EN

Case No COMP/M.3829 - MAERSK / PONL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

For the notifying party

Dear Sirs,

Subject: **Case No COMP/M.3829 – Maersk/PONL**
Notification of 9 July 2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 9 June 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which A.P. Møller – Mærsk A/S (”Maersk”, Denmark) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Royal P&O Nedlloyd N.V. (“PONL”, Netherlands) by way of public bid.

I. THE PARTIES

2. Maersk is an international group with activities in container shipping, container terminal services, harbour towage, operation of tankers, logistics, oil and gas exploration, air transport, shipbuilding and supermarkets.

3. PONL is mainly a container liner shipping company, which is also involved in container terminal services, logistics and air transport.

1 OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. Maersk made a public offer for all shares of PONL. The proposed offer was recommended by PONL's Board of Directors. The offer memorandum setting out the terms of the offer was published in mid June. Under the tender offer, beginning of August has been indicated for the closing of the acceptance period.

III. CONCENTRATION

5. After completion of the transaction, Maersk will acquire sole control of PONL.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of Maersk and PONL have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

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. As to the frequency, it can be distinguished from non-liner shipping (charter, tramp, specialised transport), as to the mode of transport it differs from non-containerised transport (bulk, vessel). Previous merger decisions have defined the market for containerised liner shipping services on one or more trades[3]. A possible narrower product market is that for transport of refrigerated goods, which could be limited to reefer (refrigerated) containers only or could include transport in conventional reefer (refrigerated) vessels.

8. From a demand side perspective, certain goods such as fruit, meat and dairy products must be shipped under refrigerated conditions. For this reason, non-reefer containers are not a substitute for reefer containers.

9. As to the supply side, in principle each container ship can carry non-reefer containers as well as reefer containers. Reefer containers have their own cooling unit which depends on electric energy to be provided by the ship. Container ships therefore need reefer plugs and sufficient power generation capacity to be able to transport refrigerated goods in reefer containers. According to a third party report, much of the world's container shipping fleet is equipped with plugs for reefer containers, but they are not necessarily in use for this purpose[4]. The report indicates that it would be

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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).

3 M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand; M.3576 – ECT/PONL/Euromax.

4 Ocean Shipping Consultants, Refrigerated trades and Outlook to 2015, May 2005, page 177.

relatively inexpensive to equip a vessel for reefer containers and the slot could be used for non-reefer containers as well[5]. The parties estimate that approximately [10-20]% of the total containerised shipping capacity represents potential reefer carrying capacity.

10. On trades with a share of reefer containers in relation to all containerised cargo below 10% in both directions, the ships have in general more reefer facilities than actually used. Carriers will therefore be able to shift volume from transport of non-reefer containers to transport of reefer containers in the short term and without significant additional costs. On these trades, transport in reefer containers is not assessed separately, but as part of the overall market for container liner shipping services.

11. 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 situation on the supply side can be different. On the trade directions with a high reefer share, the reefer capacity on the ships can be exhausted. Installation of additional plugs and power generation capacities on ships which are already operating on the trade entails time delays and additional investments. An increase of reefer capacity can require substantial technical adjustments on a ship designed for and equipped with 10% reefer plugs, in particular if additional cooling mechanisms become necessary. The redeployment of ships with higher reefer capacity also comes with time delays and additional costs. On these trades, supply side substitution is therefore more difficult.

12. As to the possible substitution between transport in reefer containers and transport in bulk reefer vessels, the recent PO/Royal Nedlloyd decision observed that on certain trades containerised liner shipping services compete with conventional reefer vessel services for the carriage of refrigerated cargo. This said the market definition was ultimately left open[6]. The parties argue that transport by conventional reefer vessels should be included into the market.

13. However, the market investigation produced some evidence that substitution is mainly one-way from bulk reefer to reefer containers, whereas substitution from reefer containers to transport in bulk reefer vessels seems to be relatively limited[7]. The possibility of substitution depends on a number of factors, such as the product shipped, the volume shipped, the logistic chain, cooling techniques available and sanitary requirements. These factors may differ from trade to trade. Possible competitive constraints on transport in reefer containers stemming from transport in reefer vessels are therefore examined in the framework of the assessment of each trade.

14. 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

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5 See previous footnote.

6 M.3379 – PO/Royal Nedlloyd.

7 See also judgment of the CFI of 30 September 2003 in Joined Cases T-191/98, T-212/98 and T-214/98, TACA, paragraph 790 ff.

influence the level of barriers to entry that may be present on the trade. Relevant trades are those from Northern Europe to other non European areas[8] and back and from the Mediterranean to other non European areas and back[9].

15. 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 case of trade imbalances or different characteristics of the products shipped[10]. In these instances, a distinction between the two directions of a trade is justified.

16. As regards substitution between Northern European and Mediterranean ports, the possibility of inland transport and transhipment between Northern Europe and the Mediterranean does not seem to lead to substitution to a considerable extent. On this point it is however not necessary to conclude on a precise definition of the geographic dimension of each trade because the competition analysis will not significantly differ under both alternative market definitions.

Container terminal services

17. 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 transhipment traffic (= relay/feeder)[11].

18. The geographic dimension of stevedoring services for hinterland traffic in Northern Europe[12] extends to UK/Ireland on the one hand, and the Northern Continental ports on the other hand[13]. However, previous merger decisions left open whether the catchment area of the Northern Continental ports might be further broken down. The widest realistic range would be Hamburg – Le Havre, a narrower range might be Hamburg – Antwerp. The exact geographic scope can be left open, because even on the basis of the narrower market definition, the transaction will not significantly impede effective competition.

19. The geographical dimension of stevedoring services for transhipment traffic extends to Northern Europe, i.e. all deep-sea ports in the Le Havre – Gothenburg range including

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8 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.

9 See M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand, which however do not distinguish between the trade direction.

10 E.g. mainly technical products head-haul and food back-haul.

11 JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.3576 – ECT/PONL/Euromax.

12 In the Mediterranean, there are no overlaps between the parties relating to stevedoring services for hinterland traffic.

13 JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.1651 – Maersk/Sealand; M.2422 – Hapag-Lloyd/HHLA; M.3576 – ECT/PONL/Euromax.

the ports in the UK and Ireland[14] on the one hand and the Mediterranean on the other hand.

In-land transportation of containerised goods

20. 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[15]. 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.

Logistics services

21. The Commission has defined contract logistics services as a separate product market consisting of services that comprise planning, implementation and control of the flow and storage of goods[16]. Geographically the Commission previously defined the market as generally national in scope[17]. In this case, however, it is not necessary to define the market precisely, because under any possible market definition no competition concerns will arise.

Air transport

22. For the passenger air transport, the Commission has in the past defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin / point of destination" (O&D) city pair approach[18]. The Commission further subdivided this market into two distinct markets for time-sensitive and non time-sensitive passengers. Furthermore, it considered that for long-haul flights competitive indirect flights may be included in the O&D pair markets and that for short-haul flights in some instances other means of transport (such as high speed train service) may be included in the market depending on travelling time, frequency of the train service and price.[19] It is not necessary to decide on a precise definition of the relevant market in this case as the concentration does not lead to competition concerns under any alternative market definition.

23. Air cargo transport markets have been defined by the Commission as wider than air passenger transport as cargo may be routed with a higher number of stop-overs and indirect routes are substitutable to any direct route. Thus for intra-European cargo, the market was defined as European-wide, including road and, to a limited extent, also other modes of transport[20]. For intercontinental routes, the Commission has found that

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14 JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.3576 – ECT/PONL/Euromax.

15 M.2905 – Deutsche Bahn/Stinnes.

16 M.1895 – Ocean Group/Exel (NFC) or M.3492 – Exel/Tibbet & Britten.

17 M.3492 – Exel/Tibbet & Britten.

18 M.3280 – Air France/KLM.

19 M.3280 – Air France/KLM.

20 JV.19 – KLM/Alitalia; M.1328 – KLM/Martinair; M.3280 – Air France/KLM.

the corresponding catchment areas broadly correspond to continents, at least for those continents where local infrastructure is adequate to allow for onward connections, for example in case of North Atlantic routes[21]. However, it is not necessary to delineate the market further, because under any possible market definition no competition concerns will arise.

Harbour towage

24. Harbour towage services are provided to large vessels (container ships, bulk vessels, cruise ships etc.) and include precise manoeuvring, positioning assistance, safe berthing, un-berthing and passing narrow gateways. The Commission has so far not defined the relevant market in the area of harbour towage. The parties submit that there is a separate market for harbour towage services and that its geographical dimension may be limited to a single port, even though there is likely to be competitive pressure from companies active in neighbouring ports as at least container carriers generally consider ports in a geographic range to be substitutes for one another. The exact definition of the geographic market can however be left open because even on the basis of the narrowest market definition, the operation will not lead to competition concerns.

B. ASSESSMENT

Containerised liner shipping

25. Maersk is the number one global carrier with a worldwide share of capacity of about [10-20]%. PONL is currently the number four global carrier with about [0-10]% capacity share. Number two and three are the Mediterranean Shipping Company (MSC, Switzerland, about [0-10]%) and Evergreen (Taiwan, about [0-10]%). Number five to ten have a share between [0-10]% and [0-10]%[22].

26. On all main EU trades, the combined market shares of the parties are above 15%. Affected markets are therefore the trades from North Europe and from the Mediterranean to:

- North America
- Far East
- Middle East
- Indian Subcontinent
- East Africa
- South Africa
- West Africa
- Caribbean and Central America
- East Coast South America

21 M.3280 – Air France/KLM.

22 Hanjin (Korea), NOL/APL (Singapore), CMA CGM (France), Cosco (China), NYK Line (Japan), Mitsui (Japan).

- West Coast South America
- Australia/New Zealand

27. Maersk and PONL are members of a number of liner conferences, consortia and alliances[23]. 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.

28. 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[24] and ancillary charges[25] 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.

29. 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 service 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.

30. 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[26]. The extent to which

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[23] See Annex 1 for the list of abbreviations of carriers, conferences and consortia.

[24] E.g. bunker adjustment factor, currency adjustment factor, congestion surcharge and war risk surcharge.

[25] I.e. those charges triggered by or associated with the operation of moving containers.

[26] 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).

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.

31. 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[27]. 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.

32. 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 Maersk maintains its 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 Maersk controlling the conference.

- In some instances Maersk is in a conference or consortium, but not PONL, even though it is active on the same trade. If Maersk maintains its membership, PONL can be expected to be integrated into the conference or consortium. The market share of the conference or consortium will rise. If only PONL is in a conference or consortium, the merger would create a link between Maersk and the conference and/or the consortium. This link would enable Maersk to take part in the exchange of information within the conference and/or the consortium. Maersk 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, Maersk would no longer be an independent competitor because it controls a member of the conference or the consortium.

33. 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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27 M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand.

Affected Markets

North Europe – North America

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[0-10]% ([10-20]% (West Bound) [0-10]% (East Bound))	[0-10]% ([0-10]% (West Bound) [0-10]% (East Bound))	[10-20]% ([10-20]% (West Bound) [10-20]% (East Bound))	TACA (Maersk and PONL)	[40-50]%	Canex (Maersk and PONL) Grand Alliance/ CP Ships (PONL)	[0-10]% [30-40]%	CP Ships [b] Hapag Lloyd [a, b] MSC [a] OOCL [a,b] Evergreen ICL	[10-20]% [10-20]% [0-10]% [0-10]% [0-10]% [0-10]%

[a] = Member of TACA
[b] = Member of Grand Alliance/CP Ships

34. The aggregated market share of Maersk and PONL on the North Europe – North America trade is [10-20]% westbound (to North America) and [10-20]% eastbound (to North Europe). The most important competitors and their approximate market shares are: CP Ships ([10-20]%), Hapag Lloyd ([10-20]%), MSC ([0-10]%) and OOCL ([0-10]%). Shipping lines which are not linked to Maersk or PONL by conferences or consortia are Evergreen and ICL (both about [0-10]%).

35. Both Maersk and PONL are in the TACA conference, which has a market share of close to [40-50]%. Other members of TACA are Hapag-Lloyd, OOCL, MSC, NYK and ACL.

36. Both parties are also members of the Canex consortium, which has a market share below [0-10]%. Only PONL is member of the Grand Alliance/CP Ships consortium (Grand Alliance). The Grand Alliance has a market share of [30-40]%. Other members of the Grand Alliance are Hapag Lloyd, OOCL, NYK and CP Ships. There are two other consortia active on this trade of which neither of the parties are member: CKYH ([0-10]% market share) and New World Alliance (NWA, [0-10]%). Maersk has a slot charter agreement with NWA representing nearly [0-10]% of the total volumes shipped on the trade, according to which Maersk uses [60-80]% and NWA [20-40]% of the slots.

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 is 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

38. The transaction changes the structure within TACA, creates a link between Maersk and the Grand Alliance and strengthens the link between TACA and the Grand Alliance.

39. Both Maersk and PONL are currently members of TACA. Competition between the members of TACA is restricted[28]. The transaction reduces the number of members from 7 to 6 and Maersk will represent about [20-30]% of the volume of the conference. TACA has [description of voting system]. Consequently, Maersk will not be able to control TACA post-merger. Given the structure of TACA, it cannot be expected that the reduction of members from 7 to 6 will appreciably strengthen the cohesion within the conference.

40. The transaction would create a link between Maersk and the Grand Alliance. Competition between the members of the Grand Alliance is restricted[29]. Even without integrating itself into the consortium, Maersk will no longer be an independent competitor of the Grand Alliance because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium. The combined market share of Maersk and the Grand Alliance would be [40-50]%.

41. In addition, the link between Maersk and Grand Alliance could influence the structure within TACA. All members of the Grand Alliance except CP Ships are also members of TACA. At present 4 out of 7 members which represent less than [50-60]% of the total volume of TACA are linked to the Grand Alliance. Post-merger 4 out of 6 members of TACA representing about [70-80]% of the total volume shipped by all TACA members would be interlinked due to their co-operation in the Grand Alliance. Therefore the transaction could strengthen the cohesion within TACA.

