EUROPEAN COMMISSION
DG Competition

Case M.8594 - COSCO SHIPPING / OOIL

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/12/2017

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EUROPEAN COMMISSION

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party:

Dear Sir or Madam,

Subject: **Case M.8594 – COSCO SHIPPING / OOIL**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 27 October 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking COSCO SHIPPING Holdings Co., Ltd. ("COSCO", China) via its indirectly wholly-owned subsidiary Faulkner Global Holdings Limited ("BVI Co") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Orient Overseas (International) Limited ("OOIL" or "Target', Bermuda), by way of purchase of shares (the "Transaction").[3] COSCO and OOIL are designated hereinafter as the "Parties".

1. THE PARTIES

(2) COSCO is a joint stock limited company incorporated in the People's Republic of China, with limited liability, listed on the Shanghai Stock Exchange and the Hong Kong Stock Exchange. Its primary business activities are (i) container shipping and (ii) terminal services. COSCO is also active to a limited extent in logistics services. It is ultimately controlled by Central SASAC, the Chinese State-owned

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

3 Publication in the Official Journal of the European Union No C 377, 9.11.2017, p. 22.

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Assets Supervision and Administration Commission of the State Council. The relevant undertaking to which COSCO belongs is hereinafter referred to as "China COSCO Shipping Group".

(3) OOIL is a private company, controlled by the Tung family, and incorporated in Bermuda, with limited liability and listed on the Hong Kong Stock Exchange. Its principal business activities are in the fields of (i) container shipping, via its subsidiary OOCL, (ii) logistics services and (iii) two container terminals which it operates in Long Beach, California and Kaohsiung, Taiwan. OOIL constitutes thus an integrated international transportation, logistics and terminal company.

2. THE TRANSACTION

(4) The Transaction will be implemented through a pre-conditional voluntary general cash offer. On 7 July 2017, COSCO, via its subsidiary BVI Co, along with joint offeror Shanghai International Port (Group) Co., Ltd. ("SIPG"), via its indirect wholly-owned subsidiary Shanghai Port Group (BVI) Development Co., Limited ("SPG BVI"), launched a pre-conditional voluntary general cash offer for the acquisition of all of the shares of OOIL.

(5) If the offer is consummated, BVI Co, and indirectly COSCO will obtain sole control of OOIL by acquiring more than 58.8% and up to 90.1% of the shares of OOIL in accordance with the terms of the offer announcement. SPG BVI, and indirectly SIPG, will hold a minority shareholding of 9.9% in OOIL. SPG BVI, and indirectly, SIPG, will not acquire joint control of OOIL.

(6) As a result of the Transaction, COSCO will acquire sole control over OOIL.

(7) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (China COSCO Shipping Group: EUR […] million; OOIL: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (China COSCO Shipping Group: EUR […] million, OOIL: EUR […] million). Each of the undertakings concerned does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

(9) The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

(10) According to the information submitted by the Parties, the Transaction gives rise to horizontally affected markets in deep-sea container liner shipping only when considering the market shares of the alliance/consortia to which they belong. The Transaction also gives rise to vertically affected markets between deep-sea

container liner shipping and i) container terminal services, and ii) freight forwarding.

4.1. Market definition

4.1.1. Deep-sea container liner shipping services

(11) In prior decisions, the Commission concluded that the product market for container liner shipping consists in the provision of regular, scheduled services for the carriage of cargo by container.[4] This market can be distinguished from non-liner shipping (tramp, specialised transport) because of the regularity and frequency of the service. In addition, the use of container transportation separates it from other non-containerised transport, such as bulk cargo.

