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***Case No COMP/M.3798 -  
NYK / LAURITZEN  
COOL / LAUCOOL JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/08/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/08/2005

SG-Greffe(2005) D/204543

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.3798 – NYK/ Lauritzen Cool / LauCool JV  
Notification of 14/07/2005 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 14 July 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings NYK Reefers Limited (“NYK”, UK) and J.Lauritzen A/S (“Lauritzen”, Denmark) acquire within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 joint control of the whole of the undertaking LauritzenCool AB (“LauCool”).

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## **I. THE PARTIES**

2. NYK is part of the Japanese NYK Group, which has interests in international liner and bulk shipping, as well as global logistics. NYK is an owner and operator of a fleet of 27 refrigerated (“reefer”) vessels used for the transport of fruit and other perishable produce by sea.
3. Lauritzen is a Danish shipping group which is actively involved in ocean transport. Lauritzen is 100% owned by Vesterhavet A/S. This in turn is 100% owned by JL-Fondet, a private foundation established in Denmark. Lauritzen operates in four business areas: Lauritzen Kosan, which is engaged in the transport of a variety of petrochemical gases, energy gases (LPG) and ammonia; Lauritzen Bulkers, which operates dry bulk carriers; Lauritzen Tankers, which transports crude oil, petroleum products, easy chemicals and vegetable oils; and Lauritzen Reefer, which is involved in chartering and operating specialised bulk reefer ships.
4. Lauritzen Cool AB (“LauCool”), is a full subsidiary of Lauritzen and part of the Lauritzen Reefer division. LauCool is responsible for the commercial and operational management of specialised reefer vessels and for the sea transport of perishable goods. LauCool does not own any reefer vessel capacity, but charters in the capacity it needs at arm’s length from independent owners of reefer ships and from Lauritzen subsidiary Lauritzen Reefers A/S. The vessels operated by LauCool are referred to as the “Leonina Fleet” (comprising 37 vessels in 2005). The system operating the fleet is referred to as the “Leonina System”. LauCool also charters vessels on short term charters to complement the Leonina Fleet.
5. NYK and LauCool each have a 50% shareholding in Lauritzen Cool Logistics AB (“LCL”), a joint venture company engaged in the reefer logistics business, providing logistics and supply chain management services, principally to smaller growers and exporters of perishable foodstuffs.

## **II. THE OPERATION**

6. The notified operation consists of the acquisition by NYK of 50% of the shares in LauCool from Lauritzen, creating a full function joint venture in which each party will hold 50%. Simultaneously, NYK will transfer its business of commercial and operational management of the trades operated by NYK to LauCool, using the vessels available under a tonnage sharing agreement between NYK and LauCool of 9 September 2003.
7. NYK will transfer its 50% shareholding in LCL, which it acquired in 2004<sup>2</sup>, to LauCool as part of the proposed transaction.
8. On completion of the operation NYK and Lauritzen will enter into a Shareholders’ Agreement which contains a commitment from both parties to provide LauCool with reefer capacity [...] for a transitional period of [...]. The parties will also enter into [...]. Finally, following completion of the transaction LauCool will be renamed NYK

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<sup>2</sup> Case M. 3346 – NYK Reefers/LauritzenCool/LCL JV

LauritzenCool AB and the tonnage sharing agreement (for which there is no further need) will be terminated.

### **III. CONCENTRATION**

#### *Joint Control*

9. Following NYK's acquisition of 50% of the shares in LauCool, LauCool will be a 50:50 joint venture with NYK and Lauritzen each holding half of LauCool's issued share capital and enjoying equal voting rights. Pursuant to the Shareholders' Agreement [description of the decision-making system]. In view of the above, NYK and Lauritzen therefore exercise joint control over LauCool.