42. TACA is the only conference on this trade and the Grand Alliance is the strongest consortium. The competitors active on this trade, such as the consortia CKYH and NWA and the independent carriers Evergreen and ICL, each carry at least four times less volume than the combined volume of Maersk and the Grand Alliance. Furthermore, Maersk is linked to NWA by a slot charter agreement. This link limits competition between Maersk and NWA because the agreement foresees a close co-operation within its scope[30].

43. On the basis of the above, on the North Europe – North America trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between Maersk and the Grand Alliance.

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[28] The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of Maersk's 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.

[29] Members of the Grand Alliance are structurally linked by a vessel sharing agreement and [description of the agreement].

[30] The parties may discuss and agree upon the deployment and utilization of the vessels covered by the agreement, including [description of the agreement].

Mediterranean – North America

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]%	[10-20]%	[20-30]%	USSEC (Maersk and PONL)	[30-40]%	FAMEX	[0-10]%	Zim [b]	[10-20]%
([10-20]% (West Bound)	([0-10]% (West Bound)	([20-30]% (West Bound)			GAMEX	[0-10]%	MSC	[0-10]%
					NAMEX	[0-10]%	COSCO	[0-10]%
[10-20]% (East Bound))	[10-20]% (East Bound))	[30-40]% (East Bound))			(all PONL)		Hapag Lloyd [a, b]	[0-10]%
							CP Ships	[0-10]%

[a] = Member of USSEC conference

[b] = Member of FAMEX, GAMEX or NAMEX consortia

44. The aggregated market share of Maersk and PONL on the Mediterranean – North America trade is [20-30]% westbound (to North America) and [30-40]% eastbound (to the Mediterranean). The most important competitors and their approximate market shares are: Zim ([10-20]%), MSC ([0-10]%), COSCO ([0-10]%), Hapag Lloyd ([0-10]%) and CP Ships ([0-10]%). Shipping lines which are not linked to Maersk or PONL by conferences or consortia are MSC, COSCO and CP Ships.

45. Both Maersk and PONL are in United States South Europe Conference (USSEC)[31] which has a market share of [30-40]%.

46. PONL is member of the consortia FAMEX (with Hapag Lloyd), GAMEX (with Hapag Lloyd and Zim) and NAMEX (Hapag Lloyd, CMA CGM, Lloyd Triestino). The combined market share of all three consortia is about [10-20]%. The CKYH consortium[32] is active on this trade with about [0-10]% market share, of which neither of the parties are member.

Non-coordinated effects

47. 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

31 Members of USSEC and their market shares : Maersk ([10-20]%), Hapag Lloyd ([0-10]%), PONL ([10-20]%).

32 Members of the CKYH consortium are COSCO, K-Line, Yang Ming and Hanjin/Senator.

48. Both Maersk and PONL are currently members of USSEC. Competition between the members of USECC is restricted[33]. The transaction reduces the number of members from 3 to 2. USSEC has [description of the voting system and possibility to influence decision making process]. The transaction might strengthen the cohesion within USSEC. However, the market share of the conference of [30-40]% does not give rise to competition concerns, in particular in view of three independent competitors which reach together the same market share as the conference.

49. The transaction would create links between Maersk and FAMEX, GAMEX and NAMEX. However, the combined market share of Maersk and these consortia of below [20-30]% does not lead to competition concerns.

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

Northern Europe - Far East

<u>Market shares</u>

Maersk	PONL	Combined Maersk / PONL	Conferences in which parties are members		Consortia in which parties are members		Individual Carriers	
[10-20]% ([10-20]% (East Bound) [10-20]% (West Bound))	[0-10]% ([0-10]% (East Bound 1) [0-10]% (West Bound))	[10-20]% ([10-20]% (East Bound) [10-20]% (West Bound))	FEFC (Maersk and PONL)	[50-60]%	Grand Alliance[a] (PONL)	[20-30]%	Hanjin/Senator [d]	[0-10]%
							COSCO [d]	[0-10]%
							Evergreen	[0-10]%
							MSC	[0-10]%
							CMA CGM [a]	[0-10]%
							CSCL	[0-10]%
							APL [a, c]	[0-10]%
							Hapag Lloyd [a, b]	[0-10]%
							NYK [a, b]	[0-10]%

[a] = Member of FEFC
[b] = Member of the Grand Alliance
[c] = Member of the New World Alliance
[d] = Member of the CKYH consortium

51. The parties combined market share is [10-20]% westbound from North Europe to the Far East and [10-20]% eastbound from the Far East to North Europe. The most important competitors and their approximate market shares are: Hanjin/Senator ([0-10]%), COSCO ([0-10]%), Evergreen, MSC, CMA CGM, CSCL (each [0-10]%),

[33] The conference sets the tariff which is used as a benchmark for negotiated rates. [50-100]% of Maersk's 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.

Hapag Lloyd and NYK (each [0-10]%). Only Evergreen and MSC operate outside conferences or consortia to which the parties are members.

52. Both parties are members of the Far East Freight Conference (FEFC), which has 14 members[34]. The market share of the FEFC is [50-60]%.

53. PONL operates in the trade within the Grand Alliance consortium. It is the most important member of the Alliance with a market share of [0-10]%. The other members of the Grand Alliance are Hapag-Lloyd, NYK, OOCL and MISC. All members of the Grand Alliance are also members of the FEFC. The market share of the consortium is [20-30]%.

54. There are two rather strong competing consortia operating on this trade, CKYH[35] with a market share of [20-30]% and NWA[36] accounting for [10-20]%. Two out of the four members of CKYH and all three members of the NWA are also members of FEFC conference.

Non-coordinated effects

55. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns. There are a sufficient number of competitors with an appreciable presence on the trade able to constraint the behaviour of the merging parties. The transport of refrigerated goods accounts for less than [0-10]% in both directions and is thus not discussed separately.

Coordinated effects

56. The transaction changes the structure within FEFC, creates a link between Maersk and the Grand Alliance and strengthens the link between FEFC and the Grand Alliance.

57. Both Maersk and PONL are members of FEFC. Competition between the members of FEFC is restricted[37]. The transaction results in a decrease in the number of FFEC's members from 14 to 13. Maersk will represent about [30-40]% of the volume of the conference. FEFC has [description of the voting system]. Consequently, Maersk will not be able to control the FEFC post-merger. Given the structure of FEFC, it cannot be expected that the reduction of members from 14 to 13 will appreciably strengthen the cohesion within the conference.

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34 Members of the FEFC and the market shares: APL ([0-10]%), CMA CGM ([0-10]%), Egyptian International Shipping (N/A), Hapag Lloyd (N/A), Hyundai Merchant Marine (N/A), Kawasaki Kisen Kaisha (N/A), Maersk ([10-20]%), Malasia International Shipping Corporation (N/A), Mitsui (N/A), Nippon Yusen Kaisha (N/A), Norasia Container Lines ([0-10]%), OOCL (N/A), PONL ([0-10]%), Yang Ming Marine Transport Corporation ([0-10]%).

35 Members of the CKYH consortium are COSCO, K Line, Yang Ming and Hanjin/Senator.

36 Members of the New World Alliance are APL, Hyundai and Mitsui-OSK Lines.

37 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of Maersk's 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.

58. The transaction would create a link between Maersk and the Grand Alliance. Competition between the members of the Grand Alliance is restricted[38]. Even without integrating itself into the consortium, Maersk will no longer be an independent competitor of the Grand Alliance because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium. The combined market share of Maersk and the Grand Alliance would amount to [30-40]%.

59. The link between Maersk and Grand Alliance could influence the structure within FEFC. At present 4 out of 14 members which represent less than [30-40]% of the total volume of FEFC are linked to the Grand Alliance. Post-merger 4 out of 13 members of FEFC representing about [50-60]% of the total volume shipped by all FEFC members would be interlinked due to their co-operation in the Grand Alliance. However, given the high number of members of FEFC which operate outside the Grand Alliance as independent operators or in another consortium, it cannot be expected that this will appreciably strengthen the cohesion within FEFC.

60. Regarding competitive constraints outside the Grand Alliance, the two other consortia operating on this trade have substantial market shares. In particular the CKYH consortium's market share is not substantially lower than the combined market share of Maersk and the Grand Alliance. On this trade, Maersk is not linked to NWA by a slot charter agreement.

61. Consequently, on the Northern Europe - Far East trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

[38] Members of the Grand Alliance are structurally linked by a vessel sharing agreement and [description of the agreement].

Mediterranean - Far East

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences in which parties are members		Consortia in which parties are members		Individual Carriers	
[10-20]% ([10-20]% (East Bound) [10-20]% (West Bound))	[0-10]% ([0-10]% (East Bound l) [0-10]% (West Bound))	[20-30]% ([20-30]% (East Bound) [20-30]% (West Bound))	FEFC (Maersk and PONL)	[40-50]%	Grand Alliance (PONL)	[10-20]%	MSC CMA CGM [a, d] Yang Ming [a, b, c] Evergreen CSCL COSCO [a, c]	[10-20]% [10-20]% [0-10]% [0-10]% [0-10]% [0-10]%

[a] = Member of FEFC
[b] = Member of the Grand Alliance
[c] = Member of the CKYH consortium
[d] = Member of the BEX consortium

62. The parties have a combined market share of [20-30]% westbound from the Far East to the Mediterranean and [20-30]% eastbound from the Mediterranean to the Far East. The most important competitors and their approximate market shares are: MSC ([10-20]%), CMA CGM ([10-20]%), Yang Ming ([0-10]%) and Evergreen ([0-10]%). Only MSC and Evergreen operate outside conferences or consortia to which the parties are members.

63. The parties are both members of the FEFC conference, the membership of which is the same as on the North Europe – Far East trade. The combined market share of the conference is [40-50]%.

64. Maersk operates outside a consortium. PONL operates within two consortia, the Grand Alliance and the BEX consortium. The other members of the Grand Alliance are the same as on the North Europe – Far East trade. The market share of the Grand Alliance is [10-20]%. The market share for the BEX consortium where PONL operates together with CMA-CGM is minimal.

65. The CKYH consortium is operating on this trade with a market share of nearly [10-20]%. Two out of four members of CKYH are also members of the FEFC conference together with Maersk and PONL.

Non-coordinated effects

66. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns. There are a sufficient number of competitors with an appreciable presence on the trade able to constraint the behaviour of the merging parties. The transport of refrigerated goods accounts for less than [0-10]% of the overall market and is thus not considered separately.

Coordinated effects

67. At conference level, Maersk will not be able to control the FEFC post-merger. Neither the reduction of members from 14 to 13 nor increased links between FEFC and Grand Alliance can be expected to appreciably strengthen the cohesion within the conference[39].

68. The combined market share of Maersk and the Grand Alliance would amount to [20-30]%. The CKYH consortium operating on this trade and MSC have substantial market shares which are not substantially lower than the combined market share of Maersk and the Grand Alliance.

69. Consequently, on the Mediterranean to Far East trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

Northern Europe / Mediterranean - Middle East

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences in which parties are members		Consortia in which parties are members		Individual Carriers	
[20-30]%	[0-10]%	[30-40]%	EMERA (Maersk & PONL)	[70-80]%	Grand Alliance (PONL)	[10-20]%	UASC [a, b]	[10-20]%
([20-30]% (East Bound)	([0-10]% East Bound)	([30-40]% (East Bound)					MSC [c]	[10-20]%
[20-30]% (West Bound)	[0-10]% (West Bound)	[30-40]% (West Bound)	NE/DC (PONL)	[10-20]%	EPIC III (PONL)	[0-10]%	CMA CGM [a, b, d]	[10-20]%
							CP Ships [a, b, d]	[0-10]%
							CSAV	[0-10]%
							Hanjin/ Senator	[0-10]%
							Hapag Lloyd [a, b, e]	[0-10]%

[a] = Member of the Europe to Middle East Rate Agreement
[b] = Member of India Pakistan Bangladesh Calcutta Conference
[c] = Member of North Europe to Djibouti conference
[d] = Member of EPIC III consortium
[e] = Member of the Grand Alliance

70. The parties have a combined market share of [30-40]% on the Northern Europe/Mediterranean - Middle East trade[40]. This figure is maintained on both trade directions. The main competitors are UASC with [10-20]% market share, MSC with

39 See above paragraph 59.

40 [30-40]% for North Europe – Middle East and [30-40]% for Mediterranean – Middle East. As there are no appreciable differences, North Europe and Mediterranean will be discussed together.

[10-20]% and CMA-CGM with a market share of [10-20]%. All these competitors are members of conferences together with the parties.

71. Both parties are members of the conference Europe to Middle East Rate Agreement (EMERA)[41]. The market share of EMERA is approximately [70-80]%. PONL is also a member of the North Europe to Djibouti Conference (NE/DC)[42]. The market share of that conference is approximately [10-20]%.

72. On this trade, Maersk operates outside consortia. PONL operates in the Grand Alliance[43] and in the EPIC III Consortium[44]. The Grand Alliance has a market share of [10-20]% in the Europe to Middle East trade and the EPIC III consortium has a market share of approximately [0-10]%.

Non-coordinated effects

73. 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 in the market that 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

74. The transaction changes the structure within EMERA, creates links between Maersk on the one hand and the Grand Alliance, the EPIC III consortium and the NE/DC conference on the other hand and strengthens the links between EMERA and the NE/DC conference and between EMERA and the consortia to which PONL belongs.

75. Both parties are members of the EMERA. Competition between the members of EMERA is restricted[45]. The transaction reduces the numbers of EMERA from 9 to 8. EMERA's [description of the voting system]. Consequently Maersk will not be able to control the conference post-merger. Given the structure of EMERA, it cannot be

41 Members of EMERA and their market shares are CMA CGM ([10-20]%), Contship (N/A), Ellerman (N/A), Hamburg Süd (N/A), Hapag Lloyd ([0-10]%), Maersk ([20-30]%), Norasia ([0-10]%), NYK (N/A), PONL ([0-10]%) and UASC ([10-20]%).

