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**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No.C-2016/01/363)

9<sup>th</sup> May 2016

**Notice under Section 6 (2) of the Competition Act, 2002 given by CMA CGM S.A.**

**CORAM**

**Devender Kumar Sikri**  
Chairperson

**S. L. Bunker**  
Member

**Sudhir Mital**  
Member

**U. C. Nahta**  
Member

**M.S. Sahoo**  
Member

**G. P. Mittal**  
Member

**Legal Representatives of the parties:** Shardul Amarchand Mangaldas & Co

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

1. On 6<sup>th</sup> January 2016, the Competition Commission of India (“**Commission**”) received a notice filed by CMA CGM S.A. (“**CMA CGM**” or “**Acquirer**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice has been filed pursuant to announcement by CMA CGM on 7<sup>th</sup> December 2015 regarding its pre-conditional voluntary offer (“**Offer**”) to acquire all the issued and paid up ordinary share capital of Neptune Orient Lines Limited (“**NOL**” or “**Target**”), excluding issued and paid up ordinary shares held by NOL as treasury stock, (“**Proposed Combination**”).
2. In addition to the Offer, the parties, *i.e.*, NOL and CMA have entered into an Offer Implementation Agreement (“**Agreement**”) on 7<sup>th</sup> December 2015, which sets out the



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steps to be taken to effect the acquisition and the Offer, and to record their respective rights and obligations relating to such matters. It has been further submitted that in case CMA CGM acquires 90 percent or more of NOL's equity shares, it will implement a compulsory acquisition and delisting process.

3. CMA CGM, incorporated in France, is a public limited company. It is engaged in the business of, *inter alia*, container liner shipping and port terminal management services. It offers a range of activities including shipping, handling facilities in port, as well as freight transport and logistics on land.
4. NOL, incorporated in Singapore, is publicly listed at Singapore Exchange Securities Trading Limited. NOL is currently controlled by Temasek Holdings which holds 67 percent (directly and indirectly) of its equity shares. NOL's business activities encompass various aspects of cargo container transportation through its container shipping brand, American President Lines ("APL").
5. In terms of Regulation 5(6) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), *vide* letter dated 6<sup>th</sup> January 2016, the Acquirer had undertaken to submit, *inter alia*, details about competitors of the parties. The Acquirer submitted the requisite information on 13<sup>th</sup> January 2016. Further, in terms of Regulation 14 of Combination Regulations, *vide* letters dated 2<sup>nd</sup> February 2016, 25<sup>th</sup> February 2016 and 8<sup>th</sup> March, 2016 CMA CGM was required to remove certain defects and provide requisite information/document. CMA CGM filed its response on 19<sup>th</sup> February 2016, 29<sup>th</sup> February 2016, 14<sup>th</sup> March 2016 and 16<sup>th</sup> March 2016, after seeking extension of time.
6. The case pertains to container liner shipping industry which provides regular scheduled services for the carriage of cargo in containers. Container ships have the capacity to carry several large warehouses worth of goods on a single journey. A cargo liner is a vessel which operates a regular scheduled service on a fixed route between designated ports and carries many consignments of different commodities.
7. Container liner shipping can be classified into deep sea (where the ship crosses oceans) ("**Deep-sea container liner shipping**") or short sea (where the ship moves along the coast,



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mainly on sea, without crossing an ocean) (“**Short-sea container liner shipping**” or “**Shallow-sea container liner shipping**”). Further, the Commission also observed that refrigerated container (“**Refeer**”) may not be treated as a separate product as the container liner shipping itself is capable of carrying the refrigerated container.

8. In this regard, it has been submitted that the market conditions and the conditions of competition on the two directions of a trade can be different, particularly in case of trade imbalances or different characteristics of the products shipped. Accordingly, it has been submitted that the relevant geographic market for the container liner shipping is based on legs of the trade routes<sup>1</sup>.
9. In relation to the Deep-sea container liner shipping, the Acquirer has submitted that the parties’ activities overlap on 8 trade routes, namely, North Europe / India; Mediterranean / India; Asia / India; India / East Coast Africa; India / West Coast South America; India / North America; India / Australasia and Oceania; and India / Central America and Caribbean. Thus, considering different legs of a trade route to be different, there are 16 possible relevant markets for Deep-sea container liner shipping.
10. In relation to the Short-sea container liner shipping, based on the submissions of the Acquirer, it is noted that the parties’ activities overlap on 11 trade routes, namely, Bangladesh / India; Maldives / India; Pakistan / India; Sri Lanka / India; Bahrain / India; Iraq / India; Kuwait / India; Oman / Muscat / India; Qatar / India; Saudi Arabia / India; and UAE / India. Thus, considering different legs of a trade route to be different, there are 22 possible relevant markets for Short-sea container liner shipping.
11. With respect to Deep-sea container liner shipping, the Acquirer has provided the following details about the market share of the parties and their competitors in volume terms (unit - twenty-foot equivalent units (“**TEU**”)), as follows:

(a) **North Europe / India**

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<sup>1</sup> A leg of trade route is defined as one of the two directions of a trade, *e.g.*, on the trade Northern Europe / India, Northern Europe to India is one leg; India to Northern Europe is a separate leg.



