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Case No COMP/M.5398 - HUTCHISON / EVERGREEN

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 17/12/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.5398 - Hutchison/ Evergreen
Notification of 18 November 2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 18 November 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) 139/2004 by which Hutchison Ports Taranto B.V. c/o ("HPT", United Kingdom), belonging to the Hutchison Whampoa Limited Group ("Hutchison Group", Hong Kong) and Evergreen Marine Corporation (Taiwan) Limited ("EMC", Republic of China), which is part of the Evergreen Group ("Evergreen Group", Taiwan) acquire within the meaning of Article 3(1)(b) of the Council Regulation, joint control over Taranto Container Terminal S.p.A. ("TCT", Italy) by way of share swap.

I. THE PARTIES AND THE OPERATION

2. Hutchison Group is active in the provision of deep-sea container stevedoring services with operations based worldwide. The Hong Kong-based Hutchison Group is also active in retail and manufacturing, telecommunications and internet infrastructure, real estate and hotels and the supply of energy and infrastructure projects.

3. EMC is part of the global Taiwan-based Evergreen Group which is a conglomerate of shipping, transportation and associated service companies controlled by Dr Chang Yung-Fa and his family.

1 OJ L 24, 29.1.2004 p. 1.

4. TCT operates a container terminal in Taranto, Italy.

5. The operation consists of the acquisition by HPT of a 50% share in TCT[2]. TCT is currently solely-controlled by Evergreen (90%); the minority shareholder, GSI Logistics S.r.l. ("GSI") holds the remaining 10%. Post transaction, HPT would have 50%, Evergreen 40% and GSI 10% of the shares in TCT. HPT and Evergreen will have joint control over TCT due to their veto rights as to the strategic decisions referring to the budget, business plan and the appointment of the senior management. TCT has all the characteristics of a joint venture performing on a lasting basis all the functions of an autonomous economic entity: it has dedicated senior management in charge of operating the terminal, access to sufficient resources including finance, staff and assets and is intended to operate for at least […] years. Besides, it is envisaged that within […] years after the completion of the transaction the joint venture will achieve more than […] of its turnover with third parties.

6. It follows from the above, that the operation constitutes a concentration within the meaning of Article 3 (1)(b) of the EC Merger Regulation.

II. COMMUNITY DIMENSION

7. The proposed transaction has a Community dimension. It meets the thresholds set out in Article 1(2) of the EC Merger Regulation, as the parties' combined worldwide turnover for the year 2007 exceeded EUR 5 billion (EUR […] million for Hutchison and EUR […] million for Evergreen), and each of the parties achieved for the year 2007 more than EUR 250 million of Community-wide turnover (EUR […] million for Hutchison and EUR […] million for Evergreen). The undertakings concerned did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

III. COMPETITIVE ASSESSMENT

RELEVANT PRODUCT MARKETS

8. Hutchison and TCT's activities horizontally overlap in the provision of stevedoring services to deep-sea container shipping lines in the Mediterranean. Evergreen and TCT's activities are vertically related in the Mediterranean market. Besides, there is a vertical link between the parents, Evergreen and Hutchison in the UK/Irish market.

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2 In particular, the acquisition by HPT of 50% of the shares of TCT will be effected through a share swap for [minority interest] of the equity currently held by ECT in MTS (Holdings) Ltd, the parent company of the container terminal at London Thamesport, United Kingdom, and for [minority interest] of the equity in ECT Delta Terminal B.V. which operates a container terminal at Rotterdam, the Netherlands.

Container terminal services

9. The provision of container stevedoring services by terminal operators involves the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo. Container terminal throughput can be broken down by traffic flow as follows: (a) hinterland traffic ("direct deep-sea"), that is containers transported directly onto/from a deep-sea container vessel from/to the hinterland (via barge, truck or train), and (b) transhipment traffic, that is, containers destined for onward transportation to other ports. Transhipment traffic involves both feeder movements (i.e. transits from deep-sea vessels to short sea-vessels going to adjacent markets – Scandinavia, Iberian peninsula) and relay movements (i.e. transits between two ocean-going vessels on differing liner services).

10. The parties submit that, in line with previous Commission decisions[3], the relevant services market in this case shall be that for the provision of stevedoring services to container shipping lines, divided into the two distinct service markets for hinterland traffic and for transhipment traffic. According to the parties, the market for transhipment traffic should not be further sub-divided into feeder and relay traffic.

11. However, for the purpose of the present case, the precise definition of the relevant product market can be left open as no competition concerns arise irrespective of the market definition.

Liner Shipping

12. The liner shipping involves the provision of scheduled transport services operating to a fixed timetable. Liner shipping services can be divided according to the type of goods shipped into containerised liner shipping, and conventional (or break-bulk) liner shipping. The parties submit that the relevant market is that for containerised liner shipping. This is in line with previous Commission decisions.[4] However, for the purpose of the present case, the precise definition of the relevant product market can be left open as no competition concerns arise irrespective of the market definition.

RELEVANT GEOGRAPHIC MARKET

Container terminal services

13. The parties submit that the relevant geographic market for the provision of stevedoring services to deep-sea container vessels for hinterland traffic is likely to be confined to Italy. The parties explain that the ability of ports located further south in Italy to penetrate the hinterland beyond Northern Italy is particularly limited. They indicate that the block train services from the Taranto Terminal currently extend only to Nola, Pomezia and Ancona, with the most northerly destination being Bologna. The principal factor for this is the limited and underdeveloped rail infrastructure within Italy and between Italy and the Alpine regions of Austria and Switzerland and South Germany.

[3] COMP/JV.55 Hutchison/RCPM/ECT, paragraph 35; COMP/JV.56 Hutchison/ECT, paragraphs 14 and 15.