42 The members of the NED conference and their market shares are MSC ([10-20]%), PONL ([0-10]%), Stinnes Linien (N/A) and West European Container Lines (N/A).

43 Members of the Grand Alliance and their market shares covered by the consortium are PONL ([0-10]%), MISC ([0-10]%), Hapag Lloyd ([0-10]%), NYK ([0-10]%) and OOCL ([0-10]%).

44 Members of the EPIC consortium and their market shares covered by the consortium are PONL ([0-10]%), CMA CGM ([0-10]%) and CP Ships ([0-10]%). The EPIC consortium slotcharters to Hapag Lloyd and Hamburg Süd.

45 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of Maersk's 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.

expected that the reduction of members from 9 to 8 will appreciably strengthen the cohesion within the conference.

76. In addition, the transaction will create a link between Maersk and the NE/DC conference to which currently only PONL is a member. Competition between the members of the NE/DC Conference is restricted[46]. The NE/DC conference agreement [description of the voting system] given the small number of members it can be presumed that internal cohesion is strong. Maersk will be able to influence decisions within the conference via PONL's membership and to benefit from the price fixing and information exchange taking place within the conference. Maersk would no longer be an independent competitor of the members of the NE/DC Conference.

77. The combined market share of Maersk and the NE/DC conference is [40-50]%. This is an important increase in the market shares of the NE/DC Conference from [10-20]% pre-merger. As currently the two other members of NE/DC conference besides the parties and MSC are very small carriers[47] to whom the parties have not attributed market share, the transaction could strengthen the cohesion between the parties and their second largest competitor MSC. In addition, the transaction strengthens the links between the conferences EMERA and NE/DC, bringing nearly all competitors on this trade into these two umbrella organisations.

78. Furthermore, the transaction will result in the creation of links between Maersk on the one hand and the EPIC III consortium and the Grand Alliance to both of which PONL belongs on the other hand. Competition between the members of the EPIC III consortium and between the members of the Grand Alliance is restricted[48]. Even without integrating itself into the consortia, Maersk will no longer be an independent competitor of EPIC III and Grand Alliance because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortia.

79. The combined market share of Maersk, EPIC III and the Grand Alliance would be [40-50]%. Considering that CMA CGM, member of EPIC III, operates an additional service outside the consortium, the combined market share of Maersk, the consortia and CMA CGM would reach [50-60]%. In addition as a result of the new links between Maersk, EPIC III, Grand Alliance and NE/DC conference there are virtually no competitors able to carry out a competitive restraint that will not be linked to the parties through a common membership of either a conference or a consortium.

80. In addition, the link between Maersk and the consortia could influence the structure within EMERA. At present 6 out of 9 members which represent less than [40-50]% of the total volume of EMERA are linked to the consortia. Post-merger 6 out of 8

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46 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of PONL's 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.

47 Stinnes Linien (N/A) and West European Container Lines (N/A).

48 Within each of the consortia, members of EPIC and of the Grand Alliance are structurally linked by a vessel sharing agreement and [description of the agreement].

members of EMERA representing about [60-70]% of the total volume shipped by all EMERA members would be interlinked due to their co-operation in the consortia. Therefore the transaction could strengthen the cohesion within EMERA.

81. On the basis of the above, on the North Europe/Mediterranean to Middle East trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between Maersk on the one hand and the NE/DC conference, the EPIC III consortium, and the Grand Alliance on the other hand.

Northern Europe/Mediterranean - Indian Subcontinent

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences in which parties are members		Consortia in which parties are members		Individual Carriers	
[20-30]% ([20-30]% (South Bound) [20-30]% (North Bound))	[0-10]% ([0-10]% (South Bound) [10-20]% (North Bound))	[30-40]% ([30-40]% (South Bound) [30-40]% (North Bound))	IPBCC (Maersk and PONL)	[70-80]%	EPIC III (PONL)	[10-20]%	MSC	[10-20]%
							CMA CGM [a, c]	[0-10]%
					Grand Alliance (PONL)	[0-10]%	UASC [a]	[0-10]%
							SC India [a]	[0-10]%
							MISC [a, b]	[0-10]%
							CSAV	[0-10]%
							Yang Ming [a]	[0-10]%
							Evergreen [a]	[0-10]%
							CP Ships [a, c]	[0-10]%

[a] = Member of IPBCC
[b] = Member of the Grand Alliance
[c] = Member of the EPIC III consortium

82. The parties have a combined market share of [30-40]% on the trade from Northern Europe/Mediterranean to the Indian Subcontinent. This figure is maintained on both trade directions. The parties are appreciably stronger on the North Europe – Indian Subcontinent trade ([30-40]%) than on the Mediterranean – Indian Subcontinent trade ([20-30]%). The main competitors and their approximate market shares are: MSC ([10-20]%), CMA CGM ([0-10]%) and UASC ([0-10]%). Only MSC operates outside conferences or consortia to which the parties are members.

83. Both parties are members of the IPBCC conference. The conference has 15 members[49] and a market share of [70-80]%.

49 CMA CGM ([0-10]%), CP Ships ([0-10]%), Evergreen ([0-10]%), Hamburg Süd (N/A), Hapag Lloyd ([0-10]%), Maersk ([20-30]%), MISC ([0-10]%), Norasia ([0-10]%), PONL ([0-10]%), PNSC (N/A), Rickmers (N/A), Shipping Corporation of India ([0-10]%), UASC ([0-10]%), Yang Ming Line ([0-10]%) and Zim ([0-10]%).

84. On this trade Maersk operates outside consortia. PONL for its part operates within the EPIC III consortium[50] and within the Grand Alliance. The EPIC III consortium has a [10-20]% market share. The Grand Alliance has a [0-10]% market share.

Non-coordinated effects

85. 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 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. It is therefore not considered separately.

Coordinated effects

86. The transaction changes the structure within IPBCC, creates links between Maersk on the one hand and the consortia EPIC III and the Grand Alliance on the other hand and strengthens the links between IPBCC and the consortia to which PONL belongs.

87. Both parties are members of the IPBCC conference. Competition between the members of the IPBCC conference is restricted[51]. The transaction reduces the number of members of the IPBCC from 15 to 14. IPBCC [description of the voting system] and consequently Maersk will not be able to control the conference post-merger. Given the structure of IPBCC, it cannot be expected that the reduction of members from 15 to 14 will appreciably strengthen the cohesion within the conference.

88. The transaction would create links between Maersk on the one hand and the EPIC III consortium and the Grand Alliance on the other hand. Competition between the members of the EPIC III consortium and between the members of the Grand Alliance is restricted[52]. The consortium members jointly slot charter to Hamburg Süd and Hapag Lloyd.

89. The combined market share of the Maersk, the EPIC III consortium and the Grand Alliance would be [40-50]%. Even without integrating itself into the consortia, Maersk will no longer be an independent competitor of EPIC III and Grand Alliance because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium.

90. In addition, the link between Maersk and the consortia could influence the structure within IPBCC. At present 7 out of 15 members which represent less than [30-40]% of

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50 The members of the EPIC consortium have the following market shares within EPIC: CMA CGM ([0-10]%), CP Ships ([0-10]%) and PONL ([0-10]%). The EPIC consortium slot charters to Hapag Lloyd and Hamburg Süd.

51 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of Maersk's 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.

52 Within each of the consortia, members of EPIC and of the Grand Alliance are structurally linked by a vessel sharing agreement and [description of the agreement].

the total volume of IPBCC are linked to the consortia. Post-merger 7 out of 14 members of IPBCC representing slightly less than [60-70]% of the total volume shipped by all IPBCC members would be interlinked due to their co-operation in the consortia. However, still half of the members of IPBCC would not be linked to the consortia. As decisions are taken [Description of the voting system and the possibility to influence the decision making process][53]. Therefore it cannot be expected that the additional links between IPBCC and the consortia will appreciably strengthen the cohesion within IPBCC.

91. Regarding competitive constraints, there are a number of carriers operating outside the consortia which have substantial market shares. In addition, MSC is operating outside the conference.

92. On the basis of the above, on the North Europe/Mediterranean to Indian Subcontinent trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

North Europe / Mediterranean – East Africa

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[20-30]% ([20-30]% (South Bound) [20-30]% (North Bound))	[0-10]% ([0-10]% (South Bound l) [0-10]% (North Bound))	[20-30]% ([20-30]% (South Bound) [30-40]% (North Bound))	EEAC (PONL)	[40-50]%			MSC [a] Delmas CMA CGM [a] DAL WEC [a]	[30-40]% [10-20]% [0-10]% [0-10]% [0-10]%

[a] Member of Europe to East Africa Conference (EEAC)

93. The aggregated market share of Maersk and PONL is about [20-30]% on the trade between Europe and East Africa[54]. The most important competitors and their approximate market shares are according to the information provided by the parties: MSC ([30-40]%), Delmas ([10-20]%), CMA CGM ([0-10]%), and DAL ([0-10]%) and

53 [Description of the voting system].

54 Volumes to the Indian Ocean islands which are closely located to the East African coast are included. The market shares are [30-40]% for North Europe – East Africa and [20-30]% for Mediterranean – East Africa. As there are no appreciable differences, North Europe and Mediterranean will be discussed together.

WEC ([0-10]%)[55]. Of these only Delmas and DAL operate outside the conference to which PONL is a member.

94. In the trade direction from East Africa to Europe, the transport of refrigerated goods accounts for slightly more than [0-10]% of the overall market. In the other trade direction transport of refrigerated cargo represents less than [0-10]% of the overall market. The parties' combined market share for the transport of reefer containers is only slightly above their overall market share.

95. PONL is member of the Europe/East Africa Conference (EEAC)[56] which has a market share of about [40-50]%.

Non-coordinated effects

96. 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.

Coordinated effects

97. The merger would create a link between Maersk and EEAC. Competition between the members of EEAC is restricted[57]. Maersk will be able to influence decisions within the conference via PONL's membership and to benefit from the price fixing and information exchange taking place within the conference. Maersk would no longer be an independent competitor of the conference but could use the information to adapt its conduct on the market.

98. As shown in the table above, the combined market share of Maersk and EEAC would be about [60-80]%. Maersk would lose its position as the most important competitor of EEAC. Maersk would in particular be linked to MSC, which has a comparable market size. Furthermore MSC has a slot charter agreement with PONL under the terms of which [description of the agreement]. This co-operation accounts for [0-10]% market share and would establish an additional link between Maersk and MSC. The only independent competitors with a market share above [0-10]% would be Delmas and DAL.

99. On the basis of the above, on the East Africa trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA

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55 Some competitors have indicated in market investigation lower market shares for themselves. It seems that they did not include the volume to the Indian Ocean islands which are closely located to the East African coast.

56 Members of EEAC and their market shares: CMA CGM ([0-10]%), Consortium Hispania Lines (N/A), Ellerman (N/A), Deutsche Seereederei Rostock-DSR (N/A), Harrison Line (N/A), Ignazio Messina ([0-10]%), Jadranska Slobodna Plovidba (N/A), Kenya International Shipping Line ([0-10]%), Lloyd Triestino (N/A), MSC ([30-40]%) PONL ([0-10]%), Wec Line ([0-10]%)

57 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of PONL's 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.

Agreement, stemming from the coordinated effects following from the link between Maersk and EEAC.

Europe - South Africa

<u>Market shares</u>

Maersk	PONL	Combined Maersk / PONL	Conferences in which parties are members		Consortia in which parties are members		Individual Carriers	
[20-30]%	[10-20]%	[40-50]%	ESAC	[50-60]%	SAECS	[50-60]%	MSC	[30-40]%
([20-30]% (South Bound)	([10-20]% (South Bound)	([30-40]% (South Bound)	(Maersk & PONL)		(Maersk & PONL)		DAL [a b]	[0-10]%
[30-40]% (North Bound))	[10-20]% (North Bound))	[40-50]% (North Bound))					MACS [b]	[0-10]%

[a] = Member of SAECS consortium
[b] = Member of the ESAC conference

100. The parties combined market share is [30-40]% southbound and [40-50]% northbound. This figure can be further broken down into [40-50]% southbound from North Europe and [50-60]% northbound from South Africa to North Europe. For the Mediterranean to South Africa the parties have [20-30]% southbound and [20-30]% northbound.

101. The most important competitor is MSC with [30-40]% market share southbound and [30-40]% market share northbound. MSC is the only carrier which does not take part in a conference or in a consortium to which the parties belong. The second largest carrier on the trade is Deutsche Africa Linen (DAL) with [0-10]% market share. The third largest competitor is Maritime Carrier Shipping (MACS) with [0-10]% market share.

102. The transport of refrigerated goods accounts for [30-40]% of the trade from South Africa to Europe and [0-10]% from Europe to South Africa. Northbound, the transport of reefer containers accounts for [40-50]% of Maersk's volume and for [20-30]% of PONL's volume. The main commodity shipped northbound is fresh fruit accounting for [80-90]% of refrigerated goods shipped. The combined market share of the parties in the transport of reefer containers is about [20-30]% if transport in conventional bulk reefer ships is included in the same market and about [50-60]% if only reefer containers are considered.

103. Most important competitors for the transport in reefer containers are MSC ([10-20]% market share for reefer containers only), DAL ([10-20]%) and MASC ([0-10]%). Transport for refrigerated goods in bulk reefer vessels is provided by Lauritzen Cool ([20-30]% market share for reefer containers and bulk reefer), Seatrade ([10-20]%) and Capesize ([0-10]%).

104. Both parties are members of the Europe to Southern Africa Conference (ESAC)[58] and of the Southern Africa to Europe Consortium (SAECS)[59]. The membership of the conference and the consortium is almost the same[60]. The ESAC conference has a [50-60]% southbound and [60-70]% northbound market share. The SAECS consortium has a [40-50]% market share southbound and a [50-60]% market share northbound from South Africa to Europe[61].