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- i. *From India to North Europe* - For this leg of the trade route, combined market share of the parties post-combination would be between 15-20 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 15-20 percent), Maersk (between 15-20 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From North Europe to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 15-20 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 15-20 percent), Maersk (between 20-25 percent), etc. which would continue to provide competitive constraint to the parties.

**(b) Mediterranean / India**

- i. *From India to Mediterranean* - For this leg of the trade route, combined market share of the parties post-combination would be between 10-15 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 20-25 percent), Maersk (between 15-20 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From Mediterranean to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 10-15 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 20-25 percent), Maersk (between 15-20 percent), etc. which would continue to provide competitive constraint to the parties.

**(c) Asia / India**

- i. *From India to Asia* - For this leg of the trade route, combined market share of the parties post-combination would be between 10-15 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 20-25 percent), Maersk (between 15-20 percent), etc which would continue to provide competitive constraint to the parties.
- ii. *From Asia to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 10-15 percent. Further,



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there are competitors like Overseas Orient Container Line India Private Limited (“OOCL”) (between 10-15 percent), Maersk (between 5-10 percent), etc. which would continue to provide competitive constraint to the parties.

**(d) India / East Coast Africa**

- i. *From India to East Coast Africa* - For this leg of the trade route, combined market share of the parties post-combination would be between 20-25 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 20-25 percent), Maersk (between 20-25 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From East Coast Africa to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 20-25 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 10-15 percent), Maersk (between 20-25 percent), etc. which would continue to provide competitive constraint to the parties.

**(e) India / West Coast South America**

- i. *From India to West Coast South America* - For this leg of the trade route, combined market share of the parties post-combination would be between 5-10 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 30-35 percent), Hamburg Sud (between 25-30 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From West Coast South America to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 0-5 percent. Further, there are competitors like Mediterranean Shipping Company S.A. (between 40-45 percent), Hapag-Lloyd (between 20-25 percent), etc. which would continue to provide competitive constraint to the parties.

**(f) India / North America**



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- i. *From India to North America* - For this leg of the trade route, combined market share of the parties post-combination would be between 20-25 percent. Further, there are competitors like Hapag-Lloyd (between 15-20 percent), Mediterranean Shipping Company S.A. (between 10-15 percent) and Maersk (between 25-30 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From North America to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 20-25 percent. Further, there are competitors like Hapag-Lloyd (between 10-15 percent), Mediterranean Shipping Company S.A. (between 25-30 percent) and Maersk (between 15-20 percent), etc. which would continue to provide competitive constraint to the parties.

**(g) India / Australasia and Oceania**

- i. *From India to Australasia and Oceania* - For this leg of the trade route, combined market share of the parties post-combination would be between 40-45 percent. Further, there are competitors like Hapag-Lloyd (between 10-15 percent), Maersk (between 15-20 percent), OOCL (between 15-20 percent), etc. which would continue to provide competitive constraint to the parties.
- ii. *From Australasia and Oceania to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 25-30 percent. Further, there are competitors like Maersk (between 35-40 percent), Mediterranean Shipping Company S.A. (between 15-20 percent) and Hapag-Lloyd (between 5-10 percent), etc. which would continue to provide competitive constraint to the parties.

**(h) India / Central America and Caribbean**

- i. *From India to Central America and Caribbean* - For this leg of the trade route, combined market share of the parties post-combination would be between 25-30 percent. Further, there are competitors like Maersk (between 30-35 percent), Hamburg Sud (between 15-20 percent) and Hapag-Lloyd



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(between 5-10 percent), etc. which would continue to provide competitive constraint to the parties.

- ii. *From Central America and Caribbean to India* - For this leg of the trade route, combined market share of the parties post-combination would be between 25-30 percent. Further, there are competitors like Maersk (between 30-35 percent), Hamburg Sud (between 15-20 percent) and Hapag-Lloyd (between 5-10 percent), etc. which would continue to provide competitive constraint to the parties.

12. The Commission also observed that there are no specific regulatory barriers in respect of Deep-sea container liner shipping.
13. From the above it is evident that Deep-sea container liner shipping is characterised by presence of global players with sizeable market share who would continue to provide competitive constraint to the parties post-combination.
14. With respect to Shallow-sea container liner shipping it has been submitted that of the total 22 relevant markets, the combined market shares of the parties for 18 relevant markets is between 0 to 15 percent and in the remaining 4 relevant markets, namely, India to Bangladesh, Sri Lanka to India, India to Bahrain and India to Saudi Arabia, it's in between 15 to 25 percent. With respect to the competitors present in the said 22 relevant markets, maritime transporters such as NYK Lines, BLPL, Maxicon, Perma, Trans Asia Shipping, Hapag-Lloyd, Maersk, Mitsui *etc.*, are present with sizeable market shares on different legs of the said routes, which would continue to provide competition constraint to the parties post combination.
15. The Commission observed that akin to Deep-sea container liner shipping there are no specific regulatory barriers in respect of Shallow-sea container liner shipping.
16. With respect to Shallow-sea container liner shipping it is observed that not only global players but relatively smaller regional players are also active in this market. Accordingly, the market is expected to remain competitive, post-combination.



