

***Case No COMP/M.5066 -
EUROGATE / APMM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/06/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/06/2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.5066 – EUROGATE/ APMM
Notification of 25 April 2008 pursuant to Article 4 of Council Regulation
No 139/2004**

1. On 25 April 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004¹ ("ECMR") by which the undertakings Eurogate GmbH & Co. KGaA, KG ("Eurogate", Germany) and A.P. Møller-Mærsk, ("APMM", Denmark) acquire within the meaning of Article 3(1)(b) of the ECMR joint control of Eurogate Container Terminal Wilhelmshaven GmbH & Co. KG and Eurogate Container Terminal Wilhelmshaven Beteiligungsgesellschaft mbH, Germany, by way of purchase of shares.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

2. Eurogate is jointly controlled by EUROKAI KGaA (50%) and BLG LOGISTICS GROUP AG & Co. KG (50%). It operates container terminals in Hamburg² and Bremerhaven³, Germany and in Italy⁴. Moreover, Eurogate has a financial investment of 16.3% in LISCONT Operadores de Contentores S.A., a container terminal in the port of Lisbon, Portugal. Eurogate is mainly active in the provision of stevedoring services at ports. Eurogate is also a party to a consortium in Northern Africa, and will operate a container terminal in this region in the future. In addition to the stevedoring services, Eurogate offers a range of "box"-related services, from cargo-modal services to container-depot services, container servicing and container repair. It further provides services relating to intermodal transport and logistics management, solutions for IT logistics and specialised technical engineering services.
3. APMM is an international group with activities in container shipping, container terminal services, harbour towage, operation of tankers, inland transportation, logistics, oil and gas exploration and production, retail and air transport. APMM operates its containerised liner shipping activities through Maersk Line and Safmarine Container Lines N.V. ("Safmarine"), and its terminal services business through APM Terminals Management B.V. ("APM Terminals"). In Europe, APM Terminals has operations in Aarhus, Algeciras, Dunkirk, Rotterdam and Zeebrugge as well as in Bremerhaven⁵ and Le Havre. It also holds minority shareholdings in Cagliari, Genoa and Gioia Tauro, Italy⁶.

2 Through its wholly owned EUROGATE Container Terminal Hamburg GmbH ("CTH").

3 Through its wholly owned EUROGATE Container Terminal Bremerhaven GmbH ("CTB"), through the North Sea Terminal Bremerhaven GmbH & Co. ("NTB"), which is jointly controlled by EUROGATE and APMM, and through MSC Gate Bremerhaven GmbH & Co. KG ("MSC Gate"), which is jointly controlled by EUROGATE and Terminal Investment Ltd, Guernsey (a 100% affiliate of MSC).

4 Through its 33.4% stake in Contship Italia S.p.A., the remaining 66.6% being indirectly held by EUROKAI KGaA.

5 Through NTB.

6 Cagliari and Gioia Tauro are operated by Contship Italia S.p.A.

II. THE OPERATION

4. The operation consists of the acquisition by APMM of a 30% share in Eurogate Container Terminal Wilhelmshaven GmbH & Co. KG⁷, and Eurogate Container Terminal Wilhelmshaven Beteiligungsgesellschaft mbH⁸, both currently solely controlled by Eurogate. The objectives of this joint venture between Eurogate and APMM ("JV") are the construction of the superstructure for the JadeWeserPort Container Terminal in the port of Wilhelmshaven ("JWP CT"), the operation of the container terminal and a possible participation in a potential future tender for any further development phases in the JadeWeserPort in Wilhelmshaven. Eurogate holds a concession to operate the JWP CT, awarded after winning a Europe-wide non-mandatory tender proceeding. Although APMM is not a party to the concession agreement between Eurogate and JadeWeserPort Realisierungs GmbH & Co. KG, it will assume joint liability in the future for the obligations of Eurogate as defined in the concession agreement.