(12) The market investigation in the present case unanimously confirmed the Commission's previous practice in relation to the product market definition for deep-sea container liner shipping services.[5]

(13) A possible narrower product market would be the transport of refrigerated goods, which could be limited to refrigerated (reefer) containers only or could include transport in conventional reefer vessels. In prior decisions,[6] while leaving the market definition open, the Commission looked separately at reefer and non-refrigerated (warm or dry) containers only in the legs of trade with a share of reefer containers in relation to all containerised cargo of 10% or more in both directions. In those cases, the Commission also left open whether bulk reefer vessels are part of the same market as reefer containers or not.[7] In any case, this issue can be left open also in the present case as the Transaction does not give raise to any affected markets when considering a potential market for reefer containers.[8]

(14) Whereas, in prior decisions, the Commission had left open whether the geographic scope should comprise trades, defined as the range of ports which are served at both ends of the service (e.g. Northern Europe – North America) or each individual leg of trade (e.g. westbound and eastbound within a given trade), in its most recent practice, the Commission has concluded that container liner shipping services are geographically defined on the basis of the legs of trade (e.g. Northern Europe – North America eastbound).[9] The Parties agree with this approach.[10]

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4 See M.7908 **–** *CMA CGM/NOL;* M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd;* M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd.*

5 Q1-Questionnaire to competitors, question 4; Q2-Questionnaire to customers, question 4.

6 See M.7908 – *CMA CGM/NOL;* M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*; M.3829 - *Maersk/PONL.*

7 See M.7908 – *CMA CGM/NOL*; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*; M.3829 – *Maersk/PONL.*

8 See Parties' combined market shares for deep-sea reefer container liner shipping. See Form CO – Annex 6.3.A-2.

9 See M.8120 – *Hapag-Lloyd/United Arab Shipping Company.*

10 Form CO, paragraph 37.

(15) The market investigation unanimously confirmed that the market for container liner shipping services should be defined on the basis of the legs of trade.[11]

(16) With regard to the Northern Europe - North America trade, it could be argued that the characteristics of the services between Northern Europe and Montreal via the St. Lawrence Seaway are different from the rest of the Northern Europe – North America trade possibly up to the point of constituting a separate market.[12] Services to Montreal are mainly used to reach customers in the Montreal area and the US Midwest region. From a supply-side perspective, it appears that substitutability between services that call in harbours on the US East Coast and services that go to Montreal would be limited, notably due to the much smaller size and, during the winter season, the required ice breaker classification of the vessels in the St. Lawrence River up to Montreal. On the demand-side, however, the majority of customers who responded to the market investigation was of the opinion that services to the Port of Montreal are substitutable to services to at least the ports on the northern US East coast (e.g. Philadelphia, New York) for container traffic on the route to and from Northern Europe, notably when looking at a door-to-door transport including hinterland traffic.[13]

(17) Consequently, for the purpose of the present Transaction and in line with its previous practice, the Commission considers the Northern Europe – North America as the relevant trade.

4.1.2. Container terminal services

(18) Container terminal services (also called stevedoring services) are "input services" to container liner shipping. In previous cases, the Commission defined separate markets for container terminal services for deep-sea container ships, broken down by traffic flows to hinterland traffic (that is, containers transported directly onto/from a deep-sea container vessel from/to the hinterland via barge, truck or train) and transhipment traffic (that is, containers destined for onward transportation to other ports).[14]

(19) In its prior decisional practice, the Commission considered that for container terminal services in deep sea ports, the relevant geographic market is in essence determined by the geographic area the container terminal generally serves (catchment area). For example, concerning container terminals in Northern Europe and in Hamburg in particular, the Commission considered that the relevant geographical dimension of stevedoring services is in its broadest scope Northern Europe (for transhipment traffic) and in its narrowest possible scope the catchment area of the ports in the range Hamburg – Antwerp (for hinterland

[11] Q1-Questionnaire to competitors, question 5; Q2-Questionnaire to customers, question 5.

[12] Q1-Questionnaire to competitors, question 6; Q2-Questionnaire to customers, question 6.

[13] Q1-Questionnaire to competitors, question 7; Q2-Questionnaire to customers, question 7.

[14] Cases M.8459 – *TIL/PSA/PSA DGD*, para. 15-16; M.8330 – *Maersk Line/HSDG*, not yet published; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 21, M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, para. 32; M.5398 – *Hutchison/Evergreen*, para. 9–11; M.3829 – *Maersk/PONL*, para. 17–19; M.3863 – *TUI/CP Ships*, para. 12.

traffic) or possibly even narrower, comprising the German ports only.[15] However, so far, the Commission has left the precise definition of the geographic market open.[16]

(20) Moreover, while ultimately leaving the market definition open, the Commission also indicated in other previous cases that, for hinterland traffic, 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.[17] Furthermore, for transhipment traffic, Mediterranean ports constitute a separate market recognising that this market may be divided into smaller geographic markets.[18]

(21) The Parties submit that the relevant market should not be geographically defined as narrower than regional and in particular that a national port market definition would be too narrow given the international nature of the container liner shipping business.

