

***Case No COMP/M.3863 -  
TUI / CP SHIPS***

Only the English text is available and authentic.

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

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Article 6(2) NON-OPPOSITION  
Date: 12/10/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.10.2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sirs,

**Subject: Case No COMP/M.3863 – TUI/CP Ships  
Notification of 24 August 2005 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 24 August 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking TUI AG (“TUI”, Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking CP Ships Limited (“CP Ships”, Canada) by way of public bid announced on 21 August 2005.

**I. THE PARTIES**

2. TUI is active in tourism, logistics and through its subsidiary Hapag-Lloyd (“HL”) in container shipping and container terminal services.
3. CP Ships is mainly a container shipping company with some activities in container terminal services.

**II. THE OPERATION**

4. TUI made a public offer for all shares of CP Ships on 1 September 2005. The proposed offer has been recommended by CP Ships’ Board of Directors. TUI’s offer is subject to the customary closing conditions, including acceptance by shareholders representing two thirds of the outstanding CP Ships shares and the receipt of necessary regulatory approvals. The transaction is expected to close during the fourth quarter of this year.

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

### **III. CONCENTRATION**

5. After completion of the transaction, TUI will acquire sole control of CP Ships.

### **IV. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of about EUR 21 billion<sup>2</sup>. Each of TUI and CP Ships have a Community-wide turnover in excess of EUR 250 million<sup>3</sup>, 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.

### **V. COMPETITIVE ASSESSMENT**

#### **A. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

##### *Containerised liner shipping*

7. Containerised liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container. It can be distinguished from non-liner shipping (charter, tramp, specialised transport) because of the regularity and frequency of the service. In addition, the use of containerised transportation separates it from other non-containerised transport such as bulk vessel. Previous merger decisions have defined the market for containerised liner shipping services on one or more trades<sup>4</sup>. A possible narrower product market is that for the transport of refrigerated goods, which could be limited to reefer (refrigerated) containers only or could include transport in conventional reefer (refrigerated) vessels<sup>5</sup>.
8. In line with the recent Maersk/PONL decision, on trades with a share of reefer containers in relation to all containerised cargo below 10% in both directions, transport in reefer containers is not assessed separately, but as part of the overall market for container liner shipping services. On imbalanced trades with high shares of transport in reefer containers in relation to all containerised cargo in one direction and relatively low shares in the other direction, the market position of the parties on a possible market for the transport of reefer containers only will be taken into consideration.
9. The geographical dimension of containerised liner shipping services consists of single trades, defined by the range of ports which are served at both ends of the service. Each trade has specific characteristics depending on the volumes shipped, the types of cargo transported, the ports served and the length of the journey from the point of origin to the point of destination. Considering that in liner shipping supply has to be provided by a sufficient number of vessels to generate a scheduled service, these characteristics influence the level of barriers to entry that may be present on the trade. Relevant trades

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<sup>2</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).

<sup>3</sup> TUI: about EUR 11 billion; CP about EUR [...].

<sup>4</sup> M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand; M.3576 – ECT/PONL/Euromax; M.3829 – Maersk/PONL.

<sup>5</sup> M.3829 – Maersk/PONL.

are those from Northern Europe to other non European areas<sup>6</sup> and back and from the Mediterranean to other non European areas and back<sup>7</sup>.

10. The parties put forward that the two directions of a trade should not be distinguished and that for certain trades Northern European and Mediterranean ports should be part of the same market. However, the market conditions on the two directions of a trade can be different, in particular in the case of trade imbalances or different characteristics of the products shipped<sup>8</sup>. In these instances, a distinction between the two directions of a trade is justified.
11. As regards substitution between Northern European and Mediterranean ports, the possibility of inland transport and transshipment between Northern Europe and the Mediterranean does not seem to lead to substitution to a considerable extent. For the trades to and from North America, this is confirmed by decisions of the Commission<sup>9</sup> and not disputed by the parties. For the other trades it is not necessary to conclude on a precise definition of the geographic dimension because the competition analysis will not significantly differ under both alternative market definitions.

#### *Container terminal services*

12. Previous merger decisions have defined the market for stevedoring services for deep-sea container ships, broken down by traffic flows to hinterland traffic (= direct deep-sea) and transshipment traffic (= relay/feeder)<sup>10</sup>. As HL is only active in Hamburg, the relevant geographical dimension of stevedoring services is in its broadest scope Northern Europe (for transshipment traffic) and in its narrowest possible scope the catchment area of the ports in the range Hamburg – Antwerp (for hinterland traffic)<sup>11</sup>.

#### *In-land transportation of containerised goods*

13. The Commission has in the past indicated that various means of transport probably constitute separate product markets and that geographically the market may be national or even wider<sup>12</sup>. It is not necessary to conclude on a precise definition of the relevant market in this case as the transaction does not lead to competition concerns under any alternative market definition.

#### *Freight Forwarding*

14. Both parties are active in freight forwarding, which has been defined by the Commission in previous cases as organisation of transportation of items (possibly including ancillary activities such as customs clearance, warehousing, ground services etc.), on behalf of customers according to their needs<sup>13</sup>. The Commission in the past considered to subdivide the market into domestic and cross border freight forwarding;

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<sup>6</sup> Such as North America, Far East, Indian Subcontinent, Middle East, East Africa, South Africa, West Africa, Caribbean/Central America, East Coast South America, West Coast South America and Australia/New Zealand.

<sup>7</sup> See M.3829 – Maersk/PONL.

<sup>8</sup> E.g. mainly technical products in one direction and food in the other direction.

<sup>9</sup> See in particular the decision in the antitrust case COMP/37.396 – Revised TACA.

<sup>10</sup> JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.3576 – ECT/PONL/Euromax.

<sup>11</sup> See in more detail M.3829 – Maersk/PONL.

<sup>12</sup> M.2905 – Deutsche Bahn/Stinnes.

<sup>13</sup> See e.g. case M.1794 – Deutsche Post/Air Express International

land, air and sea freight forwarding; and express and standard freight forwarding<sup>14</sup>. The geographic scope of the markets is either national or wider. In this case, however, it is not necessary to define the market precisely, because under any possible market definition no competition concerns will arise.

