



EUROPEAN COMMISSION
DG Competition

***Case M.8120 - HAPAG-LLOYD / UNITED ARAB
SHIPPING COMPANY***

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: 23/11/2016

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EUROPEAN COMMISSION

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PUBLIC VERSION

To the notifying party:

**Subject: Case M.8120 – Hapag-Lloyd / United Arab Shipping Company
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the
Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 3 October 2016, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Hapag-Lloyd AG ("HL", of Germany), which is jointly controlled by CSAV Germany Container Holding GmbH, the German subsidiary of CSAV.S.A. ("CSAV") of Chile, the Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH ("HGV"), of Germany, and Kühne Maritime GmbH, part of Kühne Holding AG ("Kühne"), both of Germany, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of United Arab Shipping Company S.A.G. ("UASC", of the UAE) by way of purchase of shares (the "Transaction"). HL and UASC are collectively referred to as the "Parties".

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 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

1. THE PARTIES

- (2) HL is the parent company of a group of companies that are active in the maritime sector, offering global transport services for containerised cargo under the Hapag-Lloyd brand through a fleet of approximately 170 container ships. HL also offers special cargo services, such as transporting break-bulk and out-of-gauge cargo on its container ships.
- (3) UASC is a global shipping company based in the Middle East. UASC offers global containerised cargo transport services through a fleet of approximately 55 container ships. Its other freight transport activities include special cargo services, such as transporting break-bulk and out-of-gauge cargo on its container ships. UASC's controlling shareholders are the State of Qatar and the Kingdom of Saudi Arabia.³

2. THE OPERATION AND THE CONCENTRATION

- (4) Through the Transaction, all of UASC's current shareholders will contribute their UASC shareholding to HL. HL will issue new shares to UASC's shareholders by way of consideration.⁴ Post-Transaction, UASC will be a 100% subsidiary of HL and HL will continue to be jointly controlled by its current parents, CSAV Germany Container Holding GmbH, the HGV and Kühne.
- (5) The economic and strategic rationale of the Transaction is to position the merged entity as a strong global container liner shipping company that is able to compete with Maersk,⁵ MSC⁶ and CMA CGM,⁷ all of which are much larger in size and have expanded their fleet in recent years with ultra large ships. The Parties also argue that the Transaction brings together complementary players in particular in relation to the Middle Eastern trades where UASC has a strong focus and HL's position is not significant. Further synergies would also occur as result of the Transaction.
- (6) The Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3 UASC is currently controlled by the State of Qatar and the Kingdom of Saudi Arabia. The State of Kuwait, the Republic of Iraq, United Arab Emirates and the Kingdom of Bahrain hold minority stakes in UASC.

4 UASC's current parents will hold 28% of HL's shareholding post-Transaction. However, in light of HL's Shareholders' Agreement, they will not acquire control over HL, neither individually nor jointly.

5 A.P.Møller-Mærsk A/S

6 Mediterranean Shipping Company S.A.

7 Compagnie Maritime d'Affrètement – Compagnie Générale Maritime

3. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁸ (HL: EUR [...] million; UASC: EUR [...] million). Each of them has a EU-wide turnover in excess of EUR 250 million (HL: EUR [...] million; UASC: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (8) The notified operation therefore has an EU dimension pursuant Article 1(2) of the Merger Regulation.⁹

4. MARKET DEFINITION AND COMPETITIVE ASSESSMENT

- (9) The Parties' activities mainly overlap horizontally in deep-sea container liner shipping.

4.1. Deep-sea container liner shipping services

- (10) In past cases, the Commission has found that the product market for container liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container. 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 such as bulk cargo.¹⁰
- (11) A possible narrower product market is that for the transport of refrigerated goods, which could be limited to refrigerated (reefer) containers only or could include transport in conventional reefer vessels. In past cases, the Commission has looked separately at reefer and non-refrigerated (warm) containers only in the case of legs of trade with a share of reefer containers in relation to all containerised cargo of 10% or more in both directions.¹¹
- (12) The majority of both customers and competitors responding to the Commission's market investigation confirm that the relevant market is that for container liner shipping.¹² Concerning a potential further segmentation between reefer and non-

⁸ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁹ Turnover was calculated based on the origin/seat of the customer, approach similar to the point-of-sale methodology. A calculation based on the point of departure method is not viable, as it would only attribute turnover to jurisdictions with departure ports; yet, the Parties submit that the EUMR turnover thresholds would be met, also under this methodology. Last, a calculation of the turnover based on the 50:50 methodology would not be feasible, as there are no roundtrips in container liner shipping. The approach followed is in line with Commission's decision practice in previous merger cases in the sector.

