We have reviewed the commitments against HKSPA's stated objective in paragraph 21 of the Notice dated 12 August 2020, aimed at "improving the value proposition of the Hong Kong container port in Kwai Tsing in the context of growing regional competition".

We understand this statement is made in the context of (1) declining terminal rates paid by all major shipping lines; (2) increasingly larger vessels being deployed in key trade routes; and (3) increasing consolidation of shipping carriers and shipping alliances.

In light of the above, we observe competing terminals investing in more suitable equipment, improving and optimizing operations and aligning their efforts to service increasingly bigger vessels in more complicated networks. Successful efforts to that end will be rewarded by a bigger share of transshipment cargo, while those left behind will be relegated wayward in increasingly concentrated trade lanes.

A truly genuine effort to improve Kwai Tsing's value proposition requires the recognition of longterm supply trend. Due to significant terminal capacities being planned and/or built by virtually all major ports within the competitive geographical scope, including Singapore, Pusan, Kaohsiung, and Qingdao, it is likely that there will be an increase in terminal capacity, which will drive international transshipment rates down as supply meets, and potentially exceeds, demand and trade growth.

In light of the heavy competition from other terminals, OOCL believes that if HKSPA's proposal is to truly reflect its stated objectives, it should (1) a concrete plan to demonstrate how HKSPA adds value that cannot be replicated or matched by individual terminals and which improves on or at least maintains Hong Kong's standing as a key International Transshipment hub; and (2) that without a concrete plan in #1, that the capped rates should also reference the actual rates paid by shipping carriers within the same geographical area, and that these rates can be adjusted both upwards and downwards based on the prevailing market conditions.

We also note that the duration of this commitment is well short of the HKSPA agreement itself, which is planned to continue until June 2047.

Separately, we note HKCC's approach of considering International Transshipment, Barge Transshipment and Gateway Transshipment as three separate markets. We understand the merits of the treatment, but this paradigm likely under-appreciates that a successful International Transshipment hub directly and positively contributes to the development of the other two markets. As trunk vessels become bigger, the average number of container exchanges (moves) required to justify a service calling proportionally increases. If Hong Kong's International Transshipment value proposition is not competitive, it will be increasingly challenging to justify including Hong Kong as a direct call in the future. Without direct calls, Barge Transshipment volumes will disappear as well. Supply chain cost for Gateway cargo will also be affected with reduced choices and higher costs.

Proposed Commitments

References to the paragraphs below correspond to the paragraph numbers as used in the 'Proposed Commitments to be made by Modern Terminals Limited and HPHT Limited to the Competition Commission pursuant to section 60 of the Competition Ordinance (Cap 619)' (the "Proposed Commitments").

1. Cap on Gateway cargo handling charges (paragraph 7) and Cap on Other CP Charges (paragraphs 9 and 10)

   We agree with the proposed pricing commitments. We renewed our terminal contract in Kwai Tsing in August 2019. However, the rates offered in the August 2019 contract (the "August Rates") were higher than rates charged for April 2019 under the previous contract. OOCL is cost-driven, and we appreciate that the terminal rates at Kwai Tsing are still higher than rates offered by competing terminals in neighbouring regions; however, the August Rates have made HKSPA uncompetitive against other competing terminals.

   Through reorganization arrangements for HKSPA, ITT moves have been significantly reduced, which saves costs for HKSPA members. As such, implementing the pricing commitments as set out in the Proposed Commitments will not disadvantage HKSPA on a financial basis.

2. Service levels in the Gateway market (paragraph 8):

   We agree with the proposed commitments as it will maintain Kwai Tsing's reputation for efficiency and high service quality. Customers will benefit from the sustained service levels and be able to take reassurance in the fact that Kwai Tsing terminal operators will continue to provide a high level of service.

3. Provision of overflow services to the Operator of CT3 (currently DP World) (paragraph 11)

   We agree with this commitment, as it would preserve a choice of terminal service providers for customers and reduces the risk of CT3 losing the benefit of its reciprocal overflow arrangements with HKSPA members, which would significantly impact the level of its services provided and in turn disadvantage customers.

4. Cross-directorships with the ports of Chiwan and Shekou (paragraph 12):

   We agree with the proposed commitment as it will reduce conflict of interest amongst competing terminal operators, and reduce the risk of HKSPA members colluding on price. In addition, customers will be able to react to terminal rates knowing that their negotiations with terminals are neutral.

5. Duration, release and variations of the Proposed Commitments (paragraphs 14 – 17):

   We agree with the duration of the service level commitments under the Proposed Commitments.

   However, we would question why only the service level commitments will remain for the entirety of HKSPA. A key point of Kwai Tsing's competitiveness by HKSPA is that the terminal operators will offer both high quality services and attractive pricing, the latter of which is achieved through the pricing commitments. To remove these after eight years could result in high levels of service, but at uncompetitive prices given HKSPA members' large market share. This in turn would affect CT3 if commitments relating to its overflow service are no longer in force, potentially driving CT3 out and reducing the number of terminal service operators for customers.

Allowing directors of MTL to take directorship positions on the boards of either Chiwan or Shekou ports would reduce competitiveness, as customers would be aware that all ports are controlled by HKSPA members and lead to the risk of price collusion amongst HKSPA members.