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Joint venture involving three international shipping companies given conditional approval by the Tribunal

The Competition Tribunal has approved with conditions the intermediate merger whereby Nippon Yusen Kabushiki Kaisha (NYK), Mitsui O.S.K. Lines Ltd (MOL) and Kawasaki Kisen Kaisha Ltd (KL) (Joint Venture Partners) intend to merge their container liner shipping businesses to form a joint venture in that market. NYK, MOL and KL will share ownership in the joint venture known as Ocean Network Express (“ONE”).

The primary acquiring firm is ONE, the global joint venture for the container liner shipping of NYK, MOL and KL and its South Africa subsidiary (“SA JV Co”). Pre-transaction, NYK operates its shipping company in South Africa through Michael Cotts Maritime while MOL operates in South Africa through its wholly owned subsidiary MOL South Africa and MOL ACE South Africa and KL operates through a controlled entity K Line Shipping SA.

The three companies are primarily involved in the shipping industry. Activities of the firms include the provision of various types of shipping services, including container liner shipping, car carrier shipping and bulk shipping, terminal services, logistics services and cruises.

Post-transaction, the firms will continue to compete in the adjacent market for the provision car carrier shipping and the provision of bulk shipping solutions.

Case background

The Competition Commission had originally prohibited the merger as it felt the transaction would have likely strengthened co-ordination in the market for the transportation of cars; the Liner shipping services and Bulk shipping services. However in the proceedings before the Tribunal, the Commission, jointly with the merging parties, proposed a range of conditions which addressed its concerns and ultimately did not oppose the conditional approval. The merging parties disputed the need for conditions, but indicated that they would agree to be bound by such in the interests of obtaining approval.

Conditions

The conditions approved by the Tribunal address concerns pertaining to the exchange of competitively sensitive information and cross directorships in the adjacent car carrier shipping and bulk shipping businesses between the parties.

Broadly, the conditions prohibit a cross pollination of employees and executives between the container liner JV and adjacent businesses as well as imposing a number of extensive monitoring and reporting mechanisms.

In terms of the conditions, executive and non-executive directors, management, representatives and employees of JV Ocean Network Express and SA JV Co (including those who are seconded from the parties or who have left employment of the parties and will be employed by ONE and/or SA JV Co) shall not receive any confidential information regarding the car carrier and bulk shipping business from any party.

Executive and non-executive directors who are on the board of directors on ONE and/or SA JV Co shall not be involved in the day-to-day operations of the car carrier and bulk shipping company.

Directors of Hold Co will also serve as directors and/or officers of the parties and may not disclose or exchange any of the confidential information relating to ONE and/or SA JV Co regarding the car carrier and bulk shipping business.

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