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COMPETITION IN INDIAN SEA PORT SECTOR

TYPES OF PORT RELATED COMPETITION

Ideally port related competition based on structure of the port can be classified into three:

- **Inter-port competition**
- **Intra-port competition**
- **Intra-terminal competition**

Inter-port competition

An inter port competition is the competition between two or more different ports. For example, a competition between Cochin port and Kannur port for transshipment traffic or hinterland traffic. This kind of competition depends on the geographical market of the area and the number ports situated there. If any given port is the only one in its respective market, there is no inter-port competition. In presence of multiple ports in an area, the degree of substitutability determines the extent of competition between ports. This is based on the nature of maritime trade that neither the initial origin nor the final destination of the freight or passengers tends to be the port themselves and therefore the

customers in principle may choose between different ports of origin and destination.

Intra port competition

Intra port competition refers to competition between two or more terminals of same port competing for similar cargo. Ports are not always single entity. Many modern ports contain several independently operated terminals. Where two or more operators own a terminal, a degree of intra port competition arises.

Intra terminal competition

Intra-terminal competition arises where multiple operators can provide competing services within the same terminal. It is quite rare as it refers to competition between two or more companies.

Competitive Constraints faced by Ports

- One of the major constraints faced by ports is setting price and service quality when there is inter- port competition.
- Another core concern is the degree of vertical integration between port owners and port service providers which can



The first rule is not to lose. The second rule is not to forget the first rule.

- Warren Buffet



lead to downstream foreclosure.

- In addition to existing competition, potential competition will also have an effect on the ports
- Since ports can have market power, it can lead to dominant position and consequently abuse of the same. These abuses can lead to various types of consumer harm, but fundamentally there is a net welfare detriment, which can arise from higher prices, reduced output, reduced service quality, reduced innovation or other factors.

With 90 percent by volume and 70 percent by value of India's international trade moving by sea, development of the country's ports are to be critical. As India's rate of containerization is currently only around 25 percent, vs. the global average of 60 to 70 percent, demand for new container port and inland transport infrastructure is forecast to be particularly strong.

India's Ministry of Shipping recently introduced changes to the rules governing new container terminal concessions to render them more interesting to private investors.

With these governmental actions to promote and encourage more and more port establishments, sprouting of competition issues is inevitable.

The CCI had refrained to interfere with the port sector industry up till recently due to various reasons including the diverse market structure of the industry and the vast dimensions of it, making it a herculean task for any 'non-sector regulator' to classify and de-fragment the industry.

However in 2008, TERI called for much needed intervention through its commissioned report. But unfortunately there hasn't been any significant development till date.

Another difficulty in this arena is that there must be total exclusion of government from port authorities whether or not the port is state run. This calls for a regulatory body which functions independent from the government. A sector regulator would be the proper mechanism to tackle the anti-competitive and anti-trust issues prevalent in India.

The port sector in India is largely

regulated by state authorities, maritime boards and TAMP (Tariff authority for major ports) but lacks a specific mandate to promote competition.

Moreover, over the years many organizational changes have been made in the infrastructure sector of developing countries, which have resulted in increased private sector involvement in the provision of services. However, such practices need to be regulated as to prevent the occurrence of a monopoly and to allow market forces to impact behaviour of the players. This can be achieved through two regulatory mechanisms, namely, access regulation and price regulation. In the former, the access of firms to the facilities essential for competing in the market is regulated and in the latter, prices along with the quality of services are regulated so as to control the behaviour of private investors.

In light of the above, it is the need of the hour that there should be a newly formed independent sector regulator for the ports sector or TAMP's scope and jurisdiction should be increased to make it responsible for overall port regulation.



In July 2013, the Decree No. (21) Of 2013 (the "New Decree") was enacted, concerning the formation of a special judicial committee for the liquidation of cancelled real estate projects in the Emirate of Dubai and the settlement of relevant rights.

This Special judicial committee was formed under the (the "new Decree") to handle Dubai's cancelled Real Estate Projects.

