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Case No COMP/M.2879 - 3* WALLENIUS LINES AB / WILHELMSEN ASA / HYUNDAI MERCHANT MARINE

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/11/2002
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties:

Dear Sir/Madam,

<u>Subject</u>: **Case No COMP/M. 2879 - Wallenius Lines AB/Wilhelmsen ASA/Hyundai Merchant Marine**
Notification of 17.10.2002 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 17 October 2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertakings *Wallenius Lines AB* ("Wallenius") and *Wilh. Wilhelmsen ASA* ("Wilhelmsen") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the deep-sea car carrier/roll-on roll-off (Ro-Ro) business of *Hyundai Merchant Marine Co Ltd* (Korea) ("HMM"). The HMM car carrier business ("the HMM Relevant Business") will be acquired through a newly established joint venture company, hereinafter "Ro-Ro Korea".

2. After examination of the notification, and subject to full compliance with the commitments relating to the WALLNYK agreement, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. The Swedish undertaking <u>Wallenius</u> provides world-wide maritime transportation (deep and short sea) and logistics management services mainly for vehicle, trucks and other rolling cargo.

[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).

4. The Norwegian undertaking Wilhelmsen provides world-wide maritime transportation services (deep and short sea), global ship management, ship agency and logistics management services.

5. Wallenius and Wilhelmsen provide their car carrier and roll-on/roll-off services through the 50:50 owned joint venture Wallenius Wilhelmsen Lines ("WWL"). WWL also provides a limited range of transportation services of containerised cargo but will gradually withdraw from the container market. WWL also holds a […] stake in Compagnie d'Affrètement de Transport (CAT) which provides logistic services to the automotive sector.

6. The Hyundai group has been developed as a Korean conglomerate and encompasses a wide range of industrial activities, including (i) construction, heavy industry and ship-building, (ii) deep-sea shipping and (iii) car and light vehicle production. The Hyundai Motor Company (HMC) produces cars and light vehicles and has grown to be Korea's largest car and light vehicle manufacturer. HMC also has a controlling stake in the Korean car producer KIA.

7. Hyundai Merchant Marine Co, Ltd (HMM) is a member of the Hyundai Group and was founded in 1976 as a container and tanker operator. In 1980 the HMM Relevant Business was established to provide dedicated deep-sea transportation services for HMC and its subsidiary, KIA. The HMM Relevant Business is the target that will be acquired by the Parties through the above Ro-Ro Korea joint venture.

8. As HMC's/KIA's production schedules and shipping requirements require close co-operation with the shipping operator, the HMM Relevant Business developed dedicated tailor-made shipping services for HMC and KIA. Even though HMC and KIA were recently separated from the Hyundai group, HMC and KIA have remained dependent on the dedicated shipping services of the HMM Relevant Business. In return, the latter remains highly dependent on HMC and KIA volumes, as these two companies account for [>80%] (by value) of the cargo liftings of the HMM Relevant Business on the respective Far East – Northern Europe and Far East – Mediterranean export trades.

II. THE OPERATION

9. The operation consists of the acquisition by Wallenius and Wilhelmsen, through the intermediary of Ro-Ro Korea, of the HMM Relevant Business as a going concern. Besides the car carrier vessels owned by HMM, the main assets to be acquired are the […] car carriage contracts ('ocean carrier contracts') between HMM and HMC/KIA and the world-wide route network of the HMM Relevant Business.

10. Ro-Ro Korea will be owned by Wallenius, Wilhelmsen, HMC and KIA in the following percentages, respectively: […] HMC and KIA have taken a minority non-controlling interest in Ro-Ro Korea in order to allow them greater insight into the management and financial affairs of the ocean carrier on which they are dependent as car exporters.