III. CONCENTRATION

5. By the proposed concentration APMM will acquire a 30% share in Eurogate Container Terminal Wilhelmshaven GmbH & Co. KG and Eurogate Container Terminal Wilhelmshaven Beteiligungsgesellschaft mbH (the JV). According to the Partnership Contract and the Partners' Agreement APMM will have rights to veto strategic decisions of the JV, including the annual budget, business plan, and the annual financial statements. APMM will not have operational veto rights, including the right to veto individual container terminal services contracts negotiated by the JV management with shipping liners.
6. The Partners' Agreement provides that APMM will have up to 49% of the JWP CT's total operational capacity dedicated to itself and/or its affiliates. Consequently, at least 51% of the total capacity of the JWP CT will be made available to third parties as of 2014, when it becomes fully operational. The volumes planned under the Partners' Agreement do not forecast that APMM will utilise more than this capacity. These planned volumes would represent a maximum of [50-60]% of the total throughput, in the case that the JV not be able to fully contract the remaining 51% of the terminal's total available capacity. [...] Furthermore, even for APMM's planned volumes the Partners' Agreement also stipulates that APMM will be offered normal commercial conditions i.e. at arm's length basis.
7. The JV is established for an unlimited period of time and will be active for at least 40 years, which is the duration of concession awarded to Eurogate. From 2014 on, the JV will have its own management dedicated to its day-to-day business and access to sufficient resources.
8. On the basis of the preceding elements, it can be concluded that Eurogate and APMM will acquire joint control of the JV which will be performing on a lasting basis all the functions of an autonomous economic entity.

⁷ This company was set up by Eurogate for the purposes of operating the concession.

⁸ This is the general partner in the operating company Eurogate Container Terminal Wilhelmshaven GmbH & Co. KG.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Eurogate 560 million EURO, APMM 35,493 million EURO)⁹. Each of Eurogate and APMM has a Community-wide turnover in excess of EUR 250 million (Eurogate 560 million EURO, APMM [...] million EURO), 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

Container terminal services

Relevant product markets

10. The provision of container stevedoring services by terminal operators involves the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo. Container terminal throughput can be broken down by traffic flow as follows: (a) hinterland traffic ("direct deep-sea"), that is containers transported directly onto/from a deep-sea container vessel from/to the hinterland (via barge, truck or train), and (b) transshipment traffic, that is, containers destined for onward transportation to other ports. Transshipment traffic involves both feeder movements (i.e. transits from deep-sea vessels to short sea-vessels going to adjacent markets – Scandinavia, Iberian Peninsula) and relay movements (i.e. transits between two ocean-going vessels on differing liner services).
11. In line with previous Commission decisions¹⁰, the notifying parties submit that the relevant product markets where Eurogate and APMM are active is the market for the provision of stevedoring services to container shipping lines, broken down by traffic flows into the market for hinterland traffic and the separate market for transshipment traffic. According to the parties, the market for transshipment traffic should not be further sub-divided into feeder and relay traffic.
12. The market investigation supported the view that the market(s) for stevedoring services for deep-sea container ships could be regarded as distinct from stevedoring services for other cargo types (such as bulk, liquid bulk etc) transported by deep-sea ships.
13. As for the distinction between handling hinterland and transshipment traffic, the market investigation indicated that from the demand side perspective the distinction between handling hinterland traffic and handling transshipment traffic may be justified. Unlike handling hinterland traffic, handling transshipment traffic does not require road/rail infrastructure and a hinterland linkage. Furthermore, there might be differences in pricing and cut-off times as barges might be available to a lesser extent than feeders.

⁹ 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).

¹⁰ Case No COMP/JV.55 – Hutchinson/RCPM/ECT, para 35; Case No COMP/JV.56 – Hutchinson/ECT, paras 14 and 15.

14. On the other hand, the market investigation has not clearly supported the conclusion that relay and feeder transshipment traffic should be regarded as distinct markets.

