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De Kroon
Turfmarkt 107
Den Haag 2511 DP
The Netherlands

Subject: Case AT.40976 – APM Terminals
Informal Guidance Request - APM Terminals
(Please quote this reference in all correspondence)

Dear Sir or Madam,

1. On 18 December 2024, APM Terminals (“APM” or “the applicant”) requested informal guidance under the Commission Notice on Informal Guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) that arise in individual cases (guidance letters) (hereafter: the “Notice on Informal Guidance” or the “Notice”) ⁽¹⁾.
2. This request for informal guidance relates to the compatibility with EU competition rules of a proposed sustainability agreement for the joint purchasing and the setting of minimum technical specifications of battery-electric straddle and shuttle carriers (“BE-SC”), a type of container handling equipment (“CHE”) used at ports (the “**Joint Purchasing and Specification Agreement**” or “**JPSA**”). The present informal guidance letter sets out the Commission’s position on certain issues raised in APM’s request for guidance.

1. PRELIMINARY CONSIDERATIONS

3. Since the entry into force of Council Regulation (EC) No 1/2003 ⁽²⁾, undertakings (or their associations) can no longer notify their agreements to the Commission to receive

⁽¹⁾ Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters), OJ C 381, 4.10.2022, p.9.

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union. The two sets of provisions are, in substance, identical.

an individual exemption from Article 101 TFEU. Instead, they are responsible for assessing the legality of their agreements and practices themselves. This system of self-assessment, framed by the extensive guidance provided in Commission notices and other publications, as well as existing case law, is now well-established.

4. Consequently, informal guidance letters are intended to assist undertakings with their self-assessment of compliance with the competition rules on agreements and unilateral practices, for which they ultimately remain responsible.

2. INFORMAL GUIDANCE

5. Section 2.1 summarises the facts and arguments put forward by the applicant in its request for informal guidance. Section 2.2 sets out the Commission's assessment of the JPSA's compatibility with Article 101 TFEU.

2.1. The request for informal guidance

6. In its request ⁽³⁾, APM explains that:
 - a. There is an urgent need to replace the approximately 7 500 diesel-powered straddle and shuttle carriers (together "SCs") currently in use worldwide with zero-emission SC by 2030, along with approximately 100 000 units of other forms of CHE, in order to decarbonise the industry and reduce greenhouse gas emissions ("GHG") in line with the targets set by the European Commission. Diesel-powered SCs, although small in number when compared to other CHE, account for approximately 1-2 metric tons of carbon dioxide equivalent of CHE emissions worldwide;
 - b. Most of the CHE in operation are diesel-powered. Electric CHE are on average more expensive than their diesel counterparts. This cost difference is the highest for BE-SCs. In terms of total cost of ownership ("TCO"), BE-SCs are [25-35]*% more expensive than their diesel counterparts, whereas for other CHE (i.e. terminal tractors and reach stackers), such difference amounts to approximately 14-15%;
 - c. The higher cost of BE-SC is due to the high cost of batteries, lack of manufacturing scale, charging infrastructure costs and additional downtime compared to diesel equipment. Moreover, batteries and charging solutions are produced bespoke for each brand of BE-SCs, which makes mixing and matching batteries and chargers from different manufacturers impossible;
 - d. Grouping the purchases through a JPSA would aggregate a critical level of demand such as to induce SC Original Equipment Manufacturers' ("OEMs") to scale up the production of BE-SCs, optimise batteries and charging devices, in order to reduce the TCO of BE-SCs and ultimately reach parity between the TCO of diesel-powered SCs and the TCO of BE-SCs. This would not be possible in a reasonable time, absent a joint effort by TOs [...];

⁽³⁾ Including all subsequent communication and written replies to questions.

* Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].