Historical Synopsis:

Before enactment of New Decree,

the Real Estate Regulatory Authority ("RERA") had the authority to cancel a real estate project based on a reasoned technical report under Article 11(5) of Law No. (13) of 2008 in the Emirate of Dubai.

Executive Council Resolution No.

(6) of 2010 approving the executive regulation of Law No. (13) of 2008 (the “Resolution”) sets out further details of the manner in which RERA is authorised to cancel a real estate project.

Article 23 of the Resolution further sets out nine (9) grounds pursuant to which RERA may resolve to cancel a real estate project, which are as follows:

1. If the developer fails, without any good reason, to commence the construction works although the developer has already obtained all the required approvals from the relevant authorities;
2. If the developer commits any of the crimes as provided under Article 16 of Law No. 8 of 2007 concerning the escrow accounts for real estate developments in the Emirate of Dubai;
3. If RERA confirms that the developer has no serious intention to perform the project;
4. If the plot for the intended project is withdrawn due to the breach by the sub developer of any of its contractual obligations with the master developer;
5. If the plot is fully affected by planning or re-planning projects undertaken by the relevant authorities in the Emirate;
6. If the developer fails to perform the project due to its gross negligence;
7. If the developer expresses its intention not to perform the project for reasons satisfactory to RERA;
8. If the developer declares its bankruptcy;
9. Any other reasons as determined by RERA.

Further Article 24 of the Resolution gives the developer of a real estate project seven (7) working days to appeal a resolution by RERA to cancel the project. RERA has a further seven (7) working days to determine the appeal. If RERA accepts the appeal and allows the project to proceed, it may establish terms and conditions that the

developer must meet, which terms and conditions the developer must accept in writing, in order to annul the resolution to cancel the project. However, if RERA rejects the developer’s appeal, the determination is final and RERA shall proceed to cancel the project.

Article 25 of the Resolution sets out the steps that RERA must follow immediately after resolving to cancel a real estate project. Accordingly, RERA must first prepare a technical report setting out the reasons for the cancellation and notify the developer of the cancellation resolution. Next, RERA must appoint an auditor, at the cost of the developer, to review the financial position of the project to confirm the amounts paid to the developer or deposited in the project’s escrow account, as well as the amounts spent. Any funds available in the escrow account are to be refunded to purchasers within fourteen (14) days of the date of cancellation of the project.

Article 26 of the Resolution provides that if there are insufficient funds in the escrow account to fully refund the purchasers, the developer must pay the shortfall to purchasers within sixty (60) days from the date of cancellation of the project, which period can be extended at the discretion of RERA.

Finally, Article 27 of the Resolution provides that if the developer fails to repay purchasers within the period established pursuant to Article 26, then RERA “shall take all the required procedures to secure the rights of the purchasers, including the reference of the issue to the competent judicial authorities”.

The special judicial committee under New Decree:

The special judicial committee (the “New Judicial Committee”) that is to be established pursuant to the New Decree will be the ‘competent judicial authority’ referred to in Article 27 of the Resolution.

The New Judicial Committee will only be concerned with real estate projects that have been cancelled by RERA pursuant to the procedures outlined

above – the New Judicial Committee will not be involved at all in disputes arising between developers and purchasers in relation to real estate projects that have not been cancelled. In particular, Article 2A of the New Decree provides the New Judicial Committee the following powers:

- A. To consider and decide such issues, demands and claims that may arise between the real estate developers and the purchasers, whose subject matter or cause is cancelled real estate projects.
- B. To liquidate real estate projects cancelled under a final resolution to be issued by the Real Estate Regulatory Authority, in accordance with the provisions of the Law No. 13 of 2008 and its executive regulation, and to settle the relevant rights upon deducting the liquidation expenses.
- C. To consider all executive proceedings, complaints and grievances whose subject matter or cause is cancelled real estate projects.
- D. To assist in the performance of its duties, Article 2B of the New Decree provides that the New Judicial Committee may do any of the following without limitation:
- E. Seek the assistance of experts and consultants and in particular from the Dubai Lands Department.
- F. To appoint auditors at the cost of the developer to audit the financial position of the cancelled real estate project and to verify the amounts paid to the developer by the purchasers or deposited in the escrow account of such project and the amounts spent.
- G. To issue such orders to the trustee of the escrow account of the project or the developer, in any issue in connection with the liquidation of the project, including refunding the amounts deposited in the account or paid by the developer to the relevant persons.
- H. To take all the required

procedures to secure the rights of the purchasers.

