



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2016/11/459)

**Dated: 29.06.2017**

**Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Nippon  
Yusen Kabushiki Kaisha Ltd., Mitsui O.S.K. Lines Ltd. and Kawasaki Kisen  
Kaisha, Ltd.**

**CORAM:**

Mr. S. L. Bunker  
Member

Mr. Sudhir Mital  
Member

Mr. Augustine Peter  
Member

Mr. U. C. Nahta  
Member

Mr. G. P. Mittal  
Member

**Legal Representatives of the parties:** M/s Vinod Dhall – TT&A

**Order under Section 31 (1) of the Competition Act, 2002**

**BACKGROUND**

1. On 21.11.2016, the Competition Commission of India (“**Commission**”) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”),



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jointly given by Nippon Yusen Kabushiki Kaisha Ltd. (“**NYK**”), Mitsui O.S.K. Lines Ltd. (“**MOL**”) and Kawasaki Kisen Kaisha, Ltd. (“**KL**”) (collectively “**Parties**”).

2. The Notice was filed with the Commission pursuant to: (i) Business Integration Agreement (“**BIA**”); and (ii) Shareholders Agreement (“**SHA**”), both dated 31.10.2016, entered into by and between the Parties.
3. In terms of Regulation 14 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), vide letter dated 23.12.2016, Parties were required to provide certain information/document(s) latest by 30.12.2016. The Parties filed response on 31.01.2017 after seeking extension of time. The Parties were informed that the response filed by them was incomplete and the Parties made further submissions on 02.03.2017 and 29.03.2017. Further, vide letter dated 25.04.2017, the Parties were required to provide certain information/document(s) by 27.04.2017; the same was submitted on 03.05.2017, after seeking extension of time.

**PARTIES TO THE COMBINATION**

4. NYK, incorporated in Japan, is a global logistics enterprise that specializes in international marine transportation business, cruises, terminal and harbor transport, shipping-related services, real estate and other services. The activities of NYK group can be broadly classified under five heads, viz., (i) global logistics; (ii) bulk shipping; (iii) cruise lines; and (iv) real estate business; and (v) research and development business relating to shipping and logistics.
5. MOL, incorporated in Japan, is an international multi-modal transport group specializing in ocean shipping. The services offered by MOL worldwide can be classified under following heads, viz., (i) dry bulk transport; (ii) tanker transport; (iii) LNG carriers; (iv) crude oil and LNG offshore production; (v) car carriers; (vi) containerships; (vii) terminal services; (viii) logistics; (ix) cruises; (x) ferries and coastal liners; and (xi) other services.



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6. KL, also incorporated in Japan, operates a diverse fleet of ships to cater to marine transport needs. Services provided by KL, on a global basis, can be broadly classified into: (i) container shipping; (ii) dry bulk carriers; (iii) car carriers (iv) LNG carriers; (v) tankers; (vi) energy development services; (vii) heavy lifters; (viii) terminal operations; and (ix) logistics services.

**PROPOSED COMBINATION**

7. The proposed combination envisages merger of the Parties' container liner shipping business worldwide and container terminal services business worldwide, except in Japan ("**Proposed Combination**"). Pursuant to the BIA, it is agreed that the Parties will establish a wholly owned subsidiary in Japan ("**HoldCo**"). HoldCo will establish its wholly owned subsidiary in Singapore ("**OpCo**") (together "**JV Co**"). The Parties have agreed that NYK will hold 38% and MOL and KL will each hold 31% of the shares of HoldCo and OpCo. Further, it has been agreed that the Parties will transfer certain assets to OpCo ("**Proposed Combination**").

**INVESTIGATION UNDER SECTION 29 OF THE ACT**

8. The Commission in its meeting held on 19.05.2017 considered the facts on record, details provided in the notice and the responses filed by the Parties and formed a prima facie opinion that the proposed combination is likely to cause an appreciable adverse effect on competition within the relevant markets in India. Accordingly, a show cause notice was issued to the Parties under sub-section (1) of Section 29 of the Act ("**SCN**") on 23.05.2017, as per which the Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the Proposed Combination should not be conducted.
9. The Parties submitted partial response to SCN on 12.06.2017 and 14.06.2017 and final response on 20.06.2017 ("**Response to SCN**"). The Commission in its meeting held on 29.06.2017 considered and assessed the Response to SCN.



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**COMPETITION ASSESSMENT**

10. As stated above, the Proposed Combination relates to formation of a joint venture company by the Parties which would carry on container liner shipping business worldwide and container terminal services business worldwide, except in Japan. As submitted the Parties do not provide any container terminal services in India and the overlaps arising from the Proposed Combination in India are limited to the activities in container liner shipping business.
11. The Commission noted that the Parties are also engaged in certain activities such as bulk shipping, car transport services, logistics and freight forwarding services, maritime training, ship management and manning etc. which do not form part of the Proposed Combination. While the aforesaid businesses do not form part of the Proposed Combination, the Commission examined the likelihood of Proposed Combination leading to any spill-over effects in these businesses.