- e. The proposed JPSA consists of a framework agreement between TOs on (i) the joint negotiation of purchases of BE-SCs and (ii) minimum technical specifications for these BE-SCs. The JPSA is intended to incentivise the OEMs to produce BE-SCs at scale and at more competitive prices by submitting orders of larger size;
- f. The JPSA's overarching objective is to reduce and ultimately eliminate GHG emissions by SCs. This sustainability benefit can only be achieved through the purchase of larger volumes of BE-SCs by TOs. Individual orders of BE-SCs by APM and other TOs have not been sufficient, so far, to incentivise OEMs to scale up production and ensure interoperability between batteries and chargers of different brands;
- g. To achieve the intended cost reductions described under paragraph 6(d), purchases of at least 300 to 350 BE-SCs through the JPSA are necessary, assuming a duration of the JPSA of five years ⁽⁴⁾.
- h. Part of the intended cost reduction can be achieved as follows: the JPSA would encourage OEMs to scale up production and rely on technological developments in battery cells, battery packs, electric drivetrains and charging solutions to bring down prices. Taking automotive battery packs as a benchmark, the JPSA could reduce costs for these parts by approximately [5-15]%. Moreover, the JPSA provides for TOs to jointly define minimum technical specifications for batteries and charging technology of the BE-SCs that they purchase, which would, according to APM, reduce the TCO of BE-SCs by [5-15]% on average. Furthermore, APM estimates that optimising terminal operations (such as installing ultra-fast chargers and battery swapping stations), could reduce downtime and decrease the TCO of BE-SCs by a further [5-15]% on average.
- i. The intended cost reductions require not only the aggregation of demand, but also an agreement by participating TOs on a "minimum standardisation" of the technical specifications of the BE-SCs that they purchase together. With these specifications, participating TOs aim to ensure that (i) chargers and batteries of different makes are interoperable and that (ii) BE-SCs have certain key functionalities. The OEMs are free to choose the way to achieve these specifications, including by differentiating their products ⁽⁵⁾.
- j. While it is not yet clear which TOs will become parties to the JPSA, [...] TOs ([...]) have expressed their interest to participate together with APM;
- k. The JPSA should have a duration of five years.
- l. The proposed JPSA falls outside the scope of Article 101 TFEU. APM alleges that, in the absence of the JPSA, due to the higher TCO of BE-SCs (see above 6(b), it could not comply with a number of statutory requirements under EU and other laws, such as the (i) the European Climate Law, which writes into law the goal set out in the European Green Deal for Europe's economy to become the first climate-neutral continent by 2050, and the intermediate target of reducing net GHG emissions by at least 55% by 2030, compared to 1990 levels, (ii) the

⁽⁴⁾ See APM's email of 16 April 2025.

⁽⁵⁾ APM's reply of 7 February 2025 to the Commission's request for information, p.3.

Corporate Sustainability Due Diligence Directive⁽⁶⁾, (iii) the Corporate Sustainability Reporting Directive⁽⁷⁾ and [...]. Moreover, APM argues that the JPSA has only positive effects on competition, if any, because it (i) incentivises OEMs to develop and scale production of optimised BE-SCs, (ii) decreases TCO until parity with diesel-operated SCs, and (iii) introduces more choice and stimulates innovation;

- m. Even if the JPSA were to fall within the scope of Article 101 TFEU, APM considers that it does not contain any restrictions of competition by object because its main objective is a sustainability objective. Moreover, it pursues a pro-competitive objective (see above paragraph 6(l));
- n. If the JPSA were to fall within the scope of Article 101 TFEU, it does not contain any restrictions of competition by effect either for the following reasons:
 - i. First, the JPSA is pro-competitive in nature (see above paragraph 6(l));
 - ii. Second, the JPSA does not give rise to anticompetitive effects in the upstream market for the purchase of BE-SCs by participating TOs since OEMs have a significant degree of countervailing seller power, while the TOs are unlikely to have significant market power. The market for SCs is worldwide, and the EEA demand for SCs makes up only [40-50]% of worldwide demand. Furthermore, the market on the side of the purchasers such as APM is fragmented and consists of approximately ten Global Terminal Operators (“GTOs”) and numerous small and medium-sized terminal operators (“SMTOs.”) APM estimates that the shares of each TO that has expressed interest to participate in the JPSA of the worldwide demand for SCs is [below 10]%. Even if the market power of participating TOs were significant, it would always be outbalanced by the very strong countervailing seller power of the OEMs on the market for SCs. Insofar, the Commission's findings in its decision of 24 February 2022 in Case M.10078 Cargotec/Konecranes are still valid;
 - iii. Third, the JPSA will not require the TOs to purchase any of their demand for BE-SCs or other SCs under the JPSA. The JPSA will be open to any TO. Furthermore, the pro-competitive effects of the JPSA, such as higher scale and therefore reduced production costs or better quality of BE-SCs will also benefit non-participating TOs;
 - iv. Fourth, the JPSA will not lead to anticompetitive effects in the downstream markets for container terminal services because the JPSA contains strict safeguards to avoid exchange of commercially sensitive information that could facilitate collusion. Moreover, the JPSA will not result in a high degree of commonality of costs of TOs that would facilitate tacit collusion.