11. […]

III. CONCENTRATION

12. The acquisition by Wallenius and Wilhelmsen of joint control of the HMM Relevant Business constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

13. The Board of Ro-Ro Korea will be composed of […] Directors. […] will be nominated by Wallenius and Wilhelmsen ('Group A Directors') and […] by HMC and KIA ('Group B Directors'). The Shareholders' Agreement provides that for the purpose of exercising Group A's rights under the Agreement, Wallenius and Wilhelmsen shall act jointly as one party, and for the purpose of exercising Group B's rights under the Agreement, HMC and KIA shall also act jointly as one party. The Shareholder's Agreement provides for a majority vote on matters concerning the strategic commercial behaviour of the joint venture, such as the appointment of the Chairman and the approval of the business plan and the budget. It can therefore be concluded that Wallenius and Wilhelmsen will exercise decisive influence over the strategic behaviour of Ro-Ro Korea and will thus have joint control over the proposed joint venture.

14. […]

15. Ro-Ro Korea will operate as a fully autonomous economic entity with its own chairman, CEO and chief financial officer, its own independent management and profit and loss sheets. It will operate its own vessels and will be free to determine its own commercial strategies. It will have its own marketing department, operational departments and issue its own bills of lading. Ro-Ro Korea will therefore be a full-function joint venture within the meaning of Article 3 (2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

16. The combined aggregate world-wide turnover of the undertakings concerned exceeded EUR 2 500 million[2] in 2001 […]. In each of at least three Member States, the combined aggregated turnover of the undertakings concerned was more than EUR 100 million in 2001[3]. In each of these Member States, the aggregated turnover of each of at least two of the undertakings concerned was more than EUR 25 million in 2001. The aggregated Community-wide turnover of each of the undertakings concerned was more than EUR 100 million in 2001. […].

17. Furthermore, none of the undertakings concerned achieves more than two thirds of their aggregated Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(3) of the Merger Regulation.

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2 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.

3 […]

V. RELEVANT MARKETS

The car carrier sector

18. In its report 'Market Outlook for Car Carriers – New Opportunities in a New Millennium' ('the Drewry Report'),[4] Drewry describes certain key characteristics of the car carrier business:

"As is discussed elsewhere in this report, the highly specialised sector of international car shipping is a virtually closed market. If you do not happen to enjoy a close trading relationship with a car manufacturer then you are not going to be able to start up in the business of shipping new cars.

There is no spot market to speak of and only a very limited time charter market. Contracts are usually awarded for long-term periods of between three and five years and these factors combine to preclude any would-be entrepreneur' chances of entry into the trade. Newcomers to the market would have to be able to provide at least a dozen ships in order to be able to offer the global route network and service mix demanded by manufacturers. The only conceivable manner of breaking into the deep-sea market is through becoming established via the secondhand car trades, such as Europe to West Africa and South America.

The distinction between new and secondhand vehicles is important because the international secondhand car trade accepts much higher damage levels than does the new car trade where anything above one per cent is considered to be disastrous (see also Section 7.4). This is partly because the shippers of secondhand cars are more numerous and fragmented, as shippers of new cars were at one time, and so exert less influence over shipping companies. Operationally, there is a vast difference in approach to the sea transport of secondhand cars where maximising available space is everything and cargo damage is seen as less important."[5]

19. The above barriers to entry have led to a situation in which the supply side of the market for deep-sea car carriage comprises only five or six major operators (see paragraph 33 below).

A. Relevant product market

20. The Parties consider that the relevant product market in this case is that for international maritime services for the transportation of non-containerised cargoes other than specialised bulk commodities. This definition takes account of the fact that WWL, the HMM Relevant Business and other carriers carry a wide range of cargoes on their vessels.

21. In the light of findings of the Drewry Report, as confirmed by the Commission's own investigation, the definition proposed by the Parties must be regarded as being far too broad. While it is true that the vessels operated by WWL, the HMM Relevant Business and other car carriers are capable of carrying a wide range of cargoes (and do so on the return legs from Europe), they are specifically designed for, and route patterns and schedules are tailored to, the carriage of large volumes of vehicles. These specialised

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[4] Drewry Shipping Consultants Ltd, London 1999, 110 pages. Drewry is a well-known firm of independent shipping consultants.