(22) For the purposes of this Decision, it can be left open whether the relevant geographic market would be national or comprise a transnational regional catchment area (for hinterland traffic) and whether it should be Northern Europe or the Mediterranean as a whole or a certain range of ports within this area (for transhipment traffic)[19] since the Transaction would not raise serious doubts as to its compatibility with the internal market under any of these plausible definitions of the markets for container terminal services.

4.1.3. Freight forwarding

(23) In its prior decisional practice, the Commission has defined freight forwarding as "the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs".[20] The Commission subdivided the market into domestic

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15 Cases M.8330 – *Maersk Line/HSDG*, not yet published; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 22; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, para. 16; M.5066 – *Eurogate/APMM*, para. 15–20.

16 See, for instance, case M.8120 – *Hapag-Lloyd/United Arab Shipping Company*. .

17 See for instance, cases M.5398 – *Hutchison / Evergreen*, decision of 17 December 2008, para. 14; M.5066 – *Eurogate / APMM*, decision of 5 June 2008, para. 22; M.2859 – *Deutsche Bahn Cargo / Contship Italia / JV*, decision of 15 July 2002, para. 3.

18 See for instance, cases M.5398 – *Hutchison / Evergreen*, decision of 17 December 2008, para. 16; M.1674 – *Maersk/ECT*, para. 10-11.

19 See case M.8459 –TIL/PSA/PSA DGD, paras. 21-22. In the latter case, regarding terminals in Antwerp, the Commission considered that the relevant geographic market for hinterland traffic would at least comprise the ports of Antwerp and Rotterdam and probably the entire Hamburg-Le Havre range while for transhipment it would comprise at the very least the Hamburg-Le Havre range. The market definition was, however, left open.

20 Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, para. 37, M.6059 – *Norbert Dentressangle/Laxey Logistics*, para. 17, M.1794 – *Deutsche Post/Air Express International*, para. 8.

and cross-border freight forwarding and into freight forwarding by air, land and sea.[21]

(24) In past decisions, the Commission defined the geographic scope of the market either as national or wider. Specifically, the Commission defined the market for sea freight forwarding as at least national.[22]

(25) For the purposes of this Decision, the precise relevant product or geographic market definition for freight forwarding services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition.

4.2. COMPETITIVE ASSESSMENT

4.2.1. Horizontal overlaps: Deep-sea container liner shipping

i. Forms of cooperation

(26) Shipping operators provide their services either individually with their own vessels (owned or chartered) or through cooperation agreements with other shipping operators. Cooperation agreements can consist in slot charter agreements, consortia (also called vessel sharing agreements –"VSAs") or alliances.[23]

(27) Under a slot charter agreement a shipping company ("charterer") "rents" a predetermined number of container slots on a vessel of another shipping company in exchange for cash (normal or regular slot charter) or slots on its own vessels (slot-exchange). Slot charter agreements do not normally involve joint decision making concerning marketing, ports of call, schedule or the use of the same port terminals.

(28) Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity it contributes. The allocation of container slots is usually predetermined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel

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[21] Cases M.6059 – *Norbert Dentressangle/Laxey Logistics*, para. 18, M.1794 – *Deutsche Post/Air Express International*, para. 8-12. In addition, in the Commission's practice, the further segmentation of land freight forwarding has been left open, with the exception of the freight forwarding of certain very specific products. For example, in M.5579 *TLP/Ermewa*, para. 51, the Commission defined a specific market for freight forwarding of cereals.

[22] Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, para. 37-39; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, para. 18; M.5480 – *Deutsche Bahn/PCC Logistics*, para. 12-17.

[23] Form CO, page 37 and 38.

providers individually so that there is limited to no sharing of costs between the participants in a consortium.