⁽⁶⁾ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/285, OJ L, 2024/1760, 5.7.2024, <https://eur-lex.europa.eu/eli/dir/2024/1760/oj/enghttps://eur-lex.europa.eu/eli/dir/2024/1760/oj/eng>.

⁽⁷⁾ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), OJ L 322, 16.12.2022, p. 15–80, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>.

SCs are just one of several types of BE-CHE equipment used by TOs and generally represent a small percentage of their total fixed costs. For example, in the case of APM, SCs of all types (including hybrid) represented less than [...] % of its total capital expenditure (CAPEX) ⁽⁸⁾ in 2023, whereas the exact percentage per terminal differs. Finally, APM observes that [...];

- v. Fifth, the proposed number of SC units that TOs would purchase through the JPSA of at least 300 to 350 over a period of five years (see paragraph 6(g)) is limited to what is strictly necessary and proportionate to create sufficient buyer power to achieve the JPSA's aims;
- vi. Sixth, insofar as the minimum specifications are concerned, they fall under the "soft safe harbour" defined in paragraph 549 of the Horizontal Guidelines of the European Commission ⁽⁹⁾.
- o. Since the JPSA does not restrict competition within the meaning of Article 101(1) TFEU, it is not necessary to conduct an assessment as to whether it meets the conditions to benefit from the exemption under Article 101(3) TFEU.

2.2. The Commission's assessment

2.2.1. Facts

- 7. In the following sections, the Commission sets out the facts as presented by the applicant in so far as relevant for its assessment. ⁽¹⁰⁾ In some instances, they are complemented by the Commission's own research. Section 2.2.1.1. describes the product and industry concerned, section 2.2.1.2. the objective of the JPSA, sections 2.2.1.3. and 2.2.1.4. the proposed agreement on joint purchasing and on minimum technical specifications respectively, sections 2.2.1.5. and 2.2.1.6. the conditions on the upstream market for the purchase of SCs and on the downstream markets for the supply of container terminal services, and section 2.2.1.7. the proposed duration of the JPSA.

2.2.1.1. The product and industry concerned

2.2.1.1.1. Container handling equipment

- 8. CHE is used to load and unload containers on maritime transport ships in the world's 940 container ports. CHE equipment comprises different types of "vehicles", such as terminal tractors, straddle and shuttle carriers, lift trucks, rubber-tyred gantry and ship-to-shore cranes. CHE equipment is used by TOs to perform port operations.
- 9. Within the CHE fleet, a broad distinction can be made between "horizontally moving" equipment (also referred to as "untethered") and fixed equipment. Untethered

⁽⁸⁾ Capital expenditure refers to funds that a company spends on the acquisition, upgrading or maintenance of physical assets that are expected to provide benefits over a long period (e.g. property, buildings, equipment, technology).

⁽⁹⁾ Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 259, 21.7.2023 ("Horizontal Guidelines").

⁽¹⁰⁾ Insofar as the sources are not indicated explicitly in footnotes, the source is the application mentioned in paragraph 1.

equipment (terminal tractors, straddle carriers, lift trucks) is typically used to move containers from the quay to the yard, while fixed equipment is used to place containers in the yard and remove them from the yard for horizontal transport. According to APM, untethered equipment accounts for 70% of the global CHE fleet. Most CHE is currently diesel-powered. In particular, the nature of untethered equipment makes it impossible to power it by direct electricity supply.

10. CHE can be diesel-powered, battery-electric, diesel-battery-hybrid, or hydrogen-electric. According to APM, BE-CHE are both more affordable and more accessible than hydrogen-electric CHE. Untethered BE-CHE currently represent less than 5% of the total untethered CHE.