[5] The Drewry Report, pages 13-14.

vessels – Pure Car Carrier (PCCs) and Pure Car and Truck Carriers (PCTCs) – are capable of carrying up to 6 000 car equivalent units (CEUs),[6] which is far in excess of that which most general roll-on/roll-off (RoRo) and conro (container/RoRo) vessels are capable of carrying (i.e. around 1 500 to 2 000 CEUs). In their choice of vessel type, the car carriers are responding primarily to specific demand from car manufacturers for a high-volume, low damage, deep-sea service. A contract with one or more car manufacturers provides the economic basis for the investment in vessels needed to service that contract – as the Drewry Report notes, a minimum of twelve PCC/PCTC vessels is usually required. The six major operators each have a car carrier fleet of 25-80 vessels.[7]

22. It follows that while general RoRo and conro operators may be able to compete with car carrier operators in respect of some of the cargoes carried by the latter – at least on shorter trades with 'thin' vehicle volumes – they cannot compete for the full range of cargoes carried by car carriers and in particular not for new vehicles.

23. The Parties have suggested that containerised liner shipping services may present actual or potential competition to car carrier services. The data provided by the Parties, and comments by third parties, indicate that competition from containerised liner shipping services is limited to low-volume trades and trades with particular features such as strong directional imbalances (e.g. Europe – Africa trades) or inadequate car-handling facilities in ports. Few commentators consider containerised liner shipping services to be a realistic alternative to car carrier services on the high-volume trades, such as the Far East – Europe trades, where each vessel must be able to load and discharge rapidly a very large volume of vehicles, something which in practice container vessels would have difficulty in doing cost-effectively.[8] Indirect support for this conclusion is provided by the fact that car carrier operators continue to order and charter PCTCs, rather than container vessels (or other vessel types).

24. Finally, the Parties claim that car carrier operators provide liner shipping services.

25. In the *TAA* decision, the Commission distinguished between liner shipping services and specialised transport:

"In this case [i.e. in the case of specialised transport]*, carriers conclude long-term contracts with one or a few large shippers and operate these specialized services regularly, but mainly on the basis of charter-parties or service contracts. This regularity, which is linked to an isolated or concentrated demand for transport services, is negotiated between specialised customers and differs from the regularity of liner shipping services, which operate regular services independently of any specific demand and offer their services on a non-discriminatory basis to all shippers."*[9]

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6 It is rumoured that WWL is considering an order for six PCTCs, each with a capacity of up to 9 000 CEUs (DynaLiners, 18.10.2002, page 11). These would be the largest PCTC vessels ever built.

7 The smallest operator, Hual, operates 25 vessels; the largest, NYK, operates 80 vessels. WWL operates 49 PCTCs, while the HMM Relevant Business has a total fleet of 74 PCCs and PCTCs.

8 The situation would be different with regard to vehicle parts, which are usually shipped in containers. Most exports ex-factory on the 'thick' trades are however of fully assembled vehicles.

9 Commission Decision 94/980/EC in Case No IV/34.446 – *Trans-Atlantic Agreement* (OJ L376, 31.12.1994, p.1), at recital 49.

26. The above description of specialised transport is applicable to car carrier services. These services are primarily a response to concentrated demand from car manufacturers for deep-sea transportation services from car production sites to distribution centres. Transportation is arranged on the basis of long-term contracts, usually for significant volumes. As the Drewry Report notes (see above paragraph 18), and the market investigation has confirmed, a close relationship with a car manufacturer is a pre-requisite for entry into the car carrier business. This is particularly true of the Far East – Europe trades, where the investment in vessels necessary to provide a high-volume regular service can only be justified if it is financially underpinned by one or more major contracts with car manufacturers. It is therefore concluded that car carrier services are not liner shipping services.

Conclusion

27. For the above reasons, it is concluded that the relevant product market in this case is that for the deep-sea transportation of vehicles other than in liner shipping. While a further distinction between new vehicles and secondhand vehicles might appear to be warranted on the basis of the above findings of the Drewry Report, replies from customers and competitors do not generally support such a breakdown.

B. <u>Relevant geographic markets</u>

28. The Parties refer to past Commission practice in liner shipping cases and suggest that the relevant product market should be delineated geographically by reference to liner shipping trade lanes.

