

***Case No IV/M.1474 -
MAERSK /
SAFMARINE***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 07/05/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07. 05. 1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 IV/M. 1474 – MAERSK / SAFMARINE

Notification of 6.4.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 06.04.1999 the Commission received a notification whereby Maersk A/S ('Maersk') notified its intention to acquire sole control of Safmarine Container Lines N.V. ('SCL').
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. SCL is the liner business of Safmarine, which is part of the South African group Safren Ltd. SCL is a liner shipping operator mainly active on North-South trades. SCL has an extensive network of agents and it operates a fleet of more than 50 owned and chartered liner vessels with a total capacity of 56,000 TEUs². SCL also operates a wide range of container equipment and it has a road haulage business providing support to the shipping lines. SCL is also active in inland waterways vessel operations in Europe and is involved in warehousing.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

²'twenty foot equivalent units', the industry unit for measuring capacity.

4. Maersk is a holding company owning a number of Maersk Line container shipping agencies around the world. Maersk is a member of the A.P. Møller Group.
5. The transaction consists of the acquisition by Maersk of sole control over SCL within the meaning of Article 3(1)(b) of the Merger Regulation. More precisely, Maersk will buy the Safmarine liner business through the purchase of the SCL shares and liner assets. The acquisition also includes certain landside activities, such as trucking, barging and warehousing.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Maersk: EUR [...]; SCL: EUR [...]). Each of them has a Community-wide turnover in excess of EUR 250 million (Maersk: EUR [...]; SCL: EUR [...]), 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.

III. COMPATIBILITY WITH THE COMMON MARKET

7. The relevant sector involved in the present case is liner shipping, where Maersk is one of the world's largest players. The markets affected by the transaction are on the North-South trades.⁴
8. In previous cases in the maritime transport field⁵ the Commission has defined the relevant market as a service supplied between a range of ports on either the Northern European or the Mediterranean coast and a range of ports in another continent or region; the service between two ranges of ports is called a "trade". Consequently, attention must be paid to both the definition of this service and to its geographic aspects.

A. Relevant product markets

9. In the present case the parties maintain that the definition of the relevant product market is containerised liner shipping services.⁶ This is in line with the product market definition given by the Commission in P&O/Nedlloyd. In that decision, the Commission did not include break-bulk transport (i.e. non-containerised transport) in the definition of the

³ 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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁴ The North-South trades operate between the three major industrial areas of North America, Western Europe and Asia, and economies in the Southern Hemisphere. In contrast, the East-West trades circle the globe in the Northern Hemisphere linking the three major industrial areas.

⁵ See e.g. IV/M.831 – P&O/Nedlloyd; Commission Decision of 16 September 1998 (IV/35.134 - Trans-Atlantic Conference Agreement), OJ L95, 9.4.1999, p. 1.

⁶ Containerised liner shipping services involve the carriage of goods by container, that is to say in boxes of standard shape and size (usually 20 feet or 40 feet long) on ships specially equipped for the purpose, see Commission decision of 19 October 1994 (IV/34.446 – Trans-Atlantic Agreement), OJ L376, 31.12.1994, p. 1, at paragraphs 39 to 41.

relevant product market because it found that there was no lasting substitution from container towards break-bulk in the vast majority of cases. In the present case the parties argue that on the Europe/Southern Africa trades the Commission should take into account non-containerised refrigerated transport (“reefer transport”). According to the parties, in the North-South trades there would be considerable substitutability between containerised and reefer transport, in particular for perishable goods. Therefore, the parties argue that on these trades reefer transport should be included in the relevant market definition.

10. The Commission enquires indicate that even though there are a number of commodities which are carried only by container, in several cases there is some substitutability between container and non-containerised reefer transport services. In the present case, however, it is unnecessary to determine whether the relevant product market definition should include also reefer transport since even on the basis of the narrower market definition the transaction does not create or strengthen a dominant position.