Impact of the transaction on the competitive situation

105. The parties put forward that the transaction would not appreciably change the market structure because Maersk and PONL currently are both member of ESAC and SAECS. The parties do not offer an independent service outside SAECS.

106. It is correct that ESAC and SAECS restrict competition between their members, however there remains limited competition between Maersk and PONL which will disappear as a result of the transaction.

107. Competition within ESAC and SAECS is restricted because the conference tariff is still predominant and the parties have dedicated a large proportion of their volume to multi-carrier contracts with other members of the conference and the consortium – namely [50-100]% for APMM and [50-100]% for PONL. In addition, ESAC fixes rebates on volumes for shippers and ancillary charges and surcharges which are applied to between [40% and 90%] of Maersk's volume on the trade. Between [10-20]% and [30-40]% of the total price of transport on these trades are surcharges and ancillary charges, so that there is no competition between the members of the conferences on this important part of the price. SAECS is an integrated consortium. Vessels were specifically acquired by the parties to operate on this trade and there is a […] lock in period and a […] notice period before the parties can withdraw from the consortium.

108. Nevertheless, there remains limited competition between the members of ESAC and SAECS, in particular between Maersk and PONL. [50-100]% of Maersk's volume and [0-50]% of PONL's volume is carried under individually negotiated agreements with shippers. For this volume, there can be price competition between Maersk and PONL. This is of particular importance in a market structure which is in general characterised by various links between the carriers. The transaction would put an end to this limited price competition between Maersk and PONL. Furthermore, the parties have informed

58 Members of ESAC and their market shares: Maersk (including Safmarine) ([20-30]%), PONL ([10-20]%), DAL ([0-10]%), MACS ([0-10]%), Transatlantic Southern Africa Services ([0-10]%) and Consortium Hispania Lines ([0-10]%).

59 Members of the SAECS consortium are Maersk (including Safmarine) ([20-30]%), PONL ([10-20]%) and DAL ([0-10]%).

60 Two members of ESAC that are not members of SAECS charter space from SAECS on this trade. They are Consortium Hispania Lines (which charters slots from SAECS from the Canary Islands to South Africa and vice versa) and Transatlantic Southern Africa Services (subsidiary of Swedish Orient Line). The third member of ESAC that is not a member of SAECS is MACS, a multipurpose carrier whose ro-ro vessels are not similar to those used in the SAECS consortium.

61 Including both North Europe and the Mediterranean.

the Commission that [information on the procedure to enter into multi-carrier contracts and the possible consequences thereof].

109. In addition, the transaction changes the structure within ESAC and SAECS, which will be discussed under coordinated effects.

Non-coordinated effects

110. The parties have a substantial aggregated market share in the market for containerised liner shipping on this trade. They are in particular strong in the transport of refrigerated goods in reefer containers. Shippers from South Africa have expressed concern about the transaction as regards the availability of transport in reefer containers from operators other than Maersk. The parties on the other hand are of the opinion that there is a high degree of demand-side substitution between transport in reefer container and in bulk reefer[62].

111. A general trend can be observed according to which export volumes in reefer containers have increased steadily since the South African fruit market was deregulated in 1997[63]. In the last five years these volumes have increased from [20-30]% in 1999 to [60-70]% in the first half of 2005. This trend illustrates that many shippers that have switched from bulk reefer to reefer container in the past do not switch back to bulk reefer any more[64].

112. The market investigation produced strong indications that for certain shippers bulk reefer vessels are not a substitute for reefer containers. The possibilities of substitution between reefer container and bulk reefer depend on the characteristics of the product and the volume shipped.

113. Whereas some fruits such as lemons, apples, nectarines, pears and prunes are to an appreciable extent shipped both in reefer containers and bulk reefer[65], other fruits such as mixed citrus and subtropical fruits (e.g. avocados, mangos, litchees) are nearly only transported in reefer containers[66]. The same applies to fresh vegetables, marine and meat products.

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62 The parties argue inter alia that there is price correlation between the two modes of transport. However, the data provided by the parties are not sufficient to draw a final conclusion. Seasonality and a time trend are likely to overstate the correlation between price series. In fact, year to year price changes show a different evolution for reefer container and bulk reefer. Furthermore, in this context price correlation would not be proof for substitution.

63 Up to that year, export of fruit was carried out through export marketing boards.

64 Such a trend was already identified for mature markets in the judgment of the CFI of 30 September 2003 in Joined Cases T-191/98, T-212/98 and T-214/98, TACA, pararagraph 792.

65 According to statistics of the Perishable Products Export Control Board of South Africa, in the first half of 2005, 59% of lemons, 73% of apples, 72% of nectarines, 70% of pears and 72% of prunes were exported to Northern Europe in reefer containers.

66 According to statistics of the Perishable Products Export Control Board of South Africa, 97% of mangos, 99% of mixed citrus and 100% of avocados and litchees were exported to Northern Europe in reefer containers in the first half of 2005.

114. Shippers point to several reasons for the dependence on reefer containers. For certain fruits temperature control must be preserved during the transport to guarantee the quality required by the customer. This can only be achieved by transport in reefer containers, because the fruits can be loaded in the container near the orchards and remain in the container until delivery to the customer. Secondly, shippers put forward that exports of fresh produce into the European Union have to adhere to strict food standards and phytosanitary measures and regulations[67]. In order to avoid contamination clean and closed/secure environments are created within the refrigerated containers that cannot be achieved in a reefer vessel. Thirdly, some shippers indicate that the choice of transport in container vessels is to a large extent determined by the customer (e.g. supermarkets) that request that the product be delivered in sealed containers door to door.

115. As to the volume shipped, according to the submissions of South African shippers a certain minimum production volume is required to justify the use of a reefer vessel. Consolidation or freight forwarding is not generally practised. There are also practical difficulties for consolidation such as the risk of contamination and different product requirements such as temperature control or customer requirements.

116. It is possible for the parties to identify the shippers which cannot substitute bulk reefer for reefer containers due to the characteristics of their products or due to their size. Shippers indicate the products which they intend to ship and also determine specific temperature requirements. The size of a shipper is in general known or could otherwise be deducted from the volume shipped. It is therefore possible to price discriminate against this distinct set of shippers.

117. The parties are facing few competitive constraints for the transport of reefer containers. Although MSC is a significant operator in the trade, it deploys low reefer capacity from South Africa to Europe[68], accounting only for [10-20]% of the transport of refrigerated goods in containers. A similar sized competitor is DAL, but it has a joint marketing platform called SAFDAL with Safmarine, which is owned by Maersk. Under the terms of the SAFDAL agreement, [description of the agreement]. Hence, DAL cannot be considered a competitor as […].

118. With regard to potential new entry, it should be considered that the South Africa trade is long and thin and has a limited growth potential[69]. There is also no record of a successful new entry in the past 7 years[70]. In addition to low volume, the competitive structure of the trade with a highly integrated consortium and conference and their preponderant presence in the market has a deterrent effect and increases the barriers to entry.

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67 In particular Articles 17-19 of Regulation 178/2002.

68 MSC has built its fleet with second hand ships with a low reefer capacity rather than ships specifically built for the trade, see Dynamar Report, The North West Europe Southern Africa trade, March 2005, page 8.

69 Growth in what is essentially a mature Europe to Southern Africa trade is modest at around some percentage points a year (with the exception of the car assembly and reefer trade), see Dynamar Report, The North West Europe Southern Africa trade, March 2005, page 28.

70 Dynamar Report*,* cited above.

119. On the basis of the above, on the Europe to Southern Africa trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from a particularly strong position of the parties for the transport of reefer containers.

Coordinated effects

120. As both Maersk and PONL are currently members of ESAC, the merger reduces the number of members from 7 to 6. Safmarine is member of ESAC as well, therefore companies controlled by Maersk will have [description of ESAC's voting system and the possibility to influence the decision making process]. However, as Maersk will account for more than [50-75%] of the volume carried by the conference, it will dominate ESAC. The countervailing power of PONL will disappear. In any event, this change in the structure of ESAC could strengthen the cohesion within ESAC and thereby further restrict competition between its members.

121. Both Maersk and PONL are currently members of SAECS. The merger reduces the number of members from 4 to 3. As Safmarine is member of SAECS as well, Maersk controls 2 out of 3 members of SAECS. The third member DAL is bound to Safmarine due to its co-operation in SAFDAL. In SAECS, [description of the voting system and the possibility to influence the decision making process][71]. Even though this might formally give Maersk no better position than currently, Maersk will account for [80-90]% of the SAECS volume. As PONL's countervailing power will disappear, it will gain *de facto* control of SAECS.

122. ESAC and SAECS have a market share of above [40-50]% for containerised transport. In the case of the transport of refrigerated goods by reefer container, the combined market share of ESAC and SAECS is nearly [70-80]%. The only independent competitor is MSC, which is particularly weak in the transport of reefer containers. Given that Maersk will de facto control SAECS, only two carriers will remain as main players. This could increase the risk of coordination between Maersk and MSC. Such coordination could be facilitated by the fact the Maersk and MSC had a vessel sharing agreement on the trade between Asia and South Africa which remained in place until the second quarter of 2005.

123. On the basis of the above, on the Europe to Southern Africa trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the changes in the structure of ESAC and SAECS.

Europe – West Africa

124. On the Europe – West Africa trade Maersk has a market share of [30-40]%. Maersk is in the conference EWATA, which has a market share of [60-70]%. PONL is not active on this trade and therefore does not add market shares. Consequently, the concentration does not change Maersk's market position on the Europe – West Africa trade. On the Europe – West Africa trade the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

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[71] [Information on the voting system].

North Europe / Mediterranean – Caribbean and Central America

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]% ([10-20]% (South Bound) [10-20]% (North Bound))	[0-10]% ([0-10]% (South Bound) [0-10]% (North Bound))	[10-20]% ([10-20]% (South Bound) [20-30]% (North Bound))	FWI (Maersk) WITASS (PONL) NCS (PONL)	[20-30]% [20-30]%*	Eurosal/ NCS (PONL)	[20-30]%	CMA CGM [a, b, c] EWL Hapag Lloyd [b,c] Marfret [a] Hamburg Süd [b,c]	[20-30]% [0-10]% [0-10]% [0-10]% [0-10]%

[a] = Member of FWI
[b] = Member of conferences WITASS and NCS
[c] = Member of Eurosal/NCS consortium
* = Combined market share of WITASS and NCS

125. The aggregated market share of Maersk and PONL ranges between [0-10]% from the Mediterranean to the Caribbean/Central America and [20-30]% from the Caribbean/Central America to North Europe. The parties are stronger on the North Europe - Caribbean/Central America trade ([20-30]% overall) than on the Mediterranean - Caribbean/Central America trade ([10-20]% overall). The most important competitors and their approximate market shares are: CMA CGM ([20-30]%), EWL ([0-10]%), Hapag Lloyd ([0-10]%), Marfret ([0-10]%) and Hamburg Süd ([0-10]%). Of these only EWL operates outside the conferences and consortia to which Maersk or PONL are a member.

126. From the Caribbean/Central America, the transport of refrigerated goods accounts for about [10-20]% of the overall market. The combined market share of the parties in the transport of reefer containers is about [0-10]% if transport in conventional bulk reefer ships is included. The majority of reefer cargo shipped are bananas, which are predominantly shipped in bulk reefer vessels. The combined market share of the parties is about [20-30]% if only reefer containers are considered. Most important competitors for the transport of reefer containers are CMA CGM (market share of approximately [30-40]% for reefer container only), CSAV (about [0-10]%) and EWL (about [0-10]%).

127. Maersk is member of the FWI[72] conference which is active in the French Antilles and does not provide a service to any other port in the Caribbean and Central America. FWI has a market share in the overall trade of about [20-30]%. PONL is member of the Association of the West India Trans-Atlantic Steam Ship Lines (WITASS)[73] and of the

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72 Members of FWI and their market shares are CMA CGM ([20-30]%), CNFA (N/A), Maersk ([10-20]%) and Marfret ([0-10]%).

73 Members of WITASS and their market shares are CMA CGM ([20-30]%), CSAV ([0-10]%), Hamburg Sudamerikanische Dampfshiffahrtgessellschaft ([0-10]%), Hapag Lloyd ([0-10]%), PONL ([0-10]%).

New Caribbean Service Rate Agreement (NCS)[74]. 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]% and important members are CMA CGM, CSAV, Hamburg Süd and Hapag Lloyd.

128. Maersk is member of a vessel sharing agreement with CMA CGM and Marfret which has a market share of about [0-10]%. Maersk has also a slot charter agreement with CMA CGM which covers about [0-10]% of the market and attributes [0-20]% of the slots to Maersk and [80-100]% of the slots to CMA CGM. PONL is member of the Eurosal/NCS Consortium (Eurosal). Its market share is [20-30]% and important members are CMA CGM, CSAV, Hamburg Süd and Hapag Lloyd.

Non-coordinated effects

129. The combined market shares of the parties do not give rise to competition concerns, in particular in view of the existence of several other strong players on this trade.

Coordinated effects

130. The merger would create a link between Maersk and the conferences WITASS and NCS. Competition between the members of these conferences is restricted[75]. Maersk will be able to influence decisions within the conference via PONL's membership and to benefit from the price fixing and information exchange taking place within the conferences. Maersk would no longer be an independent competitor of these conferences on the overall trade but could use the information to adapt its conduct on the market, in particular in view of a possible extension of its activities to the areas covered by WITASS and NCS.

131. In addition, the merger would strengthen the link between the conferences FWI and WITASS/NCS. Not only CMA CGM but also Maersk would be member of all three conferences. Even though the geographical emphasis of FWI and WITASS/NCS might be different, they are operating on the same market and could collude on the coverage of this market.

132. The combined market share of Maersk and WITASS/NCS would be about [30-40]%, of FWI and WITASS/NCS about [50-60]%[76]. The only independent competitor with a market share above [0-10]% would be EWL.