29. While car carrier services cannot be equated with liner shipping services (see above paragraphs 25 to 27), the Commission's investigation has shown that they nevertheless operate on broadly the same trade routes as the latter. The geographic delineation by trade lane that the Commission has adopted in decisions concerning liner shipping may therefore be applied by analogy in this case.

30. According to the Parties, the activities of WWL and the HHM Relevant Business overlap on the following trades:

Far East - Northern Europe
Far East - Mediterranean
Northern Europe - Near East
Northern Europe - Far East
Mediterranean - Near East
Mediterranean - Far East
Northern Europe – Africa

31. All of the above trades are affected markets with the exception of the Mediterranean – Far East trade. According to the Parties, and based on the market for vehicles, there is no horizontal overlap on the latter trade, as the HMM Relevant Business is not present at all on this trade.

VI. COMPETITIVE ASSESSMENT

32. In recent years the car industry has gone through a period of consolidation and it has been estimated that just 14 vehicle manufacturers account for approximately 95 % of the vehicle production volume[10].

33. Partly as consequence of the consolidation in the car manufacturing industry the car carrier business has already undergone a degree of consolidation. The industry is therefore already characterised by a few major players such as the Japanese majors (Nippon Yusen Kaisha (NYK), Mitsui O.S.K. Lines (MOL) and Kawasaki Kisen Kaisha (K-Line)), the Scandinavian majors (WWL and HUAL), Korean HMM and the Japanese company Nissan Motor Car Carrier (NMCC).

34. On specific trades the major deep-sea car carriers have developed close business relationships with specific car manufacturers. This is for instance the situation in Japan for players such as […]. Other major car manufacturers such as […] have established close business relationships with all major Japanese operators as well as with WWL.

Conferences

35. Conferences and consortia are arrangements between shipping lines that play an important role in the organisation of the liner shipping industry and which restrict competition between their members. The combined market position of the members of conferences and consortia can be substantial.

36. Neither WWL nor the HHM Relevant Business is a member of a consortium on any affected market. Both, however, participate in conferences: WWL is a member of both the WALLNYK conference and the Far Eastern Freight Conference (FEFC), while HMM is a member of the latter conference only. Further details of these conferences are provided below at paragraphs 41 and 51.

37. In its *CEWAL* judgment, the Court of Justice found that:

"…by its very nature and in the light of its objectives, a liner conference, as defined by the Council for the purposes of qualification for block exemption under Regulation No 4056/86, can be characterised as a collective entity which presents itself as such on the market vis-à-vis both users and competitors. So seen, it was logical for the Council to lay down in Regulation No 4056/86 the provisions necessary to avoid a liner conference having effects incompatible with Article 86 of the Treaty (see, in particular, Article 8 of that regulation)."[11]

38. It is accordingly necessary to examine the effects of the conferences of which WWL and the HMM Relevant Business are currently members.

Effects of the concentration

39. Based on the market definition consisting of the deep-sea transportation of vehicles, WWL and the HMM Relevant Business account for a combined market share between [20-25%] – [50-55%] by volume in 2001 on the following six trades analysed below:

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10 'Car carriers set for change', Fairplay International Shipping Weekly, 7.12.2000.

11 Judgment in Joined Cases C-395/96 P and C-396/96 P *Compagnie Maritime Belge Transport and others* v *Commission* [2000] ECR I-1365, at paragraph 48.

	WWL	HMM Relevant Business
Far East – Northern Europe	[10 – 15%]	[15 – 20%]
Far East – Mediterranean	[0 – 5%]	[30 – 35%]
Northern Europe –Near East	(WALLNYK) [25 – 30%]	[25 – 30%]
Mediterranean – Near East	(WALLNYK) [55 – 60%]	[20 – 25%]
Northern Europe-Far East	[5 – 10%]	[25 – 30%]
Northern Europe – Africa	[5 – 10%]	[15 – 20%]

Northern Europe – Near East

40. In 2001, the size of the vehicle market on this trade was EUR 162 million and 381 000 CEU (car equivalent unit).

41. On this trade WWL operates through the WALLNYK conference, together with one of its main competitors, NYK. Neither party provides any independent service on these trades. The WALLNYK conference may therefore be regarded as a collective entity within the meaning of the *CEWAL* caselaw. WALLNYK currently accounts for a market share of [25-30%] on the Northern Europe – Near East trade (WWL [10-15%] and NYK [10-15%]). The following table shows market shares based on vehicle liftings in terms both of volume and value.