B. Geographic aspects of the service

11. In previous cases the Commission has found that transport to and from Northern Europe constitutes a distinct service market from transport to and from the Mediterranean.⁷
12. In the present case the trades which will be affected by the transaction are:
 - Northern Europe/Southern Africa;
 - Mediterranean/Southern Africa;
 - Northern Europe/West Africa;
 - Mediterranean/West Africa;
 - Northern Europe/East Africa;
 - Northern Europe/Middle East.
13. Third parties agree in general that the above-mentioned trades constitute distinct relevant markets. As regards East Africa, a competitor has proposed that the relevant market should be Europe (Northern and Mediterranean) to/from Red Sea/East Africa. The reasons for this definition are that because of the geographical routing of the ships Northern Europe and the Mediterranean are generally served by the same ship systems, thus they should be regarded as one market. Moreover, the majority of ship systems which serve East Africa also serve Red Sea ports. In any event, it is not necessary in the present case to define the market precisely, as the transaction will not create or strengthen a dominant position on either market definition to/from Red Sea/East Africa.
14. The relevant markets for the present case comprise the provision of the service by shipping companies between ports in either Northern Europe or the Mediterranean and ports in each of the non-European areas, as mentioned above.

IV. COMPETITIVE ASSESSMENT

⁷ See the decisions cited at footnote 5.

A. Relevance of shipping conferences and consortia for the analysis

15. Conferences and consortia are contractual arrangements between shipping lines that play an important role in the organisation of the liner shipping industry and restrict competition between their members. Liner conferences are defined as “a group of two or more vessel-operating carriers which provides international services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or an arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services”.⁸ Liner conferences have the effect of limiting competition amongst their members in respect of pricing, timetabling, frequency of service, ports called at, carrying capacity, and allocation of cargo and revenue.
16. Consortium agreements are “agreements between two or more vessel operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade ... in order to rationalize their operations by means of technical, operational and/or commercial arrangements, with the exception of price fixing”.⁹ Consortium agreements may limit competition amongst the members of consortia by, for example, capacity planning, the operation of joint sailing timetables and determination of ports of call, and joint marketing structure.
17. Not every carrier operating on a particular trade is a member of a conference or consortium. On some trades important carriers operate outside conferences and consortia.
18. In P&O/Nedlloyd, the Commission considered to what extent the parties’ membership in different consortia and conferences had to be taken into account in the assessment of the operation. The Commission concluded that the structural link resulting from the merger must also be seen in relation to the contractual links with the co-members of the consortia and conferences. The Commission concluded further in that decision that after the operation the parties would be contractually linked to other shipping lines with which they consequently would not be in full competition. The Commission therefore investigated whether the operation would strengthen the cohesion within an existing conference or consortium which would create dominance or whether the transaction would reinforce already existing dominance.
19. In the present case there are two trades on which the membership of the parties in the relevant conferences/consortia must be taken into account for the assessment of the transaction: the Northern Europe/South Africa trade and the Northern Europe/Middle East trade. These will be discussed in more detail below.

B. Competitive assessment of the affected markets

20. Based on the information provided by the parties, they would, following the transaction become market leaders in four trades: Northern Europe/West Africa, Mediterranean/West Africa, Northern Europe/East Africa and Northern Europe/Middle

⁸ Council Regulation (EEC) No 4056/86, OJ L378 of 31 December 1986.

⁹ Council Regulation (EC) No 870/95, OJ L 89 of 21 April 1995.

East. The Northern Europe/South Africa trade is also relevant for the analysis, since in that trade both parties belong to a shipping conference and to consortia. On the remaining Mediterranean/Southern Africa trade the market position of the parties is such that the transaction is unlikely to lead to any reduction of competition.

21. Based on their own market share information, the parties would have [25 – 35 %] of the Mediterranean/West Africa trade. However, there are, according to the parties, a number of other operators on this trade, such as Messina ([15 – 25 %]), Grimaldi ([10 – 20 %]), Delmas and MSC ([5 – 15 % each]). Competitors have in general allocated a larger share of the trade to Messina and Delmas. On the basis of the foregoing, the parties' market share is not considered to be indicative of a dominant position.
22. On the Northern Europe/East Africa trade, where the parties would also have [25 – 35 %] of the trade, the situation is more balanced as the parties would face strong competition in particular from MSC ([25 - 35 %]) and West European Container Line ([15 – 25 %]). Other operators on this trade include Delmas ([5 – 15 %]) and P&O ([5 – 15 %]). It is to be noted that some third parties have estimated the parties' combined market share to be considerably lower, slightly above [5 – 15 %]. Therefore, given the existence of competing operators, the parties' market share is not considered to be likely to raise competition concerns.
23. On the Northern Europe/West Africa trade the parties have estimated their combined market share as [25 – 35 %]. Delmas would have [15 – 25 %] of the trade, OT Africa Line [10 – 20 %] and Grimaldi [0 – 10 %]. Some competitors have provided market share estimates according to which Delmas would actually have some [25 – 35 %] of the trade. Customers have indicated that there is sufficient competition on the trade. Based on the foregoing, the parties' market share is not considered to be indicative of a dominant position.