## **B. ASSESSMENT**

### ***Containerised liner shipping***

15. HL is according to the information provided by the parties the number thirteen global carrier with a share of capacity of [0-10]%, whereas CP Ships is number sixteen with a share of [0-10]%. The recently created entity Maersk/PONL is the number one global carrier with a worldwide share of capacity of [10-20]%. Number two and three are the Mediterranean Shipping Company (MSC, Switzerland, [0-10]%) and Evergreen (Taiwan, [0-10]%). Numbers four to eight have a share between [0-10]% and [0-10]<sup>15</sup>. The merged entity would become number four global carrier with a combined capacity share of [0-10]%
16. On some EU trades, the combined market shares of the parties are above 15%. Affected markets are therefore the trades:
  - North Europe - North America
  - Mediterranean – North America
  - North Europe - Caribbean and Central America
  - North Europe - Australia/New Zealand
  - Mediterranean – Australia/New Zealand
17. HL and CP Ships are members of a number of liner conferences, consortia and alliances<sup>16</sup>. Conferences, consortia and alliances are arrangements between shipping lines that play an important role in the organisation of the liner shipping industry. They restrict competition between their members.
18. Liner shipping conferences are groups of vessel-operating carriers which engage in price fixing and capacity regulation. These activities are exempted from the prohibition contained in Article 81 by Council Regulation 4056/86. Conferences are required to set common or uniform freight rates and may make a common policy on the discounts or rebates which may be offered to shippers in the geographical area covered by the conference. In addition, conferences fix surcharges<sup>17</sup> and ancillary charges<sup>18</sup> per trade, country, port or direction as relevant. Furthermore, conferences discuss capacity utilisation, volume lifted by each member line, evaluate members' market shares and carry out market forecasting through the elaboration of a business plan.

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<sup>14</sup> M.1794 – Deutsche Post/Air Express International

<sup>15</sup> CMA CGM (France), NOL/APL (Singapore), Hanijin (Korea), Cosco (China), NYK Line (Japan).

<sup>16</sup> See Annex 1 for the list of abbreviations of carriers, conferences and consortia.

<sup>17</sup> E.g. bunker adjustment factor, currency adjustment factor, congestion surcharge and war risk surcharge.

<sup>18</sup> I.e. those charges triggered by or associated with the operation of moving containers.

19. There is at present some internal competition within conferences because individual rate fixing between carriers and shippers is allowed. In these cases the conference tariff is not applied but used as a benchmark to fix the price of individual or multi-carrier contracts. The percentage of the parties' cargo that is carried under individual service contracts is an indication of the extent to which internal competition takes place. However it cannot be assumed that the other members of the conference also carry roughly the same percentage of cargo in individual services contracts. Surcharges and ancillary charges are still imposed by all conference members on cargo that transits under individual service contracts. This results in part of the price being fixed jointly. The percentage of surcharges in relation to the price of the sea leg of the journey varies from trade to trade with an average of about [20-30]%. There is no competition between the members of a conference on this important part of the price.
20. Consortia and alliances are operational agreements between carriers on a trade-by-trade or global basis for the provision of a joint service. Unlike conferences, consortia do not price fix but carry out extensive co-operation. This co-operation ranges from vessel sharing, exchange of space or slots in vessels, equipment interchange, joint operation or use of port terminals and related services, temporary capacity adjustments to the participation in a revenue or a cargo pool, joint marketing and the issuing of a joint bill of lading. It is exempted from the prohibition contained in Article 81 of the Treaty by Commission Regulation 823/2000 as amended by Regulation 611/2005. The block exemption is predicated on the assumption that in order to fulfil Article 81(3), consortia are subject to internal or external competition<sup>19</sup>. The extent to which competition amongst member lines takes place depends on the characteristics of the consortium. Exchange of commercially sensitive information takes place within consortia at least to the extent necessary for the provision of the joint service. This may include for example information on individual members' lifting, actual and future, terms and conditions negotiated with third parties for the provision of port terminal services or customer information. The bundling of several consortia each operating in a different trade is known as an alliance.
21. The combined market position of the members of conferences and consortia can be substantial. Carriers are often members of a conference and of one or more consortia on the same trade. This enables them to cumulate the benefits of the Conference Block Exemption Regulation (price fixing) and of the Consortia Block Exemption Regulation (operational arrangements for the provision of a joint service). In line with previous merger decisions, the parties' membership in conferences and consortia is taken into account in the assessment of the consequences of the operation on the affected markets<sup>20</sup>. Therefore, market shares of the merged entity and those of relevant conferences and consortia are considered. The market share of a conference or a consortium is the aggregated market share of their members, calculated on the basis of the members' volume which is carried under the conference or consortium agreement. However, in order to assess the risk of coordination between the members of a conference or a consortium and to evaluate the strength of the carriers interlinked due to their conference or consortium membership, it is appropriate to take into account the

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<sup>19</sup> After the adoption of Regulation 1/2003, consortia with a market share above 35% (and 30% if consortia operate within a conference) are under the obligation to self-assess whether their practices fulfil the four cumulative conditions of Article 81(3).

<sup>20</sup> M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand; M.3829 – Maersk/PONL.

total volume transported by the conference or consortium members in the relevant trade<sup>21</sup>.

22. Depending on the parties' membership, the proposed transaction will have different effects on conferences and consortia. The following alternatives may occur:
  - In cases where the parties are currently in the same conference or consortium and the merged entity maintains the membership, the concentration would not change the total market share of the conference or consortium. Depending on the structure of the conference or consortium, however, this could lead to a strengthening of the internal cohesion and eventually lead to the merged entity controlling the conference.
  - In some instances HL is in a conference or consortium, but not CP Ships, even though it is active on the same trade. If HL maintains its membership, CP Ships can be expected to be integrated into the conference or consortium. The market share of the conference or consortium will rise. Even without such integration, CP Ships' volume is no longer independently competing with the conference or consortium. If only CP Ships is in a conference or consortium, the merger would create a link between HL and the conference and/or the consortium. This link would enable HL to take part in the exchange of information within the conference and/or the consortium. HL could use the commercially sensitive information exchanged therein to adapt over time its conduct on the market, thus increasing the risk of market sharing or lessening of competition between itself and the other members of the conference or the consortium. Even without integrating itself into the conference or the consortium, HL would no longer be an independent competitor because it controls a member of the conference or the consortium.
23. The effects of the proposed transaction will be assessed for each affected market. The assessment is generally based on the information provided by the parties. In some cases the market investigation has shown a discrepancy between the market shares indicated by the parties and the figures provided by third parties. Where relevant, this is signalled.