133. The merger would also create a link between Maersk and the Eurosal consortium. Competition between the members of Eurosal is restricted[77]. Even without integrating

74 Members of NCS and their market shares are CMA CGM ([20-30]%), CSAV ([0-10]%), Hamburg Süd ([0-10]%) Hapag Lloyd ([0-10]%), PONL ([0-10]%).

75 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of PONL's cargo is carried under negotiated rates between individual shippers and individual carriers, but up to [10-20]% of the total price are surcharges and ancillary charges. This means that there continues to be joint price setting for part of the price.

76 As nearly [10-20]% of the market cannot be attributed, the market share might be even higher.

itself into the consortium, Maersk will no longer be an independent competitor of Eurosal because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium. Access to information and possibilities to influence are of particular importance in view of a possible extension of its activities to Eurosal's areas of operation.

134. The combined market share of Maersk and Eurosal is about [30-40]%. The reason for the relatively low market share of Eurosal is that CMA CGM operates most of its volume on this trade outside Eurosal, partly in the vessel sharing agreement with Maersk and Marfret to the French Antilles, partly individually. The combined market share of Maersk, CMA CGM and Eurosal would be about [50-60]%[78]. Again, the only independent competitor with a market share above [0-10]% would be EWL.

135. On the basis of the above, on the Caribbean/Central America trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between the conferences FWI and WITASS/NCS and between Maersk and Eurosal.

North Europe / Mediterranean – East Coast South America

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]% ([10-20]% (North Bound) [10-20]% (South Bound))	[0-10]% ([0-10]% (North Bound) [0-10]% (South Bound))	[20-30]% ([10-20]% (North Bound) [20-30]% (South Bound))			VSA PONL/ Hamburg Süd	[20-30]%	Hamburg Süd MSC CSAV CMA CGM	[20-30]% [10-20]% [0-10]% [0-10]%

136. The aggregated market share of Maersk and PONL ranges between [20-30]% on the trade between the Mediterranean and the East Coast of South America and [20-30]% on the trade between North Europe and the East Coast of South America[79]. The most important competitors and their approximate market shares are: Hamburg Süd ([20-

77 Members of the Eurosal are structurally linked by a vessel sharing agreement and [description of the agreement].

78 As nearly [10-20]% of the market cannot be attributed, the market share might be even higher.

79 As there are no appreciable differences, North Europe and Mediterranean will be discussed together.

30]%), MSC ([10-20]%), CSAV ([0-10]%) CMA CGM ([0-10]%). Of these only Hamburg Süd operates in a consortium to which Maersk or PONL are a member.

137. From the East Coast of South America, the transport of refrigerated goods accounts for about [10-20]% of the overall market. The combined market share of the parties in the transport of reefer containers is about [30-40]% if transport in conventional bulk reefer ships is included. The combined market share of the parties is about [40-50]% if only reefer containers are considered. Most important competitors for the transport of reefer containers are Hamburg Süd (market share of approximately [10-20]% for reefer container only), CSAV (about [10-20]%) and MSC (about [0-10]%).

138. No conference is operating on this trade. PONL is member of a vessel sharing agreement with Hamburg Süd which covers about [20-30]% of the market and operates as a consortium. According to the parties PONL has no own capacity on this trade, but charters slots through the vessel sharing agreement.

Non-coordinated effects

139. The combined market shares of the parties do not give rise to competition concerns. There are indications that for certain shippers, in particular exporters of meat, transport in bulk reefer vessels is hardly a substitute for reefer containers. However, on a possible narrower market for transport of reefer containers only, the parties face sufficient competitive constraints. Several carriers have appreciable market shares for the transport of reefer containers, most important Hamburg Süd. Furthermore, the increment of PONL is relatively low.

Coordinated effects

140. The merger would create a link between Maersk and the consortium between PONL and Hamburg Süd. Competition between the members of the consortium is restricted[80]. Even without integrating itself into the consortium, Maersk will no longer be an independent competitor of the consortium because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium.

141. The combined market share of Maersk and the consortium is slightly below [40-50]% for the overall transport of containers. For the transport of reefer containers only, the combined market share would be about [60-70]%. Competitors CSAV and MSC would have a much lower market share. The competition between the main players Maersk and Hamburg Süd would be restricted.

142. On the basis of the above, on the East Coast South America trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between Maersk and the consortium PONL/Hamburg Süd.

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80 Members of the consortium are structurally linked by a vessel sharing agreement and [description of the agreement].

North Europe / Mediterranean – West Coast South America

<u>Market shares</u>

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[20-30]% ([20-30]% (North Bound) [0-10]% (South Bound))	[0-10]% ([0-10]% (North Bound) [0-10]% (South Bound))	[20-30]% ([30-40]% (North Bound) [10-20]% (South Bound))	ESPMC (PONL)	[30-40]%	Eurosal (PONL)	[30-40]%	CSAV[a,b] MSC CCNI Hamburg Süd [a, b] NYK	[10-20]% [10-20]% [10-20]% [10-20]% [0-10]%

[a] = Member of ESPMC
[b] = Member of Eurosal

143. The aggregated market share of Maersk and PONL on the overall trade between Europe and the West Coast of South America ranges between [10-20]% from Mediterranean to West Coast South America and [30-40]% from West Coast South America to North Europe. The parties are for containerised transport in general stronger on the North Europe – West Coast South America trade ([30-40]% overall) than on the Mediterranean – West Coast South America trade ([10-20]% overall). The most important competitors and their approximate market shares are: CSAV ([10-20]%) MSC ([10-20]%), CCNI ([10-20]%), Hamburg Süd ([10-20]%) and NYK ([0-10]%). Of these MSC, CCNI and NYK operate outside the conference and consortium to which PONL is a member.

144. From the East Coast of South America, the transport of refrigerated goods accounts for about [10-20]% of the overall containerised market. The combined market share of the parties in the transport of reefer containers is about [10-20]% if transport in conventional bulk reefer ships is included. The combined market share of the parties is about [50-60]% if only reefer containers are considered, with [50-60]% to North Europe and [70-80]% to the Mediterranean. Most important competitors for the transport of reefer containers are CSAV (market share of approximately [0-10]% for reefer container only), CCNI (about [0-10]%), Hamburg Süd (about [0-10]%) and MSC (about [0-10]%).

145. PONL is member of the European/South Pacific & Magellan Freight Conference (ESPMC)[81], which has a market share of about [30-40]%. In addition, PONL is member of Eurosal, which operates both on the Europe – Caribbean/Central America and Europe – West Coast South America trades. Eurosal has a market share of about [30-40]% on the Europe – West Coast South America trade. Eurosal has recently added a new loop on its North Europe – West Coast of South America service, which will

81 Members of ESPMC and their market share CMA CGM ([0-10]%), CSAV ([10-20]%), Hamburg Süd ([10-20]%), Hapag Lloyd (N/A), PONL ([0-10]%), Bank Line (N/A), Columbus Line (N/A), Contship Container Lines (N/A), Hyundai Marine Merchant (N/A), Marfret (N/A),

increase its weekly capacity for non-reefer as well as for reefer containers, which might in future increase its market share. The main members of ESPMC and Eurosal are identical.

Non-coordinated effects

146. The combined market shares of the parties do not give rise to competition concerns on the overall market for containerised liner shipping. The same applies to the transport of refrigerated goods if reefer vessels are included. However, on a possible narrower market for transport of reefer containers only, the aggregated market shares of the parties are very high. The majority of reefer cargo shipped from the West Coast of South America is bananas. Bananas are mainly shipped in bulk reefers, which carry about [70-80]% of the refrigerated cargo. Bananas can also be transported in reefer containers. About [40-50]% of all cargo carried in reefer containers are bananas. Other cargo is mainly fresh fruit (about [30-40]%) and frozen fish ([0-10]%). Reefer containers do not have specific advantages for the transport of bananas vis-à-vis bulk reefers. Banana transport in bulk reefer is therefore a substitute for reefer containers.

147. However, there are indications that for certain shippers, in particular exporters of subtropical fruits and frozen fish and small shippers, bulk reefer vessels are not a substitute for reefer containers. It should also be considered that it is possible for the parties to identify these shippers and eventually to price discriminate against them. Nevertheless, in view of a sufficient number of competitors with an appreciable market share, the transaction does not lead to a significant impediment of effective competition. This also applies to the West Coast South America to Mediterranean trade. The parties' market share is high on this thin trade, but PONL increment is small. PONL ships [0 - 3,000] TEU annually on this trade, which is the approximate equivalent of [0-5] loaded vessels. PONL tranships this volume in Rotterdam to the Mediterranean. Other shipping lines already active on the West Coast South America to North Europe trade such as Hamburg Süd or CMA CGM could introduce the same transhipment concept.

Coordinated effects

148. The merger would create a link between Maersk and the conference ESPMC. Competition between the members of ESPMC is restricted[82]. Maersk will be able to influence decisions within the conference via PONL's membership and to benefit from the price fixing and information exchange taking place within the conferences. Maersk would no longer be an independent competitor of the conference but could use the information to adapt its conduct on the market.

149. The merger would create a link between Maersk and Eurosal. Competition between the members of Eurosal is restricted[83]. Even without integrating itself into Eurosal, Maersk will no longer be an independent competitor of Eurosal because it controls a member

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82 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of PONL's cargo is carried under negotiated rates between individual shippers and individual carriers, but between [0-10]% and [10-20]% of the total price are surcharges and ancillary charges. This means that there continues to be joint price setting for part of the price.

83 Members of the Eurosal are structurally linked by a vessel sharing agreement and [description of the agreement].

of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium.

150. As shown in the table above, the combined market share of Maersk and the conference or the consortium would be about [50-60]% on the overall trade and up to [60-70]% from Northern Europe to the West Coast of South America and up to [70-80]% on the overall trade for the transport of reefer containers only. Maersk would lose its position as the most important competitor of ESPMC and Eurosal. Significant competitors such as CSAV and Hamburg Süd would become linked to Maersk. Competitors outside Eurosal with a market share above [0-10]% on the overall trade would be MSC, CCNI and NYK, but the market share of each of them is much lower than the combined market share of Maersk and ESPMC/Eurosal. Furthermore, CCNI operates the consortium “Med Andes” with CSAV and is thereby linked to Eurosal.

151. On the basis of the above, on the West Coast South America trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between Maersk and ESPMC as well as Eurosal.

North Europe / Mediterranean – Australia/New Zealand

Market shares

Maersk	PONL	Combined Maersk / PONL	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]% ([10-20]% (South Bound) [10-20]% (North Bound))	[20-30]% ([20-30]% (South Bound) [20-30]% (North Bound))	[30-40]% ([30-40]% (South Bound) [30-40]% (North Bound))	EANZC/ ANZELA (both PONL)	[50-60]%*	NANZC (PONL)	[50-60]%	CP Ships [a] MSC Hapag Lloyd [a] CMA CGM [a] Hamburg Süd [a] OOCL	[10-20]% [10-20]% [0-10]% [0-10]% [0-10]% [0-10]%

[a] = Member of EANZC, ANZELA and NANZC
* = Combined market share of EANZC and ANZELA

152. The aggregated market share of Maersk and PONL ranges between [30-40]% on the trade between the Mediterranean and Australia/New Zealand and [30-40]% on the trade between North Europe and Australia/New Zealand[84]. The most important competitors and their approximate market shares are: CP Ships ([10-20]%), MSC ([10-20]%), Hapag Lloyd ([0-10]%), CMA CGM ([0-10]%), Hamburg Süd ([0-10]%) and

84 As there are no appreciable differences, North Europe and Mediterranean will be discussed together.

OOCL (about [0-10]%)[85]. Of these only MSC and OOCL operate outside the conferences and the consortium to which PONL is a member.

153. 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 about [40-50]% if transport in conventional bulk reefer ships is included and about [60-70]% if only reefer containers are considered. Most important competitors for the transport of reefer containers are CP Ships (about [10-20]% for reefer containers only) and CMA CGM (about [0-10]%), MSC (about [0-10]%) and Hapag Lloyd (about [0-10]%)[86].

154. PONL is member of the Europe to Australian and New Zealand Conference (EANZC)[87] and to the Australia/New Zealand to Europe Liner Association (ANZELA)[88], both conferences operating 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 [50-60]%. PONL is also member of the New Australia/New Zealand Consortium (NANZC)[89], which has a market share of about [50-60]%. Membership of the conferences and the consortium is nearly identical[90]. There are no other conferences or consortia operating on this trade. Maersk is an independent carrier on this trade, i.e. does not belong to any conferences or consortia.

Non-coordinated effects

155. 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 substantially stronger. There are strong indications that for certain shippers, in particular the meat exporters, conventional bulk reefer vessels are

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85 […]. However, the market shares within the group of the competitors calculated on the basis of the volumes indicated by the competitors for their own services differ in that one carrier sees himself stronger and some other carriers see themselves less strong than indicated by the parties.

86 Also for transport of reefer containers only, […]. However, the market shares within the group of the competitors calculated on the basis of the volumes indicated by the competitors for their own services differ in that one carrier sees himself stronger and some other carriers see themselves less strong than indicated by the parties.

87 Members of EANZC and their market share CMA CGM ([0-10]%), Marfret (N/A), Consortium Hispania Lines (N/A), Contship ([10-20]%), Hamburg Süd ([0-10]%) Hapag Lloyd ([0-10]%), PONL ([20-30]%).

88 Members of ANZELA and their market shares Associated Container Transportation (N/A), CMA CGM ([0-10%) Marfret (N/A), Consortium Hispania Lines (N/A), Contship ([10-20]%), Hamburg Süd ([0-10%), Hapag Lloyd ([0-10%), PONL ([20-30]%), Wallenius Wilhelmsen (N/A).

89 Members of the NANZ consortium and their market shares PONL ([20-30]%), Contship ([10-20]%) CMA CGM ([0-10%), Marfret (N/A), Hamburg Süd ([0-10%), Hapag Lloyd ([0-10%).