Northern Europe/Middle East

24. The parties belong to IPBCC (the India Pakistan Bangladesh Ceylon Conference), the main conference on the Northern Europe/Middle East trade, which has collectively [55 – 65 %] of the market. In addition, Maersk operates on that trade in a joint service with Sea Land (the Maersk/Sea Land Alliance). SCL operates on the trade as a member of EPIC (the European Pakistan Indian Consortium)¹⁰. The relevant market shares are given in the following table:

Maersk	SCL	Maersk/ SCL combined	Conferences/consortia	Others
[5 – 15%]	[0–10%]	[10 - 20%]	IPBCC (incl. Maersk and SCL) [55 – 65%] EPIC (incl. SCL) [20 - 30%] Maersk/Sea Land Alliance [10 - 20%]	P/O Nedl. [5-15%] UASC [5-15%] CMA [5-15%]

¹⁰ The exemption is pending and is expected to be granted in June/July 1999.

25. It can be seen from above that the parties' combined market share would be [10 – 20%]. P&O/Nedlloyd would have [5 – 15 %] of the trade and UASC and CMA [5 – 15 %] each. It should be noted that there are also a number of different alliances active on the trade, most importantly Grand Alliance, New World Alliance, United Alliance and SCI/ZIM/Ying Ming Alliance. The market position of the parties themselves does not give rise to any competition concerns.
26. Nor would the operation strengthen the market position of IPBCC. Third parties have not raised any concerns about the transaction on this trade in general nor have they voiced concerns over the possible links being created between EPIC and Maersk/Sea Land Alliance. Customers in particular have indicated that there are a sufficient number of strong competitors operating on the trade; indeed, there are also other conferences operating on this trade. It is also to be noted that it is easy for the carriers already operating Europe – Far East services to enter the market by way of transshipment. Therefore, on the basis of the foregoing, it is concluded that the operation is unlikely to lead to any competition concerns.

Northern Europe/South Africa

27. As mentioned above, the parties contend that Northern Europe/South Africa traffic should include also the reefer trade. The parties have therefore provided market share figures both excluding and including the reefer trade on the Northern Europe – South Africa trade, as given below.
28. With regard to the Northern Europe/South Africa trade, the relevant consortium for the analysis in the present case is SAECS (which operates currently under name 'SAECS III') and the relevant conference is ESAC (Europe Southern Africa Conference). SAECS operates within ESAC. SCL is a member of both ESAC and SAECS. Maersk is not a member of either of these.

Maersk		SCL		Maersk/SCL combined		Conferences/ consortia		Others	
Incl. reefer trade	Excl. reefer trade	Incl. Reefer trade	Excl. reefer trade	Incl. reefer trade	Excl. reefer trade	Incl. reefer trade	Excl. reefer trade	Incl. reefer trade	Excl.reefer trade
[5–15 %]	[5–15 %]	[15-25%]	[20-30%]	[20-30%]	[25-35%]	SAECS [35-45%] ESAC [35-45%]	SAECS [45-55%] [45-55%]	MSC [20-30%] MACS [5-15%] Reefers [20-30%]	MSC [25-35%] MACS [5-15%]

29. Based on the above figures, it can be seen that the combined market share of the parties would be [20-35%], depending on whether the reefer trade is included or not. The largest single competitor would be MSC, which operates outside conferences and consortia. MSC would have [20-35%] of the market. Reefers would represent up to [25-35%] of the market. Given these figures alone, it is unlikely that the operation would give rise to any competition concerns.
30. The parties have indicated that Maersk will 'most probably' join SAECS. Several third parties have drawn the Commission's attention to the fact that since entering the market in 1998, Maersk has built up a market share of approximately [5-15%], much of which

has been at the expense of SAECS whose utilisation rate has declined. Several third parties have indicated that, in case Maersk were to join SAECS, this would merely restore SAECS's competitive position before Maersk's entry. Third parties have pointed out that the combined share of the new entity within SAECS would be larger than the one held by SCL alone. Replies to the Commission's enquiries show, however, that customers and competitors consider the impact on the trade to be a limited one. Customers have confirmed competitive conditions on the trade and have also suggested that the impact of the conferences/consortia has decreased during the past few years due to severe competition on the trade.

Conclusion

31. Given all the above factors, the Commission concludes that the proposed concentration does not give rise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

32. 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 (EEC) No 4064/89.

For the Commission,