#### *Full Function Joint Venture*

10. The joint venture concerns a company which is already in operation, and which performs all the functions usually carried out by undertakings in this type of services. LauCool has its own management and possesses the necessary human and financial resources in order to conduct its business on a lasting basis. LauCool's key asset is its worldwide network of marketing and operational contacts for the transport of perishable goods, the skilled technical expertise of its staff with their specialised industry knowledge and relevant IT skills. The joint venture operates its business autonomously, it has direct contacts with its customers without intervention of the parent companies. The obligation to provide vessel capacity to the joint venture by the parent companies is limited to a transitional [...] period. Thereafter, securing reefer capacity will be entirely the responsibility of LauCool's management and subject to arms' length commercial negotiations with vessel owners.
11. Having regard to the above, the joint venture will perform on a lasting basis all the activities of an autonomous economic entity. NYK's acquisition of joint control of LauCool therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

### **IV. COMMUNITY DIMENSION**

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup>. Each of NYK and Lauritzen has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

## V. COMPETITIVE ASSESSMENT

### A. RELEVANT MARKETS

#### *Product markets*

13. The parties submit that the relevant product market concerned by the proposed transaction consists of the provision of reefer transport services for the transport by sea of perishable goods (i.e. all goods requiring temperature controlled transportation). This market should comprise transport both by refrigerated containers (“reefer containers”) and by specialised bulk reefer vessels. It is referred to hereafter as the reefer services market.
14. The reefer services market covers ocean or sea freight plus the terminal handling operations at ports at each end and/or at intermediary transshipment ports, plus, in certain cases, ancillary warehousing in cold stores. The parties submit that any further segmentation of this market would not be meaningful in view of existing substitution possibilities from both the demand side and supply side.
15. It has been submitted by some market participants that the reefer services market could possibly be further subdivided into specialised bulk reefer transport as opposed to containerised reefer transport. Some of them suggested even further segmentation of the specialised bulk reefer transport according to products transported or vessel size.
16. As regards differentiation between reefer container and bulk reefer transport, the parties argue that in most cases buyers of reefer services can use both these modes of transport interchangeably. Specialised bulk reefer ships often also carry reefer containers in specially created slots on deck. Shippers of reefer commodities often spread their business between bulk reefer and reefer containers. The parties also argue that price differences between specialised bulk reefer transport and containerised reefer transport are not of such a nature as to affect the substitution possibilities between them.
17. The parties further refer to the increased scrapping of specialised bulk reefer ships together with a lack of new builds. This has resulted in an aging of the specialised bulk reefer fleet in recent years and coincided with a continuing increase in the market share of containerised reefer transport. It is estimated that the amount of cargo carried by reefer containers will exceed specialised bulk reefer ship capacity by 2006.<sup>4</sup>
18. According to the parties the infrastructural situation in the ports of shipment and destination does not significantly affect the use of specialised bulk reefer ships as opposed to the use of containerised reefers ships. The size of the port terminal has been cited as a possible reason for arguing that reefer containers are not always substitutable for specialised bulk reefers, since container vessels are in general much larger and hence unable to access many ports because of lack of draft or lack of suitable cranes. The parties argue however that the infrastructure for handling containers at terminals (both ship-to-shore and shore side) has been under constant development over the last few years as numerous container lines have expanded their interests into traditional specialised bulk reefer areas. Furthermore, the liner operators can use smaller feeder

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<sup>4</sup> Ocean Shipping Consultants’ report “Refrigerated Trades and Outlook to 2015”, p. 52

vessels capable of calling at the small ports, transshipping cargoes into the main container hubs.