2.2.1.1.2. Battery-electric straddle and shuttle carriers

11. Straddle carriers are a particular type of CHE that TOs use to stack and move containers at port terminals horizontally by “straddling” a load. Shuttle carriers can also move a container horizontally but cannot stack them.
12. The JPSA concerns only BE-SCs. All SCs, independent of drive type, represent 7,500 units worldwide, i.e. approximately 6-7.5% of the total of 100,000 to 120,000 units of CHE worldwide. BE-SCs represent less than 1% of SCs produced per year worldwide; the remaining 99% of SCs are either diesel-powered or diesel-battery-hybrid (in recent years, purchases of hybrid SCs have increased significantly ⁽¹¹⁾). The EEA demand for SCs makes up [40-50]% of the worldwide demand ⁽¹²⁾.
13. Based on the total cost of ownership (“TCO”), BE-SC are, according to APM, around [25-35]% more expensive than their diesel counterparts, whereas for other CHE (i.e. terminal tractors and reach stackers), this differential is about 14-15%.
14. The market for the supply of SCs, including diesel-powered, battery-electric or other drive types, is highly concentrated. The two main manufacturers, Konecranes and Kalmar, both Finland-based, jointly produce more than 90% of all SC EEA-wide and worldwide (excluding China) ⁽¹³⁾.
15. APM notes that, currently, TOs generally do not purchase BE-SCs. This is because (i) the TCO of BE-SCs are [25-35]% higher than that of diesel-powered ones and (ii) mixing and matching of batteries and chargers of different OEMs is currently impossible because they are produced bespoke by each manufacturer of BE-SCs.

2.2.1.1.3. TOs

16. TOs are the customers of SC producers. These TOs include APM, Hutchison Ports, PSA International, China Cosco, DP World, Terminal Investments, CMA-CGM and Eurogate. The terminals owned or partially owned by them account for 60-70% of container throughput worldwide and three quarters of the throughput in Europe. However, approximately 20-30% of container throughput in Europe is managed by

⁽¹¹⁾ See for example APM’s reply of 7 February 2025, p.11, Table 3.

⁽¹²⁾ APM’s reply of 7 February 2025, p.20.

⁽¹³⁾ Commission decision of 24 February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, para. 930, Table 6, paragraph 931, Table 7, and 932. APM stated that the market situation has not improved since that decision.

public port authorities or other private players, including those operating inland intermodal terminals such as Deutsche Bahn, Rhenus and Hupac ⁽¹⁴⁾.

2.2.1.2. The objective of the JPSA

17. The ultimate objective of the proposed JPSA is to reduce GHG emissions by replacing diesel-operated SCs with BE-SCs. This objective would be achieved by increasing the purchase of BE-SCs by TOs. To do so, the JPSA aims to reach cost parity between BE-SCs and their diesel counterparts, i.e. lowering the TCO of BE-SCs by [25-35]%.
18. APM intends to achieve the intended cost reduction as follows: The JPSA would encourage OEMs to scale up production and rely on technological developments in battery cells, battery packs, electric drivetrains, and charging solutions to bring down TCO. Taking automotive battery packs as a benchmark, the JPSA could lower costs for these parts by approximately [5-15]%. Participants to the JPSA intend to define minimum technical specifications for batteries and charging technology of the BE-SCs that they purchase, which would, according to APM, reduce the TCO of BE-SCs by [5-15]% on average. Finally, APM estimates that once parties to the JPSA purchase BE-SCs, they could reduce TCO by a further [5-15]% on average with measures that do not fall within the JPSA, i.e. by optimising terminal operations (e.g. installation of ultra-fast chargers or battery swapping stations).

2.2.1.3. The proposed joint purchasing

19. The JPSA is open to all TOs. Moreover, the purchasing of BE-SCs through the JPSA will be optional, i.e. TOs will be free to purchase BE-SCs outside the JPSA ⁽¹⁵⁾.
20. TOs purchase SCs through calls for tenders. The JPSA provides that a steering committee (“SteerCo”) comprised of representatives of the participating TOs, and an independent third-party service provider will manage the tender process. The TOs’ representatives participating in the SteerCo will be bound by strict confidentiality commitments and will not share any competitively sensitive information exchanged at the SteerCo level with the rest of the staff of the TOs. Moreover, such information exchanges within the SteerCo will be limited to what is strictly necessary to implement the JPSA.
21. The participating TOs, within the SteerCo, will agree on the key terms and conditions, including the pricing bids that they are willing to accept, for the procurement of BE-SCs. The independent service provider will collect the participating TOs’ BE-SC demand. This demand will only be shared within the SteerCo to the extent strictly necessary for the proper functioning of the JPSA tender process.
22. The service provider will issue calls for tenders to the OEMs, based on the aggregated demand and agreed key terms and conditions. There will be two rounds of tenders to allow for negotiation between the participating TOs (through the SteerCo) and the OEMs. The TOs (through the SteerCo), in consultation with the service provider, will then select the OEM(s) winning the tender. It is possible for a tender to be awarded to more than one OEM.

