सत्यमेव जयते

Fair Competition
For Greater Good

**COMPETITION COMMISSION OF INDIA**
**(Combination Registration No. C-2021/04/829)**

**2nd June 2021**

**Notice under Section 6(2) of the Competition Act, 2002 jointly given by Unifeeder ISC FZCO, Shreyas Shipping and Logistics Limited, Transworld Feeders Private Limited and Transworld Holdings Limited**

**CORAM:**

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. On 6th April 2021, the Competition Commission of India (**Commission**) received a notice ('**Notice**') under Section 6(2) of the Competition Act, 2002 (**Act**), jointly given by Unifeeder ISC FZCO (**Unifeeder/ Acquirer**), Shreyas Shipping and Logistics Limited (**SSLL**), Transworld Feeders Private Limited (**TFPL**) and Transworld Holdings Limited (**Transworld**). The Notice was given pursuant to the Share Purchase Agreement executed between Acquirer, Transworld and SSLL on 18th August 2020 (**Indian Share Purchase Agreement**); and Share Purchase Agreement executed between Acquirer and Transworld on 18th August 2020 (**Global Share Purchase Agreement**).

2. The Commission *vide* its letter dated 17th May 2021, issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011, required the notifying parties to remove defects in the Notice and furnish certain information relevant for the purpose of assessment of the proposed combination. Notifying parties furnished their response *vide* submission dated 2nd June 2021.

3. The Proposed Combination envisages: (i) acquisition of 100% of the share capital of Avana Logistek Limited (**Avana**) by Unifeeder; (ii) acquisition of 100% of the equity share capital of TFPL by Unifeeder; and (iii) acquisition of 99.99% equity share capital of Transworld Feeders FZCO (**TWF**), leading to an indirect acquisition of 100% of the share capital of Transworld Shipping Agencies Private Limited (**TSAPL**). The Proposed Combination also envisages interconnected transactions: (i) acquisition of 100% equity capital of TFPL by SSLL followed by transfer of the domestic coastal and export and import (**EXIM**) feeder shipping business by SSLL to TFPL, prior to acquisition of TFPL by Unifeeder; and (ii) acquisition of a 17% stake in Unifeeder by Transworld as part consideration for the sale of shares of TWF. Avana, TSAPL and TFPL are jointly referred to as the **Targets**.

4. Unifeeder is a limited liability free zone company formed under the laws of the Jebel Ali Free Zone, Dubai, the United Arab Emirates. It is indirectly held by DP World and Shimin Holding Pte. Limited (**Shimin**). DP World is a wholly owned subsidiary of DP World Limited (**DPW**), which in turn is indirectly owned by the Government of Dubai. Unifeeder provides feeder services in Europe, Asia, Mediterranean, Black Sea, Middle-East and Africa. It also provides non-vessel owning common carrier (**NVOCC**) services in Europe, Asia, Black Sea, Middle-East and Africa. In India, Unifeeder provides EXIM short sea feeder services and EXIM short sea NVOCC services through its subsidiaries Feedertech Pte. Limited and Perma Shipping Line Pte. Limited, respectively.

5. DPW group operates 6 container terminals at ports, 6 container freight stations, 7 private freight terminals with inland container depot (**ICD**), 2 free trade warehouse zones, cold chain facilities, non-container surface express and third-party logistics (**3PL**) service and provides container rail transport service in India.

6. Shimin does not carry out any activity other than holding stake in the Acquirer. Shimin has been incorporated by Mohammad Ali Ghaem Maghami. Mr. Maghami does not have any other business activities in India which compete with either the Acquirer or Targets.

Mr. Maghami owns a container vessel that is currently chartered to Feedertech. Mr. Maghami does not have any other business activities or other business interests in India that would have vertical or complementary relationships with the businesses of the Targets.

7. Transworld is a holding company. Its subsidiaries *viz*. SSLL, Avana and Transworld Integrated Logistek Limited operate in India. It also has subsidiaries in USA, Panama, UAE, Qatar, Sri Lanka, United Kingdom, Singapore, Hong Kong, Oman and Saudi Arabia. Activities of the Transworld group include ship owning (container, multi-purpose vessels & bulk carriers), feeder services, NVOCC services, project logistics, supply chain management, ship management, shipping agencies, freight forwarding and information technology.

8. SSLL provides domestic coastal as well as EXIM feeder services. It offers EXIM feeder services outside of India to Chittagong, Colombo and some ports in the Gulf countries as well.