90 Members of the conferences and the consortium are PONL, CP Ships, Hapag Lloyd, CMA CGM, Hamburg Süd, Marfret. Additional member of EANZC is Consortium Hispania Lines, additional members of ANZELA are Consortium Hispania Lines and Wallenius Wilhemsen.

not a substitute to reefer containers. Nevertheless, even for transport in reefer containers, the parties would face competition from several carriers with an appreciable reefer capacity.

156. Furthermore, Maersk operates on these trades only an indirect service through transhipment at Singapore, Tanjung Pelepas or Kaohsiung. It is reported that transhipment is frequent on trades to and from Australia/New Zealand[91]. This means that the barriers to entry are relatively low on these trades. Other carriers which are already active on the Europe/Far East trade could offer containerised liner services including reefer containers to and from Australia/New Zealand through transhipment via Asia.

Coordinated effects

157. The merger would create a link between Maersk and the conferences EANZC and ANZELA. Competition between the members of the conferences is restricted[92]. Maersk will be able to influence decisions within the conferences via PONL's membership and to benefit from the price fixing and information exchange taking place within the conferences. Maersk would no longer be an independent competitor of the conferences but could use the information to adapt its conduct on the market.

158. The merger would also create a link between Maersk and the NANZC consortium. Competition between the members of NANZC is restricted[93]. Even without integrating itself into NANZC, Maersk will no longer be an independent competitor of NANZC because it controls a member of the consortium. Through PONL, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore Maersk could influence operational decisions within the consortium.

159. The combined market share of Maersk and the conferences or the consortium to which PONL is a member would be about [60-70]%. In the case of reefer containers, the combined market share of Maersk and the conferences or the consortium would be even about [70-80]%. Maersk would lose its position as the most important competitor of EANZC/ANZELA and NANZC. The only independent competitor with a market share above [0-10]% would be MSC.

160. While there is still the possibility of market entry through transhipment via Asia, a potential entrant will face a market structure characterised by close co-operation between Maersk and all the members of EANZC/ANZELA and NANZC. If he chooses to become member of EANZC/ANZELA and NANZC, the market structure will not change. When considering market entry as an independent player, this market structure will have a deterrent effect and increase the barriers to entry.

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91 Ocean Shipping Consultant, Report Refrigerated Trade and Outlook 2015, May 2005, page 25.

92 The conference sets the tariff which is used as a benchmark for negotiated rates. More than [50-100]% of PONL's 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.

93 Members of the NANZC are structurally linked by a vessel sharing agreement and [description of the agreement].

161. On the basis of the above, on the Australia/New Zealand trade the transaction raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement, stemming from the coordinated effects following from the link between Maersk and EANZC/ANZELA as well as NANZC.

Container terminal services

162. Maersk is the third biggest container terminal operator with a share of the worldwide volume of about [0-10]%[94]. Most of the volume of Maersk's container terminals is captive, i.e. the terminal services are provided to carriers of Maersk. PONL has a limited importance with a share of the worldwide volume of less than [0-10]%.

163. In Northern Europe Maersk currently controls container terminals in Aarhus, Bremerhaven and Rotterdam. A terminal in Zeebrugge is expected to become operational in mid-2006. PONL controls no container terminal which is currently active in Northern Europe, but will jointly control the Euromax terminal which will be operational in 2008[95]. Maersk's market share for transhipment traffic is about [0-10]% if captive volumes are excluded and about [0-10]% if captive volumes are included. For hinterland traffic in the Hamburg-Le Havre range, the market shares are below [0-10]% excluding captive volumes and about [10-20]% including captive volumes[96]. The hypothetical increment of Euromax in 2008 is under any possible market definition below [0-10]%[97].

164. In the Mediterranean Maersk controls container terminals in Algeciras, Tangier, Constantza and East Port Said. PONL has joint control of the container terminal in Cagliari, which is only active in transhipment. The parties' combined market share for transhipment traffic is below [0-10]% if captive volume is excluded and below [20-30]% if captive volume is included, with an increment of PONL below [0-10]%.

165. The combined market shares of the parties' are not indicative of dominance in container terminal services and will not enable Maersk to foreclose competing carriers from the access to stevedoring services in Northern Europe or the Mediterranean. Furthermore, there is no indication that after the transaction Maersk would be in a position to foreclose other container terminals from their customer base. This was confirmed by the market investigation.

166. On the market for container terminal services, the concentration does therefore 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

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94 Number one is Hutchinson from Hong Kong (with its subsidiary ECT) with a share of about [10-20]%, followed by PSA from Singapore with a share of about [0-10]%.

95 See M.3576 – ECT/PONL/Euromax.

96 On the narrower Hamburg-Antwerp range, the market shares would be nearly the same (about [0-10]% excluding captive and about [10-20]% including captive).

97 See M.3576 – ECT/PONL/Euromax.

167. Both parties are active in various segments of in-land transportation of containerised goods within the EU including rail transport, road transport and in-land waterway transport. More than [60-90]% of their in-land transportation business is carried out as in-house (captive) activity. The combined market shares of the merging parties are below [0-10]% even when a narrow market definition according to individual means of transport in individual Member States is adopted. Furthermore, there is a number of important competitors active in all segments of in-land transportation in Europe. Therefore, under any possible 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.

Logistics services

168. Both parties are active in logistics services that are largely carried out as in-house activities – [60-90]% of Maersk's and [50-60]% of PONL's logistics activities are for captive use. The combined market shares of the parties both in Europe and in individual Member States are well below [0-10]%. Furthermore, the companies will face competition both from other containerised shipping companies with integrated logistics activities and from specialised logistics companies or freight forwarders. Therefore, on the market for logistics services the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

Air transport

169. Both parties are active in the air passenger transport – Maersk through its subsidiary Maersk Air[98] and PONL through Martinair, a company jointly controlled by Air France/KLM and PONL. It has been acknowledged by the Commission that Martinair is not integrated with its parent company Air France/KLM and operates independently[99]. Therefore, the assessment of the concentration takes into account only the combination of Maersk Air and Martinair. In general, Maersk Air operates short-haul flights from Copenhagen and Billund in Denmark, whereas Martinair operates short- and long-haul flights from Amsterdam and Brussels, but not to Denmark. As Martinair does not operate from or fly to any airport which is in the catchment area of the airports of Copenhagen or Billund, there are no horizontal overlaps between the parties.

170. Both parties are also active in the air cargo transport. Maersk offers air cargo services only within Europe, whereas Martinair operates scheduled flights to North America, the Middle East, the Far East, Africa and Australia with important hubs in Amsterdam (the Netherlands), Miami (USA), Nairobi (Kenya) and Hong Kong. There are horizontal overlaps between the parties only on the intra-European market with a combined market share well below [10-20]%.

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[98] Maersk has entered into an agreement on the sale of Maersk Air's scheduled services and charter activities, but the transfer of the activities did not yet take place.

[99] M.3280 – Air France/KLM

171. Therefore, in the air transport sector the concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

Harbour towage

172. Maersk is active in the harbour towage services in more than 30 ports in Northern Europe (in Denmark, United Kingdom, Sweden and the Netherlands) and one port in Southern Europe (Lisbon in Portugal). 10 of these ports also have container terminal facilities. PONL is not active in harbour towage, nevertheless there is a vertical relationship between container liner shipping activities of the parties and harbour towage services provided by Maersk to container ships.

173. Under the narrowest geographical market definition limited to individual ports the market share of Maersk is high in several ports and in some ports Maersk is currently even the only provider of these services. However, the 10 ports in which Maersk provides harbour towage services represent only a negligible part of the total containerised volume[100]. Maersk is already now vertically integrated. There are no indications that the addition of PONL's carrier business would change in an appreciable way its ability or incentive to foreclose rival carriers from harbour towage services or harbour service towage providers from their customers.

174. Therefore, even under the narrowest market definition, in the markets for harbour towage services 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

175. In order to remove the serious doubts identified in relation to the containerised liner shipping services on the trades mentioned above, Maersk 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.

176. Maersk commits to withdraw PONL from the following liner shipping conferences at the earliest date permitted after acquisition of control of PONL:

- Australia/New Zealand to Europe Liner Association (ANZELA)
- Europe to Australia and New Zealand Conference (EANZC)
- Europe East Africa Conference (EEAC)
- European/South Pacific & Magellan Fright Conference (ESPMC)
- North Europe/Djibouti Conference (NE/DC)
- New Caribbean Service Rate Agreement (NCS)
- Association of the West India Trans-Atlantic Steam Ship Lines (WITASS)

177. Maersk commits to withdraw PONL from the following liner shipping consortia at the earliest date permitted after acquisition of control of PONL:

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[100] Less than [0-10]% for Northern Europe and less than [0-10]% for Mediterranean.

- Eurosal/NCS Consortium (Eurosal)
- Grand Alliance
- New ANZ Consortium (NANZC)
- Slot Charter Agreement between PONL and MSC on Europe – East Africa Trade (SCA MSC)
- Vessel Sharing Agreement between PONL and Hamburg Süd on the Europe – East Coast South America Trade (VSA Hamburg Süd)

178. In order to address the serious doubts identified in relation to the Europe – South Africa trades, Maersk commits to divest the business of PONL on the trade between Europe and South-Africa. This includes in particular all vessels PONL operates on this trade (three time-chartered vessels), a number of owned or leased containers corresponding to PONL's capacity on this trade (also its reefer containers) as well as personnel and contracts attributable to this trade. The purchaser also has the possibility to become a member of SAECS or, if SAECS is terminated or Maersk has withdrawn from SAECS, to enter into a vessel sharing agreement with Maersk.

VII. ASSESSMENT OF THE COMMITMENTS

North Europe – North America

179. The Commission considers that the commitment to withdraw PONL from the Grand Alliance is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk and the Grand Alliance. The market share of Maersk/PONL will be about [10-20]% and the aggregated market shares of the shipping lines which are member of Grand Alliance (reduced by PONL) will be about [20-30]%. Maersk will therefore face effective competition from the members of the Grand Alliance as well as from other consortia and independent carriers.

North Europe / Mediterranean – Middle East

180. The Commission considers that the commitment to withdraw PONL from the NE/DC conference and the Grand Alliance is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk on the one hand and the NE/DC conference and the Grand Alliance on the other hand Furthermore it will severe the links between the conferences EMERA and NE/DC. Given the low market share of EPIC III, withdrawal of PONL from this consortium is not necessary. Maersk will face effective competition from MSC and to a lesser extent USAC and the Grand Alliance.

North Europe / Mediterranean – East Africa

181. The Commission considers that the commitment to withdraw PONL from EEAC and the slot charter agreement with MSC is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk on the one hand and EEAC, in particular MSC on the other hand. The market share of Maersk/PONL will not be higher than the aggregated market shares of the shipping lines which are member of EEAC (reduced by PONL). Maersk will therefore face effective competition from the members of EEAA, in particular MSC.

North Europe / Mediterranean – South Africa

182. The Commission considers that the commitment to divest the business of PONL on this trade is sufficient to remove the serious doubts identified. Due to the divestiture, Maersk will not enlarge its market share on this trade as result of the transaction. As a third carrier will take over PONL's business, the currently existing limited competition between PONL and Maersk will be preserved in the form of competition between the purchaser and Maersk. If the purchaser chooses to keep PONL's business within SAECS, the close co-operation within SAECS would restrict competition between the purchaser and SAECS, however not to a greater extent than competition is currently restricted between Maersk and PONL. The divestiture therefore ensures that the transaction does not worsen the current competitive situation.

Europe – Caribbean/Central America

183. The Commission considers that the commitment to withdraw PONL from WITASS, NCS and Eurosal is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk and WITASS, NCS and Eurosal. Maersk might integrate PONL's volume into FWI. In this case, the market share of FWI would still remain below [30-40]% on the overall market for containerised liner shipping. The relatively limited increment will not appreciably strengthen Maersk's position within FWI. FWI has 4 members and [description of the voting system].

Europe – East Coast South America

184. The Commission considers that the commitment to withdraw PONL from the vessel sharing agreement with Hamburg Süd is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk and Hamburg Süd. As PONL has no own capacity on this trade, but charters slots through the vessel sharing agreement, the commitment will have the result that there is no increment in Maersk's market share after the withdrawal.

Europe – West Coast South America

185. The Commission considers that the commitment to withdraw PONL from ESPMC and Eurosal is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk and the conference as well as the consortium. Maersk will remain an independent competitor of the conference and the consortium. On the overall trade the market share of Maersk/PONL will remain below the aggregated market shares of the shipping lines which are member of ESPMC and Eurosal (reduced by PONL). Maersk will therefore face effective competition from the members of ESPMC and Eurosal as well as from MSC and CCNI.

Europe – Australia/New Zealand

186. The Commission considers that the commitment to withdraw PONL from EANZC, ANZELA and NANZC is sufficient to remove the serious doubts identified. The withdrawal will severe the link between Maersk on the one hand and EANZC, ANZELA and NANZC on the other hand. Maersk will remain an independent competitor of the conferences and the consortium.

187. Some competing carriers and some shippers however are of the opinion that in case of an immediate withdrawal of PONL from NANZC the volume of the remaining

consortium members would not be sufficient to maintain a competitive service on this trade. The reason would be the long distance of the trade and a relatively small market volume. Even though PONL is currently the most important member of NANZC, in particular CP Ships and Hapag Lloyd have appreciable market shares as well. On the overall trade, the market share of Maersk/PONL and the aggregated market shares of the shipping lines which are member of EANZC, ANZELA and NANZC (reduced by PONL) will be about the same. The market share of NANZC would be about [20-30]% and therefore higher than Maersk's current market share and MSC's market share, both operating independently on the trade. Furthermore, the withdrawal of PONL would take place according to the terms of the agreement. The notice period to withdraw is […], which gives time to adapt the joint operation of the service. It can be left open whether the members of NANZC could also compete outside the consortium, because there is no sufficiently strong indication that the withdrawal of PONL from NANZC would force the consortium to cease its joint operation. Maersk will therefore face effective competition from the members of EANZC, ANZELA and NANZC as well as from MSC.

