

**COMMISSION DECISION No. 01-M-33/2019**  
**Proposed Acquisition of Chelsea Logistics Holdings Corporation of  
Shares in Trans-Asia Shipping Lines, Inc.**

The Commission,

Having regard to the proposed acquisition of Chelsea Logistics Holdings Corp. (“CLC”) of shares in Trans-Asia Shipping Lines, Inc. (“TASLI”, and with CLC and 2GO Group, Inc. (“2GO”) collectively, the “Parties”), and

In reference to Sections 16 and 20 of Republic Act No. 10667 (“PCA”) and Section 1, Rule 4 of the Rules and Regulations to Implement the Provisions of Republic Act No. 10667,

Has adopted this Decision:

WHEREAS, in Commission Decision No. 022-M-039/2018 dated 28 June 2018, the Commission resolved to take no further action on the acquisition by CLC of shares in KGLI-NM Holdings, Inc. (“KGLI-NM”) (the “KGLI-NM Transaction”), on the condition that the acquisition of 100% of the shares in TASLI by Chelsea Shipping Group Corp. through Deeds of Absolute Sale of Shares dated 12 December 2016 subject of PCC Case No. M-2018-003 is void (the “Non-Notified Transaction”);

WHEREAS, in its review of the KGLI-NM Transaction, the Commission identified the following legs serviced by both TASLI and 2GO as comprising the relevant geographic markets for passenger and cargo shipping: For Passenger shipping: (1) Cebu-Cagayan de Oro, vice versa, (2) Cebu-Ozamiz, vice versa (3) Cebu-Iligan, vice versa; and for Cargo shipping: (1) Cebu-Cagayan de Oro, vice-versa; (2) Cebu-Ozamiz, vice versa; (3) Cebu-Iligan, vice versa; and (4) Cebu-Zamboanga (collectively, the “Critical Routes”);

WHEREAS, the Commission found that the KGLI-NM Transaction will most likely result in a substantial lessening of competition in the Critical Routes and that the harms identified during the review of the KGLI-NM Transaction will most likely occur, if not for the declaration of nullity of the Non-Notified Transaction in Commission Decision No. 021-M-02/2018 dated 28 June 2018;

WHEREAS, on 17 September 2018, the Parties manifested their intent to pursue and to notify the acquisition of 100% of the shares in TASLI by Chelsea Shipping Group Corp;

WHEREAS, on 9 October 2018, Udenna Corporation (“Udenna”), the ultimate parent entity of CLC, and TASLI filed their Merger Notification Forms for the acquisition of 2,000,000 common shares in TASLI (the “Transaction”) representing the entire authorized capital stock of TASLI;

WHEREAS, on 15 October 2018, the Parties filed a Request for Consideration of Commitments and Waiver to address the harms identified during the review of the KGLI-NM Transaction, in particular, the possible unilateral increase in prices of passenger and cargo shipping post-merger due to substantial lessening of competition;

WHEREAS, on 9 November 2018, CLC notified the Commission that the Maritime Industry Authority (“MARINA”) approved the Application for Withdrawal of Routes filed by 2GO for the following passenger and cargo shipping routes: (1) Cebu-Ozamiz, vice versa; and (2) Cebu-Iligan, vice versa (collectively, the “Withdrawn Routes”);

WHEREAS, [confidential], represents that he will be able to secure, within thirty (30) days from the date of the Undertaking, the authority to represent 2GO in the Undertaking;

WHEREAS, on 11 January 2019, after several consultations with the Commission, the Parties executed and submitted an Undertaking of even date containing their final proposal for voluntary commitments (“Undertaking”);

WHEREAS, the Commission considered the Undertaking sufficient to address the competition concerns found by the Commission during the KGLI-NM review;

**RESOLVED THEREFORE**, on the basis of the Undertaking, that the Commission will take no further action with respect to the Transaction, subject to the conditions provided in the Undertaking:

- I. CLC shall submit to the Commission a certified true copy of 2GO’s Board of Director’s resolution authorizing [confidential] to represent 2GO in the Undertaking, within thirty (30) days from date of the Undertaking. If the Parties fail to submit the foregoing, the Undertaking and this Decision shall be set aside, and the Transaction will revert to its status prior to this Decision and be subject to a merger review.