Relevant geographic markets

15. The parties submit that the relevant geographic market for the provision of stevedoring services to deep-sea container vessels for hinterland traffic is at least the range Hamburg – Le Havre. With respect to the transshipment traffic, the relevant geographic market shall, according to the parties, include at least all Northern European ports handling deep-sea container vessels, including the UK. For transshipment, the parties further claim that the Northern European ports compete in a larger geographic market than that identified in previous Commission decisions, in particular with Baltic ports and also with Mediterranean ports. Hence, the geographic definition should also include all container terminals in the Baltic Sea region.
16. According to previous Commission decisions, the geographical dimension of stevedoring services for hinterland traffic may extend to UK/Ireland on the one hand, and the Northern Continental ports on the other hand¹¹. It has been left open whether the catchment area of the Northern Continental ports might be further broken down. The widest realistic range considered would be Hamburg (including Gothenburg) – Le Havre, a narrower range also considered would be Hamburg (excluding Gothenburg) – Antwerp. For transshipment traffic, the Commission found that the geographic market could include all main deep-sea ports in Northern Europe, including the UK and Ireland.¹²
17. The market investigation has indicated that the geographic scope of the markets might be narrower than assumed by the parties. As for stevedoring services to hinterland traffic, some respondents submitted that not all ports in the Hamburg-Le Havre range serve the same hinterland. In particular, French ports are seen as a gateway for northern France and Paris but not for Northern Europe. They mainly compete with the Benelux ports and to a much lesser extent with the German ports since connection from the "German" hinterland to Le Havre are too costly and not operationally viable.¹³ On the other hand, the German ports handle a great share of cargo from/to Eastern Europe and the Baltic countries as well as Southeast Germany and Austria. However, the ports in Rotterdam, Amsterdam, Zeebrugge and Antwerp have recently improved connections eastwards and it appears from the responses that they are targeting these markets as well while traditionally still focusing on the areas adjacent to the River Rhine .
18. Furthermore, terminal handling charges for hinterland traffic appear to differ significantly in the Hamburg-Le Havre range. The German ports have generally the highest terminal handling charges, significantly higher than Rotterdam and Antwerp. The market investigation has indicated that shipping lines consider the level of stevedoring handling charges as one of the

¹¹ Case No COMP/JV.55 – Hutchison/RCPM/ECT and COMP/JV.56 – Hutchison/ECT; case No IV/M. 1651 – MAERSK/SEA-LAND; case No COMP/M.2422 – HAPAG-LLOYD/HAMBURGER HAFEN-UND LAGERHAUS/HHLA CTA.

¹² COMP/JV.55 – Hutchinson/RCPM/ECT, para 43; COMP/JV.56 – Hutchinson/ECT, para 20; COMP/M.3576 – ECT/PONL/EUROMAX, para 20; COMP/M.3829 – Maersk/PONL, para 19.

¹³ Similarly, hinterland links were considered an important factor as concerns terminal services for coal and iron ore for hinterland traffic; see Case No COMP/M.3848 – Sea-Invest / EMO-EKOM.

most important factors when selecting a port of call. It is also perceived as fairly difficult to switch from one port to another, especially between the German and the French ports, as hinterland volumes are often influenced by distance and hinterland links available. Switching is also problematic due to lack of available capacity in ports. There is low capacity available especially in Zeebrugge and Dunkirk. While Le Havre is perceived to be increasing its capacity, its substitutability with other ports in the above mentioned range is limited due to the fact that it has a difficult industrial labour environment often resulting in delays, is perceived by many respondents as providing inferior service and additional costs. A further indication of this is that despite a number of customers switching mainly from Hamburg to Rotterdam or Antwerp, the terminal handling rates in German ports remained high. Many respondents indicated that they would not in any case switch their hinterland traffic to an alternative deep-sea port in Europe if their current provider of terminal services increased their prices by 5-10%.