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17. For both the overlapping segments, *i.e.*, Deep-sea container liner shipping and Shallow-sea container liner shipping, the Commission also considered the market share (in both legs) of the consortia/alliances<sup>2</sup> to which the Acquirer and/or the Target belong and observed that the competitors, with sizeable market shares, are present which would provide competitive constraint to the parties post-combination.
18. In reference to the above, the Commission also noted the submission of the Acquirer that CMA CGM is a member of O3 Alliance and NOL is a member of G6 Alliance and post-combination NOL would withdraw from G6 Alliance and join the O3 Alliance. However, as per the submission of the Acquirer, the two alliances namely, O3 Alliance and G6 Alliance do not provide container liner shipping service in India.
19. Based on the submissions of the Acquirer, it is observed that there is a potential vertical relationship between the parties in relation to, (i) Deep-sea container liner shipping and/or Short-sea container liner shipping; and (ii) feeder services, freight forwarding services, inland transportation and container terminal management.
- 19.1 Feeder services entail collecting shipping containers from different ports and transporting them to central container terminals where they are loaded on bigger vessels. Freight forwarding services correspond to the organization of transportation of items (including activities such as customs clearance, warehousing and ground services, etc.) on behalf of customers. Inland transportation covers the physical movement of goods by using own (*i.e.*, owned or leased) equipment. Container terminal management refers to management of container at port.
- 19.2 In relation to these aforementioned services, it has been submitted that the Acquirer is present in India, while NOL is not present in any of the aforementioned businesses. In this regard, it has been further submitted that the Acquirer provides

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<sup>2</sup> Consortium agreements are “agreements between two or more vessel operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade in order to rationalize their operations by means of technical, operational and/or commercial arrangements, with the exception of price fixing. The bundling of several consortia each operating in a different trade is known as an alliance. Thus, consortia and alliances are agreements for business operation between container liners on a trade by trade or global basis for the provision of a joint service.





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feeder services through its own feeder vessels from India to Malaysia and Middle East, whereas NOL has no presence in India in the said business segment.

- 19.3 It has been further submitted that only the Acquirer is present in the market of freight forwarding services through CMA CGM Logistics India Pvt. Limited; however, its market share in India is marginal.
- 19.4 With respect to the business of inland transportation, it has been submitted that CMA CGM is active in inland transportation globally, however, in India, its activities are very limited. CMA CGM is present in this business through two subsidiaries, namely, Ameya Logistics Private Limited and Honeycomb Logistics Private Limited. NOL has no presence in this business segment in India.
- 19.5 Furthermore, in the business of container terminal management, the Acquirer has entered into a joint venture with Adani Ports and Special Economic Zone, a port developer and part of the Adani Group, for the development of a new common user Container Terminal at Mundra Port. However, NOL is not present in the said business in India.
20. The Commission, in its meeting held on 30<sup>th</sup> March 2016, decided to seek an expert opinion under Section 36(3) of the Act read with Regulation 52 of the Competition Commission of India (General) Regulations, 2009 and Regulation 19(3) of the Combination Regulations, on various aspects relating to maritime transport industry including Deep-sea container liner shipping and Shallow-sea container liner shipping and on market dynamics of the industry, in India.
21. Subsequently, the Commission, in its meeting held on 4<sup>th</sup> May 2016, heard the opinion of the expert on market dynamics of the industry. While giving an overview about the industry, the expert provided a general introduction about, *inter alia*, the key characteristic for each relevant market, players operating in the said businesses in India, new entrants in the said markets, extent of barriers to entry and consortia/alliances of which the parties to the combination are parties to.
22. The Commission further observed that liner shipping companies generally execute standard terms of agreements with shippers; these agreements are globally accepted and



recognised by all stakeholders. It is also observed that the shipping companies not only charge differential rates but also offer special discounts to certain category of customers. Further, shippers may also negotiate terms of the agreement which is indicative of countervailing power.

23. As regards, the likelihood of the present combination that might result into the parties to be able to increase prices or their profit margins, the Commission observed that the majority of India's maritime trade are in bulk goods, such as coal, ore, oil, etc. which are not transported through containers. Further, as opined by the expert, supply of container services exceeds the demand for the aforesaid and that post-combination, owing to economies of scale, there is a likelihood that cost would come down for the combined entity.
24. In addition, the liner shipping industry is characterized by the presence of a different set of service providers (who do not own vessels but charter space on existing vessels of liner shipping companies) known as non-vessel operating common carrier ("NVOCC"), who compete with the liner shipping companies. Apart from providing shipping services, NVOCC also act as a shipment consolidator, providing a variety of international shipping services which include packing and picking up cargo, transporting, and providing door to door cargo delivery, to customers across the world. Accordingly, the presence of NVOCC adds to the competition landscape in the liner shipping industry.
25. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the Proposed Combination on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have 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.
26. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
27. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.



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28. The Secretary is directed to communicate to the Acquirer accordingly.