(29) Finally, alliances are matrices of vessel sharing agreements that cover multiple trades rather than one trade, as opposed to consortia. Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost efficient way. If new larger ships are introduced in one trade, existing tonnage can be more easily and efficiently redeployed or cascaded into other trades. At the same time, the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location. Moreover, by forming alliances, carriers may be better placed to secure sufficient numbers of vessels to offer a fixed or weekly schedule on a more reliable basis for the benefit of their customers who seek not only lower costs, but also require certain frequency of services.

ii. Methodology

(30) As it is common industry practice in the container liner shipping business, both Parties are members of one or more alliances/consortia on the various trades which call at European ports. Since 1 April 2017, COSCO and OOCL are both members of the Ocean Alliance[24] and NET (North Europe Turkey Service).[25] While COSCO is also a member of 3 other alliances/consortia, namely GEM (Gulf East Med Services),[26] GEM 2 (Gulf East Med2 Service)[27] and MAF (Mediterranean Africa Service),[28] OOCL's additional consortia memberships include SLCS[29] as well as the SLCS and MSC.[30]

(31) The Parties are of the view that the Transaction should be assessed without taking into account their participation in alliances/consortia, because membership in alliances/consortia generates efficiencies and each carrier remains independent from its partners and in competition with them on essential parameters of competition, such as price, also within a given alliance/consortium. Moreover, in

[24] OCEAN operates trades connecting each of Northern Europe and Mediterranean with each of North America and the Far East. Apart from COSCO and OOCL, the other members of the OCEAN Alliance are CMA CGM and Evergreen.

[25] Hapag-Lloyd is also member of NET, operating on the Northern Europe-Mediterranean trade.

[26] COSCO, CMA CGM and Hapag-Lloyd are members of GEM, operating on the Mediterranean-Middle East trade.

[27] COSCO and CMA CGM are members of GEM2, operating on the Mediterranean-Middle East and Mediterranean-Indian Subcontinent trades.

[28] COSCO, Messina and MSC are members of MAF, operating on the Mediterranean-West Africa trade.

[29] OOCL and Hapag-Lloyd are members of SLCS, operating on the Northern Europe-North America trade.

[30] OOCL, Hapag-Lloyd and MSC are members of SLCS and MSC, operating on the Northern Europe-North America trade.

this particular case, the Parties submit that it is not relevant to consider the alliances/consortia market shares as both Parties are members of one and the same alliance, the OCEAN Alliance, pre-Transaction.

(32) In its decisional practice in this sector, the Commission however considered that it was not appropriate to assess the effects of a concentration only on the basis of the Parties' individual market shares. Such an approach would not adequately take into account that a member of an alliance/consortium, even when carrying limited volumes, can have a significant influence on operational decisions determining service characteristics, in particular capacity, over a much larger part of the market, i.e. that corresponding to the entire alliances/consortia of which it is a member.[31] This influence can have a dampening effect on competition on those trades served by the alliances/consortia in question.

(33) Therefore, for the assessment of this case and in line with the Commission's past practice, the aggregate shares of the Parties' alliances/consortia and all their members will also be taken into account, thus reflecting the more limited competitive constraints that the Parties' partners exert on them. Conversely, the part of the market, over which the Parties have no influence, i.e. corresponding to carriers that are not members to any of the Parties' alliances/consortia (the "free market"), will be viewed as fully competing with the Parties in the respective trade.

(34) For the reefer container market, in line with the Commission's previous decisional practice,[32] market shares are only taken into account on those legs of trade where the share of transport in reefer containers in relation to all containerised cargo is 10% or more.

iii. Affected markets

(35) The Transaction does not give rise to affected markets in deep sea container liner shipping on the legs of trade to/from Europe when adding up the individual market shares of the Parties.[33]

(36) When attributing the Parties' alliances/consortia market shares to them, the combined market share would exceed 20% leading to affected markets on 8 legs of trade, namely for both the eastbound and westbound leg of the i) Northern Europe to North America, ii) Northern Europe to Far East, iii) Mediterranean to

31 See M.7908 – *CMA CGM/NOL;* M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*.

32 Cases M.7908 – *CMA CGM/NOL*, para. 9; and M.7268 – M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, para. 11.

33 COSCO SHIPPING Holdings and OOCL have overlapping container liner shipping services on 9 trades (and 18 legs of trade) connecting each of Northern Europe and the Mediterranean to North America, the Indian Subcontinent, the Far East/Asia, the Middle East as well as Northern Europe to the Mediterranean.. If reefer only is considered, then their activities overlap in 13 legs of trade (that is, there are no overlaps on the trade Northern Europe-Mediterranean and Northern Europe-Indian Subcontinent and there is no overlap on the westbound leg of the Northern Europe-Middle East trade).