19. Lastly, switching ports might also depend on the willingness of shipping line's customers to follow its operational choices. Cargo owners consider the choice of port handling hinterland traffic by their provider of liner shipping services an important factor which influences their choice of shipping liner. The suitability of a port from the point of view of a cargo owner may depend on the distance and connection to the cargo owner's production site or the ultimate final destination. This is mainly due to costs which are caused by the inland haulage (especially pre-carriage to a port) incurred. For the above reasons, Le Havre and Dunkirk are largely considered as no substitute for the German ports (including the future terminal in Wilhelmshaven) by shipping lines operating in this range.
20. It follows from the above that the possible geographic scope of the market for handling hinterland traffic could be considered as the Hamburg-Antwerp range, and might be possibly narrowed down to comprising the German ports only. However, the final geographic definition can be left open for the purpose of the current case as the transaction does not raise competition concerns under any possible market definition.
21. As regards the geographic dimension of the market for terminal services for transshipment traffic, the market investigation has indicated that not all deep-sea ports in Northern Europe have comparable physical and logistic characteristics and charges as regards provision of stevedoring services. In particular the ports of Tilbury, Thamesport, Southampton, Gothenburg and Aarhus are largely not considered by many respondents as substitutes for the rest of the ports in the Northern European range mainly for reasons of draft restrictions and distance from key shipping routes and "transshipment markets". Additionally, Dunkirk, Le Havre and Felixstowe are considered less substitutable due to a capacity shortage and their distance from "secondary ports" in Scandinavia and the Baltic. Le Havre is considered more substitutable for handling feeders for Portugal, Spain, the UK and Ireland. In addition to these reasons, switching is always conditional upon available capacity.
22. Finally, the market investigation clearly supports the conclusion that, contrary to the notifying parties' opinion, Mediterranean is a distinct geographic market as regards stevedoring services for transshipment container traffic.
23. Consequently, it can be left open if the relevant geographic market for the provision of terminal services to transshipment traffic comprises all Northern European ports or is as narrow as the ports in the Hamburg-Antwerp range since the transaction does not raise competition concerns under any of these alternative market definitions.

Containerised Liner Shipping

24. According to the parties, liner shipping involves the provision of scheduled (sea) transport services operating to a fixed timetable. Liner shipping services can be divided according to the type of goods shipped into containerised liner shipping, and conventional (or break-bulk) liner shipping. This is in line with previous Commission decisions.¹⁴
25. The Commission has previously found that the narrowest possible geographical dimension of containerised liner shipping services consists of single trades from Northern Europe to other non European areas and vice versa¹⁵. This view is also supported by the parties.
26. The market investigation has broadly confirmed the above product and geographic market definition.

B. ASSESSMENT

I. Horizontal effects on the market for container terminal services

27. The JWP CT is a Eurogate company in which APMM will acquire joint control, and which will add capacity in the German ports from 2011 onwards.

(a) Current market shares and market structure

28. The parties have provided their respective market shares in 2006 based on total non-captive capacity and throughput (i.e. volumes available for third parties) as well as on the total operational capacity and throughput (i.e. by allocating of 100% of the non-captive throughput and capacity in jointly controlled terminals to each controlling partner). This method is used as although it overstates the market power of each partner, it provides the worse case scenario for the market power of each of the parties, as it assigns them the control over the full capacity of each joint venture in which they are involved.

Hinterland traffic

29. Based on the non-captive and total capacity¹⁶ in the Hamburg-Antwerp range, the parties indicate Eurogate's market share are [10-20]% and around [20-30]% and APMM's market share as below around [0-10]% and [0-10]%, respectively. There are a number of strong competitors, namely Hutchison and HHLA ([20-30]% and [10-20]%), PSA/HNN (around [10-20]% and [20-30]%). The parties' respective markets shares on the possible wider geographic market (Hamburg-Le Havre range) are even lower.
30. With respect to the two current German ports only (Hamburg and Bremerhaven), the parties estimate that Eurogate's market share calculated on the basis of the non-captive and total capacity is around [40-50]% and [50-60]% respectively, whereas APMM's market share is

¹⁴ Case No IV/M.831 – P&O/Nedlloyd, para 39. In case No COMP/M.3829 – Maersk/PONL, the Commission considered a possible narrower product market for the transport of refrigerated goods. The parties claim that this issue can be left open in this case.

¹⁵ Case No IV/M.831 – PO/Royal Nedlloyd; case No IV/M. 1651 – MAERSK/SEA-LAND.

