would indeed have taken place, there is no certainty either that the offer would have been successful, or, more specifically, that all the Tender Offer Conditions as specified in article 5.3.3 of the CA, would have been fulfilled. It is, for example, not certain that the tender offer would effectively result in Frontline acquiring 50% +1 of all the outstanding shares in Euronav (article 5.3.3 c of the CA).

Here too, this seems to be qualifiable as an opportunity loss. This would lead to a formula 'a x b x c', whereby 'a' is the full economic value of Euronav being taken over by Frontline and becoming part of the same group, 'b' is the percentage probability that the tender offer would effectively have been filed (i.e. that all Tender Offer Filing Conditions would eventually have been fulfilled), and 'c' is the percentage probability that the tender offer would have been successful (i.e. that all Tender Offer Conditions would have been fulfilled).

To this could be added a further layer of complexity, by distinguishing between the scenario in which the tender offer would result in Frontline acquiring less than 75% of the voting rights in Euronav, and the scenario in which the tender offer would result in Frontline acquiring at least 75% of the voting rights (which would enable a merger between Frontline and Euronav which, in turn, would arguably lead to higher synergies and therefore a larger factor 'a'). In light of the declarations and the actions of CMB, however, the scenario of Frontline acquiring at least 75% of the voting rights seems rather unlikely. In this regard, it may be pointed out that under Belgian law the lost opportunity must be sufficiently serious and real.[22] It seems doubtful that the 75%-scenario reaches this threshold.

14. The question then arises as to the economic valuation of Euronav being taken over by Frontline and becoming part of the same group (the factor 'a'). This, too, is obviously a difficult exercise. Moreover, the question is not a legal but largely an economical one. It amounts to the synergies that would have benefited Euronav as a result of its inclusion in the Frontline group.

The FTI expert's report d.d. 20 July 2023 has valued Euronav's losses at USD 494.9 million under a Partial Combination Scenario (in which Frontline would have acquired more than 50% of the shares yet less than 75% of the voting rights). As mentioned before, this figure should then be multiplied by (i) the percentage probability that the tender offer would effectively have been filed (i.e. that all Tender Offer Filing Conditions would eventually have been fulfilled), and (ii) the percentage probability that the tender offer would have been successful (i.e. that all Tender Offer Conditions would have been fulfilled).

The FTI expert's report also contains a valuation for a Full Merger Scenario, in which Frontline would have acquired 75% of the voting rights. Apart from the fact that this scenario is rather unlikely to be accepted as a sufficiently real possibility to qualify as an opportunity loss, as noted above, such a scenario carries the risk of raising complex legal issues. In particular, the question

[21] Cass. 15 May 2015, C.14.0269.N; Cass. 21 October 2013, C.13.0124.N.

[22] S. LIERMAN, "Verlies van een kans bij medische ongevallen", *NjW* 2005, 614-615; Q. DE RAEDT, "Het verlies van een kans op het verlies van een kans", *T.Gez*. 2012-13, 230.

may be raised as to whether Euronav can claim compensation at all for its failure to merge with Frontline, since this scenario would effectively entail the legal death of Euronav.[23] A somewhat tenuous but not entirely implausible link could be made to the Supreme Court's case law on wrongful life, in which it was held that there is no compensable damage within the meaning of Articles 1382 and 1383 of the Civil Code (extra-contractual liability) when the comparison must be made between the state of a person's disabled existence and his non-existence.[24] In more or less the same vein, it could be argued that there is no compensable damage when the comparison must be made between the state of a legal entity's existence and its non-existence after a successful merger.

15. It is likely that Frontline will dispute the FTI report's findings and come up with its own report. It might try to refute the magnitude of the synergies, and/or the allocation of those synergies between Euronav and Frontline.

Regarding the magnitude of the synergies, this is obviously an economical issue and not a legal one. Nevertheless, Frontline will be hampered by its own calculations made in the run-up to the CA. Since Frontline initially estimated the synergies to be approximately 85-90 mil. USD per annum (a higher estimate than the one of Euronav), and since parties eventually settled on an estimation in the range of 60 million USD per annum, Frontline will find itself in a weak position to claim now that the Combination would have resulted in no or fewer synergies. This would contradict its own calculations and (public) statements leading up to the Combination.