Middle East (including Mediterranean Middle East eastbound leg reefer only) and iv) Mediterranean to the Far East trades.

(37) The table below includes (i) the Parties' individual and combined market shares, (ii) the aggregate market share of the Parties' and their alliances/consortia and (iii) the percentage of free market on the legs of trade where affected markets arise.

Table 1: Overview of container liner shipping trades where affected markets arise

Trade	Leg[34]	Type	COSCO (%)	OOCL (%)	Parties' combined (%)	Aggregate market shares of all Parties' alliances/ consortia (2016) (%)	"Free market" (2016) (%)
1. Northern Europe – North America	EB	All containers	[0-5]	[5-10]	[10-20]	[60-70]	[30-40]
2. Northern Europe – North America	WB	All containers	[0-5]	[5-10]	[5-10]	[60-70]	[30-40]
3. Northern Europe-Far East	EB	All containers	[10-20]	[5-10]	[10-20]	[30-40]	[60-70]
4. Northern Europe – Far East	WB	All containers	[10-20]	[0-5]	[10-20]	[30-40]	[60-70]
5. Mediterranean-Middle East	EB	All containers	[5-10]	[0-5]	[5-10]	[30-40]	[60-70]
6. Mediterranean-Middle East	WB	All containers	[5-10]	[0-5]	[5-10]	[40-50]	[50-60]
6(a). Mediterranean-Middle East	EB	Reefer containers only	[0-5]	[0-5]	[0-5]	[40-50]	[50-60]
7. Mediterranean – Far East	EB	All containers	[10-20]	[0-5]	[10-20]	[30-40]	[60-70]
8. Mediterranean – Far East	WB	All containers	[10-20]	[0-5]	[10-20]	[30-40]	[60-70]

Source: CTS database and internal data

(38) Adding the (volume based) market shares of alliances/consortia partners of the merging Parties is a conservative approach since these partners are not part to the Transaction. However, with this approach the Commission takes into account the fact that the Parties and their partners agree on important parameters of competition, in particular the setting of capacity and the sailing schedule, which has a dampening effect on competition between them on those legs of trade operated by the alliances/consortia.

(39) As can be seen in Table 1 above, even when adding alliances/consortia market shares, the free market would still be above 60% for both legs of the Northern Europe - Far East and the Mediterranean - Far East trades.[35] Therefore, in line

[34] EB: eastbound, WB: westbound.

[35] Affected markets on these trades arise only when, in addition to the combined market share of the Parties, the shares of the partners in the OCEAN Alliance are added. However, as both COSCO and OOCL were already members of the OCEAN Alliance prior to the merger, the overlap between the Parties and the other members was pre-existing. Therefore, there is no new link brought about by the Transaction, and the market share increase in these trades is not merger specific.

with its practice,[36] as the free market remains above 60% and there are no new links created by the Transaction, the Commission considers that the Transaction would not raise any competition concerns in any of those affected markets which will therefore not be further considered in this decision.

(40) On the other hand, the free market would be below 60% for (i) both legs of the Northern Europe - North America trade, (ii) the westbound leg of the Mediterranean - Middle East trade, and (iii) the eastbound leg of this trade if only reefer containers are considered.