¹⁶ Only capacity figures were used for the calculations, both for 2006 and 2014, in order to have a common base for comparison and to eliminate the unpredictable element of throughput for 2014.

around [0-10]% and [10-20]%, respectively. HHLA is the only competitor active in this range and its market share is estimated at [50-60]% and [40-50]%, respectively. In all cases, Eurogate and APMM's market shares have been double counted as explained above, therefore adding up individual market shares leads to a total which is higher than 100%.

Transshipment traffic

31. Based on the non-captive and total capacity in the Hamburg-Antwerp range, the parties estimate Eurogate's market share as [10-20]% and [20-30]% and APMM's market share as below [0-10]% and [0-10]%, respectively. Also here Hutchison and HHLA are active with estimated markets shares of [20-30]% and [10-20]%, as well as PSA/HNN (around [10-20]% and [20-30]%).
32. On a Northern Europe range (including the UK, Irish and Scandinavian ports), based on the non-captive and total capacity the data provided by the parties refers that Eurogate would have a market share of around [10-20]% and [10-20]%, whilst APMM would have less than [0-10]% in any one of the calculation methods used. Other players, such as HHLA, Hutchinson/ECT and PSA have an equally strong presence on this market.

(b) Impact of the JWP CT and future market structure

33. The JWP CT will start its operation in 2011 with an estimated capacity of 2,000,000 TEUs, which will increase to 3,450,000 TEUs in 2014 (1,760,000 TEUs of which will be available for third parties). Overall JWP CT will represent around [10-20]% of the total operational capacity in the German ports, [0-10]% in the Hamburg-Antwerp range, [0-10]% in the Hamburg-Le Havre range and [0-10]% in the Northern Europe range.
34. The parties state that there will be substantial increase of total capacity through a number of expansion projects in the Hamburg – Antwerp range within the next few years and they are not involved in any of those. Examples given for envisaged capacity expansion projects are Maasvlakte 2 in Rotterdam, Deurganckdock in Antwerp, Burchardkai in Hamburg. This was also supported by the market investigation. In particular, major terminal operators have confirmed that they are planning extension of existing terminals and/or the development of new terminals.
35. It is not possible to predict exactly to which extend the expected capacity will be utilized from 2011 onwards, and therefore both the total non-captive capacity and total operational capacity figures are used to estimate the relative market power of the joint venture partners, as follows:

Product market	Geographic market	Operators	Total non-captive %	Total operational %
HINTERLAND	German market	JWP CT	[0-10]	[10-20]
		APMM	[10-20]	[20-30]
		HHLA	[40-50]	[30-40]
		EUROGATE	[40-50]	[30-40]
	Hamburg - Antwerp	JWP CT	[0-10]	[0-10]
		APMM	[0-10]	[10-20]
		HHLA	[20-30]	[10-20]
		EUROGATE	[20-30]	[20-30]
		Hutchison/ECT	[10-20]	[10-20]
		PSA	[10-20]	[10-20]
	Hamburg Le Havre	JWP CT	[0-10]	[0-10]
		APMM	[0-10]	[20-30]
		HHLA	[20-30]	[10-20]
		EUROGATE	[20-30]	[20-30]
		Hutchison/ECT	[10-20]	[10-20]
PSA		[10-20]	[10-20]	
Transshipment	Hamburg - Antwerp	JWP CT	[0-10]	[0-10]
		APMM	[0-10]	[10-20]
		HHLA	[20-30]	[10-20]
		EUROGATE	[20-30]	[20-30]
		Hutchison/ECT	[10-20]	[10-20]
		PSA	[10-20]	[10-20]
	Northern Europe	JWP CT	[0-10]	[0-10]
		APMM	[0-10]	[10-20]
		HHLA	[10-20]	[10-20]
		EUROGATE	[20-30]	[20-30]
		Hutchison/ECT	[20-30]	[10-20]
		PSA	[10-20]	[10-20]

36. In the above table, 100% of the non-captive and total capacity were attributed to each of the JV's partners, which thus overstates the overall market capacity, and the parties' respective market power. Furthermore, the above table does not include expansions that are projected to become operational by 2014 and in which the shareholders of the JV are not involved. For example as regards the German ports, a further total operational capacity of 2,000,000 TEUs is foreseen in the Special Port Expansion and the Tollerort Extension (owned by HHLA) both in the port of Hamburg, which represent together around [50-60]% of the JV.