9. Avana is said to be an integrated logistics solutions provider, offering customized and end-to-end solutions to domestic and international markets. Its domestic solutions primarily comprise containerised pier-to-pier and door-to-door NVOCC services. It also provides additional add-on services such as 3PL / warehousing and cold chain logistics services which can be added to its general door-to-door solutions,. Its international solutions comprise containerised short-sea pier-to-pier EXIM NVOCC services, consisting of refrigerated and dry cargo movements between the Indian Sub-continent (**ISC**), Middle East, South-East Asia and Far-East, including integrated freight forwarding and liner agency services.

10. TSAPL provides port agency and husbandry services to its group entities.

11. The scope of the Proposed Combination to a large extent is concerned with short-sea EXIM container liner shipping transport. The container liner shipping industry can be classified into the following:

a) deep-sea container liner shipping (*i.e.,* where the ship crosses oceans); and
b) short-sea container liner shipping (*i.e.*, where the ship moves mainly on sea, without crossing an ocean).

12. The short-sea EXIM container liner shipping comprises the following three segments:

- *short-sea EXIM service provision*: under this segment, players provide cargo transport services directly to the beneficial cargo owners (**BCOs**);

- *short-sea EXIM cargo flow consolidation*: under this segment, players consolidate the cargoes that are passed on to them by the entities providing cargo transport services to BCOs in the segment of short-sea EXIM service provision; and

- *short-sea EXIM vessel operation*: under this segment, players operate the vessels to transport the containerised cargo on short-sea routes.

13. The key participants active in containerised transport services are BCOs, freight forwarders, NVOCCs, main line operators (**MLOs**) and feeders.

14. BCO is the party which ultimately owns the cargo. It is the end-user of cargo transport services. Generally, BCOs do not control transportation infrastructure such as the containers or the vehicles or vessels that transport the containers. For cargo movement, BCOs choose from different modes of transportation and service providers.

15. Freight forwarders are intermediaries that provide a wide range of logistics services to

the BCOs to move their cargo from its point of origin to its final destination. Most freight forwarders offer end-to-end supply chain services and anything in between, *e.g.* packing of cargo, loading of cargo, parcel distribution, land-based cargo transportation (*via* road or rail), delivering it to customs clearance stations at ports, to the container freight stations or to inland container depots. Besides the organization of the sea transport, freight forwarders also offer additional services such as import and export services in relation to customs, insurance, packaging and/or land transport. Freight forwarders usually do not own the containers and vessels. Therefore, they hire the services of NVOCCs and / or MLOs to organize or carry out the sea leg of the transport.

16. NVOCCs are typically regional players that provide services of sea transport without operating the actual ships transporting the containers. These entities generally own container equipment. NVOCCs aggregate cargo and then liaise with MLOs or feeder entities to book container spots on the ships of MLOs or feeder service providers.

17. MLOs are large, typically global entities which primarily provide global, long-haul deep-sea container liner shipping services between larger ports. These entities generally own container equipment. MLOs also act as direct suppliers of transportation services to BCOs.

18. Feeders are regional, short-sea and coastal carriers providing maritime transport between a network of ports within one or more limited geographies, connecting multiple ports (from very small to large hub ports) inside the regions in scope. Feeders commonly work for MLOs and for NVOCCs. They do not directly interact with BCOs. Feeders can be divided into *common feeders* and *dedicated feeders*. Common feeders are the players having their own port-to-port network that can adapt according to individual customer needs. However, dedicated feeders are operated by MLOs and have a network that is designed to fit the needs of the MLO.

19. Activities of DPW group and Targets exhibit horizontal overlap in all the three segments of short-sea EXIM container liner shipping *viz*. (i) short-sea EXIM service provision, (ii) short-sea EXIM cargo flow consolidation and (iii) short-sea EXIM vessel operation; and cold chain activities. Activities of DPW group *viz*. operation of container terminal services, container freight station, inland container depot/ private freight station, free trade warehouse zones, cold chain facilities, non-container contract logistics and container rail transport operations exhibit vertical interface with the activities of Targets.

20. With regard to short-sea EXIM transportation of containerized cargo, notifying parties have submitted that relevant market is *short-sea EXIM container liner shipping*. Parties have also alluded that each of the segments within *short-sea EXIM container liner shipping* referred above is a relevant market. It has also been submitted that MLOs also provide competitive constraints on the other players providing services in short-sea EXIM service provision segment. Similarly, in the short-sea EXIM cargo flow consolidation segment, both MLOs and NVOCCs compete for the cargo obtained by the freight forwarders in short-sea EXIM service. Parties have therefore submitted that MLOs and NVOCCs are to be considered part of same relevant market for each of both the segments.