**CONTAINER LINER SHIPPING**

12. In an earlier case (C-2016-01-363 filed by CMA CGM S.A.) relating to container liner shipping business, the Commission observed that container liner shipping which involves provision of regular, scheduled services for the carriage of cargo by container ships can be classified into deep sea (where the ship crosses oceans) or short sea (where the ship moves along the coast mainly on sea, without crossing an ocean). As regards the geographic dimension, the Commission held that each trade route has specific characteristics depending on the volumes shipped, type of cargo transported, ports served and length of the journey from point of origin to the destination. Further, the market conditions and the conditions of competition on the two directions of a trade may be different, particularly in case of trade imbalances or different characteristics of the products shipped. Accordingly, the Commission considered the relevant geographic market for the container liner shipping as based on each leg of the overlapping trade routes in deep sea and short sea segments.



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13. Based on the information submitted by the Parties, the activities of the Parties overlap in the following short sea trade routes:

- India - Bahrain
- India - Qatar
- India - Oman
- India - Kuwait
- India to/from United Arab Emirates
- India to/from Saudi Arabia
- India - Bangladesh
- India to/from Pakistan
- India to/from Sri Lanka
- India to/from Myanmar
- India - Maldives

14. In deep sea shipping liner services, considering the presence of the Parties, following ranges of ports are considered as constituting a single end of trade:

- Asia
- Australasia and Oceania
- Central America and Caribbean
- East Coast Africa
- West Coast Africa
- East Coast South America
- West Coast South America
- Northern Europe
- Mediterranean
- North America

Accordingly, the Commission observed that for the purpose of assessment of the Proposed Combination in the market for Deep Sea Container Liner Shipping, each leg of trade to/from India to aforesaid ranges of ports need to be examined.



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15. The Commission observed that the combined market share of the Parties is less than 5 percent, which can be considered insignificant to cause any competition concerns, in the short sea trade routes of: (i) India – Bahrain; (ii) India – Qatar; (iii) India – Oman; (iv) India – Kuwait; (v) India to/from United Arab Emirates; (vi) India to/from Saudi Arabia; (vii) India to/from Myanmar; and (viii) India – Maldives. The combined market share of the Parties ranges between 10 to 15 percent in the short sea trade route of India – Pakistan. With regard to the aforesaid short sea trade routes, the Commission observed that all above said trade routes are characterized by presence of other significant competitors such as UASC, MSC, Hapag Lloyd, KMTTC, Hanjin Shipping and Maersk etc. Based on insignificant presence of the Parties and presence of other significant competitors, the Proposed Combination is not likely to cause an appreciable adverse effect on competition (“AAEC”) in any of the aforesaid short sea trade routes.
16. The combined market share of the Parties ranges between 20 to 25 percent in the short sea trade route of India – Sri Lanka; and between 25 to 30 percent on each of short sea trade route of India – Bangladesh and Sri Lanka – India. The combined market share of the Parties ranges from 30 to 35 percent in the short sea trade route of Pakistan – India. As regards the impact of the Proposed Combination on the level of concentration in the aforesaid short sea trade routes, the Commission observed that the incremental market shares in India to/from Sri Lanka trade route are insignificant (less than 5 percent). As regards the India – Bangladesh trade route, the Commission noted that NYK and MOL have market shares in the range of 15 to 20 percent and 5-10 percent while KL has an insignificant presence. The JV Co would be the market leader followed by Hapag Lloyd as the distant second competitor with a market share in the range of 10 to 15 percent. As regards the Pakistan – India trade route, the Commission observed that NYK and MOL have market shares in the range of 25 to 30 percent and 5 to 10 percent, respectively while KL has an insignificant presence. The JV Co would be the market leader followed by Maxicon as the distant second competitor with a market share in the range of 5 to 10 percent. Based on the aforesaid, the Commission was of the prima facie opinion that the Proposed Combination has the impact of



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- increasing concentration on two short sea trade routes, viz., (i) India – Bangladesh; and (ii) Pakistan – India.
17. In this regard, the Commission considered submissions made by the Parties as part of Response to SCN. As regards India – Bangladesh trade route, the Commission noted that the combined market share of the Parties over the period 2014 to 2017 has been fluctuating significantly and was less than 20 percent in 2016 and less than 15 percent in 2017 (till April). Further, the Commission observed that the volume of trade on this trade route constitutes less than 1 percent of the overall volume of goods traded from/to India.
  18. As regards Pakistan – India trade route, the Commission observed that the volume of trade on this trade route constitutes less than 1 percent of the overall volume of goods traded from/to India. The Commission also noted that the market in this trade route appears to be fragmented with presence of not only global players but also relatively smaller regional players. In this regard, the Commission noted that market share of Non-Vessel Operating Common Carriers (“NVOCCs”) has been increasing over a period of time and that NVOCCs are also likely to exert competitive constraints on the Parties.
  19. Considering the aforesaid specificities of the India – Bangladesh and Pakistan – India trade routes, the Commission is of the opinion that the Proposed Combination is not likely to cause an AAEC on these two trade routes as well.
  20. As regards deep sea routes, the Commission noted that the combined market share of the Parties (without considering market shares of consortia members for each of the overlapping deep sea trade route identified above) does not exceed 20 percent.
  21. In this regard, the Commission also noted that NYK, MOL and KL are all members of different consortia and consequently the Proposed Combination has the impact of creating links between 6 competing consortia i.e. WIN, TSC, CIS, HSX, SWACO 1, SWACO 8 (WIN 2). The Commission considered the market share (in both legs) of



