**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 5383** **4 October 2024**

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**MOL CHEMICAL TANKER PTE. LTD**

**AND**

**FAIRFIELD CHEMICAL CARRIERS PTE. LTD**

**CASE NUMBER: 2023NOV0025**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

**Background**

1. On 15 November 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby MOL Chemical Tanker Pte. Ltd ("MOLCT"), intends to acquire the entire issued share capital of Fairfield Chemical Carriers Pte Ltd ("FCC SG"). Post-merger, FCC SG will be a wholly owned subsidiary of MOLCT.

**Description of the merging parties**

2. The primary acquiring firm, MOLCT, is duly incorporated under the laws of Singapore as a wholly owned subsidiary of Mitsui O.S.K. Lines, Ltd ("MOL"), which is incorporated under the laws of Japan. MOL is listed on the Tokyo Stock Exchange and thus as its shares are widely disbursed, no firm or individual directly or indirectly controls MOL. MOLCT does not control any entities in South African, however, for the sake of completeness, MOL controls MOL Auto Carriers Express South Africa (Pty) Ltd ("MOL Auto Carriers") which is incorporated under the laws of the Republic of South Africa. MOLCT, its controllers and their other subsidiaries will henceforth be collectively referred to as the "Acquiring Group". None of MOLCT shares are owned by historically disadvantaged persons ("HDPs").

3. The primary target firm, FCC SG, is duly incorporated under the laws of Singapore. FCC SG is a wholly owned subsidiary of Fairfield Chemical Carriers, Inc. (“FCC”), a company incorporated under the laws of Liberia. FCC is controlled by Fairfield-Maxwell Ltd, a company incorporated in accordance with the laws of the United States. In South Africa, FCC SG controls Fairfield Chemical Carriers South Africa (“FCC SA”), a company duly registered under the laws of the Republic of South Africa.

4. The merging parties submit that **[CONFIDENTIAL]%** of the entire issued share capital of FCC SA are held by Thembani Shipping (Pty) Ltd (“Thembani”), a **[CONFIDENTIAL]%** black-owned entity. FCC owns the remaining **[CONFIDENTIAL]%** of the shares in FCC SA. FCC SG, its controllers and its subsidiaries will henceforth be referred to as the “Target Firm”.

**Description of the transaction**

5. In terms of the Share Purchase Agreement (“SPA”) entered into between the MOLCT and FCC on 30 September 2023, MOLCT will purchase **[CONFIDENTIAL]%** of the FCC’s shares. Post-merger, MOLCT will control FCC.

**Activities of the merging parties**

6. The Acquiring Group is active in the chemical tanker business such as the transportation of organic and inorganic chemicals, vegetable oils, fats, etc. Whereas MOLCT does not render chemical tanker services within South Africa, MOL Auto Carriers, the Acquiring Group’s only subsidiary within South Africa, operates a car carrier division, but has no activities within the chemical tanker industry.

7. The Target Firm is a chemical tanker shipping business that owns and operates a fleet of 36 chemical tankers across the world. In South Africa, the target firm operates through FCC SA, which also specialises in the transportation of organic and inorganic chemicals, vegetables oils, fats, etc.

**Overlapping markets and assessment**

8. The Commission considered the activities of the merging parties and found that they overlap horizontally in that both of them operate chemical tankers. The Commission further found that there is no vertical overlap between the activities of the merging parties.

9. In respect of the chemical tanker business, the Acquiring Group is not involved in any inbound/outbound routes to/from South Africa. Therefore, from a South African perspective, based on the routes followed by the merging parties, the Commission is of the view that there is no geographic overlap arising between the activities of the merging parties in the to/from South African routes.

10. Therefore, the Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the affected markets within South Africa.

**Public interest**

11. The parties have tendered substantial commitments including a moratorium on employment, maintenance of HDP shareholding, enterprise development and skills development. The Commission considers that the commitments made, render the merger justifiable on justifiable public interest grounds.

**Conclusion**

12. The Commission approves the merger subject to conditions attached as **Annexure A**.

**ANNEXURE A**

**MOL CHEMICAL TANKERS PTE. LTD**

**AND**

**FAIRFIELD CHEMICAL CARRIERS PTE. LTD**

**CASE NUMBER: 2023NOV0025**

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**CONDITIONS**

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1. **DEFINITIONS**

The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning:

1.1. "**Acquiring Firm**" means MOLCT;

1.2. "**Approval Date**" means the date on which the Merger is approved in terms of the Act;

1.3. "**Commission**" means the Competition Commission of South Africa;

1.4. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.5. "**Conditions**" means these conditions;

1.6. "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.7. "**FCC SG**" means Fairfield Chemical Carriers Pte. Ltd;

1.8. "**FCC SA**" means Fairfield Chemical Carriers South Africa (Pty) Ltd;

1.9. **"First Annual Period"** means the first 12-month period after the Implementation Date;