- II. The Parties shall also submit to the Commission such authorization, approvals, and other documents that will ensure compliance with the Undertaking by CLC, TASLI and 2GO. If the Parties fail to submit the foregoing, the Undertaking and this Decision shall be set aside, and the Transaction will revert to its status prior to this Decision and be subject to merger review.
- III. The Parties shall be immediately bound by the Undertaking upon execution thereof, even pending completion of compliance with Paragraphs I and II.
- IV. To address the concern on possible increase in prices of passenger and cargo shipping post-merger, the Parties shall be subject to price monitoring to ensure that Extraordinary Increase, as defined below, in passenger rates and cargo rates in the Critical Routes, excluding the Withdrawn Routes (“Remaining Critical Routes”), will not be implemented by the Parties without sufficient and valid justification.
  - a. Passenger rates shall be computed in terms of the average price per head (“Passenger Rate Measure”), calculated as actual passenger revenue divided by actual passenger volume of each trip. Cargo rates shall be computed in terms of the average price per unit (“Cargo Rate Measure”), calculated as actual cargo revenue divided by actual cargo volume of each trip. The mean Passenger Rate Measures and mean Cargo Rate Measures shall be computed on a per Route basis, where Route is defined as a pair of the origin and destination ports, and shall be monitored based on econometric model/s. The econometric model/s shall be used to provide an indication of the cost component in the Passenger Rate Measure and the Cargo Rate Measure. The cost component shall take into account the cost of fuel, crew wages, vessel depreciation, vessel repairs and maintenance, vessel insurance, and port expenses attributable to each route.
  - b. An Extraordinary Increase shall be deemed to have occurred if the corresponding actual increase in the Passenger Rate Measure and/or Cargo Rate Measure, as defined above, exceeds the increase in cost due to inflation. Inflation shall refer to year-on-year inflation rate of the transport sector, averaged for the months covered in each semester, as published by the Philippine Statistics Authority.
- V. The Parties shall submit to the Commission data on all trips of TASLI and 2GO on passenger and cargo for the year of 2018 within thirty (30) days from receipt of this Decision. Thereafter, the Parties shall submit

semi-annual reports containing data on all trips of passenger and cargo services in the Remaining Critical Routes for the semester, within thirty (30) days from the close of each calendar semester. For each trip, the data shall indicate the: (i) trip ID, (ii) voyage ID (if applicable), (iii) vessel, (iv) port of origin, (vi) port of destination, (vii) route distance in nautical miles, (viii) departure date, (ix) arrival date, (x) departure time, (xi) arrival time, (xii) passenger volume, (xiii) passenger revenue, (xiv) cargo volume in metric tons, (xv) cargo volume in cubic meters, (xvi) cargo revenue, (xvii) fuel expense, (xviii) wages, (xix) vessel depreciation, (xx) vessel insurance, (xxi) repairs and maintenance expense (if applicable), (xxii) port expenses, and (xxiii) such other data that the Commission deems necessary in order to conduct price monitoring.

- VI. Should there be a finding of an Extraordinary Increase in any of the Remaining Critical Routes, the Parties shall provide an explanation, with supporting empirical and verifiable evidence, within fifteen (15) days from receipt of the notice for the Commission's assessment.
  
- VII. Parties shall maintain the service quality of their passenger and cargo shipping services, based on the Customer Satisfaction Index ("CSI") developed by the third-party monitoring trustee ("Monitor"). This commitment will be monitored and evaluated on a semi-annual basis using methods such as, but not limited to, surveys and interviews.
  - a. The Parties shall submit a report to the Commission containing all relevant data pertaining to service quality, as determined by the Monitor, within fifteen (15) days from receipt of notice from the Monitor requiring submission of such data pertaining to service quality. Thereafter, the Parties shall submit semi-annual reports containing relevant data pertaining to service quality within fifteen (15) days from the close of each calendar semester.
  
  - b. Should there be a finding of a deterioration in or a failure to maintain the service quality of the Parties' passenger and cargo shipping services in any of the Remaining Critical Routes, the Parties shall provide an explanation, with supporting empirical and verifiable evidence, within fifteen (15) days from receipt of the notice for the Commission's assessment.
  