19. In previous decisions, the Commission has defined the market mainly in cases concerning container liner transport. In these cases it has been accepted that substitution may exist between bulk transport (such as specialised bulk reefer transport) and containerised transport. It concerns however mainly one-way substitutability, i.e. substitution from bulk transport towards containerised transport and not *vice versa*<sup>5</sup>. It was held that as the degree of (reefer) containerisation increases, shippers of non-containerised (reefer) cargoes turn towards containerised services, but once those shippers have become accustomed to shipping in containers they do not revert to non-containerised shipping<sup>6</sup>.
20. Market investigation in this case confirmed that many customers of bulk reefer services consider reefer container services as a possible substitute. Their ability and willingness to switch to reefer containers nevertheless depend on a number of factors including characteristics of the products shipped, logistic chain considerations and required speed and flexibility of the services. In general, specialised bulk reefer services are more suitable for transportation of large quantities of relatively low value products (for example bananas) in particular during the peak season. On the other hand, reefer containers are more often used for transportation of lower volumes of higher value products sensitive to temperature changes (in particular meat, dairy products and tropical fruit). However, it has been confirmed that the share of reefer containers in the overall reefer transport has been steadily growing for all product categories and it is expected to grow also in the future<sup>7</sup>. The current share of reefer containers ranges from 21% for bananas to 86% of dairy products<sup>8</sup>.
21. Therefore, it seems that due to the one-way substitution reefer container operators represent significant competitive constraints for the specialised bulk reefer operators. However, as the concentration does not lead to competitive concerns under any possible market definition, it is not necessary to decide whether the extent of these constraints justifies the definition of a single market for both modes of transport or whether it should be taken into account only within the framework of a competitive assessment of a narrower market for specialised bulk reefer services.
22. Some market participants suggested that reefer transportation services should be divided according to the different perishable products shipped (e.g. bananas, citrus fruit, deciduous fruit, exotic fruit, meat, fish and diary products). According to them, there may be differences due to different temperature conditions, seasonality of products and the volumes shipped. The parties on the other hand submit that these differences do not justify further segmentation of the market for the provision of reefer services. There are no technical or other supply side differences in the type of reefer services applied to the different categories of reefer products. Growers who grow an assortment of different products use the same reefer service providers for all their

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<sup>5</sup> Case IV/35.134 – Trans Atlantic Conference Agreement OJ 1999 L 95/1, par. 67, 70, Case IV/34.250 – Europe Asia Trades Agreement, OJ 1999, L193/23, par. 49 and most recently merger case M.3829 – Maersk/PONL, par. 13.

<sup>6</sup> Case IV/34.250 – Europe Asia Trades Agreement, OJ 1999, L193/23, par. 49. See also judgement of the CFI of 30 September 2003 in Joined Cases T-191/98, T-212/98 and T-214/98, TACA, paragraph 790 ff.

<sup>7</sup> See e.g. Ocean Shipping Consultants' report "Refrigerated Trades and Outlook to 2015", p. 52-53

<sup>8</sup> Ocean Shipping Consultants' report "Refrigerated Trades and Outlook to 2015", p. 52

products interchangeably. Moreover, different products are being shipped side by side on the same vessels and in and out of the same ports. The only difference is the temperature and possibly the stacking conditions within each compartment. The specialised bulk reefer vessels are designed to carry products requiring different temperatures in separate compartments. With reefer containers, which usually have individual refrigeration units fitted to each container, it is easy to carry a variety of products with different temperature requirements on the same vessel.

23. The Commission in the previous cases has not differentiated reefer transport services according to the different types of products shipped<sup>9</sup>. The market investigation in this case has also not confirmed that a further segmentation into such separate markets would be appropriate. The equipment used for transportation of different products is largely the same and generally all providers of reefer services are able to transport any of the refrigerated commodities. The mere fact that for some commodities certain vessels/operators may be more suitable than others does not justify further segmentation of the market as all these vessels/operators are constrained by the competitive activities of others due to a significant level of supply side substitution across all commodities. The only possible exception may be the transportation of bananas. As bananas are produced in more or less the same quantities all year round, there is a need for more long term transport contracts to ensure transportation of large volumes of bananas over the year. Bananas are also products that rely most on specialised bulk reefer transportation and banana shippers generally do not consider containers as substitutes, in particular due to large volume requirements. It can, however, be left open whether there is a separate market for transportation of bananas distinct from other perishable goods as the concentration does not lead to competition concerns even taking into account this very narrow market.
24. Some respondents also suggested differentiation of the specialised bulk reefer market according to the different size of vessels, arguing that larger vessels (for example with capacity over 300,000 cubic feet) are favoured by the customers who demand vessels of a certain capacity for transporting significant volumes of cargo (such as bananas), while smaller vessels are rather active on the spot market. The market investigation in this case, however, has not confirmed that differentiation according to the vessel size would be relevant. Even larger vessels trade on the spot market and smaller ones are also used by shippers of large quantities of cargo. There is continuous competitive pressure between these vessels, which makes a further differentiation of the market according to vessel size not plausible.