Article 3 of the New Decree establishes the exclusive authority of the New Judicial Committee in relation to cancelled real estate projects in the Emirate of Dubai, meaning all courts in the Emirate of Dubai, including the Dubai International Financial Centre Courts, are prohibited from hearing any matter concerning a cancelled real estate project, and any existing

cases are to be referred to the New Judicial Committee to handle.

Judgments issued prior to the effective date of the New Decree by any court in the Emirate of Dubai, including the Dubai International Financial Centre Courts, in connection with the liquidation of a cancelled real estate project must be referred to the New Judicial Committee for consideration.

Judgments, orders and resolutions

issued by the New Judicial Committee shall be final and binding, not subject to appeal and can be enforced by the Execution Section of the Dubai Courts (Article 5).

Finally, it is worth noting that the liquidation procedures of real estate projects together with all demands, claims and issues handled by the New Judicial Committee are exempt from court fees (Article 7).



HOT NEWS

I. 2019 ENDS WITH PLETHORA OF NEWBUILDING AND S&P DEALS

Ship owners have sought to seal a number of deals prior to the end of 2019, both in the newbuilding and the second hand markets. In its latest weekly report, shipbroker Allied Shipbroking noted that “things remained interesting for yet another week in the newbuilding market. In the dry bulk sector, we witnessed an another good rally for the Kamsarmax size segment, which saw its Orderbook boosted by 4 (optional + 4) units. This may have caught many by surprise, given the steep negative pressure that the overall dry bulk market is currently under. However, seeing the year-to-date decrease of more than 35% of the Panamax-Kamsarmax Orderbook (while the orderbook to fleet ratio still remains below the 10% mark), current trend makes more sense. With the tanker market showing a firm face (in line somehow with that of freight earnings as of late), while, at the same time, buying appetite in Gas market remaining robust, new ordering contracts will probably finish the year on a positive momentum, contradicting that way the bearish mood noted during the biggest part of the year”.

In a similar weekly note, shipbroker Banchemo Costa said that “in the dry bulk market, Seacon booked 4 + 4 Kamsarmax units from Huangpu Wencong for delivery in 2021 and 2022. Fujan Southeast received an order for 4 x 22,500 dwt Handysize to be delivered during 2021. Japanese

owner Fukujin Kisen ordered 2 x Kamsarmax at NACKS with delivery early 2021. In the gas market, Avance Gas (division of Stolt –Nielsen) signed 2 x 91,000 cbm LPG carriers to be delivered in late 2021 and early 2022 at Daewoo. AET Tanker signed 3 x Suezmax shuttle tankers with Hyundai. Vessels are expected to be delivered in 2021 and 2022 when will start a long TC to Shell”.

Meanwhile, in the S&P markets. Banchemo Costa said that “four Capesize were sold to Chinese buyers for a reported price of \$84 mln: TIGER GUANGDONG, TIGER SHANDONG, TIGER LIAONING all 180,000 dwt built 2011 Qingdao Beihai and the 2010 built sistership TIGER JIANGSU. A few interesting sales registered in the Supramax segment, a resale Ultramax HULL NR 214 about 63,700 dwt prompt delivery was sold for \$28 mln to undisclosed buyers whilst a 58,000 dwt built in 2013 at NACKS, the DRACO OCEAN was reported sold for region \$14,8 mln. A high standard BWTS fitted 2003 Mitsui Supramax MAROUDIO about 56,000 dwt Mitsui was sold to Indonesians for region \$9 mln (with fresh SS) and a younger sistership ALAM MANIS about 56,000 dwt built 2007 was sold again to Indonesians for region \$10,8 mln. The most active market for SAP is no doubt the product tanker where a few sale were reported and requirements in general are many. The Japanese controlled FREJA BALTIC about 47,500 dwt built in 2008 at Onomichi (pump room) fitted with BWTS was sold for about \$16 mln to Greeks (rumored being Spring Marine) whilst the PYXIS DELTA about 47,000 dwt built in 2006

at Hyundai Mipo was sold to Indians for a price of region \$13,5 mln. Another slightly older sister units LIBERTY and FIDELITY about 47,000 dwt built in 2004 at Hyundai Mipo were sold for a soft \$10,75 mln which evidences the prompt due date of the SS”.