¹⁰ Cases M.7908 – *CMA CGM/NOL*, recital 8; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 16; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 13.

¹¹ Cases M.7908 – *CMA CGM/NOL*, recital 9; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*; M.3829 – *Maersk/PONL*, recital 10

¹² Q1 – Questionnaire to competitors, question 4; Q2 – Questionnaire to customers, question 4.

reefer containers, the majority of customers consider it relevant, whereas the majority of competitors submit that the transport of refrigerated goods is part of the market for container liner shipping.¹³ In any case, for the purpose of the present decision, it may be left open whether or not there are separate markets for reefer and non-reefer containers, as either definition would not change the outcome of the competitive assessment.¹⁴

4.1.1. Segmentation according to trades and legs of trades

- (13) In past cases, the Commission considered that the geographical dimension of the markets for container liner shipping services consists in single trades, defined by the range of ports which are served at both ends of the service. Moreover, as market conditions on the two directions (legs) of a trade can be different, a distinction was made between the two directions (legs) of a trade.¹⁵
- (14) Each trade can have 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. In the present case, there are differences between the two legs of the same trade, in terms of volumes shipped (e.g. in the case of Northern Europe – Middle East trade the eastbound leg is more than four times the size of the westbound leg), service requirements (e.g. in the Northern Europe – South America East Coast trade, reefer containers correspond to [30-40]% of the northbound leg and to only [5-10]% of the southbound leg) and customer base. As a result, vessels do not always include the same ports of call on both legs of a trade (e.g. MSC in its Australia Express service connecting the Mediterranean to Australia and New Zealand calls on East Africa on the eastbound leg and on the Far East on the westbound leg).¹⁶ Also, some consortia only operate on a single leg of trade (e.g. the EAX consortium between HL and CMA CGM only operates on the westbound leg of the trades for Northern Europe to the Middle East, Indian Subcontinent and Far East). In addition, there are instances, where the various carriers' market position differs significantly between legs of trade (e.g. the share of MSC is [20-30]% on the eastbound leg of the Northern Europe – Indian Subcontinent trade and [20-30]% on the westbound leg of the same trade).
- (15) The majority of both customers and competitors responding to the Commission's market investigation also consider that each leg of trade constitutes a separate geographic market.¹⁷

¹³ Q1 – Questionnaire to competitors, question 5; Q2 – Questionnaire to customers, question 5.

¹⁴ In previous Commission decisions, it was assessed whether reefer containers compete with bulk reefer vessels for the shipping of refrigerated products; the exact market definition was however ultimately left open. As none of the Parties operates reefer vessels, the competitive assessment will be conducted on a plausible narrower market for reefer containers only.

¹⁵ Cases M.7908 – *CMA CGM/NOL*, recital 13; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 22; M.3829 – *Maersk/PONL*, recital 9

¹⁶ Form CO, Annex 6.1.

¹⁷ Q1 – Questionnaire to competitors, question 7 ; Q2 – Questionnaire to customers, question 7.

4.1.2. Relevant legs of trade

- (16) Relevant legs of trade for the assessment of the Transaction are those from and to Northern European areas and those from and to the Mediterranean in view of the effect of those legs of trade on the internal market.¹⁸ For these legs of trade, the majority of both customers and competitors responding to the Commission's market investigation consider that, consistent with precedents, the following ranges of ports constitute a single distinct end of trade:¹⁹
- Northern Europe ("NE")
 - Mediterranean ("MED")
 - North America ("NA")
 - South America East Coast ("SAEC")
 - Middle East ("ME")
 - Indian Subcontinent ("IS")
 - Far East ("FE")
 - Australia and New Zealand ("AUNZ")
 - West Africa ("WAF")
- (17) In general, HL concurs with this market definition while arguing that Middle East and the Indian Subcontinent do not constitute separate ends of trade.²⁰ Asked specifically on whether the Middle East and Indian Subcontinent form a single or two separate ends of trade, the majority of customers and competitors indicate that the Middle East constitutes one end of trade and the Indian Subcontinent a different end of trade.²¹
- (18) In addition, the Commission has in all decisions in the last 10–15 years treated North America, including the USA, Canada and Mexico as one geographic market and has not distinguished between the different countries.²² The majority of customers and competitors responding to the market investigation also consider that the USA and Canada form part of a single end of trade.²³
- (19) The Commission concludes from the above that, for the purpose of the assessment of the Transaction, the relevant markets are the market for container

