

Proposed Commitments from Hong Kong Seaport Alliance Questions and Answers

1. What is the Hong Kong Seaport Alliance (Alliance)? How do the port terminal operators cooperate?

The Hong Kong Seaport Alliance is a contractual joint venture between four port terminal operators (Parties) in Hong Kong, namely Hongkong International Terminals Limited (HIT), Modern Terminals Limited (MTL), COSCO-HIT Terminals (Hong Kong) Limited (CHT), and Asia Container Terminals Limited (ACT). Through the Alliance, the Parties jointly operate and manage their 23 berths across eight terminals at Kwai Tsing port (Kwai Tsing) in Hong Kong. Their cooperation includes:

- a. **Operational coordination**, including pooling and sharing of all capacity and resources related to handling cargo, joint planning and allocation of berthing space;
- b. **Commercial coordination**, including the adoption of a joint approach and processes with respect to pricing, marketing strategy, commercial terms and customer allocation; and
- c. **Financial coordination**, involving the sharing of operational profits and losses.

According to the Parties, they aim to achieve “Terminal Neutrality” through the Alliance, that is, while shipping line customers will continue to contract with individual Parties, each Party would be indifferent as to which of the Parties’ terminals a customer’s vessel berths at and receives services from.

The Parties commenced several key aspects of their cooperation on 1 April 2019. The fifth port terminal operator at Kwai Tsing, Goodman DP World Hong Kong Limited (DP World), is not party to the Alliance.

2. What are the Commission’s concerns with the Alliance arising from its investigation?

The Commission has found that the Alliance is likely to raise competition concerns in the Gateway market and other related markets. Concerns are also likely to arise as regards the provision of reciprocal overflow services to DP World (refer to Figure 1&2 for a summary).

a. Gateway market:

The Parties are unlikely at this time to be subject to effective competitive constraint in this market on the basis that, among other reasons:

- From the perspective of shipping line customers using Kwai Tsing, other ports in the region, absent improved procedures and efficiencies, are unlikely to be considered alternatives for Gateway cargo. There are several factors for this, including geographic distance from Hong

Kong, customs procedures and Kwai Tsing's superior ability to handle particular types of cargo, such as time-sensitive cargo.

- The Parties' combined market share in the Gateway market of Kwai Tsing is very high (over 90% in 2018), and DP World as the Parties' only competitor at Kwai Tsing has limited capacity to operate as an alternative supplier.

As such, the Parties, without effective competitive constraint, could potentially increase charges, or reduce service levels, to the detriment of their shipping line customers.

b. Related markets

Regarding the provision of services for Gateway cargo to customers other than shipping lines (such as truck operators and freight forwarding companies etc.), the Alliance could potentially allow the Parties to raise charges for these services. The Port Security Charge imposed on truck drivers for permitting entry into the secure cargo area of the Parties' premises is an example of such a charge.

As regards the provision of reciprocal overflow services to DP World, which allow DP World to request that its vessels berth at the Parties' berths where its own berth does not have capacity, the Alliance could potentially allow the Parties to increase the rates they charge to DP World or stop providing it overflow services altogether.

3. Why is the Alliance not likely to give rise to competition concerns in the International Transshipment and Barge Transshipment markets?

The Parties are likely to be subject to effective competition from other terminal operators in these markets on the basis that, among other reasons:

- The Parties' shipping line customers have several alternative suppliers of services at major ports in East Asia (in the case of International Transshipment cargo) and at ports in the Pearl River Delta, in particular Nansha and Shekou/Chiwan (in the case of Barge Transshipment cargo) (refer to Figure 3 and 4).
- The Parties' combined market share in these two markets are not at a level giving rise to concerns in light of the specific market dynamics in both markets (being less than 10% in the International Transshipment market and less than 30% in the Barge Transshipment market in 2018).

Hence, the Alliance is not likely to give rise to competition concerns in the International Transshipment and Barge Transshipment markets.

4. The Parties claimed that the Alliance would give rise to various efficiencies at Kwai Tsing port generating benefits to shipping line customers. What are the Commission’s views on this?

The Commission acknowledges that the Alliance could give rise to certain benefits, especially from the perspective of shipping line customers in the *International Transshipment* and *Barge Transshipment markets*. These include reductions in inter-terminal trucking trips as a result of joint berth planning by the Parties, and more efficient movements of containers in the yard due to the joint use and planning of yard space. Several of the Parties’ shipping line customers also confirmed to the Commission that this would be the case.

However, in light of the extent of the anti-competitive effects identified in the *Gateway market*, the Commission considers that the relevant efficiency claims do not meet the requirements of the efficiency exclusion under the Competition Ordinance. For example, it has not been shown that the Alliance “will not afford the Parties the possibility of eliminating competition in respect of a substantial part of goods and services”, as required by the efficiency exclusion. Therefore, the Alliance is not excluded from the application of the First Conduct Rule under the efficiency exclusion.

5. What are commitments under section 60 of the Competition Ordinance?

Under section 60 of the Ordinance, the Commission may at any stage accept a commitment to take any action or refrain from taking any action from parties under investigation, where the Commission considers it appropriate to address its concerns about a possible contravention of a competition rule.

If the Commission accepts a commitment, it may agree to terminate its investigation and not to bring proceedings in the Competition Tribunal regarding the matters covered by the commitments, or terminate them if it has already brought proceedings. The Ordinance does not require parties offering commitments to make any admission of a contravention. If a person fails to comply with the commitment, the Commission may bring enforcement action in the Tribunal.