Northern Europe – Near East (%)

Volume	**1999**	**2000**	**2001**	**Value**	**1999**	**2000**	**2001**
WWL	[15-20]	[15-20]	[10-15]	WWL	[10-15]	[10-15]	[5-10]
NYK	[15-20]	[15-20]	[10-15]	NYK	[10-15]	[10-15]	[5-10]
WALLNYK (WWL+NYK)	[30-35]	[30-35]	[25-30]	WALLNYK (WWL+NYK)	[20-25]	[20-25]	[15-20]
HMM	[15-20]	[20-25]	[25-30]	HMM	[5-10]	[15-20]	[20-25]
Post merger			**[55-60]**	**Post merger**			**[40-45]**
K-Line	0	0	0	K-Line	0	0	0
MOL	[5-10]	[5-10]	[5-10]	MOL	[5-10]	[5-10]	[5-10]
Hual	[20-25]	[15-20]	[10-15]	Hual	[20-25]	[20-25]	[10-15]
Others	[15-20]	[15-20]	[15-20]	Others	[30-35]	[25-30]	[30-35]

42. The addition of the HMM Relevant Business would increase the market share accounted for by the WALLNYK conference to at least [55-60%] on the Northern Europe – Near East trade. The largest independent competitor on this trade following the merger would be HUAL, at [10-15%]

43. On this Near East trade, the merger appears to raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the increased market power to be held by WALLNYK (incorporating the merged entity) and from the elimination of the main competitor to the conference, that is HMM.

Mediterranean – Near East

44. In the year 2001, the overall vehicle market on this trade amounted to EUR 5.5 million and 14 215 CEU.

Mediterranean – Near East (%)

Volume	1999	2000	2001	Value	1999	2000	2001
WWL	[25-30]	[30-35]	[20-25]	WWL	[20-25]	[25-30]	[25-30]
NYK	[20-25]	[25-30]	[25-30]	NYK	[20-25]	[25-30]	[25-30]
WALLNYK	[50-55]	[60-65]	[55-60]	WALLNYK	[45-50]	[55-60]	[55-60]
HMM	[15-20]	[10-15]	[20-25%]	HMM	[15-20]	[10-15]	[20-25]
Post merger			**[80-85%]**	**Post merger**			**[75-80%]**
K-Line	0	0	0	K-Line	0	0	0
MOL	[5-10]	[5-10]	[5-10]	MOL	[5-10]	[5-10]	[5-10]
Hual	[5-10]	[0-5]	[0-5]	Hual	[5-10]	[0-5]	[0-5]
Others	[10-15]	[10-15]	[5-10]	Others	[15-20]	[15-20]	[5-10]

45. On the Mediterranean – Near East trade, WALLNYK accounts for [55-60%] (WWL [25-30%] and NYK [25-30%]) of the market. The addition of HMM would increase the market share accounted for by WALLNYK to [80-85%].

46. On the Mediterranean – Near East trade, the merger appears to raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the increased market power to be held by WALLNYK (incorporating the merged entity) and from the elimination of the main competitor of the conference, that is HMM.

Far East - Northern Europe

47. This is the highest-volume EU trade on which WWL and the HMM Relevant Business operate. The vehicles market on this trade amounted in 2001 to EUR 1.263 million, by value, and 1 366 000 CEU, by volume.

48. The combined market share of WWL and the HMM Relevant Business for the Far East - Northern Europe trade is [30-35%]. The market shares of the main competitors on this trade are: NYK [20-25%]; MOL [15-20%]; K-Line[15-20%].

