

30 October 2020

For Immediate Release

Competition Commission accepts commitments from Hong Kong Seaport Alliance

The Competition Commission (“Commission”) today announced the acceptance of commitments (“Commitments”) offered under section 60 of the Competition Ordinance (“Ordinance”) by Modern Terminals Limited (“MTL”) and HPHT Limited on behalf of Hongkong International Terminals Limited (“HIT”), COSCO-HIT Terminals (Hong Kong) Limited (“CHT”), and Asia Container Terminals Limited (“ACT”) (together, the “Parties”), in relation to the Hong Kong Seaport Alliance (“Alliance”).

The acceptance follows a public consultation on an earlier set of commitments proposed by the Alliance (“Proposed Commitments”), which aimed to address the Commission’s concerns arising from its investigation into the Alliance. The Commitments have incorporated certain clarifications and improvements as requested by the Commission in light of the comments raised during the consultation.

Pursuant to the Commitments, the Parties have committed to the following:

(a) *Cap Gateway cargo handling charges*

The Parties will cap their charges for services to shipping lines in respect of Gateway cargo¹, to the level applicable to each customer on 1 April 2019² (subject to indexation). Under the modifications secured following the consultation, the Commitments clarify that the cap also applies to inter-terminal trucking services and does not affect the validity of any more favourable pricing arrangements agreed after 1 April 2019;

(b) *Maintain service levels for Gateway cargo*

The Parties commit to a minimum service level for gate access to Kwai Tsing and the turnaround time for truck services at the port. As modified in the Commitments following the consultation, the scope of this commitment is extended to ensure that any contractual provisions regarding operational productivity levels specific to Gateway cargo are no less favourable than any in force as at 1 April 2019;

(c) *Cap “Other CP [Counterparty] Charges”*

The Parties will cap their charges for services related to Gateway cargo to customers other than shipping lines, such as shippers and truckers, to the level applicable on 1 April 2019, or other particular levels as specified in the Commitments (subject to indexation). This commitment is kept unchanged in the Commitments following the consultation;

¹ Gateway cargo comprises cargo which is transported by truck between Kwai Tsing and the hinterland. Cargo in this market may but does not necessarily originate or terminate in Hong Kong.

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

- (d) *Maintain overflow arrangements with Goodman DP World Hong Kong Limited (“DP World”)*
The Parties will maintain reciprocal overflow arrangements with DP World on terms that are no less favourable to it than those applicable as at 1 April 2019 (subject to indexation). This commitment is kept unchanged in the Commitments following the consultation; and
- (e) *Avoid cross-directorships with Chiwan and Shekou*
MTL will ensure that none of its representatives appointed to serve on the Governing Committees of the Alliance are appointed as directors of the terminal operators of Shekou or Chiwan ports. Under the modification in the Commitments, the duration of this commitment has been extended from up to eight years to the lifetime of the Alliance.

Finally, the Parties have added in the Commitments an explicit reference to the plans and mechanisms they adopted to ensure customers receive a fair share of the efficiencies anticipated by the Alliance.

The Commitments are to come into effect immediately, and last for up to eight years commencing today (i.e. 30 October 2020), with the exception of the commitments on service levels (for gate access to their terminals in Kwai Tsing and turnaround time for external trucks) and MTL’s cross-directorships, which would last for the duration of the Alliance. Compliance with the Commitments will be monitored throughout by an independent Monitoring Trustee on behalf of the Commission.

Background

The Alliance is a contractual joint venture between MTL, HIT, CHT and ACT, whereby they jointly operate and manage their 23 berths across eight terminals at Kwai Tsing port (“Kwai Tsing”) in Hong Kong. The fifth port terminal operator at Kwai Tsing, DP World, is not a party to the Alliance.

The Commission conducted an investigation into whether the Alliance may constitute a contravention of the First Conduct Rule in the Ordinance by harming competition in Hong Kong. The Commission was concerned that the Alliance could result in increase in prices or decrease in service levels for the Parties’ customers in the Gateway market and certain related markets, or withholding of “overflow” services from DP World. The Commission also had concerns around the potential anti-competitive information flows between the Alliance and its competitors at Shekou and Chiwan ports in the Mainland as a result of cross-directorships held by MTL.

In response to the Commission’s investigation, the Parties offered the Proposed Commitments to address the Commission’s concerns.³ On 12 August 2020, the Commission published the Proposed Commitments for consultation and received representations from nine parties, including industry players and a member of the public. The Commission has carefully considered these representations and is grateful for the assistance received.

Acceptance of the Commitments

The Commission considers the Commitments as modified are appropriate to address its competition concerns in an effective and timely manner, and therefore has accepted them.

The Parties were responsive and cooperative with the Commission during its investigation, and engaged with the Commission in extensive discussions about the terms of possible commitments.

³ For details of the Proposed Commitments and the public consultation, please refer to the [Notice](#) which the Commission published on 12 August 2020. A [Press Release](#) and a [Q&A](#) document were also published on the same day to provide a brief account of the matter.

Together with the Commitments, the Commission has published a notice of the acceptance to provide further information on the matter, including a detailed explanation of its competitive assessment, the Commitments, and the responses to various issues raised in the representations received. These documents are available on the Commission's website at www.compcomm.hk.

Notes to the Editor

Commitments under section 60 of the Competition Ordinance

Under section 60(1) of the Ordinance, the Commission may accept commitments from a person to (a) take any action, or (b) refrain from taking any action, where it considers them appropriate to address its concerns about a possible contravention of a competition rule. If the Commission accepts commitments, it will terminate its investigation and not bring proceedings in the Competition Tribunal regarding the matters covered by the commitments. This is subject, however, to the ability of the Commission to withdraw its acceptance of commitments under the conditions provided for in section 61 of the Ordinance, including where there has been a material change of circumstances or the person giving the commitments has failed to comply with them. The Ordinance does not require Parties offering commitments to make any admission of a contravention.