- VIII. Should 2GO apply and be granted authorization to operate or TASLI apply and be granted authorization to increase the capacity or frequency of its operations in the Withdrawn Routes by MARINA, CLC shall notify the Commission within five (5) days from the receipt of the decision issued by MARINA. If the authorization is issued within two (2) years

from this Decision, the relevant Withdrawn Routes shall be automatically subject to monitoring under Paragraphs IV and VII. However, if the authorization is issued at any time after two (2) years from this Decision, the Commission shall make an independent evaluation of the market conditions and determine whether harm is likely to arise with the operation of 2GO or the expansion of TASLI in the Withdrawn Routes. In case the Commission determines that harm may likely arise, the relevant Withdrawn Routes shall be then subject to monitoring under Paragraphs IV to VII.

- IX. A Monitor shall be appointed by the Commission from a list of three (3) nominees submitted by the Parties within fifteen (15) days from this Decision, provided that the Commission may suggest other nominees. If the Commission includes other nominees, the Parties may be given the opportunity to provide comments on the Commission's nominees for the Commission's consideration. The Monitor shall be a reputable person or firm with proven capability to undertake the responsibilities of a Monitor in a fair, independent, and impartial manner. The appointed Monitor shall work under the supervision of, and shall be accountable to, the Commission. The fees and expenses associated with the appointment and retention of the Monitor shall be borne by the Parties.
- X. Parties shall furnish the Monitor with a copy of all semi-annual reports and data required to be submitted to the Commission under the Undertaking. Parties shall also exert commercially reasonable efforts to assist the Monitor in the performance of his/her/its functions effectively. All reports, together with supporting data, required to be submitted by the Parties to the Commission under the Undertaking shall be verified by a senior officer or director of CLC, TASLI and 2GO, as appropriate.
- XI. The Parties shall allow the Monitor, at any time, to board and inspect the Parties' vessels and conduct interviews of personnel and passengers. The Parties shall submit such documents and reports as may be required by the Monitor other than those specifically enumerated in the Undertaking. The Monitor shall prepare and submit reports to the Commission. If the Monitor's reports show non-compliance by the Parties, the Commission shall furnish the Parties a non-confidential copy of such reports.
- XII. Should either TASLI or 2GO effect an Extraordinary Increase or breach any of its commitments under Paragraph IV without sufficient justification, the Parties shall pay a penalty of not less than Fifty Thousand Pesos (Php50,000.00) but not more than Two Million Pesos (Php2,000,000.00) for each violation.

- XIII. Should either TASLI or 2GO breach any of its commitments under Paragraph VII and the same is not remedied within forty-five (45) days from the Commission's instruction to rectify the same, the Parties shall pay a penalty of not less than Fifty Thousand Pesos (Php50,000.00) but not more than Two Million Pesos (Php2,000,000.00) for each violation.
- XIV. Should there be a finding by the Commission that any data, document, or report submitted by any of the Parties is fraudulent or constitutes false material information, the Parties shall be subject to appropriate penalties under Section 23 and 29(c) of the PCA.
- XV. Any other violation of the Undertaking not mentioned above, including delay in the performance of any obligations herein, shall be punishable as a violation of an order or decision of the Commission under Section 29 of the PCA and Section 11.4.1 of the Merger Rules.
- XVI. Any arrangement, contractual or otherwise, intended to circumvent the application of the Undertaking shall likewise be considered a violation of this Decision and shall be subject to the appropriate penalty under the PCA, and Section 11.4.1 of the Merger Rules.
- XVII. Parties shall cooperate with the Commission in good faith and do all things necessary to comply with the terms of the Undertaking.
- XVIII. The Undertaking shall be effective for a period of four (4) years from this Decision, provided that the Parties may apply to be released from the Commitments after two (2) years from this Decision. The Parties may be released from the Commitments due to relevant changes in circumstances, including, the entry of a viable market player that poses sufficient competitive constraint, or a significant increase of market share of other operators in the Remaining Critical Routes.

This Decision is rendered based on the foregoing conditions, the Undertaking, and submissions of the Parties in relation to the said Undertaking.

Any breach of the conditions set forth herein and in the Undertaking will subject the Parties to fines, additional remedies, and such other measures as the Commission may deem necessary, including nullification of this Decision.

11 January 2019, Quezon City, Philippines.



**ARSENIO M. BALISACAN**  
Chairman



**JOHANNES BENJAMIN R. BERNABE**  
Commissioner



**AMABELLE C. ASUNCION**  
Commissioner



**MACARIO R. DE CLARO, JR.**  
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