Far East – Northern Europe (%)

Volume	1999	2000	2001	Value	1999	2000	2001
WWL	[10-15]	[10-15]	[10-15]	WWL	[10-15]	[10-15]	[10-15]
HMM	[15-20]	[15-20]	[15-20]	HMM	[10-15]	[10-15]	[10-15]
Post merger			**[30-35]**	**Post merger**			**[25-30]**
K-Line	[15-20]	[15-20]	[15-20]	K-Line	[15-20]	[15-20]	[15-20]
MOL	[15-20]	[15-20]	[15-20]	MOL	[15-20]	[20-25]	[20-25]
NYK	[20-25]	[20-25]	[20-25]	NYK	[20-25]	[20-25]	[25-30]
FEFC Total	**[85-90]**	**[90-95]**	**[95-100]**	**FEFC Total**	**[85-90]**	**[90-95]**	**[95-100]**
Hual	[10-15]	[5-10]	[0-5]	Hual	[10-15]	[5-10]	[0-5]

49. Most of the current capacity of the HMM Relevant Business on the Far East – Northern Europe trade is reserved for vehicles carried under […] contracts with HMC and KIA [>80%]. According to information provided by the Parties, the additional capacity available for other customers on this trade is relatively small.

50. Having regard to the substantial market shares of the main competitors and the amount of HMM car carrier capacity that must be reserved for long-term existing contracts, it

can be concluded that the concentration is unlikely to give rise to single dominance by the merged entity.

51. All of the major car carriers operating on the Far East – Northern Europe trade belong – with the exception of Hual – to the Far Eastern Freight Conference (FEFC). The conference, which acts as an umbrella organisation for a number of regional conferences,[12] has its own secretariat and a website on which it publishes its tariffs. It has all the features of a collective entity within the meaning of the *CEWAL* caselaw and has a combined market share of approximately 96% of the Far East – Northern Europe car carrier trade. Given this very high market share figure, it may be assumed that the conference is dominant on the trade in question.

52. However, as WWL and HMM are already members of the FEFC, the concentration in itself will not bring about any change in the market share of the conference. Nor, in the particular circumstances of this case (see above paragraph 8), is it likely appreciably to reinforce cohesion between the FEFC car carriers and thereby strengthen the dominant position of the conference.

53. For the above reasons, it can be concluded that the concentration does not give rise to any material change in the structure of competition on the Far East – Northern Europe trade and accordingly does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

Far East - Mediterranean

54. In 2001 the vehicle market on this trade accounted for EUR 397 million by value and 567 000 CEU by volume.

55. The combined market share of WWL and the HMM Relevant Business for the Far East - Mediterranean is [30-35%] and the market shares of the main competitors are: NYK [25-30%]; MOL [10-15%]; K-Line [10-15%].

Far East – Mediterranean (%)

Volume	**1999**	**2000**	**2001**	**Value**	**1999**	**2000**	**2001**
WWL	[5-10]	[0-5]	[0-5]	WWL	[5-10]	[0-5]	[0-5]
HMM	[25-30]	[25-30]	[30-35]	HMM	[30-35]	[30-35]	[35-40]
Post merger			**[30-35]**	**Post merger**			**[35-40]**
K-Line	[10-15]	[10-15]	[10-15]	K-Line	[5-10]	[10-15]	[10-15]
MOL	[10-15]	[10-15]	[10-15]	MOL	[10-15]	[10-15]	[10-15]
NYK	[25-30]	[25-30]	[25-30]	NYK	[25-30]	[25-30]	[20-25]
FEFC Total	**[90-95]**	**[85-90]**	**[85-90]**	**FEFC Total**	**[90-95]**	**[85-90]**	**[85-90]**
Hual	[5-10]	[5-10]	[10-15]	Hual	[5-10]	[5-10]	[5-10]

56. Pursuant to […] contracts with HMC and KIA, [>90%]of the current capacity of the HMM Relevant Business is reserved for HMC and KIA vehicles. Only marginal additional capacity is therefore available for other customers.