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the consortia/alliances to which the parties belong and observed that the competitors, with sizeable market shares, are present which would provide competitive constraint to the parties post-combination on all deep sea trade routes with exception of Far East to/from India where the combined market share of the consortia to which the parties belong is estimated to be around 30 percent. However, the Commission noted that as submitted by the Parties, SWACO 1 has already been suspended since May 2017 and MOL has withdrawn from CIS with effect of reducing the consortia shares to less than 20 percent on Far East to/from India trade route. In view of the fact that market share of individual competitors and consortia independent from the Parties would exceed 80 percent on Far East to/from India trade route, the Commission is of the opinion that the Proposed Combination is not likely to cause an AAEC in any of the overlapping deep sea trade routes.

22. Considering the fact that the Proposed Combination involves creation of a joint venture for specific business activities of the Parties, the Commission also examined the impact of the Proposed Combination in some related markets, i.e., the activities which are undertaken by the Parties but not forming part of the Proposed Combination, for likelihood of coordination in competitive behaviour by virtue of the Proposed Combination. The Parties were asked to provide complete details of products and services provided by them in India along with the details of their market shares and that of their competitors in all such markets. The Parties were also required to clarify as to how the Proposed Combination would not have the effect of facilitating the coordinated competitive behaviour in this segment.
23. As submitted by the Parties, they are present in India in the following markets which do not form part of the Proposed Combination:
- Bulk shipping;
  - Car Transport;
  - Logistics and Freight Forwarding;
  - Heavy lifters;
  - Ship management and manning;



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- Maritime training;
- Information processing, IT and Software; and
- Energy Development

24. As submitted, of the aforementioned markets, Parties' operations are captive and they do not have any market presence in respect of Ship management and manning, Maritime training, Information processing, IT and Software. As regards Energy Development, only KL provides these services and consequently there are no overlaps resulting from the Proposed Combination.

25. As regards other segments i.e., Bulk shipping, Car Transport, Logistics and Freight Forwarding and Heavy lifters, there are overlaps in the activities of the Parties. The Parties submitted that the characteristics of the aforesaid businesses are such that there is no interdependence between these markets and business forming part of the Proposed Combination and hence there is no possibility of any spill over effects from the Proposed Combination. However, in order to alleviate concerns, the Parties also submitted voluntary commitment that they would introduce a 'rule of information control' at the time of First Closing ("**Voluntary Commitment**"). The outline of Voluntary Commitment is as under:

- Prohibition against receiving information from the Parties:* The directors / officers and the employees of JV Co (including those who are seconded from the Parties to the JV Co, and those who left employment with the Parties and will be employed as employees of the JV Co) must not receive any sensitive information regarding the Non- Integrated Businesses from the directors / officers or employees of the Parties. It is also planned that the officers / representative directors of the Parties who shall be on the Board of Directors of the JV Co shall not be those who are directly in the chain of command of any of the Non-Integrated Businesses of the Parties and therefore would have no direct knowledge of sensitive information about these other businesses. Notwithstanding the above, some of the directors / officers of HoldCo will also serve as directors / officers of the Parties, and may come in contact with sensitive



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information about the Non-Integrated Businesses at board of directors' meetings of the Parties. However, these directors / officers will be required to comply with the rules (b) through (d) mentioned below;

- b. *Prohibition of provision of information to a third party:* The directors / officers and employees of the JV Co must not provide to a third party (including the directors / officers and employees of the Parties who will become third party post-combination) any sensitive information regarding the Non-Integrated Business that he / she has, regardless of whether the information was obtained before or after the person became a director / officer or employee of the JV Co;
  - c. *Prohibition of exchanging information internally within the JV Co:* The directors / officers and employees of the JV Co must not exchange with each other sensitive information regarding the Non-Integrated Businesses that he / she has, regardless of whether the information was obtained before or after the person became a director / officer or employee of the JV Co; and
  - d. *Disciplinary action and punishment:* A violation of any of the above rules will constitute a ground for disciplinary action and punishment. Such disciplinary action could include for instance, removal from service, denial of promotion, and demotion to lower rank.
26. Considering the facts on record as per the details provided in the notice given under sub-section (2) of Section 6 of the Act, the assessment of the proposed combination on the basis of the factors stated in sub-section (4) of Section 20 of the Act and after taking in account the Voluntary Commitment offered by the Parties, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act.



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27. This order shall stand revoked in case of failure to comply with the Voluntary Commitment submitted by the Parties and also if, at any time, the information provided by the Parties is found to be incorrect.
  
28. The Secretary is directed to communicate to the Parties accordingly.