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<sup>21</sup> See M.3829 – Maersk/PONL, par. 130 ff.

*Affected Markets*

*North Europe – North America*

Market shares indicated by the parties

HL	CP Ships	Combined HL/CP Ships	Conferences		Consortia		Others	
[0-10]%	[20-30]%	[20-30]%	TACA (HL)	[30-40]%	Grand Alliance (HL,CP Ships)	[20-30]%	Maersk / PONL <sup>a)</sup>	[10-20]%
[0-10]% (West Bound)	[10-20]% (West Bound)	[20-30]% (West Bound)	CanSec (HL, CP Ships)	[0-10]%			MSC <sup>a)</sup>	[0-10]%
[0-10]% (East Bound)	[20-30]% (East Bound)	[30-40]% (East Bound)	TAFLO (CP Ships)	[0-10]%	SLCS (CP Ships)	[10-20]%	OOCL <sup>a)b)</sup>	[0-10]%
							Evergreen	[0-10]%

<sup>a)</sup> Member of TACA

<sup>b)</sup> Member of Grand Alliance

24. The aggregated market share of HL and CP Ships on the North Europe – North America<sup>22</sup> trade is [20-30]% westbound (to North America) and [30-40]% eastbound (to North Europe) and the merged entity would thus be the leading player in this market. The most important competitors and their approximate market shares are: Maersk/PONL ([10-20]%), MSC ([0-10]%), OOCL ([0-10]%) and Evergreen ([0-10]%).

25. HL is a member of the TACA conference, together with Maersk/PONL, OOCL, MSC, NYK and ACL. In North America, the geographical coverage of the TACA agreement is limited to the US ports. According to the parties, the market share of TACA conference is [30-40]% westbound and [30-40]% eastbound. However, the market test results indicated the market share of TACA in the range of [40-50]%, which would also be in line with findings in other decisions of the Commission<sup>23</sup>. Both parties are members of the Cansec<sup>24</sup> conference with a market share of [0-10]%. In North America, the geographical coverage of the Cansec agreement is limited to Canadian ports. CP Ships is furthermore a member of the TAFLO<sup>25</sup> conference with a market share of [0-10]%.

26. Both parties are members of the Grand Alliance/CP Ships consortium (Grand Alliance). Other members of the Grand Alliance are OOCL and NYK<sup>26</sup>. The Grand Alliance has a market share of [20-30]%. Furthermore, CP Ships is together with OOCL a member of the SLCS consortium with a market share of [10-20]%. There are

<sup>22</sup> North America includes Canada, the USA (with Gulf Coast) and Mexico.

<sup>23</sup> In particular merger case M.3829 – Maersk/PONL and antitrust case COMP/37.396 – Revised TACA

<sup>24</sup> Members of Cansec conference are HL, CP Ships and OOCL

<sup>25</sup> Members of TAFLO conference are CP Ships, Maersk/PONL and APL. TAFLO conference concerns only the transportation of US military cargo in ships under American flag.

<sup>26</sup> Following the decision of the Commission in the case M.3829 – Maersk/PONL, PONL has already served notice to terminate its membership in Grand Alliance. Therefore, for the assessment of this case PONL is not considered as member of this consortium any more.



two other consortia active on this trade of which neither of the parties are member: CKYH<sup>27</sup> ([0-10]% market share) and New World Alliance<sup>28</sup> (NWA, [0-10]%).

#### Non-coordinated effects

27. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns on this trade. There are a sufficient number of competitors with an appreciable presence on these trades which can constrain the behaviour of the parties. In both trade directions, the transport of refrigerated goods accounts for less than [0-10]% of the overall market and is thus not discussed separately.

#### Coordinated effects

28. The transaction creates a link between CP Ships' volume and the TACA conference. HL could integrate CP Ships' volume into TACA. Even without such integration, CP Ships' volume would no longer independently compete with TACA. Competition among the TACA members is restricted. The members of the conference benefit from the price fixing<sup>29</sup> and exchange of sensitive information which takes place within the conference.
29. The combined market share of TACA and CP Ships ranges between [50-60]% (if market share of TACA indicated by the parties is used) and [60-70]% (if market share of TACA as resulting from the investigation is used). Even though the geographical scope of the TACA agreement is limited to shipments between North Europe and US ports, it constitutes a forum for discussion and cooperation of its members in the North Europe – North America trade (including Canada and Mexico). The commercially sensitive information which TACA members exchange within the conference is also relevant for their activities on the same market, but outside the geographical scope of the TACA agreement<sup>30</sup>. Furthermore, TACA could offer its members a platform to collude on the coverage of the market. Therefore, in order to assess the risk of coordination between TACA members and to evaluate the strength of the carriers interlinked due to their conference membership, it is appropriate to take into account the total volumes transported by the conference members in the relevant trade. The combined market share of TACA members together with CP Ships would then even on the basis of the market shares provided by the parties amount to at least [60-70]% for westbound direction and at least [60-70]% for eastbound direction.
30. Furthermore, some shippers stated that there are currently capacity constraints on this trade and expressed concerns about possible further capacity reductions which could lead to price increases with limited possibilities for switching between carriers. The ability of TACA members to regulate capacity in the trade could thus be used for a coordinated attempt to increase prices.

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<sup>27</sup> Members of CKYH are Cosco, K-Line, Yang Ming and Hanjin.

<sup>28</sup> Members of NWA are APL, Hyundai and MOL.

<sup>29</sup> The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of HL's cargo is carried under negotiated rates between individual shippers and individual carriers, but according to the parties the surcharges and ancillary charges represent in this trade between [20-30]% and [30-40]% of the total price. This means that there continues to be joint price setting for part of the price.

<sup>30</sup> I.e. operations to Canadian or Mexican ports.