37. It has to be noted that Eurogate already has 100% control of the JWP CT, therefore its market shares are not transaction specific.

38. It can be seen from the above that the expected combined market share of APMM and JWP CT in 2014 will not be substantially higher than the APMM's current market share and that APMM's major competitors will retain important market shares. This is due to the fact that on the one hand the capacity added to the market by JWP CT is not particularly significant, but also given the capacity extensions of all major competitors confirmed during the market investigation.

Conclusion

39. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of any of the possible market definitions on account of horizontal effects.

(c) Article 2(4)

40. The JV will only start operating the Wilmshaven terminal in 2011, therefore, there is no immediate overlap of the parties' activities. Nonetheless, there is the possibility of co-operative effects between the parents companies ("spill over" effects) arising from the setting up of the JV, that fall to be examined under Article 2(4) of the ECMR, both before and after 2014.

41. Even when operating at full capacity, that is estimated to occur in 2014, the JV will have only [0-10]% of total non-captive capacity in the narrowest possible geographic range of the German ports. The JV will represent approximately only [10-20]% of Eurogate's total non-captive capacity and around [70-80]% of APMM's non-captive capacity, in the German ports¹⁷. Therefore, whilst Eurogate and APMM are active in the same markets as those in which the JV is present, the fact remains that the JV, even when it becomes fully operational in 2014 will not be a significant proportion of the activity of Eurogate in these markets. Therefore, Eurogate has no ability, or incentive to coordinate with APMM.

42. Further, the parties have different commercial objectives, as Eurogate is active as an independent container terminals operator, and the setting up of the JV serves to mitigate its financial risks of constructing and operating Wilhelmshaven. On the other hand, APMM's primary interest is to ensure access to terminal capacity in Northern Europe and reduce input costs for its core shipping line business. They do not therefore have the same commercial incentives.

43. In any case, there are no other indications that the entry of APMM as shareholder in the JV would have as its object or effect the coordination with Eurogate either in the German ports or in the alternative geographic market definitions. In effect, APMM and Eurogate already have a joint venture in the NTB terminal in Bremerhaven and the Commission's investigation did not provide any indication that the two notifying parties are coordinating their activities. The fact that APMM will meet Eurogate in the Advisory Board of the JV and discuss the JV's strategy in the market for container terminal services does not appreciably increase the risk of collusion in the geographic areas where both parents are present offering container terminal services, given the above.

¹⁷ In a scenario where 100% of the non-captive capacity is attributed to each of the shareholders of the joint ventures active in this German range.

44. Further, as seen above in the previous section, there are a number of independent terminal operators handling container terminal services in these areas.
45. Therefore, even if the concentration increased the risks of coordination, this would not afford APMM and Eurogate the possibility of restricting competition in the container terminal services under the various market definitions that could be adopted in Northern Europe.

II Vertical effects

46. APMM is active in the containerised liner shipping market, which is vertically related to the container terminal services. On the identified trades, APMM is currently a member of only one consortium.

(a) Market situation on containerised liner shipping market

47. Liner shipping markets are often characterized by conferences and consortia. Regulation No 1419/2006 repeals Regulation No 4056/86 which contained a block exemption for liner shipping conferences. The transitional period provided for in Regulation No 1419/2006 will end in October 2008. Consortia may continue to exist.¹⁸ Consortia are operational forms of co-operation between carriers on a trade-by-trade or global basis which may restrict competition between their members.

¹⁸ According to Art. 2(1) of Regulation 823/2000 (as amended by Regulation 463/2004), a consortium is defined as "an agreement between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to one or more trades, and the object of which is to bring about cooperation in the joint operation of a maritime transport service, and which improves the service that would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial arrangements, with the exception of price fixing".

