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For Immediate Release

Competition Commission consults on proposed commitments from Hong Kong Seaport Alliance

The Competition Commission (“Commission”) today commenced a consultation on proposed commitments offered under section 60 of the Competition Ordinance (“Ordinance”) by the Hong Kong Seaport Alliance (“Alliance”). The Commission has conducted an investigation into the Alliance with a focus on whether the Alliance may constitute a contravention of the First Conduct Rule of the Ordinance by harming competition in Hong Kong. The commitments proposed by the Alliance aim to address the Commission’s concerns arising from the investigation.

Background

The Alliance is a contractual joint venture between four container terminal operators in Hong Kong, namely Hongkong International Terminals Limited, Modern Terminals Limited, COSCO-HIT Terminals (Hong Kong) Limited, and Asia Container Terminals Limited (the “Parties”). Pursuant to the Alliance, the Parties jointly operate and manage their 23 berths across eight terminals at Kwai Tsing port (“Kwai Tsing”) in Hong Kong, through operational, commercial and financial coordination. The fifth port terminal operator at Kwai Tsing, Goodman DP World Hong Kong Limited (“DP World”), is not a party to the Alliance.

The Commission has assessed whether the Alliance gives rise to anti-competitive effects on three primary markets in which the Parties provide port terminal services, namely the *International Transshipment market*, the *Barge Transshipment market*, and the *Gateway market*¹, as well as the potential impact on other related markets.

Competition concerns in primary markets

The Commission’s investigation has found that the Alliance is not likely to give rise to competition concerns in the *International Transshipment* and *Barge Transshipment* markets where several alternative suppliers of services for shipping line customers are available at major ports in East Asia and at ports in the Pearl River Delta respectively. The Parties’ combined market share in these markets is also not at a level to raise concerns in light of the specific market dynamics in both markets.

However, competition concerns are likely to arise in the *Gateway market* where the Parties have a very high combined market share and where there currently is a lack of significant alternative service suppliers.

The Parties are therefore unlikely to be subject to effective competitive constraint in this market, and could potentially increase charges, or reduce service levels, to the detriment of their customers.

¹ Services in the *International Transshipment market* entail the unloading of cargo from ocean-going vessels and loading on other ocean-going vessels for onward transportation to other ports. Cargo in this market does not originate or terminate in Hong Kong.

Services in the *Barge Transshipment market* entail the unloading of cargo from ocean-going vessels and loading onto smaller vessels (for example, barges or lighter vessels), and vice versa, for onward transportation to and from the hinterland. Cargo in this market does not originate or terminate in Hong Kong.

Services in the *Gateway market* entail the unloading of cargo from ocean-going vessels and loading onto trucks, and vice versa, for onward transportation to and from the hinterland. Cargo in this market may but does not necessarily originate or terminate in Hong Kong.

Competition concerns in other related markets

The Commission's investigation also found that the Alliance is likely to give rise to competition concerns with regard to the provision of various services at Kwai Tsing to customers other than the shipping lines, such as truck operators and freight forwarding companies, by enabling the Parties to raise charges for these services.

Competition concerns may also arise in the provision of reciprocal overflow services² to DP World, the Parties' only competitor at Kwai Tsing. The Alliance could potentially allow the Parties to increase the rates they charge to DP World or stop providing it the services altogether.

Proposed commitments

In response to the Commission's investigation, the Parties have offered commitments to:

- a. cap their charges for services to shipping lines in respect of Gateway cargo, to the level applicable to each customer on 1 April 2019³ (subject to indexation);
- b. provide a minimum service level for gate access to Kwai Tsing and the turnaround time for truck services at the port;
- c. cap their charges for services related to Gateway cargo to customers other than shipping lines, to the level applicable on 1 April 2019 (subject to indexation);
- d. maintain reciprocal overflow arrangements with DP World on terms that are no less favourable to it than as at 1 April 2019 (subject to indexation); and
- e. ensure that no Modern Terminals Limited representatives appointed to serve on the Governing Committees of the Alliance are appointed as directors of the terminal operators of Shekou or Chiwan ports, to allay concerns around potential anti-competitive information flows between the Alliance and its competitors at Shekou and Chiwan ports.

The proposed commitments would last for up to 8 years from their effective date, with the exception of the proposed commitment for service levels, which would last for the duration of the Alliance. Compliance with the proposed commitments would be monitored by an independent Monitoring Trustee on behalf of the Commission.

The Commission considers that the proposed commitments are appropriate to address its concerns, and it therefore proposes to accept them. In line with the requirements of the Ordinance, the Commission now invites interested parties to submit representations on the proposed commitments, including its proposed acceptance of these commitments, no later than 18:00 on 26 August 2020. The Commission will consider all representations received by the deadline, which will be posted on its website, before making its decision on whether to accept the proposed commitments. If a representation contains confidential information, a non-confidential version of the representation should also be submitted.

Together with the proposed commitments from the Parties, the Commission has published a Notice of the Proposed Commitments and a set of frequently asked questions to provide further information on the matter. These documents are available on the Commission's website at www.compcomm.hk.

² Overflow arrangements involve a terminal operator requesting another to allow their customer's vessel to berth at that second operator. In this case, overflow services allow DP World to request the Parties that its customers' vessels berth at the Parties' berths where its own berth does not have capacity.

³ 1 April 2019 is the date on which certain key provisions of the Alliance entered into force.