6. What are the benefits of the proposed commitments to relevant stakeholders?

Shipping lines

Under the proposed commitments, the Parties’ charges for Gateway cargo are to be capped at the level that applied prior to the implementation of the Alliance (subject to indexation), while the Parties also commit to meeting particular service level metrics specific to Gateway cargo. This serves to ensure that shipping lines do not suffer from higher charges or lower service levels in the Gateway market as a result of the Alliance. At the same time, the proposed commitments retain the flexibility for the shipping lines to request different charge or service levels, should this be more commercially attractive to them.

Furthermore, the proposed commitments may allow shipping lines to benefit from certain efficiencies expected to arise from the Alliance, particularly in the International Transshipment and Barge Transshipment markets, for example as a result of the joint berth allocation arrangements under the Alliance.

Truck operators and freight forwarders

The Parties' acquisition of market power in the Gateway market could also affect other parties which use the port for Gateway cargo. The proposed commitments are designed to ensure that port users such as truck operators and freight forwarders that use services relating to Gateway cargo, in particular those related to port access, delivering and picking up containers, would not see any increase in those charges (subject to indexation), and that charges for any new services in future are reasonable. The service level commitments would ensure such users have adequate access to the port gate and will be guaranteed an efficient external truck turnaround time.

Shippers

The proposed commitments are designed to neutralise any anti-competitive effects stemming from the Alliance, while also allowing the operation under the Alliance to continue. The continuation of the Alliance is expected to produce certain efficiencies for the port of Hong Kong, which may benefit shippers.

Operator of CT3

The proposed commitments are designed to ensure that the operator of CT3 which is not a party to the Alliance, will continue to benefit from reciprocal overflow arrangements with the Parties at reasonable rates (subject to indexation), so that it is able to continue to provide quality services to its customers.

7. Why are commitments suitable in this case?

The Commission considers that the proposed commitments, if accepted by the Commission, would represent an effective and appropriate remedy, which would be proportionate to the conduct in this case. First, the proposed commitments should neutralise the risks of pricing or other anti-competitive effects arising in the Gateway and related markets, promptly and before they materialise, thus avoiding harm to the Alliance's customers and other port users.

Second, the proposed commitments would allow the parties to the Alliance to continue their cooperation. In this context, the Commission found that the Alliance is unlikely to give rise to anti-competitive effects in two of the three primary markets (Barge Transshipment and International Transshipment), while the Alliance may result in more efficient operations at the port.

8. Why is the term of most of the proposed commitments limited to 8 years rather than the duration of the Alliance?

According to the Commission's investigation, there is some evidence that other ports in the Pearl River Delta will expand and improve their efficiency in handling Gateway cargo in the coming years, meaning that the Parties may be subject to more significant competitive constraint in the Gateway market from outside Kwai Tsing, in turn lessening the need for several of the proposed commitments. However, the available evidence is unclear as to the imminence and extent of these developments. In the circumstances, the Commission considers that the proposed duration of 8 years for most of the proposed commitments to be appropriate.

In addition, the proposed commitments would permit the Parties to make a reasoned request to the Commission to conduct a review of the commitments after 5 years, while the Commission would have the right to review the proposed commitments at any time under the Ordinance.

9. Did the Parties cooperate with the Commission's investigation?

The Parties cooperated with the Commission in its in-depth investigation, providing information and documents on a voluntary basis in response to the Commission's questionnaires. In order to address the competition concerns uncovered by the Commission, the Parties indicated their willingness to offer commitments under section 60 of the Ordinance. The Commission and the Parties engaged in extensive discussions about the terms of possible commitments that the Commission would consider adequate, which resulted in the proposed commitments offered by the Parties.

10. How to submit comments to the Commission on the proposed commitments?

Interested parties are invited to submit representations on the proposed commitments to the Commission **no later than 18:00 on 26 August 2020** by one of the following means:

- a. (Preferred) Email to Consultation@compcomm.hk, with the case reference number EC/03AY quoted in the subject line of the email
- b. Fax to +852 2522 4997
- c. Post to:

Representations on Case EC/03AY
Competition Commission
19/F South Island Place
8 Wong Chuk Hang Road
Wong Chuk Hang

Representations received after the deadline will not be considered.

(Please see *Appendix* on the next page)

Appendix

Figure 1: Primary markets

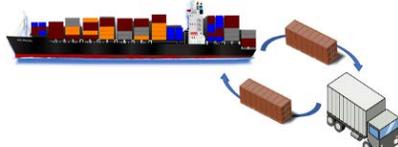
<i>International Transshipment Market</i>	
	Competition concerns: NOT likely
<i>Barge Transshipment Market</i>	
	Competition concerns: NOT likely
<i>Gateway Market</i>	
	Competition concerns: Likely

Figure 2: Related Markets

<i>Provision of various services at Kwai Tsing to customers other than the shipping lines</i>	
<p>For example, Port Security Charge imposed on truck drivers</p> 	Competition concerns: Likely
<i>Provision of reciprocal overflow services to operator of CT3 (currently DP World)</i>	
	Competition concerns: Likely

Figure 3: Major ports in East Asia



Of these ports, at least Busan, Shenzhen, Kaohsiung, Port Klang, Tanjung Pelepas and Singapore are in the same geographic market as Kwai Tsing supplying relevant services for International Transshipment cargo.

Figure 4: Ports in the Pearl River Delta



Of these ports, at least Nansha, Shekou, Chiwan, Yantian and DaChan Bay are in the same geographical market as Kwai Tsing supplying relevant services for Barge Transshipment cargo.