(41) However, for the legs of trade between the Mediterranean and the Middle East, while COSCO is a member of GEM (with CMA CGM and Hapag-Lloyd) and GEM2 (with CMA CGM), OOCL is not a party to any alliance or consortium on this trade. In addition, the increment added by OOCL is marginal, at most [0-5]% on both legs of the trade, as OOCL is currently an insignificant player on this trade. Moreover, the free market is […] [60-70]% on the eastbound leg of the trade and it is […] [50-60]% on the westbound leg of the market for all containers. Furthermore, the free market remains above 50% for the eastbound leg of trade when considering reefer containers only. As a result, particularly in light of OOCL's limited presence, the impact brought about by the Transaction on the Mediterranean-Middle East legs of trade remains marginal. The independent competitors active on this trade include Maersk and MSC with a combined market share well above 40% as well as Evergreen. Finally, both customers and competitors who expressed an opinion in the market investigation did not raise any competition concerns in relation to this trade.[37]

(42) As regards the Northern Europe - North America trade, while the Parties' alliances/consortia would reach [60-70]% westbound and [60-70]% eastbound market share (leaving a 'free market' of maximum [30-40]%), the Commission considers that the Transaction would not give rise to any competition concerns either for the following reasons.

(43) First, while the Transaction would allow COSCO to have access to capacity in the SLCS consortia post-merger, the Transaction would not lead to a completely new link between previously fully independent consortia, as OOCL is a member of the SLCS consortia and the Ocean Alliance already prior to the Transaction. As a result, the Parties' alliances/consortia are already interconnected in this trade and the only change brought about by the Transaction would be the increment added by COSCO, namely, the new link created between COSCO and the SLCS consortia. However, this overlap appears to be limited due to COSCO's marginal position on this trade (representing approximately [0-5]% of the trade both eastbound and westbound).

(44) Second, the Parties appear to be not close competitors on this trade, notably as COSCO does not serve the part of the trade where OOCL is active. In particular, through the SLCS loops, OOCL provides a service for customers from Northern

[36] See, for instance, Commission decision of 28 June 2017 in case M.8472- NIPPON YUSEN KABUSHIKI KAISHA/MITSUI OSK LINES/KAWASAKI KISEN KAISHA & JV, para 41.

[37] Q1-Questionnaire to competitors, question 22; Q2-Questionnaire to customers, question 20.

Europe to Canada and the US Midwest via the port of Montreal, which serves these parts of North America. On the other hand, COSCO does not transport any volumes between Northern Europe and the Canadian East coast/the St. Lawrence Seaway and does not currently have the required vessels to provide such service.

(45) The majority of respondents to the market investigation confirmed that the Parties are not close competitors on the Northern Europe – North America trade. In particular, when asked to rank the closest competitors to COSCO in relation to this trade, respondents indicated CMA CGM followed by Evergreen and Hapag-Lloyd. Similarly, CMA CGM was identified as the closest competitor to OOCL by the majority of respondents to the market investigation.[38]

(46) Third, there would still be sufficient competition post-merger on the Northern Europe – North America trade. Independent competitors account for [30-40]% on the eastbound and [30-40]% on the westbound leg of the trade and include the world number one carrier Maersk ([10-20]% westbound and [10-20]% eastbound). Furthermore, as acknowledged already in the past, there exists some price competition within the alliances/consortia,[39] and the volume transported outside of the Ocean Alliance and the SLCS/SLCS plus MSC consortia by the other alliance/consortia members is also substantial on this trade (that is, the volume transported by Hapag-Lloyd and MSC outside the Parties' alliances/consortia would account, for around [30-40]% of the aggregate market share on each leg of the Northern Europe - North America trade as shown in Table 1 above).

(47) Finally, the majority of those respondents to the market investigation who expressed an opinion did not express any concerns in relation to the Transaction, including as regards the Northern Europe - North America trade. In particular, both customers and competitors consider that there will be sufficient competition to prevent the merged entity from raising prices post-Transaction.[40]

iv. Conclusion

(48) Based on the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in respect of deep-sea container liner shipping (including as regards the transport of refrigerated goods) on any plausible relevant geographic market.

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[38] Q1-Questionnaire to competitors, question 13-15; Q2-Questionnaire to customers, question 14 and 15.

[39] See, for instance, para 42 of the decision in case M.8120- Hapag-Lloyd/UASC indicating that: *"On the one hand, the results of the market investigation show that there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members. Shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service".*

[40] Q1-Questionnaire to competitors, question 20 and 21; Q2-Questionnaire to customers, question 19 and 20.

4.2.2. Vertical relationships: container terminal services and freight forwarding

(49) The Parties are active, directly or via subsidiaries, on markets that are vertically related to the container liner shipping business, namely container terminal services and freight forwarding.