[4] IV/M.831 – P&O Nedlloyd, paragraph 39. In COMP/M.3829 – Maersk/PONL, the Commission considered a possible narrower product market for the transport of refrigerated goods. The parties claim that this issue can be left open in this case.

14. This seems to be in line with previous Commission decisions where it was indicated that substitution between Northern and Central European ports and Southern European ports does not take place to any considerable degree because of their different catchment areas.[5]

15. With respect to the transhipment traffic, the parties submit that the Mediterranean is a distinct geographic market which may be divided into smaller geographic markets notably Central[6], Eastern[7] and Western Mediterranean[8] although there is some degree of competition between these areas.

16. This is in line with previous Commission decision indicating that Mediterranean ports constitute a separate market[9] and recognising that this may be divided into smaller geographic markets.[10] However, for the purpose of the present case, the precise definition of the relevant geographic market can be left open as no competition concerns arise irrespective of the market definition.

Liner Shipping

17. The parties, in line with previous Commission decisions submit that containerised liner shipping services consist of single trades from Mediterranean to other non European areas and vice versa. Moreover, liner shipping services from the Mediterranean are only marginally substitutable for those from Northern European ports[11]. However, for the purpose of the present case, the precise definition of the relevant geographic market can be left open as no competition concerns arise irrespective of the market definition.

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5 IV/M.831 – *P&O/Royal Nedlloyd*; M.2859 – *Deutsche Bahn Cargo/Contship Italia/JV;* COMP/JV.55 – *Hutchison/RCPM/ECT.*

6 The ports which fall into the potential Central Mediterranean market encompass Genoa, La Spezia, Livorno, Naples, Salerno, Cagliari, Gioia Tauro, Taranto, Venice, Trieste, Ravenna.

7 The ports which fall into the potential Eastern Mediterranean market include Pireaus, Thessaloniki, Constantza, Varna, Burgas, Odessa, Iiyichevsk, Novorossiysk, Poti, Istanbul, Izmir, Mersin, Lemesos/Limassol, Larnaca, Lattakia, Tartous, Beirut, Haifa, Ashdod, Port Said, Damietta, Alexandria/El Dekheila.

8 The ports which fall into the potential Western Mediterranean market are Algeciras, Malaga, Alicante, Cadiz, Seville, Castellon, Valencia, Barcelona, Baleares, Marseilles-Fos, Spanish Morocco, Morocco, Algeria.

9 COMP/JV.55 – *Hutchison/RCPM/ECT*; COMP/JV.56 – *Hutchison/ECT*; M.3829 - *MAERSK/PONL;* COMP/M.5066 – *Eurogate/APMM.*

10 M.1674 – *MAERSK/EC;* M.1651 – *MAERSK/Sea-Land*.

11 Case COMP/37.396/D2 Revised TACA, paragraph 39 and COMP/JV.55 – *Hutchison/RCPM/ECT*, paragraphs 41 and 46.

COMPETITIVE ASSESSMENT

Horizontal overlaps

18. As a result of the Hutchison Group's ownership of various ports in Northern Europe and the Mediterranean and Evergreen Group's ownership of TCT, the parties overlap in the provision of deep-sea stevedoring transhipment services.

Hinterland traffic

19. There is no horizontal overlap in the hinterland traffic markets, even if the hinterland market served from the Taranto Terminal is extended beyond Italy. The market shares of TCT would be [0-5]% by volume. Therefore no competition concerns arise in this sub-segment.

Transhipment traffic

20. Should the Western, Central and Eastern Mediterranean sub-segments be considered separately, there is no overlap between the parties. In Western Mediterranean, Hutchison is only present with a [0-5]% market share by volume. In the Central Mediterranean, TCT is only present with a [10-20]% market share by volume and in the Eastern Mediterranean, Hutchison is only present with a [0-5]% market share by volume.

21. Should the Western and Central Mediterranean be considered together, the combined market share would be [5-10]% ([5-10]% for TCT and [0-5]% for Hutchison). Should an Eastern and Central Mediterranean market be considered together, the combined market share would be [5-10]% ([5-10]% for TCT and [0-5]% for Hutchison). Finally, should the entire Mediterranean be considered as a one market, the combined market share would amount to [0-5]% ([0-5]% for TCT and [0-5]% for Hutchison).

22. Therefore, due to the low combined market shares and the presence of other important players in the market(s) such as APMM, CMA CGM or Eurogate, the transaction does not lead to any competition concerns.

Vertical links

23. This transaction also involves vertical relationships. However, pre-merger, there was already a vertical link between TCT, which is present in the terminal services market, and Evergreen, which is present in inline shipping market in Mediterranean. Moreover, both TCT and Evergreen have market shares well below 25% in their respective relevant markets.[12] These relationships therefore do not raise competition concerns.

[12] TCT has [10-20]% of the narrowest Eastern Mediterranean market and Evergreen has about [10-20]% of any liner shipping market involving routes into the Mediterranean.

Spill-over effects

24. There is a vertical relationship between the parents in the UK/Irish market: Evergreen Group, as an operator of liner shipping services, is a user of the ports at ECT Delta and Thamesport in the UK/Ireland in which Hutchison Group has interests.

25. Even though Hutchison has a market share of approximately 40% for the provision of terminal services to the UK and Ireland hinterland, Evergreen's market shares are limited to [5-10]% in the market for inline shipping into the UK/Irish market. Moreover, the transaction as such concerns a different geographic relevant market than the UK/Irish market i.e. the Mediterranean.

26. Therefore, the incentive for the parents to cooperate in the UK/Irish market due to the JV (TCT) in the Mediterranean is remote and, as such, the vertical link between parents cannot lead to competition concerns.

IV. CONCLUSION

27. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed)
Neelie KROES
Member of the Commission