### ***Geographic markets***

25. The parties submit that the market for reefer services is a global one as it is homogeneous and, in all parts of the world, responds to the same price cycles. It is subject to the same competitive constraints all around the world, and is characterised by a high degree of asset mobility allowing services to be supplied in any part of the world with no, or few, entry barriers. According to the parties, customers are prepared to switch freely between reefer service providers without particular regard to their geographic location. The parties add that reefer transport is not analogous to a scheduled liner service where certain vessels are committed for a period to a particular route and one sees the emergence of a corridor

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<sup>9</sup> E.g. case M.3829 – Maersk/PONL

dependent upon transshipment potential. Specialised bulk reefer vessels can be more easily redeployed to another geographic area than container liner vessels.

26. The Commission in its previous decisions concentrated in particular on the liner shipping market, where geographic corridors between different continents/regions and the EU (“trades”) were considered as geographic markets<sup>10</sup>. Furthermore, the Commission in these cases considered further differentiation according to trades to/from Northern Europe and the Mediterranean as the existing substitution between the two areas was not significant. If such a geographical segmentation is applied in this case, the concentration would have impact on the geographical corridors from the following exporting countries to Northern Europe and the Mediterranean: Brazil, Argentina/Uruguay, Central America, Peru/Chile, South Africa and New Zealand/Australia. The parties argue that corridors from Argentina/Uruguay, Peru/Chile, Central America, and New Zealand/Australia should be considered as single export markets, since reefer vessels often pick up cargo from several ports within these areas, before heading to the EU.
27. The market investigation in this case indicated that even though regular services are also emerging in the bulk reefer sector, flexibility of specialised reefer vessels is greater than in the case of container liner shipping. However, it may be left open whether this greater flexibility justifies a world-wide market definition or whether it should only be taken into account as a factor lowering barriers to entry into individual geographically split markets, since the concentration does not lead to competition concerns even under the narrowest plausible geographic market definition.

### ***Conclusion on relevant markets***

28. The exact market definition can be left open as the concentration does not lead to competition concerns even under the narrowest plausible market definition of specialised bulk reefer transport services (with a possible separate market for the transport of bananas) in geographic corridors from each exporting region to Northern Europe and the Mediterranean respectively.

## **B. ASSESSMENT**

### ***Introduction***

29. The activities of the parties overlap in the area of operation of specialised bulk reefer vessels for transport of perishable products. NYK is also active in the liner shipping business, while Lauritzen does not have any activities in this area.
30. It should be noted that the joint venture, LauCool, does not own any reefer vessels but charters in the capacity it needs at arm’s length from independent owners of reefer ships (including NYK) and from Lauritzen under the conditions of the Leonina System. Its core activities are therefore focused on commercial management, operation and marketing of the specialised reefer vessels group within the Leonina Fleet. The market shares of LauCool are therefore based on volumes shipped by LauCool with all the Leonina Fleet vessels, irrespective of the actual owner of the vessels. The vessel

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<sup>10</sup> E.g. cases M.831 – P&O/ Royal Nedlloyd, M.1474 – Maersk/Safmarine, M.1651 – Maersk/Sea-Land and M.3829 – Maersk/PONL



owners only provide their vessel capacity to LauCool but do not influence its actual operation and marketing which is the sole responsibility of LauCool.

31. In general, co-operation between carriers within the specialised bulk reefer sector differs from the arrangements existing in the liner shipping sector. There are no conferences allowed to set tariffs and other conditions in the bulk reefer sector and also no highly integrated consortia with a complex operational and marketing co-operation which exist in liner shipping. On the other hand, vessel sharing agreements are quite common. Nevertheless, they typically do not involve any joint operation or joint marketing of services and are basically used as a means for a particular reefer operator to procure additional cargo space to provide its services to its own customers. Furthermore, pooling arrangements similar to the above described LauCool's Leonina System exist in the bulk reefer sector. These arrangements are then considered as single entities selling reefer transport services in competition with other fleet operators (with either own or chartered/pooled vessels) and their market share should be calculated similarly as in the case of LauCool. As opposed to liner shipping cases<sup>11</sup>, the structural characteristics of the bulk reefer sector therefore do not lead to any significant concerns of increased coordination between the bulk reefer operators due to the merger. Only the liner division of the NYK Group participates in such conferences and consortia, but the parties submit that the trade routes on which the members of these conferences and consortia operate into the EU do not overlap with those on which LauCool is active.