57. Given this circumstance, and having regard to the substantial market shares of the main competitors, it can be concluded that the concentration is unlikely to give rise to single dominance by the merged entity.

[12] For instance the Japan Europe Freight Conference (JEFC), which groups together lines operating on the Japan – Europe trades.

58. The FEFC has a market share of approximately [85-90%] of the Far East – Mediterranean trade. Given this very high market share figure, it may be assumed that the conference is dominant on the trade in question.

59. However, as WWL and HMM are already members of the FEFC, the concentration in itself will not bring about any change in the market share of the conference. Nor, in the particular circumstances of this case (see above paragraph 8), is it likely appreciably to reinforce cohesion between the FEFC car carriers and thereby strengthen the dominant position of the conference.

60. For the above reasons, it can be concluded that the merger does not give rise to any material change in the structure of competition on the Far East to Mediterranean trade and accordingly does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

Northern Europe - Far East

61. The combined market share of WWL and the HMM Relevant Business based on volume in 2001 is [35-40%] (WWL; [5-10%] and HMM [25-30%]). However, there are four significant competitors HUAL [10-15%], K-Line [15-20%], MOL [15-20%] and NYK [15-20%]. Moreover, according to the information provided by the Parties, capacity utilisation rates are significantly lower on this trade than on the Far East export trades.

62. For those reasons, the concentration does not give rise to serious doubts on the Northern Europe - Far East trade.

Northern Europe - Africa

63. The combined market share of WWL and HMM Relevant Business based on volume in 2001 is [20-25%] (WWL [5-10%] and HMM [15-20%]). However, there are four competitors: HUAL [40-45%], Grimaldi [10-15%], MOL [0-5%] and NYK [0-5%]. Moreover, the capacity utilisation rates are according to the Parties significantly lower on this trade than on the Far East export trades.

64. In conclusion, the merger does not give rise to serious doubts on the Northern Europe – Africa trade.

Conclusion

65. The Commission concludes from the above analysis that the concentration raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement on the Northern Europe – Near East and Mediterranean – Near East trades.

VII. COMMITMENTS SUBMITTED BY THE PARTIES

66. In order to address the serious doubts identified in relation to the Northern Europe – Near East and Mediterranean – Near East trades, the Parties have proposed to terminate the WALLNYK agreement on these trades and have undertaken not to enter into any other agreement similar to the current one with any other independent carrier on these trades during the […] following completion of the merger without the prior consent of the Commission. This undertaking will become effective immediately upon adoption of this decision, and will be implemented at the latest within six months following completion.

67. The Parties have also proposed that the proposed joint venture (Ro-Ro Korea), incorporating the HMM Relevant Business, should not apply for membership of the FEFC – even though WWL will remain a member of that conference. The Parties have stressed that Ro-Ro Korea will operate as a separate independent company from WWL.

VIII. ASSESSMENT OF THE COMMITMENTS

68. The Commission considers that the remedy relating to the WALLNYK agreement is sufficient to remove the serious doubts identified. The undertakings to withdraw from the WALLNYK agreement and not to enter into any other agreement similar to the current one with any other independent carrier on these trades for the following […] without the prior consent of the Commission constitute conditions for clearance of the operation, as only by fulfilling these can the necessary structural changes on the relevant markets be achieved, so as to render the concentration compatible with the common market and the functioning of the EEA Agreement.

69. The termination of the agreement and the fact that NYK will become an independent competing supplier of car carriage services in the relevant trades preserves the competitive situation prevailing prior to the proposed merger on the Mediterranean – Near East trade and contributes to a substantial reduction in the impact of the concentration on the Northern Europe – Near East trade by preserving the same number of players. Taken as a whole the commitments will therefore remove the serious doubts identified above.

70. Although the notified transaction does not raise serious doubts in relation to the trades where the FEFC is active, the Commission takes note of the proposal made by the Parties in relation to Ro-Ro Korea's abstention from FEFC membership. However, these proposals do not constitute conditions for clearance of the operation.

IX. CONCLUSION

71. For the above reasons, and subject to full compliance with the submitted commitment concerning the WALLNYK agreement, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission