

***Case No COMP/M.7268 - CSAV/ HGV/ KÜHNE
MARITIME/ HAPAG-LLOYD AG***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 11/09/2014

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EUROPEAN COMMISSION

Brussels, 11.9.2014
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

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Dear Madam(s) and/or Sir(s),

**Subject: Case M.7268 – CSAV/ HGV/ KÜHNE MARITIME/ HAPAG-LLOYD AG
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2)
of Council Regulation No 139/2004¹**

- (1) On 23 July 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Compañía Sud Americana de Vapores S.A. ("CSAV", Chile), Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH ("HGV", Germany), and Kühne Maritime GmbH ("Kühne Maritime", Germany) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Hapag-Lloyd AG ("HL AG", Germany) and which will lead to the combination of the container shipping activities of CSAV and HL AG (the "Transaction").² CSAV and HL AG are collectively referred to as the "Parties".

I. THE PARTIES

- (2) **CSAV** mainly provides container liner shipping services and has limited activities in the freight forwarding and inland transportation sector. CSAV is controlled by Quiñenco S.A., a Chilean company which provides, among others, terminal, stevedoring, towage and other associated services through its subsidiary SM SAAM S.A. ("SAAM"). Quiñenco S.A is ultimately controlled by the Luksic Group (Chile).
- (3) **HGV** is the holding company for the commercial activities of the City of Hamburg. HGV, among others, operates container terminals in Germany and the Ukraine and provides terminal logistics services.
- (4) **Kühne Maritime** is a subsidiary of Kühne Holding AG ("Kühne", Germany). Kühne is the ultimate parent company of a group of companies, including Kuehne + Nagel International AG (Switzerland), active in the logistics business.
- (5) **HL AG** is an international container liner shipping company. Through a joint venture with a subsidiary of HGV, HL AG also offers port terminal services in Hamburg-Altenwerder. HL AG's main shareholders include HGV (37%), Kühne Maritime (28%), and TUI AG ("TUI") (22%), a company active in the travel sector.
- (6) Post-Transaction, the combined entity would be the fourth largest container liner shipping company in the world in terms of capacity, after Maersk, MSC, and CMA CGM.

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 248, 30.07.2014, p. 7.

II. THE OPERATION

- (7) In the context of the Transaction, CSAV will carve-out its container shipping activities and contribute them to CSAV Container Shipping Company ("CC Co"), a wholly owned indirect subsidiary of CSAV.
- (8) CSAV will contribute to HL AG all of its shares in CC Co, which will thus become a wholly owned subsidiary of HL AG. In return CSAV will obtain 30% of HL AG's share capital. Kühne Maritime, HGV, and TUI's shareholding in HL AG will be approximately 20%, 26%, and 15% respectively after the operation. CSAV will retain its dry bulk, vehicles carrier, and reefer vessels shipping activities, which will not be combined with the HL AG business.
- (9) Post-Transaction, the Parties intend to increase HL AG's capital. While the capital increase might affect the shareholdings of HL AG's current shareholders, it should not have an impact on HL AG's governance.

III. CONCENTRATION

- (10) CSAV, Kühne Maritime, and HGV have entered into a shareholder agreement to govern the ownership and management of HL AG (the "Shareholder Agreement"). Pursuant to the terms of the Shareholder Agreement, CSAV, Kühne Maritime, and HGV will form Hamburg Maritime GmbH & Co. KG ("HM KG"), a limited partnership under German law (Kommanditgesellschaft), which will be owned by CSAV (50%), by HGV (25%) and by Kühne Maritime (25%). CSAV and Kühne Maritime will contribute to HM KG 28% and 14% respectively of their shareholdings in HL AG. As a result, HM KG will hold approximately 43% of HL AG's share capital, whereas CSAV and Kühne Maritime will retain approximately 2% and 6% of HL AG share capital, respectively. HGV will not contribute any of its shares in HL AG to HM KG.
- (11) Pursuant to the terms of the Shareholder Agreement, each of CSAV, Kühne Maritime, and HGV will hold a veto right over the approval of strategic decisions at HL AG [Details of the Shareholder Agreement].
- (12) The Commission concludes that the Transaction confers joint control to CSAV, Kühne Maritime, and HGV over HL AG. The Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

- (13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (CSAV: EUR [...], HGV: EUR 3 347, Kühne: EUR 13 867 million, HL AG: EUR 6 263 million).³ Each of them has an EU-wide turnover in excess of EUR 250 million (CSAV: EUR [...], HGV: EUR [...], Kühne: EUR [...], HL AG: EUR [...]) and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension, according to Article 1(2) of the Merger Regulation.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

V. MARKET DEFINITION

- (14) The Parties are mainly active in the provision of container liner shipping services. They also provide port terminal services, however, without any geographical overlap. CSAV, *via* its sister company SAAM, is only active in the Americas while HL AG's activities in port terminal services are concentrated in Hamburg. Kühne is active in the area of freight forwarding through its affiliate Kühne + Nagel International and HGV has shareholdings in companies that are active in container terminal services and inland transportation.

V.1. The market for container liner shipping services

V.1.1. Product market

- (15) The Parties submit that the relevant product market is the market for container liner shipping comprising refrigerated (reefer) and non-refrigerated (warm) containers.⁴
- (16) In past cases, the Commission has found that the market for container liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container.⁵ This market can be distinguished from non-liner shipping (tramp, specialised transport) because of regularity and frequency of the service. In addition, the use of container transportation separates it from other non-containerised transport (bulk, vessel).
- (17) A large majority of respondents to the market investigation indicated that this approach is still valid, and relevant for the purpose of analysing the competitive effects of the Transaction.⁶
- (18) A possible narrower product market is that for the transport of refrigerated goods, which could be limited to reefer containers only or could also include transport in conventional reefer vessels. According to the Commission's case practice, in trades with a share of reefer containers in relation to all containerised cargo below 10% in both directions, transport in reefer containers is not assessed separately, but as part of the overall market for container liner shipping services.⁷
- (19) The market investigation yielded mixed results concerning the definition of a narrower market for the transport of refrigerated goods. While a clear majority of competitors considered that there was no separate market for refrigerated goods, custom-

4 Form CO, paragraphs 110 and following.

5 M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 13.

6 Responses to question 6 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

7 On trades with a share of reefer containers below 10% of total capacity, vessels have in general more reefer facilities than actually used. Shipping companies will therefore be able to shift volume from transport of warm containers to transport of reefer containers in the short term and without significant additional costs.; M.3829 – *Maersk/PONL*, paragraph 10; M.3863 – *TUI/CP Ships*, paragraph 8; M.3973 – *CMA CGM/Delmas*, paragraph 7.

ers' views were more or less tied or stated they had no opinion.⁸ Some competitors replied that the transport of refrigerated goods is part of the market for containerised liner shipping, mainly due to supply side substitutability.⁹ Other competitors were of the opinion that the transport of refrigerated goods was a highly specialised market and required a vast amount of product knowledge.¹⁰ However, it is not necessary to come to a firm conclusion on whether there is indeed a separate market for the transportation of refrigerated goods because the assessment of the Transaction would not change materially under any plausible market definition.

- (20) With regard to the inclusion or not of conventional bulk reefer vessels (in addition to reefer containers) in a potential market for the transport of refrigerated goods, the market investigation proved inconclusive. While customers stated clearly that switching between bulk reefer vessels and reefer containers was not easy,¹¹ some competitors argued that switching from bulk reefer vessels to reefer containers was easier than the other way around.¹² In general, several respondents to the market investigation argued that the volume of reefer containers had been increasing lately to the detriment of volumes shipped by bulk reefer vessels and that competition between bulk reefer vessels and reefer containers depended on the respective trade and volumes transported. Almost all respondents, competitors and customers alike, declared to be using exclusively reefer containers.¹³ However, whether or not bulk reefer vessels compete in the same market as reefer containers can be left open since the Transaction would not raise serious doubts as to its compatibility with the inter-

⁸ Responses to question 7.1 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

⁹ For example, in their reply to question 7.1 of Q1 – Questionnaire to competitors, MSC Mediterranean Shipping Company argued that in its view "*More specifically, the overwhelming majority of container ships have a certain allocation of reefer plugs and outlets for electrical power generation purposes, in order to carry both reefer and [n]on-refrigerated containers. In case there is insufficient market demand for reefer containers, a shipping company may use these slots for non-refrigerated containers and vice versa. Indeed, it is MSC's view that the majority of the modern container liner vessels are already well equipped with requisite plugs. On older vessels, plugs can be added at a reasonable cost in order to correspond to and accommodate in a timely manner a market demand for reefer transportation in excess of their respective reefer-allocated slots on their vessels, through the use of movable generator units fitted in standard sized containers which are placed on the deck among the rest of the cargo*".

¹⁰ For example in their reply to question 7.1 of Q1 – Questionnaire to competitors, Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG ("HSDG") stated that the "*competition between conventional reefer ships and containerised transport is strong for high volume commodities such as bananas. It is also characterised by high investment levels, high imbalances and strong seasonality*".

¹¹ Responses to question 7.2 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

¹² Responses to question 7.2 of Q1 – Questionnaire to competitors.

¹³ Responses to question 7.3 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

nal market under any plausible market definition given, in particular, that there is no overlap between the Parties' bulk reefer activities.¹⁴

V.1.2. Geographic market

- (21) The Parties submit that the market for container liner shipping services consists of different trades which in turn can be segmented into legs of trade.¹⁵
- (22) In previous cases, the Commission has stated that the geographic market for container liner shipping services consists of single trades. Given that the market conditions on the two directions of a trade can be different, in particular in the case of trade imbalances or different characteristics of the products shipped, the Commission has distinguished between the legs of a trade.¹⁶ A "trade" is defined by the range of ports which are served at both ends of the service (e.g. Northern Europe – North America and back). A "leg of trade" is defined as one of the two directions of a trade (e.g. Northern Europe – North America is the first leg; North America – Northern Europe is the second leg).
- (23) 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. Relevant trades are those from Northern European areas and back on the one hand, and from the Mediterranean to other non-European areas and back on the other hand.
- (24) The Commission has based its assessment of transactions in the container liner shipping sector on the distinction between "Northern Europe" and "Mediterranean" as separate geographic markets.¹⁷
- (25) The Commission has at the same time in all decisions in the last 10–15 years treated "North America" (including Mexico) as one geographic market¹⁸ (the relevant region for the various legs of trades) and not distinguished between the different countries (US, Canada, Mexico) or between the different coasts (East Coast of North America, Mexican/US Gulf Coast, West Coast of North America).¹⁹

14 CSAV bulk reefer operations will not be contributed to the combined entity and will continue to be operated independently by CSAV post-transaction.

15 Form CO, paragraphs 119 and following.

16 M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14; M.3863 – *TUI/CP Ships*, paragraph 9.

17 M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14; M.3863 – *TUI/CP Ships*, paragraphs 9 and 11; M.3829 – *Maersk/P&O Nedlloyd*, paragraph 14.

18 The Commission has previously considered that the "North America" trade includes Canada, US (with Gulf Coast) and Mexico; M.3863 – *TUI/CP Ships*, paragraph 24, footnote 22.

19 M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14, footnote 5; M.3863 – *TUI/CP Ships*, paragraph 9, footnote 6, and paragraph 11; M.3829 – *Maersk/P&O Nedlloyd*, paragraph 14, footnote 8.

- (26) The Commission's previous practice concerning the definition of a trade and its legs has received almost unanimous approval by all respondents in the market investigation.²⁰
- (27) The market investigation has equally confirmed with large majorities among all groups of respondents the Commission's assessment that the following ranges of ports constitute a single end of trade:²¹
- Northern Europe
 - Mediterranean
 - North America
 - South America East Coast
 - South America West Coast
 - Central America and Caribbean
 - Middle East and Indian Subcontinent
 - Far East
- (28) Furthermore, clear majorities of all responding competitors and customers were of the opinion that the transportation of cargo from point A to point B (the first leg of a trade) is a different market from the transportation of cargo from point B to point A (the second leg of a trade).²² Customers also stated that when purchasing cargo transportation services on a trade, they did not purchase in comparable proportions for both legs of trade,²³ thus lending credence to the conclusion that the two legs of a trade do indeed form separate markets.
- (29) In light of the above, the market for container liner shipping services consists of different trades which in turn can be segmented into legs of trade. However, for the purposes of this Decision it is not necessary to conclude if the legs of trade form a separate, narrower product market because the overall assessment of the Transaction would not be different under either definition.

20 Responses to question 8 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

21 Responses to question 9 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders; responses to question 4 of Q2 – Questionnaire to container terminal service providers.

22 Responses to question 10 of Q1 – Questionnaire to competitors, of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

23 Responses to question 11 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

V.2. Other product markets

- (30) Apart from horizontal overlaps between the Parties' activities in container liner shipping there are several markets which are vertically affected.²⁴

V.2.1. Container terminal services

- (31) Container terminal services are "input services" to container liner shipping. The Parties submit that, as HL AG and HGV have an interest only in a container terminal services operation in Hamburg, the relevant geographic market for container terminal services (or stevedoring services) is in its broadest scope Northern Europe (for transshipment traffic) and in its narrowest possible scope the catchment area of the ports in the range Hamburg – Antwerp (for hinterland traffic).²⁵
- (32) In previous cases,²⁶ the Commission defined separate markets for stevedoring services for deep-sea container ships, broken down by traffic flows to hinterland traffic (direct deep-sea) and transshipment traffic (relay/feeder).
- (33) As regards the geographic market definition for container terminal services, the Commission considered that for container terminal services in deep sea ports, the relevant geographic market is in essence determined by the geographic scope the container terminal generally serves (catchment area).²⁷ For example, concerning Northern Europe, the Commission considered that the relevant geographical dimension of stevedoring services is in its broadest scope Northern Europe (for transshipment traffic) and in its narrowest possible scope the catchment area of the ports in the range Hamburg–Antwerp (for hinterland traffic) or possibly even narrower, comprising the German ports only.
- (34) The results of the market investigation show almost unanimous support for the delineation as established by the Commission's previous case practice.²⁸
- (35) However given that the Transaction would not raise serious doubts as to its compatibility with the internal market on the market for container terminal services, there is no need to come to a firm conclusion on the definition of this market.

V.2.2. Freight forwarding

- (36) Freight forwarders are customers of container liner shipping companies, i.e. freight forwarding is a downstream market to container liner shipping.

²⁴ HGV has some activities in ship financing (Form CO, paragraph 202). However, given the very limited extent of these activities, it is unlikely that they will create any foreclosure concerns and therefore they will not be discussed any further in this Decision.

²⁵ Form CO, paragraphs 224 and following.

²⁶ M.5398 – *Hutchison/Evergreen*, paragraphs 9–11; M.3829 – *Maersk/PONL*, paragraphs 17–19; M.3863 – *TUI/CP Ships*, paragraph 12.

²⁷ Compare M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16; M.5066 – *Eurogate/APMM*, paragraphs 15–20; M.6305 – *DFDS/C.Ro Ports/Älvsborg*, paragraphs 16–18.

²⁸ Responses to question 3 and of Q4 – Questionnaire to container terminal service providers.

- (37) The Commission has defined the freight forwarding market as "*the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs*".²⁹ The Commission subdivided the market into domestic and cross-border freight forwarding and into freight forwarding by air, land and sea.³⁰
- (38) Air and sea freight forwarding include land transportation to/from the airport/port when required by customers. The freight forwarder generally hires transportation capacity from third parties. In the segment of sea freight forwarding, transportation capacity is provided by container liner shipping companies like HL AG and its competitors and thus, container liner shipping and sea freight forwarding are two vertically related businesses.
- (39) In past decisions, the Commission defined the geographic scope of the market either as national or wider. Specifically, the Commission defined the market for sea freight forwarding as at least national.³¹
- (40) The Parties did not express any disagreement with this approach.³²
- (41) However, it is not necessary to define the market precisely, because the Transaction would not raise serious doubts as to its compatibility with the internal market under any possible market definition as regards freight forwarding.

V.2.3. *Inland transportation*

- (42) If a container liner shipping company provides door-to-door services it also arranges inland haulage for its customers. Thus, these services are vertically related to container liner shipping.
- (43) In accordance with the Commission's previous decisional practice, inland transportation covers the physical movement of goods by using own (i.e. owned or leased) equipment. The Commission also indicated that the various means of inland transport probably constitute separate product markets. With regard to the geographic dimension, the Commission considered the market as either national or wider.³³
- (44) The Parties concur with the Commission's previous practice.³⁴
- (45) However, it is not necessary to conclude on a precise definition of the relevant market as the Transaction would not raise serious doubts as to its compatibility with the

²⁹ M.1794 – *Deutsche Post / Air Express International*, paragraph 8, M.5480 – *Deutsche Bahn/PCC Logistics*, paragraph 12; M.6059 – *Norbert Dentressangle / Laxey Logistics*, paragraph 17.

³⁰ M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 18; COMP/M.5480 – *Deutsche Bahn/PCC Logistics*, paragraph 12.

³¹ M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 18; COMP/M.5480 – *Deutsche Bahn/PCC Logistics*, paragraph 15–17; M.6671 – *LBO France / Aviapartner*, paragraph 76.

³² Form CO, paragraphs 274 and following.

³³ M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 17.

³⁴ Form CO, paragraph 262.

internal market under any plausible market definition as regards inland transportation.

V.2.4. *Harbour towage services*

- (46) There is a vertical relationship between the container liner shipping activities of the Parties and harbour towage services.
- (47) 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.
- (48) In previous decisions, the Commission left the exact market definition open. In case M.3829 – *Maersk/PONL*,³⁵ the Commission considered that the narrowest possible geographical market definition was limited to individual ports.
- (49) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market regarding the market for harbour towage services, the exact product and geographic market definitions can be left open.

VI. COMPETITIVE ASSESSMENT

VI.1. Introduction

VI.1.1. *Slot charter agreements, consortia, and alliances*

- (50) Shipping companies provide their services either individually with their own vessels (owned or chartered) or through co-operation agreements with other shipping companies. Cooperation agreements can consist of slot charter agreements, consortia (also called vessel sharing agreements), or alliances.
- (51) Under a *slot charter agreement* a shipping company ("charterer") "rents" a pre-determined number of container slots on a vessel of another shipping company in exchange for cash (normal slot charter) or slots on its own vessels (slot-exchange). Slot charter agreements do not normally involve joint decision making concerning marketing, ports of call, schedule or the use of the same port terminals.
- (52) *Consortia* are operational agreements between shipping companies established on individual or multiple trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides vessels for operating the joint service and in exchange receives a number of container slots across all vessels in the service based on the total vessel capacity contributed. The allocation of container slots is usually pre-determined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of costs between the participants in a consortium.

³⁵ M.3829 – *Maersk/PONL*, paragraphs 24.

(53) The Parties are members of various consortia. CSAV is currently a member of six consortia on trades from/to European ports where its container liner shipping services overlap with those of HL AG:³⁶

Table 1: Information on CSAV's memberships in consortia on overlapping trades from/to Europe

| Name | Members | Overlap trades |
|--|-----------------------------|--|
| Samex (also referred to as Victory Bridge) | CSAV, CMA CGM ³⁷ | Northern Europe – North America |
| Ecuador Express | CSAV, MSC ³⁸ | Northern Europe – North America (westbound ("wb") only) Northern Europe – Central America/Caribbean Northern Europe – South America West Coast |
| Med Andes | CSAV, CCNI ³⁹ | Mediterranean – Central America/Caribbean Mediterranean – South America West Coast |
| Euroandes | CSAV, MSC | Northern Europe – Central America/Caribbean Northern Europe – South America West Coast |
| Euroatlan Brazilian | CSAV, MSC, CMA CGM | Northern Europe – South America East Coast |
| IMEX | CSAV, MSC | Northern Europe – Indian Subcontinent/Middle East Mediterranean – Indian Subcontinent/Middle East |

³⁶ Notice of termination has been served for Samex and IMEX [...]. Therefore those consortia are unrelated to the Transaction. [...] There are two separate Ecuador Express agreements – one covering the Northern Europe – South America West Coast trade, [...]. The other one, the Ecuador Express agreement covering Northern Europe – North America (westbound only), [...]. The Euroatlan Brazilian consortium was [restructured in 2014]. [...].

³⁷ Compagnie Générale Maritime – Compagnie Maritime d'Affrètement ("CMA CGM").

³⁸ Mediterranean Shipping Company S.A. ("MSC").

³⁹ Compañía Chilena de Navegación Interoceánica S.A. ("CCNI").

- (54) HL AG is a member of the following consortia on trades from/to European ports where its container liner shipping services overlap with those of CSAV:

Table 2: Information on HL AG's memberships in consortia on overlapping trades from/to Europe

| Name | Members | Overlap trades |
|-------------------|---|---|
| G6 | HL AG, APL, ⁴⁰ HMM, ⁴¹ MOL, ⁴² NYK, ⁴³ OOCL ⁴⁴ | Northern Europe – Indian Subcontinent/Middle East Northern Europe – North America Mediterranean – Indian Subcontinent/Middle East Mediterranean – Far East |
| GA | HL AG, NYK, OOCL | Mediterranean – Indian Subcontinent/Middle East Mediterranean – Far East |
| SLCS | HL AG, OOCL | Northern Europe – North America |
| SLCS - MSC | HL AG, OOCL, MSC | Northern Europe – North America |
| MPS | HL AG, HSDG ⁴⁵ | Mediterranean – Central America/Caribbean |
| Eurosal | HL AG, HSDG, CMA CGM | Northern Europe – Central America/Caribbean Northern Europe – South America West Coast |
| EAX | HL AG, CMA CGM | Northern Europe – Indian Subcontinent/Middle East Mediterranean – Indian Subcontinent/Middle East Mediterranean – Far East |
| IOS (former EPIC) | HL AG, HSDG | Northern Europe – Indian Subcontinent/Middle East Mediterranean – Indian Subcontinent/Middle East |

⁴⁰ American President Lines Ltd ("APL").

⁴¹ Hyundai Merchant Marine Co. Ltd ("HMM").

⁴² Mitsui O.S.K. Lines Ltd ("MOL").

⁴³ Nippon Yusen Kabushiki Kaisha ("NYK").

⁴⁴ Orient Overseas Container Line Ltd ("OOCL").

⁴⁵ Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG ("HSDG").

- (55) *Alliances* are basically vessel sharing agreements, the main difference being that they cover multiple trades rather than one trade, i.e. they are a matrix of vessel sharing agreements. Only HL AG, but not CSAV, is a member of alliances, the GA and the global G6 alliance.⁴⁶
- (56) Since 1995 the Commission had put in place several Block Exemption Regulations concerning the container liner shipping industry.⁴⁷ The Commission acknowledges that although the cooperation of consortia members in jointly operating container liner shipping services is likely to restrict competition, it also enables achieving certain efficiencies, by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress. For customers to benefit from those efficiencies, however, sufficient competition should be maintained in the market. This condition is met, according to the BER, where the market share of a consortium does not exceed 30%⁴⁸ and the consortium agreement does not include features likely to significantly restrict competition, such as the fixing of prices, the limitation of capacity, and the allocation of customers or markets.⁴⁹

VI.1.2. *Market share calculation and data availability*

- (57) One of the main data sources in the container liner shipping industry is a private consultancy, Container Trades Statistics Ltd ("CTS"). CTS receives information on the individual volumes shipped by twenty of the main companies active in the container liner shipping business. The data CTS collects consist of the volumes transported by each shipping company on a given trade, broken down by the type of service (i.e. reefer and warm). CTS data does not distinguish whether volumes are transported by a shipping company on its own vessels, through consortia, or slot charter agreements.
- (58) CTS data are collected on a monthly basis and published with a one year delay. Therefore, 2012 is the most recent complete calendar year for which data are availa-

⁴⁶ The G6 Alliance was started in March 2012 on trades between Europe and Asia, as can be seen from Table 2. GA has been subsumed by G6 on the transatlantic routes and is expected to be subsumed by G6 on all trades over time. Neither G6 nor GA are active on any of the trades between Europe and South America. As can be seen from Table 2, HL AG is only a member in two smaller consortia that operate on trades covering South America (Eurosas and MPS). On the trade Mediterranean – North America (where the overlap between the Parties' activities is small), the JMCS consortium agreement between HL AG and Hanjin was terminated by Hanjin and therefore is unrelated to the Transaction.

⁴⁷ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256, 29.9.2009, p.31 ("BER"), prolonged until 2020 by Regulation (EC) 697/2014 of 24 June 2014 amending Regulation (EC) No 906/2009, OJ L 184, 25.6.2014, p.3.

⁴⁸ Calculated on the basis of the method provided in the BER, see paragraph 60 below.

⁴⁹ Articles 5 and 6 of the BER.

ble. However, in its assessment the Commission has taken into account consortia composition as at August 2014 and projected 2012 data thereon.⁵⁰

- (59) In the present case, the Parties mainly rely on CTS data and are therefore not able to provide estimated consortia market shares based on the volumes transported by the individual consortia.
- (60) A method for computing consortia market shares is included in the BER, on the basis of which the 30% threshold contained in that regulation should be calculated. According to the BER, the market share of a consortium is equal to the sum of the market shares of all its members, irrespective of whether those volumes are carried within the consortium in question; within another consortium to which the member is a party or outside a consortium on the member's own or on third party vessels. The BER methodology may lead to some double-counting in calculating the shares of individual consortia where shipping companies are members of multiple consortia which operate on the same trade(s). In such cases, the volumes transported by each shipping company on a given trade are attributed in full to the various consortia it participates in on that trade.⁵¹ As a consequence, on trades on which several consortia are active, this methodology may result in aggregate consortia market shares exceeding 100%.
- (61) The Parties have estimated the total volumes transported by each consortium by following the BER method and on the basis of a second calculation method, in order to reduce the double-counting.⁵² Through this second methodology, a single aggregate market share for the Parties and all of their consortia is computed, summing up the total volumes of all the shipping companies participating in any of the Parties' consortia. In this way if a shipping company participates in more than one consortium with any of the merging Parties on the same trade, its volume will be counted only once and not added for each consortium.
- (62) For the purposes of this Decision, the Commission will follow this second methodology in its analysis. This calculation not only reduces double-counting, but it further provides an indication of the part of the market corresponding to the operations of the Parties and their consortia. Subsequently, it also enables the calculation of the part of the market that is completely independent from the Parties.

VI.1.3. Assessment framework

- (63) In order to offer liner shipping services on a given trade with a regular, usually weekly schedule, a certain minimum volume is required. Therefore, most shipping companies, including the Parties, mainly offer their container liner shipping services in cooperation with other shipping companies through consortia.

⁵⁰ Share data (2012) for individual shipping companies is provided in Annex 6.1.24 to the Form CO; share data (2012) for consortia mapped onto consortia memberships as at August 2014 is provided in Annex 6.1.25 to the Form CO.

⁵¹ See the BER on liner shipping which provides a methodology for calculating market shares for individual consortia.

⁵² Form CO, paragraphs 198 and following.

- (64) The Parties submit that viewing consortia as single economic entities would not be in line with economic and legal reality. To the contrary, they consider consortia as pro-competitive arrangements that do not involve any form of price coordination or revenue sharing but lead instead to an increase of competition in particular on price between the members of a given consortium, as the service offered within the consortium is rather homogeneous. Furthermore, the Parties submit that shipping companies, even within consortia, can manage freely the capacity of their own ships, once the minimum requirements of the consortia are met, and increase it to meet customer demand. This reflected the behaviour of customers which employed multisourcing strategies across and within consortia on a given trade. The Parties are therefore of the view that their participation in consortia should not be taken into account when assessing the impact of the Transaction as these agreements do not adversely affect competition.
- (65) A majority of respondents to the market test have indicated that price competition does exist, and not only among consortia, but also among consortium members.⁵³ Customers stated that they often invite shipping companies belonging to the same consortium to negotiate or bid for their business, because even though they belong to the same consortium they charge different rates.⁵⁴ Also consortium membership does not seem to play a major role with regard to consumer choice: a large majority of responding customers have stated that they do not choose container liner shipping companies based on consortium or alliance membership.⁵⁵
- (66) Moreover, customers, in particular those shipping large volumes, have indicated that they consider to have some degree of buyer-power *vis-à-vis* shipping companies⁵⁶ and confirmed that they often source their requirements for container liner shipping services from multiple shipping companies (often more than four different shipping companies),⁵⁷ irrespective of their consortia membership,⁵⁸ thus benefitting from price competition within one and the same consortium. In addition, customers use several contract methods, combining individual service contracts, multiple service contracts and spot contracts, thus maintaining a significant level of flexibility. Cus-

53 Replies to Q2 – Questionnaire to direct customers, questions 22 and 30; replies to Q3 – Questionnaire to freight forwarders, questions 22 and 30.

54 Replies to Q2 – Questionnaire to direct customers, question 18; replies to Q3 – Questionnaire to freight forwarders, question 18.

55 Replies to Q2 – Questionnaire to direct customers, question 28; replies to Q3 – Questionnaire to freight forwarders, question 28.

56 Replies to Q2 – Questionnaire to direct customers, question 32; replies to Q3 – Questionnaire to freight forwarders, question 32.

57 Replies to Q2 – Questionnaire to direct customers, question 13; replies to Q3 – Questionnaire to freight forwarders, question 17.

58 Replies to Q2 – Questionnaire to direct customers, question 13; Replies to Q3 – Questionnaire to freight forwarders, question 13.

tomers that multisource have indicated that switching among their suppliers of container liner shipping services is not only commonplace⁵⁹ but also fairly easy.⁶⁰

- (67) The replies to the market investigation have therefore confirmed the views of the Parties that there is competition not only between consortia but also within consortia between their respective members.
- (68) However, contrary to what the Parties argue, the participation in consortia can lead to anticompetitive effects as it restricts consortia members' flexibility on some of the key parameters of competition (outlined in the following recital). This conclusion is valid despite some degree of price competition within a consortium.
- (69) Participants in a consortium have to agree on the capacity that the consortium will offer and even if the individual shipping companies can normally increase the capacity offered on the vessels they operate on an *ad hoc* basis, changes to the capacity of the consortium have to be agreed among all consortium members.⁶¹ It must be noted in this respect that, because demand for container liner shipping services is rather inelastic with regard to price changes, capacity represents a key parameter of competition as small variations in available capacity can have a significant effect on price.⁶² The setting of capacity for an individual consortium can materially influence the level at which price competition takes place not only across competing consortia but also among consortia members. A vast majority of respondents to the market investigation have confirmed that capacity is indeed an important driving force for competition in this industry.⁶³
- (70) In addition to capacity, consortia members have to agree on other aspects of the service, including frequency of service, transit times, and ports of call, which are also important drivers of competition among shipping companies.⁶⁴
- (71) As the Transaction would lead on certain trades to the creation of new links between previously independent consortia, the combined entity, in markets where it would have market power post-Transaction, would have a greater ability to influence these key parameters of competition on those trades. By having (i) the ability to influence decisions regarding the level and the allocation of capacity, (ii) a say in the setting of ports of call and schedules, and (iii) access to information on capacity for a broader range of consortia and competitors than CSAV and HL AG individually have today, the merged entity could reduce the capacity it offers or, in any event, compete less

59 Replies to Q2 – Questionnaire to direct customers, question 24; replies to Q3 – Questionnaire to freight forwarders, question 24.

60 Replies to Q2 – Questionnaire to direct customers, question 23; replies to Q3 – Questionnaire to freight forwarders, question 23.

61 See, e.g., Form CO, Annexes 6.1.10, Details of CSAV's consortium agreements and 6.1.15, Details of HL AG's consortium agreements.

62 Form CO, Annex 7.5.7.

63 Replies to Q2 – Questionnaire to direct customers, question 12; Replies to Q3 – Questionnaire to freight forwarders, questions 12.

64 Replies to Q2 – Questionnaire to direct customers, question 12.2 and 29; Replies to Q3 – Questionnaire to freight forwarders, questions 12.2 and 29.

aggressively than today. The combined entity would then generate profits from consortia that pre-transaction were independent from one another by benefitting from the effects of an increase in prices induced by a reduction in capacity in one consortium through the profits generated in another consortium in which it also participates.

- (72) The creation of new links between previously independent consortia may generally make also co-ordinated effects more likely, in particular on those trades where through the Transaction previously independent consortia would be linked in such a way that independent competition becomes very limited and entry and expansion is hampered due to the small volumes transported. Such a situation might occur on two trades: Northern Europe – Central America/Caribbean and Northern Europe/South America West Coast. However, on those trades the commitments offered by the parties would also remove any serious doubts as to the compatibility of the Transaction with the internal market based on co-ordinated effects by severing the new links between previously independent consortia which would have been created by the Transaction.

VI.1.4. Assessment criteria

- (73) The Commission starts its analysis by considering the Parties' individual market shares in the different affected markets and the market share increment brought about by the Transaction. However, the Commission considers that it is not appropriate to assess this Transaction only on the basis of the Parties' individual market shares. This approach would not adequately take into account that a member of a consortium, even by carrying a limited volume, can have a significant influence on the operational decisions of the consortium concerning the characteristics of the service provided, in particular its level of capacity. Therefore, the Commission will also base its assessment on the aggregate shares of the Parties' consortia, following the second method of calculation of market shares proposed by the Parties, which provides a quantitative indication of the volumes over which the Parties have an influence through their participation in different consortia. In so doing, the Commission does not treat other consortia members as if they were part of the Parties' undertakings (*quod non*) but simply reflects the more limited competitive constraints that the Parties' consortia partners exert on them for the reasons set out at recitals (68) to (71) above.
- (74) The part of the market that will remain completely independent from the combined entity and its consortia will also be considered, as it provides a first indication of the level of competitive constraint that the Parties would continue to be facing post-Transaction. Similarly, the number and size of the various independent competitors that will continue operating on each trade post-Transaction will be taken into account in the Commission's assessment. Where the number of independent competitors would be limited and their share significantly smaller than that which can be influenced by the Parties, the Commission will consider this a strong indication that the Transaction would raise serious doubts as to its compatibility with the internal market.
- (75) The Transaction is also more likely to have a significant impact on trades, in which the Parties operate prior to the concentration in consortia not already linked to each other in any way, i.e. by cross-participation of third parties. If the Transaction creates a new link of previously unconnected consortia, the Parties would be directly able to jointly decide on the capacity and other parameters of the services of these consortia and therefore influence a significantly greater part of the market post-Transaction. If,

however, these consortia were already linked via third parties prior to the Transaction,⁶⁵ the reduction of competition would be comparatively smaller as the two consortia would not, pre-Transaction, decide fully independently of each other on capacity and the services they offer.

- (76) The overall size of the trades will also be taken into account in the Commission's assessment, as small trades are less attractive to potential new entrants. In order to effectively compete with incumbent shipping companies, new entrants have to ensure that they can sell a minimum amount of volume enabling them to offer a weekly service as is the business standard. This is significantly more difficult in small trades, where demand is relatively low and therefore new entrants would not be in the position of exerting an effective constraint, should the Parties decide to reduce the capacity they offer.
- (77) In particular as regards barriers to entry and expansion, a majority of the Parties' competitors that have replied to the market investigation indicated that entry into new trades or expansion of services is somewhat (53%) or very difficult (6%), whereas 24% consider it to be somewhat or very easy. The majority of respondents identified overcapacity (63%) and the low profitability/low demand of certain services (56%) as the main deterring factors, followed by the time and cost of setting up a new service and of establishing cooperation with other shipping companies (38%). Moreover, 59% of the Parties' competitors that have replied to the market investigation indicated that they did enter new routes or expand their services in the course of the last three years. It thus derives that if there is sufficient demand in a trade, some of the shipping companies already active in this route could further expand their service offer, or new shipping companies would enter.

VI.2. Horizontal overlaps (trade-by-trade assessment)

VI.2.1. The view of the Parties

- (78) The Parties submit that the Transaction will not materially affect competition on any of the overlapping trades because of the moderate market shares the Parties have individually. Moreover, the Parties submit that the Transaction will not create substantial new links between consortia and that they will continue to face competition from independent shipping companies as well as from third-party consortia.⁶⁶ For the Northern Europe – South America East Coast, Northern Europe – South America West Coast and Mediterranean – South America West Coast trades the Parties also argue that they will continue facing competition from transshipment services to Central America and the Caribbean.⁶⁷

VI.2.2. Overview of overlapping trades

- (79) The Parties' activities overlap on twelve trades: Northern Europe–North America, Northern Europe–Central America and Caribbean, Northern Europe–South America East Coast, Northern Europe–South America West Coast, Mediterranean–North

⁶⁵ This is currently the case in the NE-NA trade, where the Parties are not in the same consortium, but are both members in consortia in which the other member is MSC.

⁶⁶ Form CO, paragraphs 313 and following.

⁶⁷ Form CO, paragraphs 340–346 and 367.

America, Mediterranean–Central America and Caribbean, Mediterranean–South America West Coast, Northern Europe–Indian Subcontinent/Middle East, Mediterranean–Indian Subcontinent/Middle East, Northern Europe–Far East, Mediterranean–Far East and Mediterranean–South America East Coast.⁶⁸

- (80) The Parties submit that the overlaps of their activities in the Mediterranean–North America and the Northern Europe–Far East trades are negligible, as CSAV only ships marginal volumes and has effectively zero market shares; as a result these two trades will not be part of the Commission analysis.
- (81) Among the remaining 9 trades, the Transaction would lead to serious doubts as to its compatibility with the internal market on the following two:
- Northern Europe–Central America and Caribbean; and
 - Northern Europe–South America West Coast.
- (82) The competitive situation and the market structure pre- and post-Transaction for all the overlapping trades are described and assessed in sections VI.2.3–VI.2.11 below.
- (83) Concerning the market shares as presented in Tables 3–11 summarising the competitive landscape for each of these trades, the market shares attributed to individual consortia tend to overstate the position of those consortia due to limitations of the available data (data are available only by shipping company without any split between volumes carried by that company within or outside of a consortium) and double counting (due to cross-participation of shipping companies in various consortia), as explained in recitals (57) to (62).
- (84) In order to limit the effect of double counting, Tables 3–11 present market shares on an aggregated level for all consortia the Parties participate in and the market shares of all competitors unaffiliated with the Parties. The market shares of the independent competitors reported in the table represent the part of the overall market that is completely independent from the Parties. However, individual consortia market shares presented in the route descriptions may differ from and exceed the figures contained in the tables because they are calculated according to the methodology provided in recital 10 in the preamble to the BER, as explained in recitals (57) and following.

VI.2.3. *Northern Europe–North America (NE–NA)*

VI.2.3.1. Description of the trade

- (85) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–NA trade are summarised in the table below.

⁶⁸ On the Mediterranean–South America East Coast the Parties are not active through consortia. On a trade level, their combined market share amount to [10-20]% on a market for container liner shipping services including reefer (the Parties' market share would not change materially if a market for container liner shipping services excluding reefer were considered) and to [5-10]% if a market for shipping of reefer goods is considered separately.

Table 3: NE–NA

| | Trade | West- | Eastbound |
|---------------------------|----------|----------|-----------|
| | Comb. | Comb. | Comb. |
| CSAV ⁶⁹ | [0-5]% | [0-5]% | [0-5]% |
| HL ⁷⁰ | [20-30]% | [20-30]% | [20-30]% |
| Parties combined | [20-30]% | [20-30]% | [20-30]% |
| Parties' consortia | [60-70]% | [60-70]% | [60-70]% |
| Independent competitors | [30-40]% | [30-40]% | [30-40]% |

Source: Parties' best estimates and CTS data for 2012

- (86) On the NE–NA trade, the Parties held a combined share of [20-30]% ([20-30]% westbound and [20-30]% eastbound) in 2012. HL AG operates in this trade through the G6 Alliance⁷¹ together with OOCL,⁷² NYK,⁷³ HMM,⁷⁴ APL,⁷⁵ MOL,⁷⁶ the SLCS consortium in cooperation with OOCL, and the SLCS-MSK consortium together with MSC.⁷⁷ HL also shipped approximately [5-10]% of its total cargo through slot chartering and few independent operations.
- (87) CSAV operates the Ecuador Express consortium together with MSC.⁷⁸ Ecuador Express is only active on the westbound (from Northern Europe to Northern America) leg of this trade. Until recently, CSAV shipped most of its cargo on this trade through the Samex consortium which it operated together with CMA CGM.⁷⁹ However Samex ceased its operations in August 2014 following a termination notice by

⁶⁹ CSAV is a member of Samex (Victory Bridge) and Ecuador Express (westbound only).

⁷⁰ HL AG is a member of SLCS, SLCS-MSK, and GA.

⁷¹ As the G6 Alliance started operating in this trade in the second quarter of 2014, no information on the volumes shipped is yet available. The share attributed to it for the analysis is the aggregated 2012 share of the Grand Alliance and the New World Alliance, which were subsumed by G6.

⁷² "OOCL" stands for Orient Overseas Container Line Ltd in this analysis.

⁷³ "NYK" stands for Nippon Yusen Kabushiki Kaisha in this analysis.

⁷⁴ "HMM" stands for Hyundai Merchant Marine Co. Ltd in this analysis.

⁷⁵ "APL" stands for American President Lines Ltd in this analysis.

⁷⁶ "MOL" stands for Mitsui O.S.K. Lines Ltd in this analysis.

⁷⁷ "MSC" stands for Mediterranean Shipping Company S.A. in this analysis.

⁷⁸ As the Ecuador Express consortium only started operating on this trade in 2013, no information on the volumes shipped is yet available. The market share attributed to it for this analysis, corresponds to the aggregated shares of its members in 2012.

⁷⁹ "CMA CGM" stands for the CMA CGM Group in this analysis.

CMA CGM.⁸⁰ CSAV intends to replace its share in SAMEX by two slot charter agreements with HL AG.⁸¹

- (88) The aggregated share of the total cargo carried by the G6 Alliance, Ecuador Express, SLCS, and SLCS-MSK in the NE-NA trade, would amount to [60-70]% ([60-70]% northbound and [60-70]% southbound).
- (89) The Parties' main independent competitors offering standalone services include Maersk⁸² ([10-20]% – westbound [10-20]% and eastbound [10-20]%), ACL⁸³ ([0-5]%), HSDG⁸⁴ ([0-5]%), and ZIM⁸⁵ ([0-5]%). Cosco,⁸⁶ Evergreen,⁸⁷ Hanjin,⁸⁸ K-Line,⁸⁹ and Yang-Ming⁹⁰ operate the CKYHE consortium ([20-30]% – [10-20]% westbound and [20-30]% eastbound). CMA CGM and Marfret offer a joint service ([5-10]% – [5-10]% westbound and [0-5]% eastbound).
- (90) Other shipping companies active in this trade include MSC ([10-20]% – [20-30]% westbound and [10-20]% eastbound), OOCL ([10-20]% – [5-10]% westbound and [10-20]% eastbound), and APL ([5-10]% – [5-10]% westbound and [5-10]% eastbound). APL and OOCL are only active through consortia operated together with HL AG while MSC, in addition to the Ecuador Express service, also offers a standalone weekly service.⁹¹
- (91) The transport of reefer containers accounted for [5-10]% of the total volumes transported on the trade ([5-10]% westbound and [5-10]% eastbound).⁹² Therefore, the effects of the transaction on the transport of reefer containers will not be assessed separately for the NE-NA trade.

80 Form CO, Annex 6.1.8.

81 The slot charter agreements concerning the NE-NA trade are currently being negotiated by CSAV and HL and will allow CSAV to continue transporting all the volumes that it previously transported through Samex (Parties' reply to RFI 10 of 1 August 2014).

82 "Maersk" stands for A.P.Møller-Maersk A/S in this analysis.

83 "ACL" stands for Atlantic Container Line Ltd in this analysis.

84 "HSDG" stands for the Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG in this analysis.

85 "ZIM" stands for Zim Integrated Shipping Services Ltd. in this analysis.

86 "Cosco" stands for China Ocean Shipping (Group) Company in this analysis.

87 "Evergreen" stands for the Evergreen Marine Corporation Ltd. in this analysis.

88 "Hanjin" stands for Hanjin Shipping Co. Ltd in this analysis.

89 "K-Line" stands for Kawasaki Kisen Kaisha Ltd. in this analysis.

90 "Yang-Ming" stands for Yang Ming Marine Transport Corporation.

91 Form CO, Annex 7.5.6, Frequencies of all individual shipping companies and consortia (2012).

92 Form CO, Annex 6.1.24.

VI.2.3.2. Commission's assessment

- (92) HL AG had the highest individual share on this trade with [20-30]% of the total volume shipped. CSAV is a niche player that accounted for only [0-5]% of the total volumes shipped. The Transaction would therefore lead to a very small increase of HL AG's market share and result in a combined market share below 25% of the total volumes shipped.
- (93) CSAV, however, also contributes its membership in the Ecuador Express consortium to the merged entity, which would then be a member of four consortia in this trade. The market share of the three HL AG's consortia would be [60-70]% ([60-70]% northbound and [60-70]% southbound) on the basis of the methodology described in recitals (60) and following. Post-Transaction the market share of the four consortia in which the combined entity will participate would be only [0-5]% higher, namely [60-70]% ([60-70]% northbound and [60-70]% southbound), than the share of HL AG's three consortia, as the volume of MSC in the Ecuador Express consortium has already been accounted for due to MSC's participation in a consortium together with HL AG (SLCS-MS C). Subsequently, the share of the independent competitors and of the consortia not related to the Parties would be [30-40]% ([30-40]% northbound and [30-40]% southbound).
- (94) In addition, the link to the Ecuador Express consortium, which CSAV contributes to the merged entity, does not constitute a completely new link between previously independent consortia, as MSC, which is the only other member to the Ecuador Express consortium also participates in the SLCS-MS C consortium with HL AG. The Parties' consortia are therefore already interconnected in this trade through the multiple consortia memberships of HL AG and MSC.
- (95) Independent competition comprises three sizable competitors (Maersk, ACL and HSDG) and a few smaller shipping companies operating independently on the trade. In addition, two further consortia, CKYHE and CMA CGM – Marfret exist in this trade, the activities of which are not linked to the Parties' operations.
- (96) Moreover, almost all market participants indicated that there is competition also among members of the same consortia and alliances in this trade.⁹³ Therefore, in addition to the sizeable and credible independent competitors, customers can also benefit from the price competition taking place within the consortia active on this trade.
- (97) Lastly, there is considerable entry, expansion and exit on this trade which comprises "thick routes" in terms of volume. It is the second largest in terms of volume among the trades in which the Parties' activities overlap, with 4 267 301 TEUs⁹⁴ shipped in 2012. There are currently more than 20 shipping companies and six different consortia or alliances active in the trade, reflecting the significance and attractiveness of this trade for shipping companies.

⁹³ Responses to question 23 of Q1 – Questionnaire to competitors, question 22 of Q2 – Questionnaire to direct customers and question 22 of Q3 – Questionnaire to freight forwarders.

⁹⁴ "TEU" stands for Twenty-Foot Equivalent Unit.

(98) In addition, significant changes have occurred during the last two years regarding consortia participation in this trade.⁹⁵ The G6 Alliance, absorbing the GA and the NWA alliances, and the Ecuador Express consortium were created, CKYH was expanded into CKYHE to include Evergreen and the GA-ZIM-HSDG and the Samex consortia were terminated, further demonstrating that the NE–NA market is quite dynamic and that shipping companies are prepared to quickly adapt to changes in the market conditions and review their strategy.⁹⁶

VI.2.3.3. Conclusion

(99) In light of the low increment the Transaction would bring about both in terms of individual market shares and on the basis of consortia membership, the fact that the Parties' consortia are already indirectly interconnected prior to the Transaction through HL AG and MSC, and the remaining sizeable and credible independent competition as well as the low barriers to entry and expansion on that trade, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the NE–NA trade.

VI.2.4. Northern Europe–Central America and Caribbean (NE–CAC)

VI.2.4.1. Description of the trade

(100) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–CAC trade are summarised in the table below.

Table 4: NE–CAC

| | Trade | | Northbound | | Southbound | |
|---------------------------|----------|----------|------------|----------|------------|----------|
| | Comb. | Reefer | Comb. | Reefer | Comb. | Reefer |
| CSAV | [5-10]% | [0-5]% | [0-5]% | [0-5]% | [5-10]% | [0-5]% |
| HL AG | [10-20]% | [10-20]% | [10-20]% | [5-10]% | [10-20]% | [20-30]% |
| Parties combined | [10-20]% | [10-20]% | [10-20]% | [5-10]% | [20-30]% | [20-30]% |
| Parties' consortia | [60-70]% | [50-60]% | [60-70]% | [50-60]% | [60-70]% | [60-70]% |
| Independent competitors | [30-40]% | [40-50]% | [30-40]% | [40-50]% | [20-30]% | [20-30]% |

Source: Parties' best estimates and CTS data for 2012

(101) On the NE–CAC trade, the Parties hold a combined share of [10-20]% ([10-20]% northbound and [20-30]% southbound). HL AG operates, together with HSDG and CMA CGM, the Eurosal consortium. Eurosal accounts for approximately [90-

⁹⁵ Form CO, paragraph 317, Annexes 6.1.24 and 6.1.25 and Replies to RFI 8 of 25 July 2014.

⁹⁶ In this context, a potential further change in consortia participation in the NE-NA trade has been announced as part of the M2 Alliance between Maersk and MSC, see Maersk, Press Release of 10 July 2014 "Maersk Line announces cooperation on the East-West trades with MSC" and MSC, Press Release of 10 July 2014 "Multi-trade vessel sharing agreement between MSC Mediterranean Shipping Company S.A. and Maersk Line".

100] of the total cargo shipped by HL AG. CSAV, together with MSC, is a member of the Euroandes consortium which transports over [50-60] of CSAV's cargo. According to the BER methodology,⁹⁷ Euroandes and Eurosal hold a share of approximately [10-20] ([10-20] northbound and [20-30] southbound) and [50-60] ([40-50] northbound and [50-60] southbound) respectively, their combined share is [60-70] ([60-70] northbound and [60-70] southbound).

- (102) The Parties' main independent competitors include Maersk ([20-30] – [30-40] northbound and [20-30] southbound) and CCNI (less than [0-5]) which operate standalone services and are not part of any consortia. Other competitors include MSC ([10-20] – [10-20] northbound and [10-20] southbound), HSDG ([10-20] – [10-20] northbound and [10-20] southbound), and CMA CGM ([20-30] – [20-30] northbound and [20-30] southbound) which are active through consortia operated together with the. CMA CGM in addition to Eurosal offers a separate service together with Marfret.
- (103) The transport of reefer containers accounts for [30-40] ([60-70] northbound and [10-20] southbound) of the total container volumes transported on the trade. The Parties do not offer a bulk reefer vessel service on this trade. Likewise, Euroandes and Eurosal do not operate bulk reefer vessels.
- (104) Because on the NE–CAC trade the activities of the Parties and that of their consortia do not overlap in the bulk reefer vessels business, it is not necessary to assess the effects of the Transaction on this segment.

VI.2.4.2. Commission's assessment

- (105) The combined market share of the Parties does not exceed 30% on any segment. The market share increment brought about by CSAV is not exceeding [5-10] on any segment save for "southbound combined" ([5-10]). However, when looking at consortia membership, the assessment changes. The Parties today are members of different consortia on this trade. There is no consortium that counts both CSAV and HL AG among its members. As the combined entity would be a member of both the Euroandes and Eurosal consortia,⁹⁸ the Transaction would create a link between consortia which are currently independent from one another. As a result, the combined market shares of the Parties and the consortia of they are a member would amount to [60-70] ([60-70] northbound and [70-80] southbound). The link created by CSAV's consortium, Euroandes, adds [10-20] ([10-20] northbound and [20-30] southbound) to HL AG's consortia share (Eurosal).
- (106) As a consequence, the volume shipped by independent competitors would shrink to only [30-40] ([20-30] northbound and [30-40] southbound). The only sizable competitor independent from the Parties and their consortia Euroandes and Eurosal would be Maersk with a market share of [20-30] ([30-40] northbound and [20-30] southbound). In the reefer segment Maersk holds a share of [40-50] ([40-50] northbound and [10-20] southbound).

⁹⁷ See recitals (57) and following and recital 10 of the preamble to the BER (Commission Regulation (EC) No 906/2009 of 28 September 2009).

⁹⁸ For completeness, the Ecuador Express (CSAV and MSC) was active on the NE–CAC trade. However, this service was stopped in May 2014.

- (107) The agreements setting up the Euroandes and Eurosal consortia establish the main criteria for the operation of each consortium, including the capacity that will be offered and its allocation among shipping companies as well as the consortia's schedule and ports of call. Furthermore, the consortia agreements provide that the parties can modify the service by mutual agreement.⁹⁹
- (108) Post-Transaction, the combined entity would therefore (i) have the ability to influence decisions regarding the level and the allocation of capacity, (ii) participate in the setting of ports of call and schedules, and (iii) have access to information on capacity for a broader range of consortia and competitors than CSAV and HL AG individually have today.
- (109) The link created by the Transaction between the Euroandes and Eurosal consortia is likely to lead to a decrease of competitive pressure as it would increase the incentives for the combined entity to reduce the capacity it offers or, in any event, compete less aggressively than today. The combined entity would generate profits from consortia that pre-transaction were independent from one another and could benefit of the effects of an increase in prices induced by a reduction in capacity in a consortium through the profits generated in a different consortium in which it participates.
- (110) It appears unlikely that significant new entry could occur on this trade because of the relatively low total volumes transported, in particular on its southbound leg.
- (111) The Parties consider that transshipment from the trade connecting Northern Europe to the South America West Coast region would impose a competitive constraint on the Parties and their consortia. However, most of the respondents to the market investigation have indicated that transshipment is not a viable alternative to direct transport or that it can substitute direct transport only in certain specific circumstances, e.g. in the case of non-time sensitive cargo.

VI.2.4.3. Conclusion

- (112) In light of recitals (100) to (111) above, the Commission concludes that the Transaction would raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the NE–CAC trade.

VI.2.5. *Northern Europe–South America East Coast (NE–SAEC)*

VI.2.5.1. Description of the trade

- (113) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–NA trade are summarised in the table below.

⁹⁹ Eurosal Agreement paragraph I.2.1, I.6.1, I.3.2, I.3.3 and II.2.3; Euroandes Agreement paragraph 5.3, 5.4 and 7.3.

Table 5: NE–SAEC

| | Trade | | Northbound | | Southbound | |
|--|----------|----------|------------|----------|------------|----------|
| | Comb. | Reefer | Comb. | Reefer | Comb. | Reefer |
| CSAV | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% |
| HL AG | [5-10]% | [5-10]% | [5-10]% | [5-10]% | [5-10]% | [5-10]% |
| Parties com- | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [20-30]% |
| CSAV's con- sortium¹⁰⁰ | [30-40]% | [20-30]% | [20-30]% | [20-30]% | [30-40]% | [30-40]% |
| Independent competitors ¹⁰¹ | [60-70]% | [70-80]% | [60-70]% | [70-80]% | [60-70]% | [60-70]% |

Source: Parties' best estimates and CIS data for 2012

- (114) On the NE–SAEC trade, the Parties held an aggregate share of [10-20]%. HL AG offers only independent services on this trade, whereas CSAV operates mainly in cooperation with MSC in this trade. [...].¹⁰² [...].¹⁰³
- (115) The Parties' main independent competitors in this trade include HSDG ([20-30]% – [20-30]% northbound and [20-30]% southbound), Maersk ([10-20]% – [10-20]% northbound and [10-20]% southbound) and CMA CGM (13% – 14% northbound and 11% southbound). CSAV's consortium partner, MSC, has a share of of [20-30]% ([10-20]% northbound and [20-30]% southbound).
- (116) The transport for refrigerated goods in this trade accounts for approximately [20-30]% of the total trade ([40-50]% northbound and [5-10]% southbound). Reefer containers constitute [20-30]% and [10-20]% of the total cargo shipped by CSAV and HL AG respectively. Neither the Parties, nor the other shipping companies offering container liner shipping services operate reefer vessels in this trade, it is therefore not necessary to assess the effects of the Transaction in this segment of the trade.
- (117) The Parties have an aggregated market share of [10-20]% ([10-20]% northbound and [20-30]% southbound) in reefer container shipping. Their main competitors are also active in this segment, HSDG with a share of [20-30]% ([20-30]% northbound and [20-30]% southbound), Maersk with [20-30]% ([20-30]% northbound and [10-20]% southbound) and CMA CGM with [10-20]% ([10-20]% northbound and [10-20]% southbound).

¹⁰⁰ Note that HL AG is not included in the entry "CSAV's consortia" given that it is not active in any consortium on this trade.

¹⁰¹ Note that the share of independent competitors already takes into account the additional link between HL AG and CSAV's consortium.

¹⁰² Parties' reply to RFI11 of 8 August 2014.

¹⁰³ Allocation based on the market shares of 2012, projected in the 2014 market structure.

VI.2.5.2. Commission's assessment

- (118) Post Transaction, the Parties would have a share of approximately [10-20]% in all plausible markets, with the exception of the very small market for reefer containers in the southbound leg of the NE–SAEC trade, where their aggregate share would amount to [20-30]%. Even though the increment brought about by the Transaction is not marginal and would amount to [5-10]%, the combined entity would hold a share of the total volumes shipped well below [20-30]%.
- (119) As there is only one single consortium in this trade, the Transaction would not create any additional links between consortia. The market share of CSAV and its consortium with MSC was [30-40]% ([20-30]% northbound and [30-40]% southbound) and [20-30]% ([20-30]% northbound and [30-40]% southbound) in the reefer market. Post-Transaction, the total market share attributed to the Parties and their consortia would be 7% higher and amount to [30-40]% ([30-40]% northbound and [30-40]% southbound) and [20-30]% ([20-30]% northbound and [30-40]% southbound) in the reefer market. Consequently, the share of independent competitors would be [60-70]% ([60-70]% northbound and [60-70]% southbound) and [70-80]% ([70-80]% northbound and [60-70]% southbound) in the reefer market.
- (120) Moreover, the market structure in this trade ensures that effective competition would be maintained, as four other shipping companies with shares comparable to that of the combined entity will continue to be operating. Other than MSC, which may continue its cooperation with the Parties post-Transaction, HSDG, Maersk and CMA CGM will continue offering self-standing services in the market.
- (121) Moreover, the Parties consider that transshipments from the trade connecting Northern Europe to the Central America/Caribbean region would impose competitive constraints on the activities of the Parties and their consortium in this trade. Although most of the respondents to the market investigation have indicated that transshipment is not a viable alternative to direct transport, some customers indicated that it may indeed substitute direct transport in specific circumstances, e.g. in the case of non-time sensitive cargo.¹⁰⁴

VI.2.5.3. Conclusion

- (122) In light of recitals (113) to (121), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the NE–SAEC trade.

VI.2.6. Northern Europe–South America West Coast (NE–SAWC)

VI.2.6.1. Description of the trade

- (123) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–SAWC trade are summarised in the table below.

¹⁰⁴ Responses to question 36 of Q1 – Questionnaire to competitors and to question 38 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

Table 6: NE–SAWC

| | Trade | | Northbound | | Southbound | |
|---------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| | Comb. | Reefer | Comb. | Reefer | Comb. | Reefer |
| CSAV | [10-20]% | [5-10]% | [10-20]% | [5-10]% | [10-20]% | [10-20]% |
| HL AG | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [20-30]% |
| Parties combined | [20-30]% | [10-20]% | [20-30]% | [10-20]% | [20-30]% | [30-40]% |
| Parties' consortia | [70-80]% | [60-70]% | [70-80]% | [60-70]% | [60-70]% | [50-60]% |
| Independent competitors | [30-40]% | [30-40]% | [20-30]% | [30-40]% | [30-40]% | [40-50]% |

Source: Parties' best estimates and CTS data for 2012

- (124) On the NE–SAWC trade, the Parties hold a combined share of [20-30]% ([20-30]% northbound and [20-30]% southbound). HL AG operates, together with HSDG and CMA CGM, the Eurosal consortium. Eurosal accounts for approximately [80-90]% of the total cargo shipped by HL AG. CSAV, together with MSC, is a member of the Euroandes and Ecuador Express consortia, which transport over [90-100]% of CSAV's cargo. According to the BER methodology,¹⁰⁵ Euroandes/Ecuador Express and Eurosal hold a share of approximately [30-40]% ([30-40]% northbound and [20-30]% southbound) and [30-40]% ([30-40]% northbound and [40-50]% southbound) respectively, their combined share is [70-80]% ([70-80]% northbound and [60-70]% southbound).
- (125) The Parties' main independent competitors include Maersk ([20-30]% – [20-30]% northbound and [20-30]% southbound) and CCNI ([0-5]% – [0-5]% northbound and [0-5]% southbound) which operate standalone services and are not part of any consortia. Other competitors include MSC ([10-20]% – [20-30]% northbound and [10-20]% southbound), HSDG ([10-20]% – [10-20]% northbound and [10-20]% southbound), and CMA CGM ([10-20]% – [5-10]% northbound and [10-20]% southbound), which are only active through consortia operated together with the Parties.
- (126) The transport of reefer containers accounts for [40-50]% ([60-70]% northbound and [5-10]% southbound) of the total container volumes transported on the trade.
- (127) HL AG does not offer a bulk reefer vessel service while CSAV only transports limited amounts of cargo in bulk reefer vessels (approximately [0-5]% of its total reefer volume). Euroandes/Ecuador Express and Eurosal do not operate bulk reefer vessels. Maersk and CCNI are the most important independent competitors for the transport of reefer containers, none of these companies offers a bulk reefer vessel service.
- (128) As on the NE–SAWC trade the activities of the Parties and those of their consortia do not overlap in the bulk reefer vessels business, it is not necessary to assess the effects of the Transaction on this segment.

VI.2.6.2. Commission's assessment

- (129) The combined market share of the Parties does not exceed 30% on any segment with the exception of "reefer containers southbound", where they amount to [30-40]%. However, when looking at consortia membership, the assessment changes. The Parties are currently members of different consortia on this trade. There is no consortium that counts both CSAV and HL AG among its members. As the combined entity would be a member of both the Euroandes/Ecuador Express and Eurosal consortia,

¹⁰⁵ See paragraphs (57) and following.

the Transaction would create a link between consortia which are currently independent from one another. As a result, the combined market share attributable to CSAV's consortia would add [30-40]% ([20-30]% northbound and [20-30]% southbound) to market share attributable to HL AG's consortia.

- (130) As a consequence, the volumes shipped by competitors that are independent from the combined entity's consortia would amount to only [30-40]% ([20-30]% northbound and [30-40]% southbound). The only sizable competitor independent from the Parties and their consortia, Euroandes/Ecuador Express and Eurosal, would be Maersk with a market share of [20-30]% followed by CCNI with a market share of only [0-5]%. In the reefer segment Maersk holds a market share of [20-30]% ([20-30]% northbound and [40-50]% southbound).
- (131) The agreements setting up the Euroandes/Ecuador Express and Eurosal consortia establish the main criteria for the operation of each consortium, including the capacity that will be offered and its allocation among shipping companies as well as the consortia's schedule and ports of call. Furthermore, the consortia agreements provide that the parties can modify the service only by mutual agreement.¹⁰⁶
- (132) Post-Transaction, the combined entity would therefore (i) have the ability to influence decisions regarding the level and the allocation of capacity, (ii) participate in the setting of ports of call and schedules, and (iii) have access to information on capacity for a broader range of consortia than CSAV and HL AG individually have today.
- (133) Furthermore, the link created by the Transaction between the Euroandes/Ecuador Express and Eurosal consortia is likely to lead to a decrease of competitive pressure as it would increase the incentives for the combined entity to reduce the capacity it offers or, in any event, compete less aggressively than today. The combined entity would generate profits from consortia that pre-transaction were independent from one another and could benefit of the effects of an increase in prices induced by a reduction in capacity in a consortium through the profits generated in a different consortium to which it participates.
- (134) It appears unlikely that significant new entry could occur on this trade because of the relatively low total volumes transported, in particular on its southbound leg.
- (135) The Parties consider that transshipments from the trade connecting the Mediterranean to the Central America/Caribbean region would impose a competitive constraint on the Parties and their consortia. However, most of the respondents to the market investigation have indicated that transshipment is not a viable alternative to direct transport or that it can substitute direct transport only in certain specific circumstances, e.g. in the case of non-time sensitive cargo. Furthermore, shipments to or from the Mediterranean are a poor substitute for those directed to or originating from Northern Europe. This was confirmed by the market investigation that supported the view that trades to and from Northern Europe and the Mediterranean respectively constitute separate relevant markets.

¹⁰⁶ Form CO, Annexes 6.1.11 and 6.1.12.

VI.2.6.3. Conclusion

(136) In light of recitals (123) to (135), the Commission concludes that the Transaction would raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the NE–SAWC trade.

VI.2.7. Mediterranean-Central America and Caribbean (MED–CAC)

VI.2.7.1. Description of the trade

(137) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the MED–CAC trade are summarised in the table below.

Table 7: MED–CAC

| | Trade | | Northbound | | Southbound | |
|---------------------------|-----------------|-----------------|-----------------|----------------|-----------------|-----------------|
| | Comb. | Reefer | Comb. | Reefer | Comb. | Reefer |
| CSAV | [0-5]% | [0-5]% | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| HL AG | [10-20]% | [5-10]% | [5-10]% | [5-10]% | [10-20]% | [10-20]% |
| Parties combined | [10-20]% | [5-10]% | [5-10]% | [5-10]% | [10-20]% | [10-20]% |
| Parties' consortia | [20-30]% | [10-20]% | [20-30]% | [5-10]% | [20-30]% | [30-40]% |
| Independent competitors | [70-80]% | [70-80]% | [80-90]% | [90-100]% | [70-80]% | [70-80]% |

Source: Parties' best estimates and CTS data for 2012

(138) On the MED–CAC trade, the Parties would hold a combined share of [10-20]% ([5-10]% northbound and [10-20]% southbound) on a market for container liner shipping services including reefer volumes.¹⁰⁷

(139) HL AG operates, together with HSDG, the MPS consortium. CSAV, together with CCNI, is a member of the Med Andes consortium. In 2012, According to the BER methodology,¹⁰⁸ MPS and Med Andes held a share of [20-30]% ([10-20]% northbound and [20-30]% southbound) and of [0-5]% ([0-5]% northbound and [0-5]% southbound) respectively. The combined share of MPS and Med Andes would amount to [20-30]% ([20-30]% northbound and [20-30]% southbound).

(140) The Parties' main independent competitors operating standalone services include Maersk (combined: [10-20]%; northbound: [10-20]%; southbound: [10-20]%), MSC (combined: [20-30]%; northbound: [10-20]%; southbound: [20-30]%), and ZIM (combined: [10-20]%; northbound: [5-10]%; southbound: [10-20]%) in a market for container liner shipping services including reefer volumes. In addition, CMA CGM and Marfret operate through the CMA-CGM-Marfret consortium, which neither the Parties nor their consortia partners are members of. The share of the CMA-CGM-

¹⁰⁷ The Parties combined market share would not change materially if a market for container liner shipping services excluding reefer were considered.

¹⁰⁸ See recitals (57) and following and recital 10 of the preamble to the BER (Commission Regulation (EC) No 906/2009 of 28 September 2009)..

Marfret consortium amounted to [20-30]%¹⁰⁹ ([40-50]% northbound and [20-30]% southbound).

- (141) Other shipping companies active on the MED–CAC trade include HSDG (combined: [5-10]%; northbound: [10-20]%; southbound: [5-10]%) and CCNI (less than [0-5]% on all possible geographic segmentations of the market). These shipping companies are linked to HL AG and CSAV respectively through consortia membership.
- (142) The transport of reefer containers accounted for [10-20]% of the total containerised cargo transported on the trade ([40-50]% northbound and [0-5]% southbound). Therefore the effects of the Transaction on competition on a possible market for the transport of refrigerated goods are discussed separately.
- (143) In 2012, the transport of reefer containers accounted for [0-5]% (irrespective of any possible geographic market segmentation) and [5-10]% ([5-10]% northbound and [10-20]% southbound) of CSAV and HL AG's cargo respectively. The combined market share of the Parties in the transport of reefer containers would amount to [5-10]% ([5-10]% northbound and [10-20]% southbound). Maersk and MSC are the most important independent competitors for the transportation of reefer containers with market share of [10-20]% ([10-20]% northbound and [10-20]% southbound) and [10-20]% ([10-20]% northbound and [5-10]% southbound) respectively.
- (144) Neither HL AG nor CSAV offer bulk reefer vessel. MPS and Med Andes do not operate bulk reefer vessels either. Therefore, it is not necessary to assess the effects of the Transaction on competition with reference to this possible market segmentation.

VI.2.7.2. Commission's assessment

- (145) Post-Transaction, the combined market share of the Parties would be below [20-30]%, with a small increment of up to [0-5]% ([0-5]% combined, [0-5]% northbound and [0-5]% southbound; if reefer was considered separately the increment would amount to [0-5]% southbound).
- (146) Currently the Parties are members of different consortia. Therefore the Transaction would create a link between the MPS and the Med Andes consortia, which are currently independent of one another. The Parties, together with their co-members, through the MPS and the Med Andes consortia may influence the capacity that will be offered on this trade and its allocation among shipping companies as well as the consortia's schedule and the selection of ports of call.¹¹⁰ The market investigation indicated that all these elements constitute important parameters of competition.¹¹¹
- (147) However, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, three sizeable competitors (Maersk,

¹⁰⁹ Since Marfret is not a member of CTS, their share is not available to the Parties. Therefore, the share of the CMA-CGM-Marfret consortium presented above is understated as it HAMrefers to CMA-CGM's share only.

¹¹⁰ Form CO, Annex 6.1.10, Details of CSAV's consortium agreements and Annex6.1.15, Details of HL's consortium agreements.

¹¹¹ Responses to questions 12 and 13 of Q1 – Questionnaire to competitors, to question 12 of Q2 – Questionnaire to direct customers, and to question 12 of Q3 – Questionnaire to freight forwarders.

MSC and ZIM), which are independent of the Parties and the Parties' consortia, will remain active on this trade, as well as the CGA-CGM-Marfret consortium, which is not connected to the Parties' operations. The share of the independent competitors and of a consortium not linked to the Parties would be [70-80]% or more, depending on the possible segmentation of the market.

- (148) The moderate combined market share of the Parties, the small increment brought about by the Transaction, the presence of several strong competitors operating stand-alone services as well as of a sizeable third parties' consortium would counterbalance the new link created by the Transaction at a consortia level and would ensure effective competition post-Transaction.

VI.2.7.3. Conclusion

- (149) In light of recitals (137) to (148), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments on the MED-CAC trade.

VI.2.8. Mediterranean-South America West Coast (MED-SAWC)

VI.2.8.1. Description of the trade

- (150) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the MED-SAWC trade are summarised in the table below.

Table 8: MED-SAWC

| | Trade | | Northbound | | Southbound | |
|--|-----------------|----------------|----------------|----------------|-----------------|-----------------|
| | Comb. | Reefer | Comb. | Reefer | Comb. | Reefer |
| CSAV | [10-20]% | [0-5]% | [5-10]% | [0-5]% | [10-20]% | [5-10]% |
| HL AG | [5-10]% | [0-5]% | [0-5]% | [0-5]% | [10-20]% | [10-20]% |
| Parties combined | [10-20]% | [5-10]% | [5-10]% | [5-10]% | [20-30]% | [20-30]% |
| CSAV's consortium¹¹² | [10-20]% | [0-5]% | [5-10]% | [0-5]% | [20-30]% | [5-10]% |
| Independent competitors ¹¹³ | [70-80]% | [90-100]% | [80-90]% | [90-100]% | [60-70]% | [70-80]% |

Source: Parties' best estimates and CTS data for 2012

- (151) On the MED-SAWC trade, the Parties would hold a combined share of [10-20]% ([5-10]% northbound and [20-30]% southbound) on a market for container liner shipping services including reefer volumes and of [20-30]% ([10-20]% northbound and [20-30]% southbound) on a market for container liner shipping services excluding reefer volumes.
- (152) HL AG is not a member of any consortia on this trade. CSAV, together with CCNI, is a member of the Med Andes (Mediterráneo) consortium. According to the BER

¹¹² The share refers to CSAV's consortium Med Andes (Mediterráneo), as HL is not member of any consortia on this trade.

¹¹³ Note that the share of independent competitors already takes into account the additional link between HL AG and CSAV's consortium.

methodology,¹¹⁴ Med Andes (Mediterráneo) would hold a share of [10-20]% ([5-10]% northbound and [20-30]% southbound).

- (153) The Parties' main independent competitors operating standalone services include Maersk (combined: [20-30]%; northbound: [30-40]%; southbound: [20-30]%), MSC (combined: [30-40]%; northbound: [40-50]%; southbound: [20-30]%), CMA CGM (combined: [5-10]%; northbound: [5-10]%; southbound: [5-10]%), and HSDG (combined: [5-10]%; northbound: [0-5]%; southbound: [5-10]%) on a market for container liner shipping services including reefer volumes.
- (154) Another shipping company active on this trade is CCNI (combined: [5-10]%; northbound: [0-5]%; southbound: [5-10]%) which is linked to CSAV through consortia membership.
- (155) The transport of reefer containers accounted for [30-40]% of the total containerised cargo transported on this trade ([60-70]% northbound and [0-5]% southbound). Therefore the effects of the Transaction on competition on a possible market for the transport of refrigerated goods are discussed separately.
- (156) The transport of reefer containers accounted for [0-5]% (combined and northbound; [5-10]% southbound) and [0-5]% (combined and northbound; [10-20]% southbound) of CSAV and HL AG's cargo respectively. The combined market share of the Parties in the transport of reefer containers would amount to [5-10]% ([5-10]% northbound and [20-30]% southbound). MSC and Maersk are the most important independent competitors for the transportation of reefer containers with market share of [40-50]% ([40-50]% northbound and [10-20]% southbound), [40-50]% ([40-50]% northbound and [30-40]% southbound), respectively.
- (157) Neither HL AG nor CSAV offer bulk reefer vessel. Med Andes (Mediterráneo) does not operate bulk reefer vessels either. Therefore, it is not necessary to assess the effects of the Transaction on competition with reference to this possible market segmentation.

VI.2.8.2. Commission's assessment

- (158) Post-Transaction, the combined market share of the Parties would amount to [20-30]%.
- (159) Only CSAV operates through a consortium on this trade. Therefore the Transaction would not create a link between different consortia but only between the Med Andes consortium and HL AG. This link would enable HL AG to have visibility of the information exchanged within the consortium, notably as regards the capacity that will be offered on this trade and its allocation among shipping companies as well as the consortium's schedule and the selection of ports of call.¹¹⁵
- (160) However, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, four sizeable competitors (Maersk, MSC, CMA CGM and HSDG), which are independent of the Parties and CSAV's

¹¹⁴ See recitals (57) and following and recital 10 of the preamble to the BER (Commission Regulation (EC) No 906/2009 of 28 September 2009).

¹¹⁵ Form CO, Annex 6.1.10, Details of CSAV's consortium agreements.

consortium, would remain active on this trade. The share of competitors not linked to the Parties would be [60-70]% or more, depending on the possible segmentation of the market.

- (161) The moderate combined market share of the Parties and the presence of several strong competitors operating stand-alone services would counterbalance the new link created by the Transaction between CSAV's consortium and HL AG and would ensure effective competition post-Transaction.

VI.2.8.3. Conclusion

- (162) In light of the recitals (150) to (161), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the MED-SAWC trade.

VI.2.9. Northern Europe – Indian Subcontinent and Middle East (NE-ISME)

VI.2.9.1. Description of the trade

- (163) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE-ISME trade are summarised in the table below.

Table 9: NE-ISME

| | Trade | Westbound | Eastbound |
|---------------------------|----------------|-----------------|----------------|
| | Comb. | Comb. | Comb. |
| CSAV | [0-5]% | [0-5]% | [0-5]% |
| HL AG | [5-10]% | [5-10]% | [5-10]% |
| Parties combined | [5-10]% | [10-20]% | [5-10]% |
| Parties' consortia | ~[30-40]% | ≤[30-40]% | ≤[30-40]% |
| Independent competitors | ~[60-70]% | ≥[60-70]% | ≥[60-70]% |

Source: Parties' best estimates and CTS data for 2012 and Commission's own calculation

- (164) On the NE-ISME trade, the Parties would hold a combined share of [5-10]% ([10-20]% westbound and [5-10]% eastbound) in a market for container liner shipping services including reefer volumes.
- (165) HL AG operates in this trade through three different cooperation agreements: the G6 alliance with NYK, OOCL, APL, HMM and MOL; the EAX consortium in cooperation with CMA CGM, and the IOS (former EPIC) consortium together with HSDG. CSAV is currently shipping cargo on the IMEX consortium, which is operated together with MSC. However, the IMEX consortium will terminate in October 2014, due to the notice of termination of six months served by MSC in April 2014. Following the termination of the IMEX consortium and unrelated to this Transaction, CSAV volumes will be transferred to the IOS consortium. According to the BER methodology,¹¹⁶ the G6, EAX and IOS consortia would hold market shares of [10-20]% ([10-20]% westbound and [10-20]% eastbound), of [10-20]% ([10-20]% westbound and [10-20]% eastbound) and of [10-20]% ([10-20]% westbound and [5-10]%

¹¹⁶ See recitals (57) and following and recital 10 of the preamble to the BER (Commission Regulation (EC) No 906/2009 of 28 September 2009).

eastbound) respectively in a market for container liner shipping services including reefer. The IMEX consortium accounted for [10-20]% ([10-20]% westbound and [10-20]% eastbound) on this market. In 2012, the combined share of the Parties' consortia amounted to [50-60]% ([50-60]% westbound and [50-60]% eastbound).¹¹⁷ In 2014, after the termination of the IMEX consortium, the combined market share of the Parties consortia would amount to [30-40]% (both legs)¹¹⁸.

- (166) The Parties' main independent competitors operating standalone services include Maersk (combined: [20-30]%; westbound: [20-30]%; eastbound: [20-30]%) and Evergreen ([0-5]% on all possible market segmentations). In addition, there are five consortia active on this trade which neither the Parties nor their consortia partners are members of. These five consortia are: the EPIC consortium (CMA CGM and OOCL), the CKYH (now CKYHE) consortium (Cosco, Hanjin, Yang Ming and K.Line), a consortium between CMA CGM and MSC and a consortium between CMA CGM, UASC and CSCL. According to the BER methodology, the aggregate share of these five consortia would amount to [80-90]% ([60-70]% westbound and [90-100]% eastbound).
- (167) Among the other shipping companies active on the NE-ISME trade the main ones are CMA CGM (combined: [10-20]%; westbound: [10-20]%; eastbound: [10-20]%) and MSC (combined: [10-20]%; westbound: [10-20]%; eastbound: [10-20]%)¹¹⁹ which are linked to HL AG and CSAV respectively through consortia membership.
- (168) The transport of reefer containers accounts for [5-10]% of the total containerised cargo transported on this trade ([5-10]% westbound and [5-10]% eastbound). Reefer container shipping services can thus be considered as part of an overall market for container liner shipping services and will not be discussed separately.

VI.2.9.2. Commission's assessment

- (169) Post-Transaction, the combined market share of the Parties would be below 10% with a small increment of up to [0-5]% ([0-5]% combined, [0-5]% westbound and [0-5]% eastbound).
- (170) The Transaction would not create a link between the Parties' consortia, given that IMEX, the only consortium which CSAV currently operates on this trade, will be terminated in October 2014.
- (171) In addition, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, Maersk, the market leader independent of the Parties and the Parties' consortia, would remain active on this trade, as well two consortia (CKYH, now CKYHE and MSC SCI¹²⁰), which would not be connected to the Parties' operations. The share of the independent competitors and the con-

117 Annex 6.1.25 to the Form CO.

118 Parties' reply to the Commission's RFI 2 of 24 June 2014.

119 As already explained, however, MSC will not be any more linked to the Parties as of October 2014, as it served notice of termination of the IMEX consortium.

120 MSC is currently linked to CSAV through the IMEX consortium, which however will be terminated in October 2014.

sortia not linked to the Parties would be [60-70]% or more, depending on the segmentation of the market.

- (172) The moderate combined market share of the Parties, the small increment brought about by the Transaction, the presence of several strong competitors operating stand-alone services as well as of sizeable third parties' consortia would ensure effective competition post-Transaction.

VI.2.9.3. Conclusion

- (173) In light of recitals (163) to (172), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the NE–ISME trade.

VI.2.10. Mediterranean-Indian Subcontinent and Middle East (MED–ISME)

VI.2.10.1. Description of the trade

- (174) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the MED–ISME trade are summarised in the table below.

Table 10: MED–ISME

| | Trade | Westbound | Eastbound |
|---------------------------|-----------------|-----------------|-----------------|
| | Comb. | Comb. | Comb. |
| CSAV | [0-5]% | [0-5]% | [0-5]% |
| HL AG | [5-10]% | [5-10]% | [0-5]% |
| Parties combined | [5-10]% | [5-10]% | [0-5]% |
| Parties' consortia | [20-30]% | [20-30]% | [20-30]% |
| Independent competitors | [70-80]% | [70-80]% | [70-80]% |

Source: Parties' best estimates and CTS data for 2012

- (175) On the MED–ISME trade, the Parties would hold a combined share of [5-10]% ([5-10]% westbound and [0-5]% eastbound) on a market for container liner shipping services including reefer volumes. The increment brought about the Transaction is very limited, as CSAV's market share would be up to [0-5]% (westbound).
- (176) HL AG operates in this trade through three different cooperation agreements: the G6 alliance with NYK, OOCL, APL, HMM and MOL, which has subsumed the GA alliance;¹²¹ the EAX consortium in cooperation with CMA CGM, and the IOS (former EPIC) consortium together with HSDG. CSAV is currently shipping cargo on the IMEX consortium, which is operated together with MSC. However, the IMEX consortium will terminate in October 2014, due to the notice of termination of six months served by MSC in April 2014. Following the termination of the IMEX consortium, CSAV volumes will be transferred to the IOS consortium. According to the BER methodology,¹²² the G6, EAX and IOS consortia would hold a share of [10-20]% ([10-20]% westbound and [10-20]% eastbound), of [10-20]% (both legs) and

¹²¹ Members of the GA alliance were: HL, NYK and OOCL. In 2012, GA's share amounted to [5-10]% ([5-10]% westbound and [5-10]% eastbound).

¹²² See paragraphs (57) and following.

of [5-10]% ([5-10]% westbound and [0-5]% eastbound) respectively on a market for container liner shipping services including reefer. The IMEX consortium accounted for [20-30]% ([20-30]% westbound and [20-30]% eastbound) on this market. In 2012, the combined share of the Parties consortia amounted to [40-50]% ([40-50]% westbound and [50-60]% eastbound). In 2014, after the termination of the IMEX consortium, the combined market share of the Parties consortia would amount to [20-30]% ([20-30]% westbound and [20-30]% eastbound).

- (177) ZIM (combined: [0-5]%; westbound: [5-10]%; eastbound: [0-5]%) is the only shipping line not linked to HL AG or CSAV by consortia or by any contractual arrangement in relation to the provision of containerised liner shipping services. In addition, there are two consortia (UASC Hanjin and UASC CSCL) which neither the Parties nor their consortia partners are members of. According to the BER methodology, the share of the UASC Hanjin consortium amounted to [10-20]% ([10-20]% westbound and [10-20]% eastbound) and of the UASC CSCL consortium approximately amounted to [10-20]%¹²³ ([5-10]% westbound and [10-20]% eastbound).
- (178) Among the other shipping companies active on the MED–ISME trade the main ones are CMA CGM (combined: [10-20]%; westbound: [10-20]%; eastbound: [10-20]%) and MSC (combined: [20-30]%; westbound: [20-30]%; eastbound: [20-30]%)¹²⁴ which are linked to HL AG and CSAV respectively through consortia membership.
- (179) The transport of reefer containers accounted for [5-10]% of the total containerised cargo transported on this trade ([0-5]% westbound and [5-10]% eastbound). Reefer container shipping services can thus be considered as part of an overall market for container liner shipping services and will not be discussed separately.

VI.2.10.2. Commission's assessment

- (180) Post-Transaction, the combined market share of the Parties would be below [5-10]% with a small increment of up to [0-5]% (westbound).
- (181) The Transaction will not create a link between the Parties' consortia, given that IMEX, the only consortium which CSAV currently operates on this trade, will be terminated in October 2014.
- (182) In addition, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, in addition to ZIM, two sizeable consortia (UASC Hanjin and UASC CSCL), which would not be connected to the Parties' operations, would remain active on this trade. The share of the independent competitors and of a consortium not linked to the Parties would be [70-80]% (eastbound) or more, depending on the possible segmentation of the market.
- (183) The moderate combined market share of the Parties, the small increment brought about the Transaction and the presence of sizeable third parties' consortia independent of the Parties would ensure effective competition post-Transaction.

123 These figures do not include CSCL since its volumes are not available through CTS. See Annex 6.1.24 to the Form CO.

124 As already explained, however, MSC will not be any more linked to the Parties as of October 2014, as it served notice of termination of the IMEX consortium.

VI.2.10.3. Conclusion

(184) In light of recitals (174) to (183), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the MED–ISME trade.

VI.2.11. Mediterranean-Far East (MED–FE)

VI.2.11.1. Description of the trade

(185) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the MED–FE trade are summarised in the table below.

Table 11: MED–FE

| | Trade | Westbound | Eastbound |
|---------------------------|-----------------|-----------------|-----------------|
| | Comb. | Comb. | Comb. |
| CSAV | [0-5]% | [0-5]% | [0-5]% |
| HL AG | [0-5]% | [0-5]% | [0-5]% |
| Parties combined | [0-5]% | [0-5]% | [5-10]% |
| Parties' consortia | [20-30]% | [20-30]% | [20-30]% |
| Independent competitors | [70-80]% | [70-80]% | [70-80]% |

Source: Parties' best estimates and CTS data for 2012

(186) On the MED–FE trade, the Parties would hold a combined share of [0-5]% ([0-5]% westbound and [5-10]% eastbound) on a market for container liner shipping services including reefer volumes.

(187) HL AG operates in this trade through two different cooperation agreements: the G6 alliance with NYK, OOCL, APL, HMM and MOL, which has subsumed the GA alliance¹²⁵ and the EAX consortium in cooperation with CMA CGM. CSAV does not operate through any consortia on this trade. According to the BER methodology,¹²⁶ G6 and EAX would hold a share of [10-20]% ([5-10]% westbound and [10-20]% eastbound) and of [10-20]% ([10-20]% westbound and [10-20]% eastbound) respectively. The combined share HL AG's consortia would amount to [30-40]% ([30-40]% westbound and [30-40]% eastbound).

(188) ZIM ([0-5]% both legs) is the only independent competitor of the Parties operating standalone services on this trade. In addition, three consortia which neither the Parties nor their consortia partners are members of operate on this trade: the UASC CSCL consortium, the CKYH (now CKYE) consortium, whose members are Cosco, Hanjin, Yang Ming and K-Line, and the CSCL, K-Line, Yang Ming, PIL, Wan Hai consortium. According to the BER methodology, the share of the UASC CSCL consortium amounted to [5-10]% ([5-10]% westbound and [0-5]% eastbound), of the

¹²⁵ Members of the GA alliance were: HL AG, NYK and OOCL. In 2012, the GA's share amounted to [5-10]% (both legs).

¹²⁶ See recitals (57) and following and recital 10 of the preamble to the BER (Commission Regulation (EC) No 906/2009 of 28 September 2009).

CKYH consortium approximately amounted to [20-30]%¹²⁷ ([10-20]% westbound and [20-30]% eastbound) and of the CSCL, K-Line, Yang Ming, PIL Wan Hai consortium amounted to [10-20]%¹²⁸ ([10-20]% westbound and [10-20]% eastbound).

- (189) Among the other shipping companies active on the MED–FE trade the main one is CMA CGM (combined: [10-20]%; westbound: [10-20]%; eastbound: [10-20]%), which is linked to HL AG through consortia membership.
- (190) The transport of reefer containers accounts for [0-5]% of the total containerised cargo ([0-5]% westbound and [5-10]% eastbound). Reefer container shipping services can thus be considered as part of an overall market for container liner shipping services and will not be discussed separately.

VI.2.11.2. Commission's assessment

- (191) Post-Transaction, the combined market share of the Parties would be below [5-10]% with a small increment of up to [0-5]%.
- (192) The Transaction would not create a link between the Parties' consortia, given that CSAV does not participate in any consortia on this trade.
- (193) In addition, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, in addition to ZIM, three sizeable consortia (UASC CSCL, CKYH and the consortium between CSCL, K-Line, Yang Ming, PIL and Wan Hai), which would not be connected to the Parties' operations, would remain active on this trade. The share of the independent competitors and of the consortia not linked to the Parties would be [70-80]% (eastbound) or more, depending on the possible segmentation of the market.
- (194) The moderate combined market share of the Parties, the very small increment brought about the Transaction and the presence of sizeable third parties' consortia independent of the Parties would ensure effective competition post-Transaction.

VI.2.11.3. Conclusion

- (195) In light of recitals (185) to (194), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the MED–FE trade.

VI.3. Vertical relationships

- (196) CSAV and HL AG offer services that are vertically related to the container liner shipping business. In particular, CSAV and HL AG offer container terminal services, although without any overlap in geography. In addition, CSAV offers freight forwarding, harbour towage, and inland transportation services. Kühne, as the parent company of Kühne Maritime, offers freight forwarding services through its affiliate Kühne + Nagel

¹²⁷ These figures do not include CSCL since its volumes are not available through CTS. See Annex 6.1.24 to the Form CO.

¹²⁸ These figures do not include CSCL since its volumes are not available through CTS. See Annex 6.1.24 to the Form CO.

International AG. HGV holds interests in companies active in the areas of container terminal services and inland transportation.

- (197) The Transaction would create vertical links between the Parties' operations in the market for container liner shipping services and (i) the upstream market for container terminal services; (ii) the upstream market for inland transportation services; (iii) the downstream market for freight forwarding services; as well as (iv) the upstream market for harbour towage services.

VI.3.1. Container terminal services

- (198) Container terminal services are a necessary input for the provision of container liner shipping services.
- (199) CSAV, through its sister company SAAM, provides port, terminal, towage and agency services in North (USA), Central and South America. In South America, SAAM has terminal operations in Chile, Colombia and Ecuador. SAAM's market share in terminal services is around [10-20]% in South America. SAAM does not have any activities in the EU.
- (200) HGV, *via* its subsidiary HHLA Hamburger Hafen- und Logistik AG ("HHLA"), and HL AG provide container terminal services in Hamburg through a joint venture (HHLA Container Terminal Altenwerder GmbH). HL AG has no additional container terminal operations in Europe, whereas HGV, *via* its shareholding in HHLA, also operates container terminal services in Germany and in Odessa, Ukraine. In 2012, HHLA Container Terminal Altenwerder GmbH had [5-10]% market share in the Northern range (between Hamburg and Antwerp). Kühne is not active in this market.
- (201) On the basis of the combined market shares of the Parties, the Transaction would create vertically affected markets between the Parties' activities in the market for port terminal services where the Parties offer such activities (see recitals (199)–(200) and (206)–(209)) and in the market for container liner shipping services in the NE–SAWC trade, where the Parties would have a combined market share of [30-40]% (container liner shipping services excluding reefer) northbound and of [30-40]% (reefer containers including reefer vessels) or [30-40]% (reefer containers only) southbound.

VI.3.1.1. Parties' view

- (202) The Parties submit that the assessment of the vertical relationships brought about by the Transaction should be based only on the Parties' individual and not on their consortia's market shares, since members of consortia fiercely compete with each other. In addition, consortia members conclude port terminal agreements mostly on an individual basis, and volumes – which might differ between container liner shipping companies – have an effect on prices. Even though members of consortia could jointly select port terminal providers, the choice of ports of call was not only dictated by financial or economic interests that container liner shipping companies might hold in port terminals, but also by objective criteria such as secured berthing, productivity rates, most favoured user treatment and inland connections.¹²⁹

¹²⁹ See e.g. the Euroandes Agreement, clause 9.1 and the SLCS-MSK Operating Agreement clauses 20.2 and 20.3.

VI.3.1.2. Results of the market investigation

- (203) The market investigation indicated that although co-members of a consortium frequently use the same container terminal provider, they mostly conclude port terminal agreements individually, since services are sufficiently different as to warrant tailored contracts.¹³⁰ For example, rates, which are negotiated individually with members of consortia, are mainly linked to volumes, the amount of moves and reefers.¹³¹
- (204) In addition, when negotiating with liner shipping companies, port terminal providers do not take into consideration affiliation to a consortium and thus do not offer any special stevedoring rates linked to consortium membership. A majority of port terminal providers acknowledged that container liner shipping companies switched container terminal services providers in the past three years. Finally, port terminal operators pointed out that they did not enjoy bargaining power *vis-à-vis* large shipping companies and consortia.
- (205) However, when asked about the impact of the Transaction on their company and on competition in the container terminal as well as in the container liner shipping businesses, a majority of port terminal services providers stated that the Transaction would not significantly change the market structure. Likewise, a majority of the Parties' competitors and customers participating in the market investigation also considered the impact of the Transaction on the container terminal services market as neutral.¹³²

VI.3.1.3. Commission's assessment

- (206) The Commission considers that the merged entity would not have the ability to engage in any foreclosure strategy, regardless of whether the vertical links brought about by the Transaction are assessed at individual or at consortia level.
- (207) First, there is no risk that the merged entity would stop providing port terminal services to competing liner shipping companies both in Northern Europe and in South America.
- (208) As regards services that start or end in Northern Europe, the Parties' competitors in the container liner shipping market could procure port terminal services from several alternative providers, since, at the Hamburg port, port terminal services are not only offered by HHLA but also by the Eurogate Group (Eurogate Container Terminal Hamburg) with a direct motorway connection. The Eurogate terminal capacity will be expanded up to six million TEU p.a. until 2019.¹³³ In addition, the Hamburg port is constrained by other ports in the Northern range (between Hamburg and Antwerp) such as the Bremerhaven port.

¹³⁰ Responses to questions 8 and 8.1 of Q4 – Questionnaire to container terminal providers.

¹³¹ Responses to question 7.1 of Q4 – Questionnaire to container terminal providers.

¹³² Responses to question 37 of Q1 – Questionnaire to competitors; responses to question 39 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

¹³³ For further details please see <http://www.hafen-hamburg.de/en/article/Eurogate-CTH>.

- (209) As regards the risk of input foreclosure in North and South America, SAAM has only minor activities in port terminal services in North America,¹³⁴ whereas it is mainly active in South America, notably in Chile and to a lesser extent in Ecuador. In Chile, SAAM provides port terminal services through a joint venture with SSA Marine on the basis of a concession in San Antonio (Terminal Internacional). In San Antonio, SAAM shall grant non-discriminatory access to all shipping companies. Therefore it cannot favour the merged entity post-Transaction. Additionally, the San Antonio port is constrained by the port of Valparaiso, which is located at 80km north of San Antonio. Finally, both San Antonio and Valparaiso ports will expand in the coming years, thus fostering intra-port and inter-ports competition.¹³⁵ In Ecuador, SAAM operates a terminal in Guayaquil (Terminal Portuario de Guayaquil), which is medium-sized and handles a small percentage of the total volumes shipped to Ecuador.¹³⁶
- (210) Second, it is unlikely that competitors in the market for container terminal services where the Parties offer such activities (see recitals (199)–(200) and (206)–(209)) would be foreclosed from access to a significant customer base since the Parties represent a negligible share of demand for container terminal services both in Northern Europe and in South America. In addition, on each vertically affected trade, there are sufficient alternative container liner shipping companies, operating individually, which represent a significant share of the demand in relation to port terminal services.

VI.3.1.4. Conclusion

- (211) In light of recitals (198) to (210), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the activities of the Parties in the market for container liner shipping services and in the market for container terminal services.

VI.3.2. Freight forwarding

- (212) Sea freight forwarders are among the most important customers of container liner shipping companies.

VI.3.2.1. Parties' view

- (213) The Parties submit that the Transaction will not lead to any competition concerns in relation to freight forwarding services.

¹³⁴ In particular, in North America SAAM operates at Port Everglades (Florida International Terminal), where [80-90]% of the volumes go through other terminals. In addition, SAAM operates in Mexico at the Terminal Portuario Mazatlan, located on the Pacific coast. None of the consortia to which the Parties are members served Mazatlan in 2012.

¹³⁵ New concessions are being granted in Valparaiso to TCVAL (OHL Group) and in San Antonio to Puerto Central (Matte Group). See, Form CO, page 78.

¹³⁶ [80-90]% of all volumes shipped to Ecuador go through the other three terminals in Guayaquil (Con-tecon, Dole and Fertisia). See Form CO, page 78.

VI.3.2.2. Commission's assessment

- (214) CSAV is a minor player in freight forwarding with a turnover of EUR [...] worldwide in 2012, out of which EUR [...] were achieved in sea freight forwarding. In South America, CSAV's market share in freight forwarding is below [5-10]% irrespective of the exact scope of the market. CSAV is not active in the EU.
- (215) Kühne, through its subsidiaries, is active in freight forwarding with a market share of around [10-20]% or less in all EEA countries in sea freight forwarding, apart from Austria, where its market share amounts to [20-30]%.
- (216) On the basis of the combined market shares of the Parties, the Transaction would create vertically affected markets between the Parties' activities in the upstream market for container liner shipping services and in the downstream market for sea freight forwarding in the northbound leg of the NE-SAWC trade, where the Parties' combined market share in the market for container liner shipping services would amount to [30-40]%.
- (217) Respondents to the market investigation did not raise any concerns with regard to the vertical integration between the Parties activities in freight forwarding and container liner shipping markets.¹³⁷
- (218) The Commission considers that given the low market share of Kühne in freight forwarding irrespective of any possible market segmentation it is unlikely that the merged entity would have the ability and incentive to foreclose access to a sufficient customer base to its actual or potential rival in the upstream market for container liner shipping services. Likewise, due to the low market share of the Parties it is unlikely that other sea freight forwarders would be foreclosed from access to container liner shipping services on each trade.

VI.3.2.3. Conclusion

- (219) In light of recitals (212) to (218), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the activities of the Parties in the market for container liner shipping services and in the market for freight forwarding services.

VI.3.3. *Inland transportation*

- (220) Container liner shipping companies providing door-to-door services also arrange inland transportation for their customers. To that extent, inland transportation services are a necessary input for the provision of container liner shipping services.

VI.3.3.1. Parties' view

- (221) The Parties submit that the Transaction would not lead to any competition concerns in relation to inland transportation services.

¹³⁷ Responses to question 39 of Q1 – Questionnaire to competitors; responses to question 41 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

VI.3.3.2. Commission's assessment

- (222) CSAV provides inland transportation services *via* its subsidiary Norgistics, with market shares up to [5-10]% in all South American countries. Norgistics does not have any activities in the EU.
- (223) HGV, *via* its majority shareholding HHLA and its subsidiary Metrans, owns railway transport operations and has limited activities in road transportation. Metrans operates mainly in Germany, the Czech Republic and Slovakia. HHLA's market share in the market for inland transportation in each of these three countries is below 10%. Kühne provides road transportation services particularly *via* its French subsidiary Alloin.¹³⁸ Kühne is mainly active in France and Belgium with a market share of less than [5-10]% in each of these countries. HL AG is not active in the market for inland transportation services but rather purchases these services from third parties.
- (224) On the basis of the combined market shares of the Parties, the Transaction would create vertically affected markets between the Parties' activities in the upstream market for inland transportation and in the downstream market for container liner shipping services in the northbound leg of the NE–SAWC trade, where the Parties' combined market share in the market for container liner shipping services would amount to [30-40]%.
- (225) Respondents to the market investigation did not raise any concerns with regard to the vertical integration between the Parties activities in the inland transportation and container liner shipping markets.¹³⁹
- (226) The Commission considers that given the low market shares of each Kühne, HHLA and CSAV in the market for inland transportation services it is unlikely that the merged entity would have the ability and incentive to foreclose its competitors in the downstream market of inland transportation. Customer foreclosure can also be excluded because the merged entity would represent a marginal part of the demand of inland transportation and container liner shipping companies are only one of many customers of inland transportation providers.

VI.3.3.3. Conclusion

- (227) In light of recitals (220) to (226), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the activities of the Parties in the market for container liner shipping services and in the market for inland transportation services.

VI.3.4. Harbour towage services

- (228) Harbour towage services are a necessary input for the provision of container liner shipping services.

138 M. 5382 – *Kühne+Nagel / Alloin*.

139 Responses to question 39 of Q1 – Questionnaire to competitors; responses to question 41 of Q2 – Questionnaire to direct customers and of Q3 – Questionnaire to freight forwarders.

VI.3.4.1. Parties' view

(229) The Parties submit that the Transaction would not lead to any competition concerns in relation to harbour towage services.

VI.3.4.2. Commission's assessment

(230) CSAV is active in harbour towage services through SAAM in Central and South America, namely in Brazil, Chile, Costa Rica (Pacific coast), Ecuador, Guatemala (Pacific coast), Honduras, Mexico, Peru and Uruguay. SAAM has a market share of about [20-30]% in Brazil, [30-40]% in Chile and [30-40]% in Mexico. SAAM has recently entered into a JV with the towage service provider Boskalis/SMIT in the Americas.¹⁴⁰ SMIT operates tugboats in Canada, Panama and Brazil. CSAV does not provide harbour towage services in Europe. None of the other parties provides harbour towage services.

(231) On the basis of the combined market shares of the Parties, the Transaction would create vertically affected markets between the Parties' activities in the upstream market for harbour towage services and in the downstream market for container liner shipping services in the southbound leg of the NE–SAWC trade, where the Parties' combined market share in a possible sub-segmentation of the container liner shipping market in a market for refrigerated goods would amount to [30-40]% and to [30-40]% in a hypothetical market for reefer containers only.

(232) None of the respondents to the market investigation raised any concerns with regard to the vertical integration brought about by the Transaction in the market for harbour towage services and the market for container liner shipping services.

(233) The Commission considers that given the moderate market shares of the Parties in both markets, the presence of several harbour towage providers, and the countervailing buyer power of big players in the container shipping liner market, it is unlikely that the merged entity would engage in any foreclosure strategy.

VI.3.4.3. Conclusion

(234) In light of recitals (228) to (233), the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the activities of the Parties in the market for container liner shipping services and in the market for harbour towage services.

VI.4. Conclusion on competitive assessment

(235) In light of the above and on basis of the information available to it, the Commission concludes that the Transaction would raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services on the NE–CAC and NE–SAWC trades, where it would give rise to non-coordinated effects.

(236) As for co-ordinated effects, in any event, even if the Transaction were to give rise to coordinated effects on the NE–CAC and NE–SAWC trades, the commitments of-

¹⁴⁰ See <http://www.boskalis.com/press/news-archive/news-page/boskalis-and-saam-begin-joint-towage-operations-in-americas.html> (date of retrieval 9 September 2014).

ferred by the Parties would also remove any serious doubts as to its compatibility with the internal market based on coordinated effects by severing the additional link between previously unrelated consortia, which would have been created by the Transaction.

VII. COMMITMENTS

VII.1. Commitments submitted by the Parties

VII.1.1. Procedure

- (237) In order to address the serious doubts raised by the Transaction regarding the provision of container liner shipping services on the NE–CAC and NE–SAWC trades and to render the Transaction compatible with the internal market, the Parties have modified the Transaction by entering into the following commitments, which are annexed to this Decision and form an integral part thereof.
- (238) The Parties provided a draft set of commitments on 19 August 2014. In that draft the Parties proposed to make a commitment to serve notices of termination in relation to the Ecuador Express (NE–SAWC) and the Euroandes (NE–CAC and NE–SAWC) Vessel Sharing Agreements.
- (239) The Parties further proposed to make a commitment that, provided the Eurosal¹⁴¹ Vessel Sharing Agreement were not terminated, the Parties would not before [...] become a member of any consortium of which MSC is a member on the NE–CAC and NE–SAWC trades (collectively referred to as the "Relevant Trades").
- (240) As concerns ring-fencing, the Parties offered that from the date of closing the Transaction until the date on which CSAV's withdrawal from the Ecuador Express and Euroandes agreements takes effect, the Parties shall procure that information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in these agreements will not be disclosed to HL AG, HGV, or Kühne Maritime (and *vice versa*).
- (241) Following a conference call with the case-team on 20 August 2014, the Parties provided a slightly amended draft set of commitments on 21 August 2014. After a discussion with the case-team on 21 August 2014, the Parties submitted formal commitments on 21 August 2014 (the "Final Commitments").

VII.1.2. Description of the Final Commitments

- (242) In order to resolve the serious doubts raised by the European Commission for the trades NE–CAC and NE–SAWC, the Parties offer that CSAV serves notice of termination within one week of the closing of the Transaction in relation to:
- (i) Vessel Sharing Agreement North Europe to/from Ecuador between MSC and CSAV (**Ecuador Express** – Northern Europe–South America West Coast); and

¹⁴¹ Operating Agreement North Europe / Caribbean / Central America / South America West Coast Service Eurosal 2 and ECS – Eurosal 1 Services between CMA CGM, HL AG, and HSDG dated 20 September 2011 (*Eurosal Agreement*).

- (ii) Vessel Sharing Agreement North Europe to West Coast South America between MSC and CSAV (**Euroandes Agreement**).
- (243) The Final Commitments aim at addressing the Commission's serious doubts with respect to the provision of container liner shipping services on the NE–CAC trade and on the NE–SAWC trade by removing the link which would have been created between HL AG's consortium Eurosal (active on both NE–CAC and NE–SAWC trades) and CSAV's consortia Euroandes (active on both NE–CAC and NE–SAWC) and Ecuador Express (operating only on the NE–SAWC trade).
- (244) In order to avoid any circumvention of the commitment to terminate the Ecuador Express and Euroandes Agreements on the NE–CAC and NE–SAWC trades, the Parties further commit that they will not, within five years from the date of the adoption of this Decision, become a member of any consortia of which MSC is a member on the NE–CAC or NE–SAWC trades.
- (245) The Parties also make the commitment that they will not become a member of any consortia of which Maersk is a member on the NE–CAC or NE–SAWC trades before the earlier of 1 January 2017 or the date on which the widening of the Panama Canal is completed.
- (246) The Parties can join consortia or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided those agreements are not of substantially similar terms and with the same partners as the Ecuador Express and Euroandes agreements.
- (247) From the date of the closing of the Transaction until the date on which CSAV's withdrawal from the Ecuador Express and Euroandes agreements takes effect, the Parties will ascertain that information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in these agreements will not be disclosed to HL AG, HGV, or Kühne Maritime (and *vice versa*).
- (248) In the transitional period until CSAV's withdrawal from the Ecuador Express and Euroandes agreements takes effect, the Monitoring Trustee will exercise any veto rights CSAV may have with respect to decisions taken within the Euroandes and Ecuador Express (NE–SAWC) consortia, except to the extent that any decision would adversely affect CSAV's allocation in those vessel sharing agreements (currently 27 300 nominal TEU and 4 680 plugs per year per leg of trade in Ecuador Express (NE–SAWC) and 65 000 nominal TEU and 6 500 plugs per year per leg of trade in Euroandes)
- (249) The Final Commitments differ from the draft commitments of 19 August 2014 as concerns the following points:
- Instead of "[...]", the Parties offer that they will not, within five years from the date of adoption of this Decision, become a member of any consortia of which MSC is a member on a Relevant Trade.
 - Additionally, the Parties also make the commitment that they will not become a member of any consortia of which Maersk is a member on a Relevant Trade before the earlier of 1 January 2017 or the date on which the widening of the Panama Canal is completed.

- The Parties can join consortia or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided those agreements are not of substantially similar terms and with the same partners as the Ecuador Express and Euroandes agreements.
 - The Monitoring Trustee will exercise any veto rights CSAV may have with respect to decisions taken within the Euroandes and Ecuador Express (NE–SAWC) consortia, except to the extent that any decision would adversely affect CSAV's allocation in those vessel sharing agreements.
- (250) As will be explained in section VII.2, the Commission considers the Final Commitments suitable to entirely remove the serious doubts as to the compatibility of the Transaction with the internal market as identified at recitals (50) to (236) above.

VII.2. ASSESSMENT OF THE FINAL COMMITMENTS

VII.2.1. The view of the Parties

- (251) The Parties submit that the Final Commitments are sufficient to remove the serious doubts as to the compatibility of the Transaction with the internal market.

VII.2.2. NE–CAC trade

- (252) Each party is a member of only one consortium on this trade. CSAV is a member of the Euroandes consortium together with MSC; HL AG is a member of Eurosal together with HSDG and CMA CGM. The Ecuador Express (CSAV and MSC) was active on the NE – CAC trade until May 2014, when this service was terminated.
- (253) The Parties contend that MSC is the stronger partner in the Euroandes consortium and provides seven out of nine vessels.¹⁴² The capacity of these vessels is between 4,400–5,300 TEU. Therefore the Parties believe that it is highly unlikely that MSC would cease its operations on this trade as a result of CSAV's notice of termination of the Euroandes Agreement. Rather, MSC would continue on a stand-alone basis or find another cooperation partner.
- (254) The commencement date for the Euroandes Agreement was [...].¹⁴³ The agreement has a duration [...] and will thus expire on [...].¹⁴⁴ [Summary on the contractual arrangements between the consortium members].
- (255) The Parties propose that CSAV will terminate the Euroandes Agreement with MSC. CSAV will execute the termination notice in relation to Euroandes within one week of the closing of the Transaction. The termination will become effective [...] months after the date on which notice is given.¹⁴⁵

142 Clause 5.3 of the Euroandes Agreement, Annex 1 to the Form RM.

143 Clause 3.1. of the Euroandes Agreement, Annex 1 to the Form RM.

144 Clause 3.2.1 of the Annex 1 Euroandes Agreement, Annex 1 to the Form RM.

145 Under Clause 3.2.2 of the Euroandes Agreement: "*A Party may terminate this Agreement on the expiry of [...] months written notice to the other Part, such notice not to be effective before [...] months after the Commencement Date. (...)*", see Annex 1 to the Form RM.