31. At the consortia level, the transaction would create a link between SLCS and the Grand Alliance consortia. Nevertheless, the combined market share of these consortia amounting to [30-40]% westbound and [30-40]% eastbound would in itself not lead to a substantial impediment to effective competition in the trade. This cooperation at the consortia level of the parties with OOCL and NYK nevertheless further strengthens links created by the transaction between CP Ships' volume and the TACA conference members.
32. As regards external competition to TACA, it should also be noted that the second largest individual competitor to the parties in the trade, Maersk/PONL with a market share of about [10-20]%, is also a member of TACA. Currently, CP Ships is the most important competitor independent of TACA. Following the transaction, individual market shares of the largest competing carriers or consortia outside of TACA would not exceed [0-10]%. Therefore, there would be only limited external competition outside the group of carriers interlinked due to their membership of the TACA conference. Consequently, the elimination of CP Ships as an independent competitor by linking it to the TACA conference threatens to significantly impede effective competition on the North Europe – North America trade.
33. In view of the above, the concentration raises serious doubts as to its compatibility with the common market and the functioning of the EEA agreement due to coordinated effects stemming from the link created between CP Ships and the TACA conference.

*Mediterranean – North America*

Market shares indicated by the parties

HL	CP Ships	Combined HL/CP Ships	Conferences		Consortia		Others	
[0-10]%	[10-20]%	[20-30]%	USSEC (HL)	[10-20]%	JMCS (CP Ships)	[0-10]% (WB) [10-20]% (EB)	Maersk / PONL <sup>a)</sup>	[20-30]%
[0-10]% (West Bound)	[10-20]% (West Bound)	[20-30]% (West Bound)	MedCan (CP Ships)	[0-10]%	GAMEX (HL)	[0-10]%	MSC	[10-20]%
[0-10]% (East Bound)	[20-30]% (East Bound)	[30-40]% (East Bound)	TAFLO (CP Ships)	[0-10]%	Grand Alliance (HL)	[0-10]%	Zim <sup>b)c)</sup> Hanjin/Senator <sup>b)d)</sup>	[0-10]% [0-10]%

a) Member of USSEC

b) Member of MedCan

c) Member of GAMEX

d) Member of JMCS

34. The aggregated market share of HL and CP Ships on the Mediterranean – North America<sup>31</sup> trade is [20-30]% westbound (to North America) and [30-40]% eastbound (to the Mediterranean). The most important competitors and their market shares

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<sup>31</sup> North America includes Canada, the USA (with Gulf Coast) and Mexico.

provided by the parties are: Maersk/PONL ([20-30]%<sup>32</sup>), MSC ([10-20]%<sup>33</sup>), Zim ([0-10]%) and Hanjin ([0-10]%). Of these most important competitors in the trade, the only shipping line which is not linked to HL or CP Ships by a conference or a consortium is MSC.

35. HL is a member of United States South Europe Conference (USSEC)<sup>34</sup>. In North America, the geographical coverage of the USSEC agreement is limited to the US ports. According to the parties a market share of USSEC is [10-20]%. However, the market share of USSEC could be significantly higher, amounting to [30-40]% in both directions combined<sup>35</sup>. CP Ships is a member of MedCan<sup>36</sup> conference with a market share of [0-10]% (in North America, the geographical coverage of the MedCan agreement is limited to the Canadian ports) and of TAFLO<sup>37</sup> conference with a market share of [0-10]%.

36. HL is a member of the consortia GAMEX (with Zim) and Grand Alliance (with MISC, NYK and OOCL)<sup>38</sup>. The combined market share of these consortia is around [0-10]%. CP Ships is together with Senator a member of Joint Mediterranean Canada Service (JMCS) consortium with market share of [0-10]% westbound and [10-20]% eastbound. There are also CKY consortium<sup>39</sup> with about [0-10]% market share and CMA CGM/Evergreen consortium with about [0-10]% market share active on this trade, of which neither of the parties are member.

#### Non-coordinated effects

37. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns on this trade. There are important competitors with an appreciable presence on this trade (in particular Maersk/PONL) which can constrain the behaviour of the parties. In both trade directions, the transport of refrigerated goods accounts for less than [0-10]% of the overall market and is thus not discussed separately.

#### Coordinated effects

38. HL is a member of USSEC together with Maersk/PONL. Competition between the members of USECC is restricted<sup>40</sup>. CP Ships is a member of MedCan conference (and

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<sup>32</sup> However, according to the findings of the Commission decision in the case M.3829 – Maersk/PONL, the market share of Maersk/PONL is higher, amounting to [20-30]% westbound and [30-40]% eastbound.

<sup>33</sup> However, the market investigation indicated that the market share of MSC might be lower.

<sup>34</sup> Members of USSEC are Maersk/PONL and HL.

<sup>35</sup> See M.3829 – Maersk/PONL.

<sup>36</sup> Members of MedCan are CP Ships, ZIM and Senator.

<sup>37</sup> Members of TAFLO conference are CP Ships, Maersk/PONL and APL. TAFLO conference concerns only the transportation of US military cargo in ships under American flag.

<sup>38</sup> Following the decision of the Commission in the case M.3829 – Maersk/PONL, PONL has already served notice to terminate its membership in Grand Alliance. Therefore, for the assessment of this case PONL is not considered as member of this consortium any more. Similarly, PONL has given notice to terminate the FAMEX consortium with HL and to terminate its membership in GAMEX consortium, which has also been taken into account.

<sup>39</sup> Members of the CKY consortium are COSCO, K-Line and Yang Ming.

<sup>40</sup> The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of HL's cargo is carried under negotiated rates between individual shippers and individual carriers, but according to the parties the surcharges and ancillary charges represent in this trade between [20-30]% and [30-40]% of the total price. This means that there continues to be joint price setting for part of the price.

a minor TAFLO conference) where competition between the members (CP Ships, ZIM, Senator) is restricted as well<sup>41</sup>.