Conclusion on the Commitments

188. 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 1 to 5, 13 to 15, 20, 22 and 27 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

189. 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
signed
Joe BORG
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 Compañia Chilena de Navigacion Interoceanica
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 Compãnia Sud Americana de Vapores 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 Rate Agreement 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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Commitment to the European Commission

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the *"***Merger Regulation***"*), A.P. Møller - Mærsk A/S ("**APMM**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition by APMM of the sole control over Royal P&O Nedlloyd N.V. ("**PONL**", and together with APMM, 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**").

The Commitment is submitted on the understanding that it will be returned prior to the Commission issuing the Decision if on further investigation the Commission concludes that the proposed concentration does not give rise to serious doubts as to its compatibility with the common market in the area concerned or if otherwise no longer considered necessary.

The Commitments shall take effect upon the date of the adoption of the Decision (the "**Effective Date**").

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.

SECTION A. DEFINITIONS

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EC) No 4064/89.

Australia/New Zealand to Europe Liner Association: The Australia/New Zealand to Europe Liner Association is a conference agreement on the Europe/Australia and New Zealand trade. The following carriers are members of the Australia/New Zealand to Europe Liner Association: Associated Container Transportation (Australia) Limited, CMA CGM SA, Compagnie Maritime Marfret, Consortium Hispania Lines, Contship Containerlines, Hamburg Sudamerikanische Dampfschifffahrts Gesellschaft KG (Columbus Line), Hapag Lloyd Container Line GmbH and PONL.

Bay Plan: A stowage plan that shows the locations of all containers on the vessel, including reference to the precise position of the container on the vessel (cell position), together with the Line loading the container, the weight (cargo and container), the port of loading and the intended port of discharge.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser(s).

Completion: the acquisition of control of PONL by APMM.

Conference: a liner conference in the sense of Article 1, section 3, under (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 in the sense of Article 2, section 1 of the 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.

Divestment Business: the business of PONL on the Identified Trade as defined in Section B and the Schedule to these Commitments that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by APMM and who has received from APMM the irrevocable and exclusive mandate to sell the Divestment Business.

EANZC: Europe to Australia and New Zealand Conference, which is a conference agreement on the Europe/Australia and New Zealand trade. The following carriers are members of EANZC: CMA CGM SA, Compagnie Maritime Marfret, Consortium Hispania Lines, Contship Containerlines, Hamburg Sudamerikanische Dampschifffahrtsgesellscaft KG, Hapag Lloyd Container Line GmbH and PONL.

EEAC: Europe/East Africa Conference, which is a conference agreement on the Europe/East Africa trade. The following carriers are members of EEAC: CMA CGM SA, Consortium Hispania Lines, Cunard Ellerman Lines, Deutsche Seereederei Rostock, Harrison Line, Ignazio Messina & C., Jadranska Slobodna Plovidba, Kenya National

Shipping Line, Lloyd Triestino, Mediterranean Shipping Company, PONL, H. Stinnes Linien and WEC Line.

ESPMC: European/South Pacific & Magellan Freight Conference, which is a conference agreement on the Europe/West Coast South America trade. The following carriers are members of ESPMC: CMA CGM SA, CSAV, Hamburg Sudamerikanische Dampfshifffahrtgessellschaft KG, Hapag Lloyd Container Line GmbH, K Line, PONL, Bank Line, Columbus Line, Contship Containerlines, Hyundai Marine Merchant and Compagnie Maritime Marfret.

Eurosal/NCS Consortium: The Eurosal/NCS Consortium is a consortium on the Europe/Caribbean and Central America and Europe/West Coast South America trades. This is a vessel sharing agreement between CSAV, CMA CGM SA, Hamburg Sudamerikanische Dampfshifffahrtgessellschaft KG, Hapag Lloyd Container Line GmbH and PONL.

Extended Divestiture Period: the period of **[CONFIDENTIAL]** from the end of the First Divestiture Period.

First Divestiture Period: the period of **[CONFIDENTIAL]** from the Effective Date.

Form CO: the notification to the European Commission of a proposed concentration between APMM and PONL on 9 June 2005, pursuant to Council Regulation (EC) No. 139/2004.

Grand Alliance: The Grand Alliance is a consortium on the Europe/North America, Europe/Far East and Mediterranean/Far East trades. PONL, Hapag Lloyd Container Line GmbH, Nippon Yusen Kaisha, Orient Overseas Container Lines Ltd. and Malaysian International Shipping Corporation are members of this consortium. The Grand Alliance also cooperates with Americana Ships (CP Ships group) on the Europe to North America trades, and charters space to the Cosco/K Line/Yamgming alliance between Europe and Miami and the US Gulf ports of Houston and New Orleans.

Hold Separate Manager: the person appointed to manage the day-to-day business of the Divestment Business, independently of APMM, acting under the supervision of the Monitoring Trustee.

Identified Trade: the trade between Europe and Southern Africa.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business.

Monitoring Trustee: one or more natural or legal person, independent from the Parties and their Affiliated Undertakings, who is approved by the Commission and appointed by APMM, and who has the duty to monitor APMM's compliance with the conditions and obligations attached to the Decision.

NE/DC: North Europe/Djibouti Conference, which is a conference agreement on the Europe/Middle East trade. The following carriers are members of NE/DC: Mediterranean Shipping Company, PONL, H. Stinnes Linien and WEC Lines.

New ANZ Consortium: The New ANZ Consortium is a consortium, consisting of a number of separate agreements, on the Europe/Australia and New Zealand trade. The following carriers are members of the New ANZ Consortium: PONL, Contship

Containerlines (CP Ships), CMA CGM/Marfret, Hamburg Sudamerikanische Dampfshifffahrtgesellschaft KG and Hapag Lloyd Container Line GmbH.

New Caribbean Service Rate Agreement: New Caribbean Service Rate Agreement is a conference agreement on the Europe/Caribbean and Central America trade. The following carriers are members of the New Caribbean Service Rate Agreement: CMA CGM SA, CSAV, Hamburg Sudamerikanische Dampfshifffahrtgesellschaft KG, Hapag Lloyd Container Line GmbH and PONL.

Personnel: all personnel currently employed by PONL in South Africa in the management, operation and marketing of its liner shipping activities on the Identified Trade.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Relevant Trade: this is for:

(a) Australia/New Zealand to Europe Liner Association the Europe/Australia New Zealand trade;

(b) EANZC the Europe/Australia and New Zealand trade;

(c) EEAC the Europe/East Africa trade;

(d) ESPMC Europe/West Coast South America trade;

(e) NE/DC the Northern Europe/Middle East trade;

(f) New Caribbean Service Rate Agreement the Europe/Caribbean and Central America trade;

(g) WITASS the Europe/Caribbean and Central America trade;

(h) Eurosal/NCS Consortium the Europe/West Coast South America trade and the Europe/ Caribbean and Central America trade;

(i) Grand Alliance the Northern Europe/North America trade and the Europe/Middle East Trade;

(j) New ANZ Consortium the Europe/Australia and New Zealand trade;

(k) Slot Charter Agreement between PONL and Mediterranean Shipping Company the Europe/East Africa trade; and

(l) Vessel Sharing Agreement between PONL and Hamburg Süd the Europe/East Coast South America trade.

SAECS: this is a consortium on the Northern Europe/Southern Africa Trade. The following carriers are members of the SAECS consortium: Deutsche Afrika-Linien, Safmarine, Maersk Sealand and PONL.

Sale and Purchase Agreement: all the binding agreement(s) entered into between the Parties and the Purchaser (including all ancillary agreements relating thereto) concerning the transfer of the Divestment Business to the Purchaser.

Same Partner(s): all partners to the individual Conference or Consortium concerned except PONL; for instance for the Vessel Sharing Agreement between PONL and Hamburg Süd, Same Partner is Hamburg Süd.

Slot Charter Agreement between PONL and Mediterranean Shipping Company: This is a slot charter agreement on the Europe/East Africa trade. PONL and Mediterranean Shipping Company are party to this slot charter agreement.

TEU: Twenty-foot Equivalent Unit.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Vessel Sharing Agreement between PONL and Hamburg Süd: This vessel sharing agreement applies on the Europe/East Coast South America trade. PONL and Hamburg Sudamerikanische Dampfshifffahrtgessellschaft KG are party to this vessel sharing agreement.

WITASS: Association of West India Trans-Atlantic Steam Ship Lines, which is a conference agreement on the Europe/Caribbean and Central America trade. The following carriers are members of WITASS: CMA CGM SA, CSAV, Hamburg Sudamerikanische Dampfshifffahrtgessellschaft KG, Hapag Lloyd Container Line GmbH and PONL.

SECTION B. THE DIVESTMENT BUSINESS

Commitment to divest

1. In order to restore effective competition, APMM commits to divest, or procure the divestiture of the Divestment Business according to the procedure described in Section D, on the understanding that APMM commits to use its best efforts to procure the transfer of the Personnel and the contracts mentioned in the Schedule, paragraph 2 under (d) - (h).

2. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of **[CONFIDENTIAL]** after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

3. The Divestment Business consists of all assets, rights and obligations which relate to PONL's liner shipping activities on the Identified Trade. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule to these Commitments.

4. The price to be paid by the Purchaser for the Divestment Business during the First Divestiture Period will be an agreed lump sum plus the fees to be paid for the sub-time-charter of the vessels that are part of the Divestment Business, which fees will be not more than the fees PONL will have to pay to the owners of these vessels under the time-charter agreements.

5. If within the period of the time-charters mentioned in the Schedule, paragraph 2 under (a), SAECS is terminated or APMM has withdrawn from SAECS, APMM commits to enter into a vessel sharing agreement with the Purchaser, or, if the Purchaser prefers a slot charter agreement, then to enter into a slot charter agreement with the Purchaser with respect to the Identified Trade, upon the Purchaser's request, provided that prior approval by the Commission has been obtained to enter into such a vessel sharing agreement or slot charter agreement. APMM will procure that the vessel sharing agreement or slot charter agreement will be concluded on reasonable commercial terms to be agreed between APMM and the Purchaser subject to the Commission's prior approval.

SECTION C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, APMM shall use its best endeavours to preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular APMM undertakes until Closing:

    (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value or competitiveness of the Divestment Business; and

    (b) to make available sufficient resources for the development of the Divestment Business, on the basis of and in continuation of the existing business plans.

    (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, until Closing.

Hold-separate obligations of Parties

7. PONL commits to keep the Divestment Business separate from APMM in the period from the Effective Date until Completion. Thereafter, the Parties commit to carve the Divestment Business out from the merged businesses of PONL and APMM in a manner that ensures the operation of the Divestment Business in accordance with paragraph 6 on a stand-alone basis.

8. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. The Parties shall appoint a Hold Separate Manager, subject to prior approval of the Commission. The appointment of the Hold Separate Manager shall be subject to the agreement of the Monitoring Trustee. The Hold Separate Manager shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee and shall use its best efforts to manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

9. To ensure that the Divestment Business is managed as a separate entity, the participation in the central information technology network and other central operational functions shall be severed to the extent possible, without compromising the full economic viability, marketability and competitiveness of the Divestment Business.

Ring-fencing

10. The Parties and the Hold Separate Manager shall use their best efforts to implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, with the exception of information which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to APMM is required by law.

Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel employed by the Purchaser in relation to Divestment Business or the Hold Separate Manager for a period of **[CONFIDENTIAL]** after Closing.

Due Diligence

12. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, APMM shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

   (a) provide to potential purchasers sufficient and timely information as regards the Divestment Business; and

   (b) provide to potential purchasers sufficient and timely information relating to the Personnel and allow them reasonable access to the Personnel.

SECTION D. THE DIVESTITURE PROCEDURE

The First Divestiture Period

13. APMM undertakes to find one Purchaser for the Divestment Business and to enter into a final binding Sale and Purchase Agreement with such Purchaser for the transfer of the Divestment Business within **[CONFIDENTIAL]** from the Effective Date.

The Extended Divestiture Period

14. Should APMM be unable to enter into binding agreements for the transfer of the Divestment Business in the First Divestiture Period, the First Divestiture Period shall be extended by another **[CONFIDENTIAL]** from the date of the expiry of the First Divestiture Period. APMM undertakes to give the Divestiture Trustee an exclusive mandate to sell the Divestment Business within the Extended Divestiture Period in accordance with the procedure described in paragraphs 36 and 37.

Closing

15. APMM shall be deemed to have complied with this undertaking if, within a period **[CONFIDENTIAL]** from the Effective Date, it has entered into a binding Sale and Purchase Agreement for the transfer in accordance with paragraphs 13 and 14, provided that the Closing takes place no later than **[CONFIDENTIAL]** after the approval of the Purchaser and Sale and Purchase Agreement by the Commission and that the Divestment Business is transferred to the Purchaser either upon Closing or within **[CONFIDENTIAL]** from Closing, subject to third party consent where applicable.

Reporting

16. APMM shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than **[CONFIDENTIAL]** after the end of every month following the Effective Date (or otherwise at the Commission's request); however, where this date falls on a day which is not a working day as defined under Council Regulation (EC) No 139/2004, such written reports will be due on the following working day as defined under the terms of that Regulation. These reporting obligations on APMM shall continue until Closing and the transfer of the Divestment Business has taken place in accordance with paragraph 15.

17. APMM shall inform the Commission and the Monitoring Trustee on the preparation of any data room documentation, information memorandum and due diligence procedure arranged by APMM.

SECTION E. THE PURCHASER

18. In order to be approved by the Commission, the Purchaser must:

(a) be independent of and unconnected to the Parties;

(b) have the financial resources and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business; and

(d) agree to operate the Divestment Business on the Identified Trade (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").