VII.2.3. NE–SAWC trade

- (256) CSAV is a member of two consortia on this trade, Euroandes and Ecuador Express, both with MSC. HL AG is a member of the Eurosal consortium with HSDG and CMA CGM.
- (257) The terms of the Euroandes Agreement are described at recital (254) of this Decision.
- (258) According to the Parties Euroandes and Ecuador Express (NE–SAWC) go back to the same memorandum of understanding and the terms of the two agreements are nearly identical. MSC is the senior partner in the Ecuador Express consortium on this trade and provides five of the six vessels operated under the Ecuador Express Agreement.¹⁴⁶ Therefore the Parties believe that it is highly unlikely that MSC would stop operating on this trade as a result of CSAV's notice of termination. MSC will therefore have a strong incentive to continue operating on this trade by providing additional capacity of its own or using that provided by a new partner.
- (259) The Ecuador Express Agreement (which commenced in [...]) expired in [...]¹⁴⁷ but the Parties have agreed that their cooperation on the NA–SAWC trade will continue until notice of termination is served. A [...] month notice period applies.¹⁴⁸
- (260) The notice of termination for the Euroandes and Ecuador Express Agreements will be executed within one week of the Proposed Transaction's Closing. Termination will become effective [...] months after the date on which notice is given.

VII.2.4. The results of the market test

- (261) In the market test, a majority of customers expressing an opinion and MSC indicated that the Final Commitments would be sufficient to eliminate all serious doubts on the NE–CAC and NE–SAWC trades as identified by the Commission.¹⁴⁹ A large majority of customers and MSC stated that the Final Commitments were sufficiently clear.¹⁵⁰
- (262) Furthermore, about half of the customers expressing an opinion said that they would continue to use the Euroandes and Ecuador Express services by reallocating their volumes previously shipped by CSAV to the shipping companies that would continue the Euroandes and Ecuador Express service, even though some customers ex-

146 Clause 5.3. of the Ecuador Express (NE–SAWC), *Annex 3* to the Form RM.

147 Clause 3.2.1 of the Ecuador Express Agreement, *Annex 3* to the Form RM.

148 Under Clause 3.2.2 of the (expired) of the Ecuador Express Agreement “*a Party may terminate this Agreement on the expiry of [...] months written notice to the other Party.*” See *Annex 3* to the Form RM.

149 Most customers stated that they did not know the answer; replies to questions 5.1 and 5.2 of the market test questionnaire to customers of 27 August 2014; replies to questions 7.1 and 7.2 of the market test questionnaire to MSC of 27 August 2014.

150 Replies to question 6 of the market test questionnaire to customers of 27 August 2014; replies to question 8 of the market test questionnaire to MSC of 27 August 2014.

plained that their decision would depend on the prices offered by MSC.¹⁵¹ In general, customers confirmed that they are keen to multisource among different consortia and service providers. None of these customers would stop using the Euroandes services as a result of the Transaction; and only a small minority would stop using the Ecuador Express service.¹⁵²

- (263) One customer stated that the Final Commitments would have a negative impact on competition as it would reduce the choice of alternative services providers. In particular, this customer would have to rely entirely on MSC in terms of prices and frequencies.
- (264) MSC stated that its current intention is to continue both services Euroandes and Ecuador Express, on its own, should it not find a suitable replacement for CSAV.¹⁵³
- (265) Maersk accepted the relevance of the Final Commitments directed at severing the link with MSC but objected to the merged entity voluntarily committing not to become a member of any consortia of which Maersk is a member on a Relevant Trade as unrelated to the serious doubts identified by the Commission, and therefore unjustified.
- (266) As for the remaining competitors, they refrained from taking a clear stance on the suitability of the Final Commitments on the NE–CAC trade and their views were tied regarding the NE–SAWC trade.¹⁵⁴

VII.2.5. The Commission's assessment

- (267) While the draft commitments were aimed at removing the link which would be created between HL's consortium Eurosas and the consortia of CSAV (Euroandes and Ecuador Express) post-closing of the Transaction, their effectiveness was limited by the fact that the Parties initially proposed to have their obligation not to become a member of any consortia of which MSC is a member on a Relevant Trade expire on [...]. The Commission deemed that the duration of this obligation was too short to ensure that effective competition could be maintained on the Relevant Trades.
- (268) Moreover, the draft commitments did not indicate with sufficient clarity the extent to which the Parties were restricted from cooperating with third parties and did not provide for a mechanism enabling CSAV to directly protect its capacity allocation in the Euroandes and Ecuador Express consortia where it could be adversely affected by MSC.
- (269) The Final Commitments address the issues described above and remove the link which would be created between HL's consortium Eurosas and the consortia of CSAV (Euroandes and Ecuador Express) post-closing of the Transaction. As a result, there will be three independent credible operators, namely the consortium Eu-

151 Replies to questions 1.1 and 3.1 of the market test questionnaire to customers of 27 August 2014.

152 Replies to questions 1.2 and 3.2 of the market test questionnaire to customers of 27 August 2014.

153 Replies to questions 1 and 3 of the market test questionnaire to MSC of 27 August 2014; email of 4 September 2014 entitled "RE: M.7268 Reply to market test - confidential information".

154 Replies to questions 6.1 and 6.2 of the market test questionnaire to competitors of 27 August 2014.

rosal, Maersk (as before) and MSC, which will continue the services of the consortia CSAV is exiting. Moreover, the two operators not linked to the merged entity, Maersk and MSC, would account for a substantial part of the volumes transported on each of the two Relevant Trades.

- (270) On the NE–CAC trade, following the withdrawal of CSAV from the Euroandes consortium with MSC, *ceteris paribus*, the latter will become a competitor independent from the Parties; post-Transaction the share of independent competitors will therefore increase to [40-50]% ([50-60]% northbound – [40-50]% southbound) in the overall market and to [50-60]% ([60-70]% northbound – [20-30]% southbound) for reefer containers.
- (271) On the NE–SAWC trade, following the withdrawal of CSAV from the Euroandes and Ecuador Express consortia with MSC, *ceteris paribus*, the latter will become a competitor independent from the Parties; post-Transaction the share of independent competitors will therefore increase to [40-50]% ([50-60]% northbound – [40-50]% southbound) in the overall market and to [60-70]% ([60-70]% northbound – [40-50]% southbound) for reefer containers.
- (272) The fact that MSC stated that it intends to continue the Euroandes and Ecuador Express services either on its own or with a new partner replacing CSAV, is an indication that the Euroandes and Ecuador services will remain sustainable post-Transaction and will impose a significant competitive constraint on the Parties and the consortium in which the merged entity will participate (the Eurosal service).
- (273) Customers stated during the market investigation that they would continue to use the Euroandes and Ecuador Express services despite CSAV's withdrawal. This also indicates that the Euroandes and Ecuador Express services will remain sustainable after the Transaction and will exert significant competitive constraints on the consortium in which the merged entity will participate (the Eurosal service).
- (274) The concern raised by one customer that the Final Commitments would create sole dependency on MSC which may raise prices can be dismissed. MSC is unlikely to raise prices or reduce the quality of its services on the NE–CAC and NE–SAWC trades, since it seems to have extra capacity and it would likely try to attract customers in order to maintain a stand-alone service.
- (275) The termination of the Ecuador Express agreements (NE–SAWC) will necessarily also result in the termination of the Ecuador Express agreement (NE–NA). This is because, notwithstanding that there are two separate agreements governing these trades, the same ship system is used for NE–NA as NE–SAWC. The termination of Ecuador Express (NE–NA) will not have any material impact on competition on the NE–NA trade. As noted, MSC provides six out of the seven vessels and is likely to add an additional vessel to maintain weekly service or find a new consortium partner. MSC already provides other separate services on the NE–NA trade independently and is therefore well positioned to adapt its overall service offering as a result of the withdrawal of the one CSAV vessel through the termination of the Ecuador Express (NE–NA).
- (276) Moreover, the Parties offered the voluntary commitment not to become a member of any consortia of which Maersk is a member on a Relevant Trade. The Commission considers that this commitment safeguards the effectiveness of the Final Commitments in that it prevents the merged entity from entering into agreements setting up a consortium with Maersk on the Relevant Trades, which could have as their effect the

circumvention of what the Final Commitments aim to ensure: indeed, instead of having a substantial part of the market accounted for by two shipping companies independent of and unrelated to the merged entity, there could in fact be just one, MSC, with a rather moderate market share. Since, moreover, that commitment will be in place for a rather limited time, it does not go beyond what is necessary for protecting effective competition on the Relevant Trades. In any event, both the commitment not to enter into a consortium with Maersk and to re-enter into a consortium with MSC on the Relevant Trades are subject to close monitoring by the Trustee and a review clause.

(277) For those reasons, the Final Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

VII.2.6. Overall conclusion on the Final Commitments

(278) In light of the above and on the basis of the information available to it, the Commission concludes that the Final Commitments are sufficient to eliminate all serious doubts to which the Transaction would give rise as to its compatibility with the internal market in the market for container liner shipping services on the NE–CAC and the NE–SAWC trades.

VII.3. Conditions and obligations

(279) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its Decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into *vis-à-vis* the Commission with a view to rendering a notified concentration compatible with the internal market.

(280) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(281) In accordance with the distinction described above, the Decision in this case is conditioned on the full compliance with the requirements set out in section B of the Final Commitments (conditions), whereas sections C, D, and F of the Final Commitments constitute obligations on HL AG, CSAV, HGV and Kühne Maritime.

(282) The detailed text of the Final Commitments is annexed to the present Decision. The full text of the Final Commitments forms an integral part to this decision.

VIII. CONCLUSION

(283) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the Final Commitments annexed to the present Decision and with the obligations contained in sections C, D, and F of the Final Commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission

(Signed)

Neelie KROES

Vice-President

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the *Merger Regulation*), Compañía Sud Americana de Vapores S.A. (*CSAV*), Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH (*HGV*), and Kühne Maritime GmbH (*Kühne Maritime*) (the *Notifying Parties*) hereby enter into the following Commitments (the *Commitments*) vis-à-vis the European Commission (the *Commission*) with a view to rendering the combination of the container shipping activities of CSAV and Hapag-Lloyd AG (*HL AG*) (the *Concentration*) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the *Decision*), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the *Remedies Notice*).

Section A. Definitions

1. 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 light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the *Consolidated Jurisdictional Notice*).

Closing: the date on which the container shipping activities of CSAV will be contributed to HL AG and the acquisition of joint control of HL AG by CSAV, HGV, and Kühne Maritime takes legal effect.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Effective Date: the date of adoption of the Decision.

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

Parties: the Notifying Parties and the undertaking that is the target of the Concentration.

Relevant Trades: collectively, the trades from Northern Europe to Central America/Caribbean (*NE-CAC*), and Northern Europe to South America West Coast (*NE-SAWC*).

Trustee: the Monitoring Trustee.

Section B. Commitment to terminate two vessel sharing agreements

2. The Parties commit that CSAV will withdraw, or will procure that CSAV will withdraw, from the following vessel sharing agreements at the earliest date permitted by such agreements by serving notices of termination within one week of Closing:
 - Vessel Sharing Agreement North Europe to/from Ecuador dated 11 November 2013 between MSC and CSAV – covering NE – SAWC (*Ecuador Express (NE-SAWC)*); and
 - Vessel Sharing Agreement North Europe to West Coast South America dated 11 November 2013 between MSC and CSAV (*Euroandes Agreement*).

Section C. Related commitments

3. In order to avoid any circumvention of the previous provision, the Parties further commit that they will not, within five years from the Effective Date, become a member of any consortia to which MSC Mediterranean Shipping Company S.A. (*MSC*) is a member on a Relevant Trade.
4. The Parties also commit that they will not become a member of any consortia to which A.P. Moller-Maersk Group (*Maersk*) is a member on a Relevant Trade before the earlier of 1 January 2017 or the date on which the widening of the Panama Canal is completed.
5. Subject to the Commitments in paragraphs 3 and 4, these Commitments do not preclude the possibility that the Parties join consortia or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided those agreements are not of substantially similar terms and with the same partners as the agreements enumerated in paragraph 2.

Section D. Ring-fencing

6. The Parties note that within each of the Ecuador Express (*NE-SAWC*) and Euroandes consortia, the members provide international liner services in respect of which they co-operate in the joint operation of a maritime transport service, including any one or more of the following: the coordination of sailing timetables and the exchange of vessel space or slots. The members of the consortia do not agree upon any common freight rate or charges.
7. Notwithstanding the above, from the date of Closing until the date on which CSAV's withdrawal from the agreements enumerated at paragraph 2 takes effect, the Parties shall

procure that, if and to the extent that CSAV receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in these agreements, such information will not be disclosed to HL AG, HGV, or Kühne Maritime (and vice versa).

8. The Parties also commit that during the period between Closing and the date on which the termination of the agreements enumerated in paragraph 2 takes effect, the Monitoring Trustee will exercise any veto rights CSAV may have with respect to decisions taken within the Euroandes and Ecuador Express (NE-SAWC) consortia, except to the extent that any decision would adversely affect CSAV's allocation in those vessel sharing agreements (currently 27,300 nominal TEU and 4,680 plugs per year per leg of trade in Ecuador Express (NE-SAWC) and 65,000 nominal TEU and 6,500 plugs per year per leg of trade in Euroandes).

Section E. Reporting

9. The Monitoring Trustee shall submit written reports in English confirming the Parties' compliance with the Commitments to the Commission no later than two weeks (or at any other time requested by the Commission, if necessary) following Closing. Thereafter, the Monitoring Trustee will submit compliance reports every six months (or at any other interim periods as requested by the Commission, if necessary) as well as a final compliance report within two weeks following the expiry of the restriction on consortium re-entry set out in paragraph 3.

Section F. Trustee

I. Appointment procedure

10. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
11. The Trustee shall:
 - (i) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
12. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

13. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 11 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

14. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties 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 the Parties

15. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 10 and 14 of these Commitments.

Trustee nominated by the Commission

16. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

17. The Trustee shall assume its specified duties and obligations in order to ensure compliance with: (i) the Parties' commitment to terminate the Ecuador Express (NE-SAWC) and Euroandes consortia; (ii) the related ring-fencing commitment; and (iii) the restriction on consortium re-entry set out in paragraphs 3 and 4. The duties of the Trustee shall cease two weeks following the expiry of the restriction on consortium re-entry set out in paragraph 3 or following submission of the Trustee's final compliance report,

whichever comes first. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

18. The Trustee shall:
- (i) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision;
 - (ii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

III. Duties and obligations of the Parties

19. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties shall provide the Trustee upon request with copies of any document. The Parties shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
20. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request while carrying out its duties. The Parties shall keep the Monitoring Trustee informed of all developments related to the termination of the vessel sharing agreements required under these Commitments.
21. The Parties shall indemnify the Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
22. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' 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 reasona-

ble. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 21 of these Commitments shall apply mutatis mutandis.

23. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
24. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
25. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

26. 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 and the Parties, require the Parties to replace the Trustee; or
 - (b) the Parties may, with the prior approval of the Commission, replace the Trustee.
27. If the Trustee is removed according to paragraph 26 of these Commitments, 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 10-16 of these Commitments.
28. Unless removed according to paragraph 26 of these Commitments, 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 at paragraph 17 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 G. The review clause

29. The Commission may extend the time periods as set out in paragraph 2 of the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.
30. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. For example, the completion of the widening of the Panama Canal, or the termination of the Eurosal consortium¹⁵⁵ may each constitute an exceptional circumstance for the purposes of this paragraph 30 to the extent they lead to a significant change in the competitive conditions on a Relevant Trade. Any request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the commitment and, in particular, of suspending the expiry of any time period in which the commitment has to be complied with.

Section H. Entry into force

31. The Commitments shall take effect upon the date of adoption of the Decision.

155 Operating Agreement North Europe / Caribbean / Central America / South America West Coast Service Eurosal 2 and ECS – Eurosal 1 Services between CMA CGM, HL AG, and HSDG dated 20 September 2011 (*Eurosal Agreement*).

Duly authorised for and on behalf of
Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH

[insert name]
[insert title]

Duly authorised for and on behalf of
Kühne Maritime GmbH

[insert name]
[insert title]

Duly authorised for and on behalf of
Hapag-Lloyd AG

[insert name]
[insert title]

Duly authorised for and on behalf of
Compañía Sud Americana de Vapores S.A.

[insert name]
[insert title]