(50) The Transaction would thus create vertical links between the Parties' operations in the market for container liner shipping services and (i) the upstream market for container terminal services and (ii) the downstream market for freight forwarding services.

(51) These markets would be vertically affected by the Transaction if the Parties' individual or combined market shares were 30% or more in one of those upstream or downstream markets or if the Parties' individual or combined market shares were 30% or more in the related container liner shipping markets. In its prior decision practice, the Commission has also taken into account the market shares of the Parties' alliances/consortia in the related container liner shipping markets in its assessment of vertical relationships,[41] as alliances/consortia members are likely to jointly select their supplier of some of these services.

4.2.2.1. *Container terminal services*

i. Description of the Parties' activities

(52) Container terminal services are a necessary input for the provision of container liner shipping services and therefore serve as an upstream market.

(53) Within the EEA, COSCO has controlling interests in container terminals in Greece, Spain and it is in the process of acquiring control of a terminal in Belgium. Outside of the EEA, COSCO has controlling interests in container terminals serving traffic on trades from/to the EEA on which the Parties are active in Turkey, China (including Hong Kong), Singapore and the United Arab Emirates. OOIL operates a container terminal in Taiwan that serves traffic on trades from/to the EEA on which the Parties are active.

(54) In five ports, COSCO solely or jointly controls or will control in the near future more than 30% of the container terminal services: Piraeus, Greece (100% of container traffic); Bilbao, Spain (100%); Valencia, Spain ([40-50]%); Zeebrugge, Belgium (100%) and Guangzhou, China (50-60]%). In addition, the Parties' combined market shares for deep-sea container liner shipping, including the shares of their alliances/consortia partners, are above 30% on 8 legs of trade (see Table 1 in Section 4.2.1 (iii)). Therefore, all markets for container terminal services in which the Parties are active with the container terminals as noted in recital (53) above are vertically affected by the Transaction.

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[41] Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*; M.7908 – *CMA CGM/NOL*, para. 148-150; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, para. 206.

ii. Commission's assessment

(55) The Commission considers that the merged entity would neither have the ability nor the incentive to engage in any input and/or customer foreclosure strategy, regardless of whether the vertical links brought about by the Transaction are assessed at individual or at alliance/consortium level.

(56) In the large majority of cases, the Parties' share of container terminal services within the same port is below 30%, therefore making any anti-competitive effect from the Transaction unlikely. Any input foreclosure strategy engaged by the merged entity would be unlikely, because other container liner shipping companies could procure port terminal services from several alternative providers within the same port or in other ports in the same catchment area. Furthermore, the Commission has no evidence that in the past the Parties engaged in any foreclosure strategy and there is no reason to believe that this would change post-merger. In addition, it is unlikely that the Transaction would increase the ability or incentives of the Parties to engage in a customer foreclosure strategy, namely, by foreclosing terminal operators' access to container liner shipping companies. As explained above, the increments created by the Transaction are small. On 6 out of the 8 legs of trade that are affected, the Parties are already cooperating within the OCEAN Alliance and the Transaction thus does not create any (completely) new link or increment.

(57) In five ports (see recital (54)), COSCO controls more than 30% of the container terminal services. However, even in those ports, the Commission considers that the merged entity is unlikely to engage in input foreclosure. The Parties' activity in those ports, in terms of their own container traffic, is limited, with OOCL representing a particularly small share of the traffic. The Parties, seeking to employ the capacity at their terminals to a maximum extent, will thus have no incentive to refuse serving competing shipping companies. In any case, as mentioned above, the Commission has no evidence that the Parties engaged in any foreclosure strategy in the past. Since any change brought about by the Transaction is small, the Transaction will not affect the Parties' ability and incentive to adopt foreclosing practices to any significant extent.