⁽¹⁴⁾ Commission decision of 24 February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, para. 1050.

⁽¹⁵⁾ Call with APM on 12 February 2025.

23. Each participating TO will conclude an individual contract with the selected OEM(s) for the supply of its corresponding portion of the aggregated demand at the key terms and conditions agreed through the tender process, including price and minimal technical specifications. The JPSA allows TOs to negotiate other terms and conditions individually.
24. The JPSA will be limited to joint purchasing of BE-SCs.
25. To achieve the intended cost reductions described under paragraph 6(d), purchases of at least 300 to 350 BE-SCs through the JPSA are necessary, assuming a duration of the JPSA of five years ⁽¹⁶⁾.

2.2.1.4. The proposed minimum specifications

26. The JPSA envisages that the TOs will agree also on a “minimum standardisation” of technical specifications of the BE-SCs that they purchase together. The JPSA will define minimum technical specifications for the following areas for the BE-SC units that will be purchased through the JPA’s tenders, namely charging strategy and method and charger architecture. These specifications are intended to be further developed and agreed upon between the participating TOs and will be progressively reflected in the JPSA’s tenders. These specifications intend to define minimum requirements, which, for example, will allow interoperability between chargers and batteries and help achieve TCO parity between BE-SCs and diesel-powered SCs. These specifications will not affect the OEMs’ ability to design or otherwise differentiate their products.

2.2.1.5. Upstream market for SCs

27. The EEA demand for SCs makes up [40-50]% of the worldwide demand ⁽¹⁷⁾. The supply of SCs is highly concentrated (see above paragraph 14).

2.2.1.6. Downstream markets for container terminal services

28. While it is not clear yet which TOs will become parties to the JPSA, the TOs [...] have expressed an interest to participate, together with APM. APM owns one terminal in Rotterdam (NL), terminals in Aarhus and Kalundborg (DK), Gothenburg (SE), Barcelona and Algeciras (ES) and holds shares in the terminals in Bremerhaven (DE) (50% JV with Eurogate), Gijon and Valencia (ES), Marseille (FR) (JV with Terminal International and China Cosco) and Vado Ligure (IT) (JV with COSCO (40%)). [...].
29. Apart from the [...] TOs mentioned in the previous paragraph, it is not known who might participate in the JPSA and therefore, what the combined share will be of all participating TOs on the markets on which they offer their container terminal services at deep-sea ports in the EEA or on the market on which they purchase BE-SCs.
30. SCs are just one of several types of BE-CHE used by TOs and they represent a small percentage of the total fixed costs of TOs. For example, in the case of APM, SCs of all types (including hybrid) represented less than [...] % of its total CAPEX.

⁽¹⁶⁾ See APM’s email of 16 April 2025.

⁽¹⁷⁾ APM’s reply of 7 February 2025, p.20.

2.2.1.7. Duration

31. The JPSA will have a duration of five years.

2.2.2. *Criteria set out in points 7(a) and 7(b) of the Notice*

32. The Commission considers that it is appropriate to provide clarifications on the applicability of Article 101 TFEU to the proposed JPSA because it raises novel or unresolved questions, clarification of which would provide added value regarding legal certainty pursuant to point 7 of the Informal Guidance Notice.
33. Firstly, the request for informal guidance involves unresolved questions in the sense of point 7(a) of the Notice insofar as they concern the application of Article 101 TFEU to a sustainability agreement, which includes an agreement on minimum technical specifications aimed at ensuring interoperability between batteries and chargers of different brands. Moreover, the JPSA will likely entail joint purchasing by competitors whose combined share on the market for purchasing SCs will exceed the threshold specified in the soft safe harbour provided in the Horizontal Guidelines ⁽¹⁸⁾.
34. Secondly, the Commission considers that there is an interest in providing guidance in this scenario, as the JPSA's objectives are relevant for the achievement of the Commission's priorities or the Union interest in the sense of point 7(b) of the Notice. The JPSA aims to contribute to sustainability by reducing GHG emissions through the substitution of diesel-operated SCs with BE-SCs. It therefore aligns with the European Green Deal and its goals of reducing greenhouse gas emissions (i.e. reducing net GHG to 55% of 1990 levels by 2030, and to zero by 2050 ⁽¹⁹⁾).