21. Selection of service provider by BCOs and freight forwarders may depend upon several factors such as total volume of cargoes to be transported during a given period, ticket size, trade route, consistency of cargoes, ability to give volume commitment, *etc*. Small and mid-size BCOs and freight forwarders may not have the volume leverage that would make them attractive as a customer for the large freight forwarders and MLOs, or at least, to get the same costing for the services. Further, certain trade routes having low transit time, low overall volume *etc*. may be better served by NVOCCs. Therefore, it may not be said with reasonable certainty that MLOs are part of same relevant market. Thus, as a plausible alternative, the Proposed Combination may deserve competition assessment without considering MLOs as part of relevant market.

22. With regard to EXIM vessel operation, parties have submitted that this segment includes entities *viz*. independent third-party feeders as well as integrated feeders of the MLOs and their deep-sea / short-sea vessels. Thus, parties have argued that integrated feeders of the MLOs and their deep-sea / short-sea vessels, also need to be considered as part of same relevant market. In this regard, it is observed that movement of cargoes by MLOs' own feeder service (*dedicated feeders*) *i.e.* captive consumption are not market facing, and thus may not exert significant competition constraint on common feeders. Therefore, in the instant matter, this segment deserves competition assessment excluding dedicated feeders.

23. Parties submitted that the relevant geographic market should be delineated by trade corridors between India and neighbouring regions of the Gulf and Far East Asia. Thus, parties have suggested for gross aggregation of all the ports in India, on one hand and all the port in Gulf/Far East Asia, on the other hand.

24. Two or more ports having common contestable hinterland are likely to be in the same geographic market. Extent of contestable hinterland may depend upon several factors such as the distance between ports, proximity of target customer from such ports, transport infrastructure and inland transport costs.

25. Gross aggregation of all the ports of Gulf or India, as the case may be, in a single market may not reflect true market dynamics. This is because of several factors, some of which are as follows. Considering the vast length of the coastline of India on east and west, it is difficult to assume that all the ports of India are substitutable with one another and thus form part of the same relevant market. Further, unloading of a cargo at a port other than preferred destination may require additional surface transportation which may be significantly higher than marine freight. Moreover, cargo may also require crossing of boundaries of countries, which may involve time, additional taxes and duties or in certain cases may not be even practically feasible. Thus, as mentioned above, inclusion of all

ports in a single market may not be appropriate. Where two or more ports have common hinterland, cluster of those ports may form part of the same relevant geographic market. Further, certain trade routes with a high density of service providers may experience downward pricing pressure. Thus, all port pairs may not exhibit homogeneous competition dynamics and may not be part of same relevant geographic market. Port pairs with distinct competition dynamics may warrant a narrower market delineation. In such cases specific port pair may be a considered a relevant geographic market in itself.

26. The precise delineation of the relevant market is left open as it was observed that the Proposed Combination is not likely to cause an appreciable adverse effect on competition in any of the plausible relevant markets.

27. With regard to horizontal overlaps in the all the three segments of short-sea EXIM container liner shipping *viz*., short-sea EXIM service provision, short-sea EXIM cargo flow consolidation and short-sea EXIM vessel operation, based on the market position of the parties, volume handled and presence of the competitors, the Commission observed that the Proposed Combination is not likely to raise competition concern. Further, with regard to cold chain activities *viz*. temperature-controlled warehouses operated by DPW and Avana Logistek, it is observed that horizontal overlaps exist only in two cities *viz*. Delhi and Mumbai / Navi Mumbai. Combined capacities of the temperature-controlled facilities operated by DPW and Avana Logistek are not significant to raise competition concern.

28. Vertical interface between the activity of operation of container terminal, container freight station, inland container depots / private freight terminals, free trade warehouse zones, cold chain facilities, non-container contract logistics and container rail transport operations of DPW group with the activities of Targets are not such as to raise competition concern.

29. Considering the facts on record including details provided in the Notice given under

Section 6(2) of the Act and assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under Section 31(1) of the Act.

30. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.

31. The information provided by the Acquirer is confidential at this stage in terms of and subject to the provisions of Section 57 of the Act.

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