### ***Horizontal overlaps***

32. On a world-wide basis, the combined share of the parties of the total nominal reefer capacity<sup>12</sup> (consisting of both specialised bulk reefer ship capacity and reefer container capacity) amounts to [0-10]% ([0-10]% for NYK and [0-10]% for LauCool). The most important competitors of the parties are container lines Maersk Sealand/P&O Nedlloyd (approximately [10-20]% of the total reefer capacity), Evergreen ([0-10]%) and CMA CGM ([0-10]%) and specialised reefer ship operators Seatrade ([0-10]%), Star Reefers ([0-10]%) and Reefership ([0-10]%). In case only specialised bulk reefer world-wide capacity is considered, the parties' combined share amounts to [0-10]% ([0-10]% for NYK and [0-10]% for LauCool) with the most important competitors being Seatrade ([10-20]%), Star Reefers ([0-10]%), Reefership ([0-10]%), United Reefers ([0-10]%) and many other smaller operators. Considering the low combined shares, the concentration does not lead to competition concerns in case of a world-wide market.
33. In case the geographic market is defined on the basis of the above described geographic corridors from individual exporting regions into Northern Europe and the Mediterranean respectively, the combined market share of the parties in the overall reefer services market does not exceed 15% on any of the geographic corridors where the parties' activities overlap except for Central America to Northern Europe ([10-20]%) and Australia/New Zealand to the Mediterranean ([10-20]%). If only specialised bulk reefer services market is considered, the parties' combined market share again does not exceed 15% on any of the geographic corridors where the parties' activities overlap except for Central America to Northern Europe ([10-20]%) and Australia/New Zealand to the Mediterranean ([50-60]%).

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<sup>11</sup> In particular M.3829 – Maersk/PONL

<sup>12</sup> Capacity shares are based on parties' data and data contained in Ocean Shipping Consultants' report "Refrigerated Trades and Outlook to 2015"

### *Central America - Northern Europe*

34. As regards the reefer transport from Central America to Northern Europe (most of which concerns transportation of bananas), the parties' market shares do not indicate any competition concerns either in the overall reefer services market ([0-10]% for NYK and [0-10]% for LauCool) or in the specialised bulk reefer market ([10-20]% for NYK and [0-10]% for LauCool). Furthermore, according to the parties NYK has lost its contracts in this trade with effect from the beginning of this year and there is in fact no overlap any more. There are also a large number of significant competitors active in the specialised bulk reefer market (in particular Seatrade) and further competitive constraints are exercised by container reefer operators (in particular Maersk Sealand).

### *Australia/New Zealand - Mediterranean*

35. In the overall reefer services market, the market shares of the parties ([10-20]% for NYK and [0-10]% for LauCool) do not indicate any competition concerns. Furthermore, strong competitors such as Maersk Sealand/P&O Nedlloyd or Seatrade are active in this corridor.
36. As regards the specialised bulk reefer transport from Australia/New Zealand to the Mediterranean, the parties' market shares in 2004 amounted to [40-50]% for NYK and [10-20]% for LauCool. Nevertheless, there are a number of factors relevant for this particular route that exclude the existence of competition concerns due to the transaction.
37. First, the volumes transported on this route are very small as most of the refrigerated cargo from Australia/New Zealand is shipped to Northern Europe (in 2004 volumes shipped to the Mediterranean represented only approximately 15% of the total volume shipped to Europe). The combined market share of the parties in the corridor to Northern Europe amounts only to [20-30]%. In case the total volume transported to the EU is considered, the parties' combined market share would be [20-30]%. Furthermore, the market share of NYK reaching [40-50]% is generated by a single contract [...] won by NYK only for [...]. In the years before, NYK was not active in this corridor and after the year [...] a new open tendering procedure for the award of this contract is envisaged.
38. Second, reefer containers provide an important external competitive constraint for bulk reefer operators in this corridor. For the commodities shipped from Australia/New Zealand (in particular meat, dairy products and deciduous fruit including kiwi fruit), the use of reefer containers is significant (the world-wide share of reefer containers in the total transport is 86% for dairy products, 79% for meat and 40% for deciduous fruit). Indeed, the share of reefer containers in the total reefer transport services from Australia/New Zealand to the EU is estimated to amount to 70%. The combined market share of the parties in this overall reefer services market would be significantly lower, amounting to [0-10]% for the whole EU and [10-20]% for the Mediterranean.
39. Finally, there are important competitors active in the Australia/New Zealand to the EU market both in reefer container transport (in particular Maersk Sealand/P&O Nedlloyd is a clear market leader with estimated [50-60]% share of the total reefer transport services to the EU) and in specialised bulk reefer transport (in particular Seatrade with a market share of [0-10]% of the total reefer transport to the EU comparable to [0-10]% combined share of the parties). Furthermore, barriers to entry to the