2.2.3. *Assessment of the JPSA under Article 101(1) TFEU*

35. The Commission bases its legal reasoning in particular on chapters 4 and 9 of the Horizontal Guidelines. Chapter 4 applies to joint purchasing agreements and therefore covers the JPSA. Chapter 9 applies in addition to chapter 4 if the agreement also qualifies as a "sustainability agreement" ⁽²⁰⁾. The Commission considers that this is the case, as the JPSA pursues a sustainability objective. According to the applicant, the aim of the JPSA is to replace diesel-powered SC with zero-emission BE-SCs by 2030. Such replacement would reduce GHG emissions by SCs ⁽²¹⁾.
36. As explained in para. 6(m), APM argues that the JPSA falls outside the scope of Article 101(1) TFEU as it is primarily aimed at ensuring compliance with binding international law. Contrary to the applicant's claim, the Commission does not consider that the JPSA is excluded from the scope of Article 101(1) TFEU on the mere basis that it would solely aim to ensure compliance with requirements in legally

⁽¹⁸⁾ Horizontal Guidelines, point 291.

⁽¹⁹⁾ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en (last accessed 24 March 2025).

⁽²⁰⁾ Horizontal Guidelines, paragraph 523. In contrast, sustainability standardisation agreements are to be assessed solely on the basis of chapter 9.2 of the Horizontal Guidelines because of their distinct characteristics. However, the JPSA, insofar as it concerns an agreement on Minimum Specifications, does not qualify as a "sustainability" standardisation agreement or as a (non-sustainability-related) "standardisation" agreement in the sense of Chapter 7 of the Horizontal Guidelines.

⁽²¹⁾ See Horizontal Guidelines, paragraph 517.

binding international treaties, agreements or conventions in the sense of paragraph 528 of the Horizontal Guidelines ⁽²²⁾.

37. In the following paragraphs, the Commission will assess the elements on the basis of which it considers that the JPSA does not raise concerns under Article 101 TFEU, and in particular does not restrict competition by object or by effect within the meaning of Article 101(1) TFEU.

2.2.3.1. No restriction of competition by object

38. An agreement has as its object the restriction of competition within the meaning of Article 101(1) TFEU if it in itself presents a sufficient degree of harm to competition ⁽²³⁾. When an agreement is held to restrict competition by object, it is not necessary to assess the effects that it may have on competition ⁽²⁴⁾. An agreement generally does not have the object to restrict competition when it genuinely concerns joint purchasing and not, for example, a disguised buyer cartel, seller cartel or boycott ⁽²⁵⁾.
39. Based on the information APM provided, the Commission considers that the joint purchasing agreement is not a disguised buyer cartel. The JPSA makes it clear to OEMs that the negotiations are conducted on behalf of the participating TOs and that these TOs will be bound by the agreed terms and conditions for their individual purchases ⁽²⁶⁾. Moreover, the JPSA does not give rise to exchange of competitively sensitive information between TOs, as such exchange of information takes place only within the framework of the JPSA (i.e. within the SteerCo) and only to the extent necessary for the JPSA's implementation ⁽²⁷⁾. Furthermore, all the elements of the JPSA take the form of a written agreement that can be verified ex post and checked against the actual operation of the joint purchasing arrangement.
40. In addition, the JPSA does not contribute or serve as a tool to engage in a seller cartel, since it is not an agreement to fix resale prices or limit any other factors of competition on the downstream market on which TOs offer container terminal services ⁽²⁸⁾.
41. Finally, the JPSA does not constitute a horizontal boycott ⁽²⁹⁾ aimed at excluding a competitor in the downstream selling market for container terminal services ⁽³⁰⁾ since the JPSA is open to all TOs.

⁽²²⁾ First, APM cites merely EU law and [...] which allegedly obliges APM to reduce its GHG emissions. However, these are not international treaties, agreements or conventions in the sense of paragraph 528 of the Horizontal Guidelines, which explicitly exempts from the scope of Article 101 (1) TFEU only agreements that have as their sole aim to fulfil obligations under international law, but not EU law. Second, none of the legal acts cited by APM contain a sufficiently precise requirement or prohibition on APM to reduce GHG.