Regarding the allocation, Frontline might try to argue that eventual synergies would have belonged to, and have benefitted, Frontline instead of Euronav, since from an economic point of view, the ultimate benefit of the synergies resulting an acquisition tends to accrue to the acquiring company rather than to the acquired company controlled by it.[25] It should be noted in this regard that the CA contains no arrangement on the allocation of synergies that would result from the Combination; more specifically, Euronav does not seem to have a contractual right to a specific portion of the created synergies. In a worst case scenario, this could lead the arbitrators to value the damages on Euronav's behalf at zero, even though this seems rather theoretical. Euronav could respond by referring to the pre- and post-contractual synergy documents, prepared *in tempore non suspecto*, from which it can be inferred that more than 50% of the synergies would flow to Euronav. Furthermore, the FTI report also addresses this issue, allocating to Euronav 59% of the synergies and costs under a Partial Combination Scenario.[26]

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[23] See in this sense J. CHAN and M. PETRIN, "Lost Synergies and M&A Damages: Considering Cineplex v. Cineworld", *Canadian Bar Review* 2022, vol. 100, 295: "*Assessing damages based on future synergies of a specific target entity may become outright futile when said target would not survive post-closing, be it because the acquisition itself is structured as a merger or amalgamation, or the target would be merged with another entity as part of a buyer's post-closing reorganization activities. Either way, a legal entity that ceases to exist can hardly be said to have benefited from future excess cash flows, unless we assume that there is a short time window, a "logical split second" between the closing of a transaction and the target's disappearance, during which future benefits accrue that can later be claimed on the entity's behalf*."

[24] Cass. 14 November 2014, C.13.0441.N.

[25] See in this sense J. CHAN and M. PETRIN, "Lost Synergies and M&A Damages: Considering Cineplex v. Cineworld", *Canadian Bar Review* 2022, vol. 100, 295: "*The economic reality is that within corporate groups, any benefits in the form of cash flows or otherwise can be shifted or allocated as the group (or its management) sees fit. The ultimate benefit, especially in case of wholly owned subsidiaries, accrues to the parent company, as the Cineplex court noted. This does not mean that separate legal personalities of group entities should be disregarded, but it does signify that there is a high level of artificiality and uncertainty in assumptions that synergies accrue, and will continue to accrue in the future, to a certain entity within a group […] It would mean that if a court can be convinced that projected transactional synergies would have accrued only or in large part to entities other than the target, the target's damages would have to be small or zero*".

[26] FTI report p. 54-55.

3. Conclusion

16. From the foregoing, I believe I can conclude that Euronav's position as to the unlawfulness of Frontline's termination of the CA is quite strong. In my opinion, there is a good chance that the termination will indeed be considered irregular under Belgian law by the arbitral tribunal, since none of the termination grounds fully convince.

Euronav's position on relief seems somewhat more challenging. The forced continuation of the CA, under a financial penalty, seems dubious in light of the case law of the Belgian Supreme Court which seems to limit specific performance to the contractual obligations that already existed and were due before the (even unlawful) termination. As to damages, the matter can be qualified as loss of an opportunity: Euronav has lost the opportunity to become a part of the Frontline group. However, it is very difficult to calculate both the benefits of the synergies that such an acquisition would have generated and the chance of the acquisition effectively happening (i.e. fulfillment of the Tender Offer Filing Conditions and the Tender Offer Conditions). Both calculations require significant assumptions and a high degree of discretion. Furthermore, Euronav will have to establish that these synergies would have, at least partially, accrued to Euronav and not (exclusively) to Frontline as the parent company. The fact that the CA contains no arrangement on the allocation of synergies, together with the economic reality of parent companies controlling the cash flows of the entities they control, substantially weaken Euronav's position in this regard.

In light of the foregoing, it is difficult to give a concrete valuation of Euronav's claim. The valuation in the FTI expert's report at USD 494.9 million under a Partial Combination Scenario (disregarding the rather unlikely Full Merger Scenario) seems, at any rate, an upper limit. On the other hand, Euronav could reasonably argue that it has at least suffered some damage in the form of missed synergies. Given that Frontline will undoubtedly come up with its own figures, and that the arbitral tribunal may itself appoint an expert or a panel of experts to come to a more impartial valuation, it is, at this stage, impossible to give a more detailed estimate of the value of the claim.

Yours sincerely,

Johan Verbist (Signature)
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Johan Verbist
Attorney with the Supreme Court