Australia/New Zealand-Mediterranean bulk reefer market are not significant as specialised bulk reefer ships are flexible in changing their geographic area of activities.

40. Therefore, despite the high combined market share of the notifying parties in the Australia/New Zealand to the Mediterranean corridor, the concentration does not lead to any competition concerns.
41. As regards a possible separate relevant market for the transportation of bananas in bulk reefer vessels, the only overlap between the parties' activities on the basis of 2004 figures would be in the Central America to Northern Europe corridor. Nevertheless, their combined market share even in this narrow market does not exceed 15% and there are significant competitors active in this segment such as Seatrade, Chiquita, Del Monte, Dole and Fyffes. Furthermore, as of the beginning of this year NYK has lost all its banana contracts in this geographical corridor.
42. It can, therefore, be concluded that the concentration does not lead to competition concerns under any plausible alternative market definition.

#### ***Coordination of competitive behaviour: assessment under Article 2(4)***

43. The parent companies to the joint venture do not retain any activities in the market for the provision of reefer services by specialised bulk reefer vessels. In the case of a reefer services market including reefer containers, there would be overlaps between the activities of the joint venture and the liner division of NYK. Nevertheless, the Commission's investigation has given no indication that the transaction would have the object of co-ordinating the competitive behaviour of NYK and the joint venture. Taking into account the market position of the joint venture and NYK liner division (combined share of the total available reefer capacity amounting to [0-10]%) under this broader market definition and the existence of a number of strong competitors, any anti-competitive coordination of their competitive behaviour seems unlikely.
44. Furthermore, both NYK and Lauritzen are active in the long-term chartering of specialised reefer vessels. These activities can be considered as upstream to the activities of the joint venture because LauCool does not own any ships but charters them at arms' length from their owners, including NYK and Lauritzen. LauCool is nevertheless free to procure reefer capacity for its Leonina Fleet from any owner according to the competitiveness and suitability of the charter terms. The parties to the transaction only agreed to a temporary arrangement under which they are obliged to provide to LauCool [...]. These arrangements are considered necessary for ensuring capacity for the joint venture to continue its activities and are in place only for [...] expiring on [...]. Thereafter, securing reefer capacity will be entirely the responsibility of LauCool's management and subject to arms' length commercial negotiations. Therefore, there are no indications of coordination of competitive behaviour of the parent companies in relation to long term chartering of special reefer vessels.
45. It should be also noted that one of the vessel owners participating in the Leonina Fleet submitted formal observations within the merger proceedings related to the contractual conditions of its charter agreement with LauCool alleging their anti-competitive character. This issue, however, has no relevance for the merger proceedings in this case. These arrangements do not relate to the creation of the joint venture (the existing contractual relationships between LauCool and third party vessel owners are not affected by this transaction) and are therefore not covered by Article 2(4) of Council Regulation (EC) No 139/2004. Moreover, since these arrangements are not directly

related and necessary to the implementation of the concentration, they are not covered by the provision of Article 6(1)(b) second paragraph of Council Regulation (EC) No 139/2004. Assessment of the compatibility of these arrangements with Article 81 of the EC Treaty is therefore governed by rules set out by Council Regulation (EC) No 1/2003<sup>13</sup>. The decision in this case is without prejudice to the results of any possible proceedings regarding these arrangements under Council Regulation (EC) No 1/2003.

## **VI. CONCLUSION**

46. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

signed  
László KOVACS  
Member of the Commission

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<sup>13</sup> OJ L 1, 4.1.2003 ,p. 1