(58) Accordingly, in the port of Piraeus, Greece, COSCO controls all container terminal services (100% ownership of two piers and 51% of the third pier in the port). Its own container traffic represents only [20-30]% of the throughput of the port and that of OOCL less than [0-5]%. COSCO also controls (40% ownership) the container terminal in the port of Bilbao. Its own container traffic represent less than [0-5]% of the throughput of the port and that of OOCL less than [0-5]%. In the port of Valencia, Spain, COSCO controls one of three container terminals (51% ownership) which accounts for [40-50]% of the total throughput of the port. COSCO's container traffic represents only [0-5]% of the throughput of its own terminal and thus less than [0-5]% of the port's total while OOCL's annual container traffic is less than […] containers. At the time of the notification, COSCO was in the process of acquiring control (100% ownership) over the remaining operational container terminal in the port of Zeebrugge, Belgium (two other container terminals were closed in that port in 2016). In 2016, COSCO's container traffic represented only about [10-20]% of the throughput of this terminal while OOCL […]. In the port of Guangzhou, COSCO controls 2 container terminals out of nine (39% and 40% ownership respectively),

representing [50-60]% of the port's throughput. COSCO's own traffic represents [50-60]% of the throughput of its controlled terminals and thus only [30-40]% of the port's total. OOCL's traffic in COSCO's controlled terminals represents only [0-5]% of throughput and thus only [0-5]% of the port's total.

(59) Against this background, the majority of customers and competitors responding to the market investigation did not raise any competition concerns with regard to the vertical link between the Parties' activities in container liner shipping and the operation of container terminals. More specifically, the majority of both customers and competitors do not consider that the Transaction would increase the merged entity's ability or incentive to restrict access of container shipping companies to container terminal services or of container terminal operators to container shipping companies as customers.[42]

iii. Conclusion

(60) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards vertical effects in respect of container terminal services.

4.2.2.2. ***Freight forwarding***

i. Description of the Parties' activities

(61) Sea freight forwarders are among the most important customers of container liner shipping companies.

(62) COSCO is active in freight forwarding services mainly via COSCO SHIPPING Logistics Co., Ltd. and its subsidiaries having its main activity in China and some presence in the EEA, Japan and North America. OOIL is active in freight forwarding services via OOCL Logistics Lines Limited having 130 offices in over 30 countries in Europe, North America and Asia.

(63) According to the figures provided by the Parties, they have negligible freight forwarding activity in the EEA representing a market share of less than [5-10]% at EEA or Member State level under any plausible definition of the relevant market.[43] The Parties further submit that according to their best estimates their combined market share would not exceed [5-10]% on any other market outside of the EEA.

ii. Commission's assessment

(64) In light of the low market shares of the Parties in freight forwarding markets, irrespective of any plausible market segmentation, it is unlikely that the merged entity would have the ability and/or the incentive to foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market for

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[42] Q1-Questionnaire to Competitors, question 18; Q2-Questionnaire to customers, question 17.

[43] The Parties' activities overlap only in 5 national markets at EEA level: Belgium, France, Germany, the Netherlands and the United Kingdom. However, their activities do not give rise to any horizontally affected markets in these Member States.

container liner shipping services. Likewise, the post-Transaction standalone market shares of the merged entity in the upstream markets for container liner shipping services are modest and their increments are small. To the extent that the Parties' alliances/consortia market shares are considered, on most trades the Parties have already cooperated within the OCEAN Alliance and the Transaction does not create new links.[44] It is therefore unlikely that the merged entity would have the ability and incentive to foreclose access of other sea freight forwarders to container liner shipping services on any trade.

(65) The majority of customers and competitors responding to the market investigation did not raise any concerns with regard to the vertical links between the Parties' activities in container liner shipping and freight forwarding services. More specifically, the majority of both customers and competitors do not consider that the Transaction would increase the merged entity's ability or incentive to foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market for container liner shipping services or to foreclose access of other sea freight forwarders to container liner shipping services on any trade.[45]

iii. Conclusion

(66) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as regards vertical effects in respect of freight forwarding services.

5. CONCLUSION

(67) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

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[44] As explained in recital (43) above, there is also no completely new link on the trade between Northern Europe and North America and, in any event, the change brought about by the Transaction is small. As regards the trade between the Mediterranean and the Middle East where the OCEAN Alliance is not active, the increment added by OOCL is marginal (see recital (37) above).

[45] Q1-Questionnaire to competitors, question 19; Q2-Questionnaire to customers, question 18.