⁽²³⁾ Judgment of 29 June 2023, *Super Bock Bebidas*, C-211/22, ECLI:EU:C:2023:529, paragraph 34.

⁽²⁴⁾ Judgment of 29 June 2023, *Super Bock Bebidas*, C-211/22, ECLI:EU:C:2023:529, paragraph 31.

⁽²⁵⁾ See Horizontal Guidelines, paragraphs 278 et seq.

⁽²⁶⁾ See Horizontal Guidelines, paragraph 282(a).

⁽²⁷⁾ See Horizontal Guidelines, paragraphs 281 and 282.

⁽²⁸⁾ See Horizontal Guidelines, paragraph 283.

⁽²⁹⁾ See Horizontal Guidelines, paragraph 284.

⁽³⁰⁾ See also below section 2.2.3.2.2.

2.2.3.2. No restriction of competition by effect

42. Based on the available information, the Commission considers that the JPSA does not have as its effect a restriction of competition either on the upstream market on which TOs purchase BE-SCs or on the downstream market(s) on which TOs offer container terminal services⁽³¹⁾. The Commission's assessment is based on five elements examined in paragraphs 43 to 50 below.

2.2.3.2.1. Upstream market for the purchase of SCs

2.2.3.2.1.1. Absence of exclusive purchasing obligations

43. The first element is that the JPSA does not impose on TOs any obligation to purchase all or a part of their requirements for SCs (independent of drive type, including BE-SC) exclusively under the JPSA. According to the applicant, such an obligation is, in this case, not necessary to achieve the required degree of buying power or volume for the realisation of the intended TCO reduction.

2.2.3.2.1.2. Maximum share of demand aggregated through JPSA

44. The second element is that the JPSA does not aggregate the purchase of more than 350 units of BE-SCs in the next five years, which corresponds to approximately [30-40]% of the total demand for SCs in the EEA.
45. The total number of 350 units of BE-SCs is the upper end of the range that APM indicated as the amount of units which TOs need to purchase during the next five years through the JPSA to achieve the cost reductions intended by the JPSA (see above paragraph 18)⁽³²⁾.
46. These 350 units of BE-SCs would correspond to [30-40]% of the total demand for SCs (of any drive type) in the EEA during the next five years. This estimate of total demand for SCs in the EEA is based on sales forecasts by the OEMs⁽³³⁾ and on the Commission's decision-making practice, according to which the relevant upstream product market where the TOs' demand meets the OEMs' supply, appears to be the market for the supply of SCs (i.e. straddle and shuttle carriers⁽³⁴⁾). This market includes SCs of all drive types, i.e. diesel, battery-electric, battery-hybrid⁽³⁵⁾, and of all modes of operation, i.e. manual and automated mode⁽³⁶⁾. BE-SCs therefore seem substitutable in principle (i.e. leaving aside the cost disadvantage) with SCs of other

⁽³¹⁾ See Horizontal Guidelines, paragraphs 285 et seq.

⁽³²⁾ See APM's email of 16 April 2025.

⁽³³⁾ In the next five years, Kalmar estimates that it will sell approx. [...] units of SCs per year, Konecranes [...], and ZPMC [...], see emails from Kalmar and Konecranes of 22 April and email from ZPMC of 24 April 2025. In sum, this gives a total of [...] SC units which these OEMs estimate that they will sell in the next five years in the EEA. Of these [...] SC units, 350 units make up a share of [30-40]%.

⁽³⁴⁾ See Commission decision of 24. February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, para. 115. Shuttle carriers are a "short leg" version of straddle carriers mainly used to transport containers horizontally, whereas straddle carriers can be also used for stacking containers. The Commission found indications that due to the high supply-side substitutability, straddle and shuttle carriers belong to the same product market, but ultimately left this question open.

⁽³⁵⁾ See Commission decision of 24 February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, para. 99.

⁽³⁶⁾ See Commission decision of 24 February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, paras. 104, 106.

drive types. This market is at least EEA-wide, and possibly worldwide ⁽³⁷⁾. The EEA demand for SCs represents [40-50]% of the worldwide demand.