39. The transaction would create a link between the USSEC and MedCan conferences. Although the market shares of the conferences themselves according to the parties are fairly low, the market investigation suggested that the market share of the USSEC conference is significantly higher than indicated by the parties. Even though the scope of the USSEC agreement is limited to shipments between North Europe and US ports and the scope of the MedCan agreement to shipments between North Europe and Canada, the conferences constitute a forum for discussion and cooperation of its members in the Mediterranean – North America trade. The commercially sensitive information which the members exchange within the USSEC and MedCan is also relevant for their activities on the same market, but outside the geographical scope of these agreements<sup>42</sup>. Furthermore, these conferences could offer their members a platform to collude on the coverage of the market. Therefore, in order to assess the risk of coordination between their members and to evaluate the strength of the carriers interlinked due to their conference membership, it is appropriate to take into account the total volumes transported by the conference members in the relevant trade. In this case the market test indicated that the combined market shares of the individual members of USSEC and MedCan would amount at least to [60-70]% in the westbound direction and even [80-90]% in the eastbound direction.
40. Furthermore, the transaction would create a link between the two largest carriers on the trade, HL/CP Ships and Maersk/PONL, which would together control [about] half of the market.
41. At the consortia level, the transaction would create links between GAMEX and Grand Alliance on the one hand and JMCS on the other hand. However, the combined market share of the parties together with these consortia amounting to [20-30]% westbound and [30-40]% eastbound would in itself not lead to a substantial impediment to effective competition in the trade. This cooperation at the consortia level of the parties with ZIM and Senator nevertheless further strengthens links created by the transaction between the USSEC and MedCan conferences.
42. As regards the external competition to the USSEC and MedCan conferences, there would not be any sufficiently strong individual carrier left in the market as the market share of the largest one (MSC) would not exceed [10-20]%. There are no other independent conferences active in this trade and the existing two consortia independent of USSEC and MedCan have individual market shares not exceeding [0-10]% and [0-10]% respectively. Therefore, there would be only limited external competition outside the group of carriers interlinked due to their membership in USSEC and MedCan conferences. Consequently, the creation of the link between USSEC and MedCan conference members threatens to significantly impede effective competition on the Mediterranean – North America trade.

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<sup>41</sup> The conference sets the tariff which is used as a benchmark for negotiated rates. Around [50-100]% of CP Ships's cargo eastbound and [50-100]% westbound is carried under negotiated rates between individual shippers and individual carriers, but between [20-30]% and [30-40]% of the total price are surcharges and ancillary charges. This means that there continues to be joint price setting for part of the price.

<sup>42</sup> I.e. to Canadian or Mexican ports in case of USSEC and to Mexican and US ports in case of MedCan.

43. In view of the above, the concentration raises serious doubts as to its compatibility with the common market and the functioning of the EEA agreement on the Mediterranean – North America trade due to coordinated effects stemming from the link created between USSEC and MedCan conferences.

*North Europe – Caribbean and Central America*

Market shares indicated by the parties

HL	CP Ships	Combined HL/CP Ships	Conferences		Consortia		Others	
[0-10]%	[0-10]%	[0-10]%	WITAS S (HL)	[20-30]%	Eurosals/ NCS (HL)	[20-30]%	Maersk/ PONL	[10-20]%
[10-20]%(West Bound)	[0-10]%(West Bound)	[10-20]%(West Bound)						EWL
[0-10]%(East Bound)	[0-10]%(East Bound)	[0-10]%(East Bound)	NCS (HL)	[0-10]%			CMA CGM <sup>a,b,c</sup>	[0-10]%

<sup>a</sup> = WITASS

<sup>b</sup> = NCS

<sup>c</sup> = Eurosals/ NCS

44. The aggregated market share of HL and CP Ships ranges between [0-10]% from the Caribbean/Central America to North Europe and [10-20]% from North Europe to the Caribbean/Central America<sup>43</sup>. The most important competitors and their approximate market shares are: Maersk/PONL ([10-20]%), EWL ([0-10]%) and CMA CGM ([0-10]%).
45. From the Caribbean/Central America, the transport of refrigerated goods accounts for about [30-40]% of the overall market. The parties are weaker in the transport of reefer containers than in the overall transport of containers.
46. HL is member of the Association of the West India Trans-Atlantic Steam Ship Lines (WITASS) and of the New Caribbean Service Rate Agreement (NCS). WITASS covers 15 countries of the Caribbean and Central America, whereas NCS only covers Puerto Rico and the US Virgin Islands. Both conferences together have a market share in the overall trade of about [20-30]%<sup>44</sup> and other important members are CMA CGM, CSAV and Hamburg Süd. HL is also a member of the Eurosals/NCS Consortium (Eurosals). Its market share is [20-30]%<sup>45</sup> and other important members are CMA CGM, CSAV and Hamburg Süd. CP Ships is not member of any conferences or consortia on this trade.

<sup>43</sup> If the geographic scope of the market was considered as Europe – Central America/Caribbean, the combined market share of the parties would be below [10-20]% in both trade directions.

<sup>44</sup> As Maersk has committed to withdraw PONL from the conferences in M.3829 – Maersk/PONL, PONL's volume is deducted.

<sup>45</sup> As Maersk has committed to withdraw PONL from the conferences in M.3829 – Maersk/PONL, PONL's volume is deducted.

Non-coordinated effects

47. The combined market shares of the parties do not give rise to competition concerns, in particular in view of the small increment of CP Ships and the existence of several other strong players on this trade.

Coordinated effects

48. The merger would create a link between CP Ships’ volume and the conferences WITASS and NCS on the one hand and the Eurosal consortium on the other hand. However, in view of the moderate market shares of the conferences and the consortium<sup>46</sup>, the small increment of CP Ships and the existence of other strong players on this trade which are not member of the conferences and the consortium such as Maersk/PONL and EWL, a link or possible integration of CP Ships’ volumes do not give rise to competition concerns.

49. As the parties are weaker in the transport of reefer containers than in the overall transport of containers, it is not necessary to discuss the reefer container transport separately.