48. APMM had a market share of [20-30]% or more on the seven following trades in 2006¹⁹:

Trade	Market size in TEUs	Market size in % of global Northern Europe trade ²⁰	APMM's market share in TEUs	APMM's market share in %
1. Northern Europe to South Africa	[...]	>1%	[...]	[30-40]
2. Northern Europe to West Africa	[...]	>1%	[...]	[30-40]
3. Australia/New Zealand to Northern Europe	[...]	>1%	[...]	[30-40]
4. West Coast South America to Northern Europe	[...]	>1%	[...]	[30-40]
5. South Africa to Northern Europe	[...]	>1%	[...]	[30-40]
6. West Africa to Northern Europe	[...]	>1%	[...]	[40-50]
7. East Africa to Northern Europe	[...]	>1%	[...]	[30-40]
TOTAL (of the 7 trades)	[...]	2.2%	[...]	[20-30]

49. On the trades to and from Northern Europe, APMM is only a member of the South African Europe Container Service VSA consortium (to and from South Africa). The total market shares of the VSA, including APMM in 2006 were [50-60]% on the trade from Northern Europe to South Africa, and [60-70]% from South Africa to Northern Europe.

50. Moreover, APMM had a market share between [10-20]% and [20-30]% on the following trades in 2006: Northern Europe to Australia/New Zealand, Northern Europe to East Africa, and Indian subcontinent to Northern Europe.

¹⁹ The information on APMM's market shares is provided in line with previous Commission decisions (COMP/M.3829 – Maersk/PONL, para 25ff.; IV/M.831 – P&O Nedlloyd, para 40ff.) on a trade by trade basis, split front-haul and back-haul (i.e. by trade direction). In 2006, [...] TEUs were shipped to and from Northern Europe through liner shipping, thereof [...] TEUs ([10-20]%) by APMM. APMM's volumes represent [0-10]% of the total deep sea terminal capacity in Northern Europe (APMM's volumes represent [0-10]% of the total deep sea terminal capacity in Northern Europe). This means that liner shipping throughput represents [50-60]% of the total terminal capacity in N.Europe.

²⁰ The percentage of the global N. Europe trade is calculated by arbitrarily supposing that out of the total of [...] TEUs shipped to and out of N. Europe, 50% were shipped in and 50% shipped out.

(b) Impact of JWP CT

51. APMM will have joint control over JWP CT. However, shipping lines competing with APMM and its consortium partners will not be foreclosed from the access to the relevant port terminal services as a result of the creation of JWP CT. JWP CT's market share will be below [0-10]% on any geographic ranges. Considering solely the German deep sea container ports, the market share of the JWP CT will be [0-10]% with respect to the non-captive capacity, and around 14% with respect to the total operational capacity.
52. Although APMM is the largest carrier by operating capacity, it represents only [10-20]% of the global containerised liner shipping market. Hence, it will not be in a position to foreclose other terminal operators from their customer base. APMM reaches market shares over [20-30]% on the 7 above listed trades identified as relevant markets in this case. However, considering the respective market shares and the combined market shares for the consortium to which APMM belongs, they are not sufficiently high to foreclose other terminals from their customer base.²¹ Various other strong competitors are active on the identified trades, and they can use competitors' terminals. No terminals are specific to any individual trade. In addition, numerous competitors hold shareholdings in at least one terminal. As all major shipping lines are reacting to growing demand, it can be expected that APMM's market shares when JWP CT becomes operational will not be substantially higher than its current market shares. Furthermore, the additional capacity added by JWP CT will only allow absorbing less than 5% of the total demand for container terminal services in Northern Europe, and therefore other terminal operators will not be excluded from the access to their customer base²². Consequently, the operation will not lead to foreclosure effects in the container terminal service market.
53. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of any vertical effects.

VI. CONCLUSION

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

For the Commission
[signed]
Benita FERRERO-WALDNER
Member of the Commission

²¹ Each of the above identified affected trades where APMM had a market share higher than [20-30]% represents less than [0-10]%, and the total of these trades account for [0-10]%, of the total deep sea container trade to and from Northern Europe. Moreover, despite APMM's high market shares on a per trade basis, the sum of its shares in the above trades ([...] TEUs) accounts for [0-10]%, of its share of global trade ([...] TEUs).

²² In 2006, [...] TEUs were shipped to and from N. Europe through liner shipping.