1.10. "**HDPs**" mean historically disadvantaged persons within the meaning of section 3(2) of the Competition Act;

1.11. "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties in South Africa;

1.12. “**LRA**” means the Labour Relations Act 66 of 1995, as amended;

1.13. "**Merging Parties**" means the Acquiring Firm and the Target Firm;

1.14. “**Merger**” means the proposed acquisition by the Acquiring Firm over the Target Firm as notified to the Commission under Case No. 2023Nov0025;

1.15. “**MOLCT**” means MOL Chemical Tankers Pte. Ltd;

1.16. **“Preceding Annual Period”** means the 12-month period preceding the Implementation Date;

1.17. **"Second Annual Period”** means the 12-month period from the first anniversary of the Implementation Date to the second anniversary of the Implementation Date;

1.18. “**Target Firm**” means Fairfield Chemical Carriers Pte. Ltd.;

1.19. **“Third Annual Period”** means the 12-month period from the second anniversary of the Implementation Date to the third anniversary of the Implementation Date; and

1.20. “**Tribunal**” means the Competition Tribunal of South Africa.

## 2. HDP OWNERSHIP

2.1. The Commission notes that the relevant business and entity associated with the Target Firm within South Africa, FCC SA, is **[CONFIDENTIAL]%** owned by HDPs.

2.2. The Merging Parties record that the Merger will not affect the HDP shareholding in FCC SA and commit to maintain a minimum of **[CONFIDENTIAL]%** HDP shareholding in FCC SA for as long as MOLCT controls FCC SA.

## 3. EMPLOYMENT CONDITION

3.1. The Merging Parties undertake that there will be no retrenchments in South Africa as a result of the Merger for a period of 3 years after the Implementation Date of the Merger.

3.2. For the sake of clarity, retrenchments for purposes of these Conditions, will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

4. **ENTERPRISE AND SUPPLIER DEVELOPMENT**

4.1. In pursuance of the public interest goals contemplated in the Competition Act, the Merging Parties are committed to increasing levels of localisation across the value chain and making a positive impact on and developing local HDP-owned businesses and suppliers. In this regard, the Merging Parties record and undertake:

4.1.1. Enterprise Development:

4.1.1.1. The Target Firm's bursary programme expenditure, which is aimed at providing HDPs, including women HDPs with support to obtain maritime and related qualifications at a tertiary level, was **R[CONFIDENTIAL]** for the Preceding Annual Period. The Merging Parties commit to increase such expenditure per annum to **R[CONFIDENTIAL]** in the First Annual Period, R **R[CONFIDENTIAL]** in the Second Annual Period and R **R[CONFIDENTIAL]** in the Third Annual Period.

4.1.1.2. The Target Firm's enterprise development expenditure, which is aimed at developing South African HDP-owned businesses, was approximately **R[CONFIDENTIAL]** for the Preceding Annual Period. The Merging Parties commit to increase such expenditure to **R[CONFIDENTIAL]** per annum (amounting to total expenditure of **R[CONFIDENTIAL]** over the 3 (three) year period following the Implementation Date).

4.1.2. Supplier Development:

4.1.2.1. The Merging Parties commit to source bunker supply from HDP-owned businesses subject to appropriate quality standards being met and reasonable availability of facilities on reasonably competitive commercial terms (based on FCC SA's usual and standard business practices in South Africa over time).

4.1.2.2. The Target Firm's supplier development expenditure, which is aimed at developing South African HDP-owned suppliers, was approximately **R[CONFIDENTIAL]** for the Preceding Annual Period. The Merging Parties commit to increase such expenditure to **R[CONFIDENTIAL]** per annum (amounting to total expenditure of **R[CONFIDENTIAL]** over the 3 (three) year period following the Implementation Date).

4.2. The Conditions set out in this clause 4 shall apply for a period of 3 (three) years from the Implementation Date.

## 5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

5.1. Within 45 calendar days of each anniversary of the Approval Date up until the 3rd anniversary of the Implementation Date, the Merging Parties shall provide a suitable and appropriately detailed annual report to the Commission regarding compliance with the Conditions.

5.2. These compliance reports shall be accompanied by an affidavit (deposed to by a senior official of the merged entity) confirming the accuracy of the information contained in the compliance reports.

5.3. The Commission may request the Merging Parties to provide any documents which the Commission considers necessary for monitoring compliance with the Conditions.

6. **APPARENT BREACH**

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Tribunal Rules.

7. **VARIATION**

Should the Merging Parties seek to vary the Conditions, they shall make a proposal to the Commission to consent to a waiver, relaxation, modification and/or substitution of any aspect of the Conditions, which consent shall, if made on good cause, not be unreasonably withheld. To the extent that the Commission is unwilling or unable to grant any modification of these Conditions, the Merging Parties shall be entitled to make application to the Tribunal for approval by it of such waiver, relaxation, modification, or substitution of any one or more of the Conditions.

8. **GENERAL**

All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298