Allied also mentioned in its report that “on the dry bulk side, it was an interesting week yet again. With interest moves noted across all size segments and with no specific direction in terms of age range, it seems as though the SnP market will finish the year on at a satisfactory pace (even if there is some of feeling that asset price levels are slowly softening). With all that being said, while given the fragile state and volatile nature being seen in the market for some time now, it is hard to point to any clear direction right now. On the tankers side, it was a rather good week in terms of SnP deals being concluded. However, we witnessed some slight slowdown in activity when compared with the week prior. At this point, it seems that there is a disconnect, given the upward momentum noted in freight earnings and the level of activity being seen. Notwithstanding this, we can expect a good flow of transactions to continue through after the holiday period fades away”.

II. DP WORLD ACQUIRES LEADING MARINE LOGISTICS PROVIDER

Expanding Unifeeder to the fast-growing Asia-Indian Subcontinent-Gulf trade route
Dubai, UAE – December 4, 2019:



Unifeeder, a 100% owned subsidiary of DP World PLC, has announced the acquisition of a 77% stake in the Feedertech Group. The deal, which is expected to close in Q1/2020, is the latest step in DP World's vision to build end-to-end logistics capability to serve the needs of shipping lines and cargo owners. The acquisition of Feedertech will expand the company's feeding and short-sea product offering to multiple geographies.

Established in 2003 and based in Singapore, Feedertech operates two businesses; Feedertech, which is an independent feeding service, and Perma, a regional shortsea network. Both operate in the same market and connect the fast-growing trade route of Asia to the Middle East via the Indian Subcontinent. Feedertech group calls at 50 ports, generating a combined revenue of around \$200 million from a diverse customer mix and transporting more than 600k TEUs annually.

Acquired by DP World in 2018, Unifeeder, is an integrated logistics company with the largest and best-connected feeder and growing shortsea network in

Northern Europe with connectivity to approximately 100 ports.

Through Feedertech and Perma, Unifeeder will have the capability to offer feeding and regional shortsea connectivity in Northern Europe, the Mediterranean, North Africa and now Asia and the Indian Subcontinent. DP World aims to preserve the common-user independent platform, while increasing efficiency to offer a more complete logistics solution to all its customers.

DP World's strategic objective was to create additional value by using Unifeeder's management expertise to replicate the asset-light model in other regions. The Feedertech Group transaction is the first stage of this ongoing value creation process.

Sultan Ahmed Bin Sulayem, Group Chairman and CEO, DP World, said: "The acquisition of a stake in the Feedertech Group is another strategic step in our vision to build an end-to-end logistics capability and offer an integrated service suite that also engages end-customers and traders across the while optimising operations. Feedertech has a strong reputation as a reliable and independent feeder

and regional shortsea operator, and we are delighted to add this important asset to our expanding portfolio."

"Furthermore, it offers us exposure to the fast-growing coastal shortsea trade in the Indian Subcontinent, which is highly complementary to our existing India logistics strategy. The next and imminent stage of this development will be to launch a dedicated and efficient India-Gulf region service, which is an important route for our customers."

Ali Maghami, Founder and Chairman, Feedertech said "Feedertech has enjoyed great success over the years and we are proud of our achievements, but we believe the transaction with Unifeeder with the support of DP World, will allow us to take the business to the next stage of its growth. Both Feedertech and Unifeeder share similar business models and a desire to reduce inefficiencies, and by combining the expertise of the two entities, we believe we can deliver a high-quality product for our customers. Furthermore, being part of the DP World family, will allow us to benefit from the Group's deep relationship with end-customers and wide global network. We look forward to a prosperous future together'."

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