50. Consequently, on the North Europe – Caribbean/Central America trade, the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

*North Europe / Mediterranean – Australia/New Zealand*

Market shares indicated by the parties

HL	CP Ships	Combined HL/CP Ships	Conferences		Consortia		Others	
[0-10]%	[10-20]%	[10-20]%	EANZC/ ANZELA	[20-30]%	NANZC (CP Ships and HL)	[20-30]%	Maersk/ PONL	[30-40]%
[0-10]% (South Bound)	[10-20]% (South Bound)	[20-30]% (South Bound)	(CP Ships and HL)				MSC	[10-20]%
[0-10]% (North Bound)	[0-10]% (North Bound)	[10-20]% (North Bound)					CMA CGM <sup>a,b</sup>	[0-10]%

<sup>a</sup> = EANZC/ANZELA

<sup>b</sup> = NANZC

51. The aggregated market share of HL and CP Ships ranges between [10-20]% on the trade between North Europe and Australia/New Zealand and [10-20]% on the trade between the Mediterranean and Australia/New Zealand<sup>47</sup>. Both parties are stronger on the trade direction from Europe to Australia/New Zealand. The most important competitors and their approximate market shares are Maersk/PONL ([30-40]%), MSC

<sup>46</sup> This also applies to the total volumes of the members of the conferences and the consortium on the trade.

<sup>47</sup> As there are no appreciable differences, North Europe and Mediterranean will be discussed together.

([10-20]%) and CMA CGM ([0-10]%). Of these Maersk<sup>48</sup> and MSC operate outside the conferences and the consortium to which the parties are a member.

52. From Australia/New Zealand to Europe, the transport of refrigerated goods accounts for about [20-30]% of the overall market. The combined market share of the parties in the transport of reefer containers is less than [0-10]% of the total reefer container shipment on the trade.
53. The parties are members of the Europe to Australian and New Zealand Conference (EANZC)<sup>49</sup> and to the Australia/New Zealand to Europe Liner Association (ANZELA)<sup>50</sup>, both conferences operate on this trade. EANZC covers the trade direction to Australia and New Zealand, whereas ANZELA covers the trade direction to Europe. Their combined market share on the overall trade is [20-30]%<sup>51</sup>. The parties are also members of the New Australia/New Zealand Consortium (NANZC)<sup>52</sup>, which has a market share of about [20-30]%<sup>53</sup>. Membership of the conferences and the consortium is nearly identical. There are no other conferences or consortia operating on this trade.

#### Non-coordinated effects

54. The aggregated market share of the parties on the market for containerised liner shipping is not likely to give rise to competition concerns on this trade. There are a sufficient number of competitors with an appreciable presence on these trades which can constrain the behaviour of the parties. For the transport of reefer containers, the position of the parties is not stronger than for the overall transport of containers.

#### Coordinated effects

55. Both HL and CP Ships are currently members of the same conferences and consortium. Competition between the members of EANZC/ANZELA and NANZC is restricted<sup>54</sup>. The transaction reduces the number of members of EANZC/ANZELA from 8 to 7 and of NANZC from 6 to 5. The transaction might strengthen the cohesion within EANZC/ANZELA and NANZC<sup>55</sup>. However, given the market share of the conferences

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<sup>48</sup> In M.3829 – Maersk/PONL, Maersk committed to withdraw PONL from the conferences and consortium on this trade.

<sup>49</sup> Members of EANZC are CMA CGM, Marfret, Consortium Hispania Lines, CP Ships, Hamburg Süd and HL. Maersk committed to withdraw PONL.

<sup>50</sup> Members of ANZELA are Associated Container Transportation, CMA CGM, Marfret, Consortium Hispania Lines, CP Ships, Hamburg Süd, HL and Wallenius Wilhelmsen. Maersk committed to withdraw PONL.

<sup>51</sup> As Maersk has committed to withdraw PONL from the conferences in M.3829 – Maersk/PONL, PONL's volume is deducted.

<sup>52</sup> Members of the NANZ consortium are CP Ships, CMA CGM, Marfret, Hamburg Süd and HL. Maersk committed to withdraw PONL.

<sup>53</sup> As Maersk has committed to withdraw PONL from the conferences in M.3829 – Maersk/PONL, PONL's volume is deducted.

<sup>54</sup> The conferences set the tariff which is used as a benchmark for negotiated rates. [50-100]% of HL's and between [50-100]% and [50-100]% of CP Ships' cargo is carried under negotiated rates between individual shippers and individual carriers, but between [10-20]% and [20-30]% of the total price are surcharges and ancillary charges. This means that there continues to be joint price setting for part of the price. Members of the NANZC are structurally linked by a vessel sharing agreement and [description of the agreement].

<sup>55</sup> The share of HL/CP Ships within the conference will be between [50-60]% and [90-100]%.

and the consortium (around [20-30]%), this does not give rise to competition concerns, in particular in view of the strong position of the independent competitor Maersk/PONL, which reaches a higher market share than the conferences and the consortium, and the substantial market share of MSC.

56. As the parties are weaker in the transport of reefer containers than in the overall transport of containers, it is not necessary to discuss reefer container transport separately.
57. Consequently, on the Australia/New Zealand trades, the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

#### ***Container terminal services***

58. Both HL and CP Ships have a limited importance in container terminal services. HL controls a container terminal in Hamburg and CP Ships owns a container terminal in Montreal. There are therefore no horizontal overlaps on the relevant geographic markets. Even on the narrower geographic range from Hamburg to Antwerp, the container terminal controlled by HL has a market share below [0-10]%. Given these low market shares HL will not be able to foreclose its competitors from the access to relevant port terminal services in Northern Europe or to foreclose other container terminals from their customer base. Consequently, for container terminal services, the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

#### ***In-land transportation of containerised goods***

59. Both parties are active in various segments of in-land transportation of containerised goods within the EU including rail transport, road transport (or trucking) and in-land waterway transport. However, the majority of their in-land transportation business is carried out as an in-house (captive) activity. The combined market shares of the merging parties are far below [10-20]% on any possible in-land transportation market. Furthermore, there are a number of important competitors active in all segments of in-land transportation in Europe. Therefore, under any alternative definition of the market for in-land transportation of containerised goods, the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

#### ***Freight Forwarding***

60. Both parties are active in freight forwarding. The combined market share of the parties under any possible relevant market definition is far below [10-20]%. Furthermore, the companies will face competition both from other containerised shipping companies with integrated freight forwarding activities and from specialised freight forwarders or logistics companies. Consequently, in freight forwarding, the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.