47. Setting the aggregated purchasing threshold at 350 units in total, i.e. [30-40]% of the total yearly demand for SCs in the EEA, seems justified in this case (i) to rapidly increase demand for and supply of BE-SCs, (ii) because a substantial part of worldwide and EEA-wide demand for SCs, including BE-SCs, would remain unaffected by the JPSA, and (iii) taking into account the high level of concentration in the market for the supply of SCs (see para. 14). Regarding (i), the Commission estimates, based on numbers provided by APM, that only 1% of all SCs sold (worldwide) are currently BE-SCs ⁽³⁸⁾. Reducing TCO of these BE-SCs will therefore likely contribute to increasing demand for and supply of BE-SCs rapidly. Regarding (ii), APM estimates that aggregating at least 350 units of BE-SCs during the next five years through the JPSA is necessary to achieve the cost reductions intended by the JPSA, which corresponds to approximately [30-40]% of the total demand for SCs in the EEA (see above paragraph 46). Therefore, approximately [60-70]% of that demand in the EEA remains unaffected by the JPSA. Based on the worldwide demand for SCs, the share which remains unaffected by the JPSA is even higher.

2.2.3.2.2. Downstream markets for container terminal services ⁽³⁹⁾

48. The third element is that the JPSA does not facilitate coordination with regard to sales prices and output and thus does not lead to a collusive outcome on the selling market ⁽⁴⁰⁾. The JPSA therefore must not entail more exchange of competitively sensitive information than objectively necessary for its implementation. In this regard, the JPSA must contain safeguards, such as confidentiality commitments undertaken by representatives of each TO not to share any competitively sensitive information with other staff within their respective companies. Competitively sensitive information, such as individual demand or individual preference for price and technical specifications must not be shared outside the SteerCo. The concrete formulation, scope of application, duration, and implementation of these safeguards must be effective to limit the information exchange to what is objectively necessary to implement the JPSA.
49. The fourth element is that the JPSA does not lead to such cost commonality that participating TOs are more able and likely to collude. Based on the applicant's information, the expected increase in cost commonality for the parties to the JPSA is likely to be limited. Assuming that all TOs participating in the JPSA have a cost structure similar to that of APM, the cost of SCs, compared to the cost of all other CHE that TOs use in providing container terminal services – and which competing

⁽³⁷⁾ See Commission decision of 24 February 2022, Case M.10078 – *CARGOTEC / KONECRANES*, para. 343.

⁽³⁸⁾ See for example APM's reply of 7 February 2025, p.11, Table 3.

⁽³⁹⁾ Based on the Commission's decision practice, the product market for container terminal services includes the loading, unloading, storage and land-side handling for inland transportation of containerised cargo. This market can be further distinguished into separate submarkets for hinterland traffic (containers transported directly to/from a container vessel from/to the hinterland via barge, truck or train) and transshipment traffic (containers destined for the onward transportation to other ports or other vessels). The geographic market is in essence determined by the geographic area generally served by the container terminal (catchment area). See Commission Decision of 29 April 2022, Case M.10522 - *HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN*, paras. 15 et seq.

⁽⁴⁰⁾ See Horizontal Guidelines, paragraph 302.

TOs do not purchase jointly – constitutes a limited part of TOs’ total CAPEX (see above, paragraph 30).

2.2.3.2.3. Minimum Specifications

50. To the extent the parties to the JPSA intend to agree on a “minimum standardisation” of technical specifications of the BE-SCs that they purchase together (see paragraph 26), the fifth element is that these specifications remain limited to charging strategy and/or method and charger architecture. The Commission considers that this will increase the interoperability between charging infrastructure and BE-SCs of different OEMs, while at the same time leaving sufficient scope for OEMs to compete by differentiating their products.

2.2.4. Limits of application of the informal guidance letter

51. In addition to the limits of effects of guidance letters described in the Commission’s Notice on Informal Guidance, the guidance provided in this letter remains applicable for a maximum of five years. This informal guidance letter does not concern the possible effects of the JPSA outside the EEA.

3. CONCLUDING REMARKS

52. This informal guidance letter reflects the Commission’s observations on the facts presented to it and does not create any rights or obligations for APM or any third party. It also cannot prejudge the assessment of the same question by the Court of Justice of the European Union. Moreover, the clarifications provided herein are expressly conditioned on the accuracy and truthfulness of the information that APM has submitted. Any material divergence from the information provided will render this informal guidance letter inapplicable.

For the Commission

Signed

*Teresa RIBERA
Executive Vice-President*