19. The final binding Sale and Purchase Agreement shall be conditional on the Commission's approval. When APMM has reached or is about to reach an agreement with the Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final Sale and Purchase Agreement, to the Commission and the Monitoring Trustee. APMM must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more assets, rights, obligations or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking into account the proposed purchaser.

SECTION F. WITHDRAWAL

Commitment to withdraw from conferences

20. APMM will procure that PONL will withdraw from the following liner shipping conferences. It 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) Australia/New Zealand to Europe Liner Association is**[CONFIDENTIAL]**;

    (b) EANZC is **[CONFIDENTIAL]**;

    (c) EEAC is **[CONFIDENTIAL]**;

    (d) ESPMC is **[CONFIDENTIAL]**;

    (e) NE/DC is **[CONFIDENTIAL]**;

    (f) New Caribbean Service Rate Agreement is **[CONFIDENTIAL]**; and

    (g) WITASS is **[CONFIDENTIAL]**.

21. In summary, within each of the above conferences the members provide international liner services in respect of which they operate a common freight rate and other agreed general trading conditions, for example, relating to the co-ordination of sailing timetables, and the calculation of certain charges and surcharges.

Commitment to withdraw from consortia

22. APMM will procure that PONL will withdraw from the following liner shipping consortia. It will do so by serving notice of termination of its membership within one week of Completion in accordance with the terms of the respective consortia agreements, such notice to take effect at the earliest date permitted by such agreements which according to the agreements for:

    Eurosal/NCS Consortium is **[CONFIDENTIAL]**;

    Grand Alliance, **[CONFIDENTIAL]**, is **[CONFIDENTIAL]**;

    New ANZ Consortium is **[CONFIDENTIAL]**;

    Slot Charter Agreement between PONL and Mediterranean Shipping Company is **[CONFIDENTIAL]**; and

    Vessel Sharing Agreement between PONL and Hamburg Süd is **[CONFIDENTIAL]**.

23. In summary, within each of the above liner shipping consortia the members provide international liner services, chiefly by container, in respect of which they cooperate in the joint operation of a maritime transport service, including, any one or more of the following, the coordination of sailing timetables, the exchange of vessel space or slots and the pooling of vessels. The members of the consortia do not agree any common freight rate or charges.

Ring-fencing

24. From the date notice of withdrawal has been given by PONL regarding the agreements enumerated under paragraph 20 until the withdrawal of PONL from these conferences, the Parties will not attend any meetings of these conferences, will not exercise the right to vote and will not receive information from the conference or provide information to the conference in the framework of the conference agreement. APMM will procure that PONL will include these limitations in the letters giving notice of withdrawal.

25. From the date that notice of withdrawal is given by PONL from the agreements enumerated at paragraphs 22 (a) and (e) until the withdrawal of PONL from these agreements, the Parties shall procure that, if and to the extent that PONL receive information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in those agreements, such information is not disclosed to APMM (and vice versa). **[CONFIDENTIAL]**

Reporting

26. The Monitoring Trustee shall submit written reports in English confirming APMM's compliance with the Commitments under this Section to the Commission no later than **[CONFIDENTIAL]** (or any other time requested by the Commission, if necessary) following Completion. Thereafter, the Monitoring Trustee will continue to submit similar reports every **[CONFIDENTIAL]** (or any other times requested by the Commission, if necessary) until the withdrawal of PONL has been completed from all the above-mentioned conferences and consortia. **[CONFIDENTIAL]**

Related commitment

27. APMM commits that, for a period of **[CONFIDENTIAL]** following Effective Date, it will not become a member of the conferences listed in paragraph 20. In order to avoid circumvention of the previous sentence, APMM also commits to not become a member of any Conference of substantially similar terms with the Same Partners as the conference concerned on the Relevant Trade.

    APMM commits that for a period of **[CONFIDENTIAL]** following Effective Date, it will not become a member of the consortia listed in paragraph 22 (a) to (c) and (e). In order to avoid circumvention of the previous sentence, APMM also commits to not become a member of any Consortium of substantially similar terms with the Same Partners as the consortium concerned on the Relevant Trade.

    As for the Slot Charter Agreement listed under paragraph 22 (d), APMM commits that, for a period of **[CONFIDENTIAL]** following Effective Date, it will not enter into such an agreement. In order to avoid circumvention of the previous sentence, APMM also commits to not enter into any other slot charter agreements of substantially similar terms with Mediterranean Shipping Company on the Relevant Trade.

    The commitments in this paragraph 27 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 and consortia (which includes also the agreement mentioned at paragraph 22 (d)) is no longer necessary to render the proposed concentration compatible with the common market.

Subject to the commitments in the first to third sub-paragraphs in this paragraph, the commitments in this paragraph 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, provided the ad hoc bi-lateral space or slot chartering arrangements with any carrier(s) on the Relevant Trades are not in substantial similar terms (including duration), to the arrangement in paragraph 22 (d).

SECTION G. TRUSTEE

I. Appointment Procedure

28. APMM shall appoint one or more Trustees, subject to the prior approval of the Commission as referred to in paragraph 31. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither be nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Extended Divestiture Period.

29. If APMM has not entered into a binding Sale and Purchase Agreement **[CONFIDENTIAL]** before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by APMM at that time or thereafter, APMM shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.

Proposal by APMM

30. APMM shall propose a list of Trustee(s) and the full terms of their proposed mandates and an outline work plan which describes how the Trustee intends to carry out its task(s), for the Commission's approval no later than **[CONFIDENTIAL]** after the date of the Decision in the case of the Monitoring Trustee and no later than **[CONFIDENTIAL]** before the end of the First Divestiture Period in the case of the Divestiture Trustee. The proposal shall contain sufficient information for the Commission to verify that the Trustee fulfils the requirements set out in paragraph 28 and shall indicate to the Commission whether the proposed Trustees are to act as both Monitoring Trustee and Divestiture Trustee or whether different Trustee(s) are proposed for the two functions. The mandate submitted for approval shall be drawn up taking due account of the Commission Standard Trustee Mandate and shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments.

Approval or rejection by the Commission

31. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications the Commission deems necessary for the Trustee to fulfil its obligations. If only one name is approved, APMM shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, APMM shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by APMM

32. If all the proposed Trustees are rejected, APMM shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 28 to 31.

Trustee nominated by the Commission

33. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom APMM shall appoint, or cause to be appointed, in accordance with a Trustee Mandate approved by the Commission.

II. Functions of the Trustee

34. The Trustee shall assume its specified duties in order to ensure compliance with these Commitments. The Commission may, on its own initiative or at the request of the Trustee or APMM, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

35. Following its appointment, the Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by APMM with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) oversee the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraphs 6 to 10 of the Commitments;

(c) in consultation with APMM, determine all necessary measures to ensure that APMM does not after Completion obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular: (i) strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to APMM as the disclosure is reasonably necessary to allow APMM to carry out the divestiture or as the disclosure is required by law;

(d) oversee the splitting of assets and the allocation of Personnel between the Divestment Business and APMM or Affiliated Undertakings; and

(e) monitor the Parties' compliance with their withdrawal commitment under Section F of these Commitments.

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations relating to the Divestment Business attached to the Decision;

(iv) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations relating to the Divestment Business attached to the Decision;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient and timely information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

(vi) provide to the Commission, sending APMM a copy without any confidential information at the same time, a written report within **[CONFIDENTIAL]**; however, where this date is not a working day as defined under Council Regulation (EC) No 139/2004, such written reports will be due on the following working day as defined under the terms of that Regulation. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending APMM a non-confidential copy at the same time, if it concludes on reasonable grounds that APMM is failing to comply with these Commitments relating to the Divestment Business;

(vii) within **[CONFIDENTIAL]** after receipt of APMM's purchaser proposal, submit to the Commission a reasoned opinion regarding: (a) the suitability of the proposed purchaser under the Purchaser Requirements; (b) the viability of the Divestment Business after the sale to the proposed purchaser; (c) whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision; and (d) if relevant, whether the sale of the Divestment Business without one or more of the assets, rights or obligations or Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(viii) Promptly provide the Commission with its opinion regarding the continued appointment of the Hold Separate Manager appointed under paragraph 8;

(ix) Provide the Commission with its opinion on the consistency of the terms of the vessel sharing agreement, or slot charter agreement provided for under paragraph 5 with the matters enumerated under sub-paragraph (vii) of this paragraph.

Duties and obligations of the Divestiture Trustee

36. Within the Extended Divestiture Period, the Divestiture Trustee shall sell **[CONFIDENTIAL]** the Divestment Business to a Purchaser independent of the Parties, provided that the Commission has approved the Purchaser and the final binding Sale and Purchase Agreement in accordance with the procedure laid down in paragraphs 18 and 19. The Divestiture Trustee shall include in the Sale and Purchase Agreement such terms and conditions as it considers appropriate for an expedient sale. In particular, the Divestiture Trustee may include in the Sale and Purchase Agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest **[CONFIDENTIAL]** in the Trustee Divestiture Period.

37. In the Extended Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in the English language on the progress of the divestiture process. Such reports shall be submitted **[CONFIDENTIAL]** with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to APMM.

III. Duties and obligations of the Parties

38. APMM shall provide the Trustee with all such co-operation, assistance and information, including copies of all relevant documents, as the Trustee may reasonably require to perform its tasks. In addition, the Trustee shall have full and complete access to any of the Parties' books, records, documents, personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments. APMM and the Divestment Business shall make available to the Trustee offices on their premises and a representative of APMM shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

39. APMM shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide the Monitoring Trustee, on request, with access to the information submitted to potential purchasers, in particular to any data room documentation and all other information granted to potential purchasers in the due diligence procedure.

40. APMM shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, APMM shall cause the documents required for effecting the sale and the Closing to be duly executed.

41. At the expense of APMM, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to APMM's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by

the Trustee are reasonable. Should APMM refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard APMM. Only the Trustee shall be entitled to issue instructions to the advisors. In the Extended Divestiture Period, the Divestiture Trustee may use advisors who served APMM during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

    (a) the Commission may, after hearing the Trustee, require APMM to replace the Trustee; or

    (b) APMM, with the prior approval of the Commission, may replace the Trustee.

43. If the Trustee is removed according to paragraph 42, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 28 to 33.

44. Beside the removal according to paragraph 42, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION H. THE REVIEW CLAUSE

45. The Commission may, where appropriate, in response to a reasoned request from APMM showing good cause and, if requested by the Commission, accompanied by a report from the Monitoring Trustee:

    (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.

    Where APMM 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 APMM be entitled to request an extension within the last month of any period.

46. In case of a material change of circumstances, APMM reserves its rights under Community law to request the Commission to review the whole or any specific undertakings relating to this Commitment as set out above.

duly authorised for and on behalf of
A.P. Møller - Mærsk A/S

duly authorised for and on behalf of
Royal P&O Nedlloyd N.V.

Vagn L. Møller
Executive Vice President

R.P.M. van Slobbe
Executive Director

SCHEDULE

1. PONL currently operates the Divestment Business on the Identified Trade by way of a joint service with the other members of the SAECS consortium (Maersk Sealand, Safmarine and Deutsche Afrika Line). PONL deploys three vessels on the trade; two core vessels (the PONL Heemskerck and the PONL Livingstone) were built to PONL's specifications for deployment on the Identified Trade and are operated on SAECS's core string; a third vessel is a general purpose vessel operated on SAECS' intermediate service; all three vessels are under charter to PONL. These ships provide total capacity on the Identified Trade in one cycle of each loop of **[7,000-8,000]** TEUs round voyage, of which **[3,000-4,000]** TEUs northbound are available for the carriage of reefer cargo. PONL's rights to space under the SAECS Agreement is **[8,000-9,000]** TEUs southbound and **[7,000-8,000**] TEUs northbound of which **[3,000-4,000]** TEUs are available for the carriage of reefer cargo. These allocations are based on the present deployments of SAECS vessels, therefore subject to any changes in the SAECS fleet.

2. The Divestment Business consists of those assets, rights and obligations which relate to PONL's activities on the Identified Trade, namely:

   (a) PONL's rights, interests and obligations in two time-charters with Offen Reederei GmbH & CO, Hamburg:

      (i) the PONL Heemskerck, under time-charter dated 26 March 2003 for a duration of **[5-10]** years from 15 February 2005, being the date of delivery, with PONL's option of **[1-5]** further one year periods;

      (ii) the PONL Livingstone, under time-charter dated 26 March 2003 for a duration of **[5-10]** years from 28 February 2005, being the date of delivery, with PONL's option of **[1-5]** further one year periods.

   (b) PONL's rights, interests and obligations in a time-chartered vessel, the P&O Nedlloyd Portbury, chartered for **[1-5 years]** with effect from 15 July 2004. This is a B170 vessel with a nominal capacity of 1,728 TEUs (allocated capacity of **[1,000-2,000]** TEUs) having 200 reefer plugs.

   (c) PONL's rights, interests and obligations whether as owner of lessee, of the following number of dry and reefer containers used by it on the Identified Trade: PONL estimates that the number of containers required to service its volume on the Identified Trade would be approximately **[16,000-17,000]** general purpose 20' containers (or equivalent mixture of 20' and 40') together with approximately **[2,000-3,000]** 40' high cube integral (ie reefer) containers.

   (d) The Personnel employed by PONL in South Africa in the management, operation and marketing of its liner shipping activities on the Identified Trade.

   (e) The contracts to which PONL (whether individually or jointly with one or more other liner shipping companies) is party for the provision of liner shipping services on the Identified Trade.

   (f) The contracts to which PONL (whether individually or jointly with one or more other liner shipping companies) is party for the provision of goods and services to PONL in the operation of its liner shipping services on the Identified Trade.

(g) The rights and obligations associated with PONL's membership of the SAECS consortium, including PONL's rights and obligations as a member of SAECS under special berthing arrangements negotiated with terminals in South Africa.

(h) The rights and obligations associated with PONL's membership of the Europe South Africa Conference.