## **VI. COMMITMENTS SUBMITTED BY THE PARTIES**

61. In order to remove the serious doubts identified in relation to the containerised liner shipping services on the trades mentioned above, TUI has submitted commitments pursuant to Article 6(2) of Council Regulation (EC) No 139/2004. The commitments are attached to this decision and form an integral part thereof.
62. TUI commits to withdraw HL from the following liner shipping conferences at the earliest date permitted after acquisition of control of CP Ships:
  - TACA
  - USSEC

## **VII. ASSESSMENT OF THE COMMITMENTS**

### *North Europe – North America*

63. The Commission considers that the commitment to withdraw HL from TACA is sufficient to remove the identified serious doubts. The withdrawal will sever the link between HL/CP Ships and TACA. The market share of HL/CP Ships will be about [20-30]% and the aggregated market shares of the shipping lines which are members of TACA (reduced by HL) will be about [30-40]%. HL will therefore face effective competition from the members of TACA (in particular Maersk/PONL) as well as from other consortia and independent carriers.

### *Mediterranean – North America*

64. The Commission considers that the commitment to withdraw HL from USSEC is sufficient to remove the identified serious doubts. The withdrawal will sever the link between HL/CP Ships and USSEC. The merged entity would remain a member of the MedCan conference and the combined market share of competitors, interlinked due to their membership in MedCan, would amount to around [30-40]%. However, they would face effective competition from other carriers not linked to MedCan, in particular from Maersk/PONL.

### Conclusion on the Commitments

65. The Commission considers that the commitments submitted are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market and the functioning of the EEA agreement. The commitments provided for in paragraphs 5 and 8 of the attached text constitute conditions attached to this decision, as only through full compliance can the necessary changes to eliminate the serious doubts identified by the Commission on the relevant markets be achieved. The remaining commitments constitute obligations since they concern the implementing steps necessary to achieve the change intended.

## VIII. CONCLUSION

66. 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) and Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

Neelie KROES (*signed*)  
Member of the Commission

## **Annex 1**

### **ABBREVIATIONS**

#### **CARRIERS**

**ACL** Atlantic Container Line  
**ANL** ANL Container Lines  
**ANZDL** Australia New Zealand Direct Line  
**APL** American President Lines  
**AWS** Andrew Weir Shipping  
**CanMar** Canada Maritime  
**CCNI** Compañía Chilena de Navegación Interoceánica  
**CHL** Consortium Hispania Lines  
**CMA CGM** CMA CGM Group  
**Contship** Contship Container Lines Limited, a division of CP ships  
**COSCO** Cosco Container Lines Ltd.  
**CP Ships (or CS)** CP Ships Group  
**CSAV** Companhia Sud Americana de Vapor S.A.  
**CSCL** China Shipping Container Lines Co. Ltd.  
**DAL** Deutsche Afrika-Linien GmbH & Co.  
**ECL** Euroatlantic Container Line  
**Evergreen** Evergreen Group  
**EWL** Europa West-Indië Lijnen B.V.  
**Hamburg-Süd (or HSD)** Hamburg-Süd Group  
**Hanjin (or Hanjin / Senator)** Hanjin Shipping Co. Ltd.  
**HL** Hapag-Lloyd Container Line GmbH  
**Hyundai (or HMM)** Hyundai Merchant Marine Co. Ltd  
**Independent C.L. (or ICL)** Independent Container Line  
**K Line** Kawasaki Kisen Kaisha Ltd.  
**KNSL** Kenya National Shipping Line  
**Lloyd Triestino** Lloyd Triestino di Navigazione SpA  
**Lykes** Lykes Lines  
**MACS** Maritime Carrier Shipping GmbH & Co.  
**Maersk** A.P. Møller – Mærsk A/S  
**Messina** Ignazio Messina & C. SpA  
**MISC** Malaysia International Shipping Corporation  
**Mitsui (or MOL)** Mitsui-OSK Lines  
**MSC** Mediterranean Shipping Company  
**MSL** Maersk Sealand  
**Norasia** Norasia Shipping Ltd.  
**NYK** Nippon Yusen Kaisha  
**OOCL** Orient Overseas Container Line Ltd  
**OTAL** OT Africa Lines  
**PIL** Pacific International Lines  
**PONL** Royal P&O Nedlloyd N.V.  
**S.C. India** Shipping Corporation of India Ltd.  
**Senator** Senator Lines  
**TMM** TMM Lines  
**TSK** Tokyo Senpaku Kaisha  
**UASC** United Arab Shipping Company  
**WEC** West European Container Lines  
**Yang Ming** Yang Ming Marine Transport Corp.  
**Zim** Zim Israel Navigation Container Line Ltd.

#### **CONFERENCES**

**ANZELA** Australia / New Zealand to Europe Liner Association

**EANZC** Europe to Australia and New Zealand Conference  
**EEAC** Europe / East Africa Conference  
**EMERA** Europe Middle East Rate Agreement  
**EMTA** Europe Mediterranean Trade Agreement  
**ESAC** Europe South Africa Conference  
**ESPMC** European / South Pacific & Magellan Freight Conference  
**EWATA** Europe West Africa Trade Agreement  
**FEFC** Far Eastern Freight Conference  
**FWI** French West Indies Maritime Conference  
**IPBCC** India-Pakistan-Bangladesh-Ceylon Conferences  
**NCS** New Caribbean Service Rate Agreement  
**NE/DC** North Europe to Djibouti Conference  
**TACA** Trans-Atlantic Conference Agreement  
**USSEC** United States South Europe Conference  
**WITASS** Association of West India Trans-Atlantic Steam Ship Lines

### **CONSORTIA & ALLIANCES**

**BEX** Black Sea Express  
**CKYH** Alliance between COSCO, K Line, Yang Ming and Hanjin/Senator  
**EPIC III** Europe to Pakistan and India Consortium  
**NWA** New World Alliance  
**SAECS** South Africa to Europe Container Service

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Directorate General for Competition (DG COMP)  
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**Case M.3863 TUI AG – CP Ships Limited**

### **Commitment to the European Commission**

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1. Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the "**Merger Regulation**"), TUI AG ("**TUI**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition by TUI of sole control over CP Ships Limited ("**CP Ships**", and together with TUI, the "**Parties**") compatible with the common market and the EEA Agreement by its decision pursuant to Articles 6(1)(b) and 6(2) of the Merger Regulation (the "**Decision**").
2. The Commitments shall take effect upon the date of the adoption of the Decision (the "**Effective Date**").
3. This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission's Notice on remedies acceptable under Council Regulation (EC) No 4064/89 and under Commission Regulation (EC) No 447/89.

Chairman of the  
supervisory board  
Dr. Jürgen Krumnow  
Executive board  
Dr. Michael Frenzel  
(Chairman)  
Sebastian Ebel  
Dr. Peter Engelen  
Rainer Feuerhake

Registered company  
office  
Berlin/Hanover  
Company Register  
Amtsgericht  
Berlin-Charlottenburg  
HRB 321  
Hanover HRB 6 580

### **67. SECTION A. DEFINITIONS**

4. For the purpose of the Commitments, the following terms shall have the following meaning:

**Completion:** the acquisition of control by TUI of CP Ships.

**Conference:** a liner conference within the meaning of Article 1(3)(b) Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 [81] and 86 [82]

of the Treaty to maritime transport.

**Consortium:** a consortium within the meaning of Article 2(1) Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) as amended by Commission Regulation 611/2005.

**Effective Date:** the date of adoption of the Decision.

**Form CO:** the notification to the European Commission of a proposed concentration between TUI and CP Ships on 24 August 2005, pursuant to Council Regulation (EC) No. 139/2004.

**FMC:** the Federal Maritime Commission, an independent regulatory agency responsible for the regulation of oceanborne transportation in the foreign commerce of the United States.

**Hapag-Lloyd:** Hapag-Lloyd Container Linie GmbH

**Relevant Trade:** this is for:

- (a) Trans Atlantic Conference Agreement (TACA) the trade between Northern Europe and North America;
- (b) United States South Europe Conference (USSEC) the trade between the Mediterranean and North America.

**Same Partner(s):** all partners to the individual Conference concerned except Hapag-Lloyd; for instance for the USSEC conference agreement A.P. Moller-Maersk Sealand and P&O Nedlloyd Limited are Same Partners.

**Trans Atlantic Conference Agreement (TACA):** a conference agreement covering shipping routes between U.S. Atlantic, Gulf and Pacific ports and North European ports (including United Kingdom and Ireland, Scandinavia and Baltic ports). The following carriers are members of TACA: A.P. Moller-Maersk Sealand; Atlantic Container Line AB; Hapag-Lloyd; Mediterranean Shipping Co., S.A.; Nippon

Yusen Kaisha NYK Line; Orient Overseas Container Line Limited and P&O Nedlloyd Limited.

**United States South Europe Conference (USSEC):** a conference agreement covering shipping routes between U.S. Atlantic and Gulf

ports and South European ports in Italy (including Islands), France (Mediterranean ports only), Spain (including Ceuta and Melilla, Spanish Mediterranean Islands and the Canary Islands), Portugal (including Madeira Island and the Azores Islands), Greece (including all Greek Islands) and Cyprus. The following carriers are members of USSEC: A.P. Moller-Maersk Sealand; Hapag-Lloyd and P&O Nedlloyd Limited.

## 68. SECTION B. WITHDRAWAL

5. TUI will procure that Hapag-Lloyd will withdraw from the following liner shipping conferences. Hapag-Lloyd will do so by serving notice of termination of its membership within one week of Completion in accordance with the terms of the respective conference agreements, such notice to take effect at the earliest date permitted by such agreements, which according to the constitutions for:
  - (a) Trans Atlantic Conference Agreement (TACA) is **[Business secret]**;
  - (b) United States South Europe Conference (USSEC) is **[Business secret]**.

## Ring-fencing

6. From the date notice of withdrawal has been given by Hapag-Lloyd regarding the agreements enumerated under paragraph 5 until the withdrawal of Hapag-Lloyd from these conferences, Hapag-Lloyd will not attend any meetings of these conferences, will not exercise the right to vote and will not receive information from the conference. TUI also commits to procure that Hapag-Lloyd will not provide information to the conferences enumerated under paragraph 6 in the framework of the respective conference agreement unless legally required in order to comply with FMC reporting obligations. If such legal requirement exists, Hapag-Lloyd will provide information (i) only to the extent necessary for complying with FMC reporting obligations and (ii) to the extent legally possible, only to an independent third party for submitting the information to the FMC. TUI will procure that Hapag-Lloyd will

include these limitations in the letters giving notice of withdrawal.

## **Reporting**

7. TUI shall submit written reports in English confirming TUI's compliance with the Commitments under this Section to the Commission no later than **[Business secret]** (or any other time requested by the Commission, if necessary) following Completion. Thereafter, TUI will continue to submit similar reports every **[Business secret]** (or any other times requested by the Commission, if necessary) until the withdrawal of Hapag-Lloyd has been completed from all the above-mentioned conferences.

## **Related commitment**

8. TUI commits that, for a period of **[Business secret]** following Completion, neither Hapag-Lloyd nor CP Ships will become a member of the conferences listed in paragraph 5. In order to avoid circumvention of the previous sentence, TUI also commits that neither Hapag-Lloyd nor CP Ships will become a member of any Conference of substantially similar terms with the Same Partners as the Conference concerned on the Relevant Trade.
9. The commitments in paragraph 8 will (partly) lapse if the Commission has previously found (as a matter of priority) that the structure of the market has changed to such an extent that the withdrawal of the membership of or participation in the said conferences is no longer necessary to render the proposed concentration compatible with the common market.
10. Subject to the commitments in paragraphs 8 and 9, the commitments in paragraph 8 do not preclude the possibility that the Parties join Conferences, Consortia and any other agreements that are compatible with Article 81 of the EC-Treaty. Nor do they preclude the possibility that the Parties may enter into any ad hoc bi-lateral space or slot chartering arrangements with any carrier(s) on the Relevant Trades or any other trades in order to meet customer demands for capacity and/or frequency on such trades at any given time.

## **SECTION C. THE REVIEW CLAUSE**



11. The Commission may, where appropriate, in response to a reasoned request from TUI showing good cause:
  - (i) Grant an extension of the time periods foreseen in the  
  
Commitments, or
  - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.
12. Where TUI seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall TUI be entitled to request an extension within the last month of any period.
13. In case of a material change of circumstances, TUI reserves its rights under Community law to request the Commission to review the whole or any specific undertakings as set out above.

TUI AG

Dr. Peter Engelen

Andreas Göhmann