¹⁸ Cases M.7908 – *CMA CGM/NOL*, recital 11; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 23; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14.

¹⁹ Q1 – Questionnaire to competitors, question 8 ; Q2 – Questionnaire to customers, question 8.

²⁰ Form CO, paragraph 105.

²¹ Q1 – Questionnaire to competitors, question 8 ; Q2 – Questionnaire to customers, question 8.

²² Cases M.3863 – *TUI/CP Ships*, recital 24, footnote 22; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 14, footnote 5; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 25.

²³ Q1 – Questionnaire to competitors, question 10 ; Q2 – Questionnaire to customers, question 10.

liner shipping services and the market for reefer container liner shipping services,²⁴ both geographically defined on the basis of the legs of trade set out above.

4.2. Other markets

- (20) Furthermore, the Transaction creates vertical links between, on the one hand, deep-sea container liner shipping services and, on the other hand, container terminal, inland transportation, freight forwarding and harbour towage services, which are offered by HL or its controlling entities.

4.2.1. Container terminal services

- (21) Container terminal services are "input services" to container liner shipping. In previous cases, the Commission defined separate markets for container terminal services for deep-sea container ships, broken down by traffic flows to hinterland traffic and transshipment traffic.²⁵
- (22) 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). For example, concerning Northern Europe and terminals in Hamburg in particular, 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.²⁶
- (23) The Parties argue that national ports should not be considered as a separate market and that, in the case of terminal services at the Hamburg port, the relevant geographic market is Northern Europe for transshipment traffic and the catchment area of the ports in the range Hamburg – Antwerp for hinterland traffic.²⁷
- (24) 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 internal market under any of the abovementioned plausible geographic definition of the markets for container terminal services.

4.2.2. Freight forwarding services

- (25) In sea freight forwarding, transportation capacity is provided by container liner shipping companies like HL and its competitors. Freight forwarders are thus

²⁴ Reefer container liner shipping services are only considered a separate market, on those legs of trade where the share of transport in reefer containers in relation to all containerised cargo is 10% or more.

²⁵ Cases M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 32; M.5398 – *Hutchison/Evergreen*, recitals 9–11; M.3829 – *Maersk/PONL*, recitals 17–19; M.3863 – *TUI/CP Ships*, recital 12.

²⁶ Compare M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 16; M.5066 – *Eurogate/APMM*, recitals 15–20.

²⁷ Form CO, paragraph 159.

customers of container liner shipping companies, i.e. freight forwarding is a downstream market to container liner shipping.

- (26) 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*". The Commission subdivided the market into domestic and cross-border freight forwarding and into freight forwarding by air, land and sea. In past decisions, the Commission defined the geographic scope of the market either as national or wider. Specifically for sea freight forwarding, the Commission defined the market as at least national.²⁸ The Parties did not express any disagreement with this approach.²⁹
- (27) 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 internal market under any plausible of the abovementioned geographic definition of the markets for freight forwarding services.

4.2.3. *Inland transportation services*

- (28) If a container liner shipping company provides door-to-door services, it also arranges inland haulage for its customers to and/or from the harbour. Thus, these services are vertically related to container liner shipping.
- (29) 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 but ultimately left the market definition open. With regard to the geographic dimension, the Commission considered the market as either national or wider.³⁰ The Parties concur with the Commission's previous practice.³¹
- (30) 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 internal market under any of the abovementioned plausible definition of the markets for inland transportation services.

4.2.4. *Harbour towage services*

- (31) 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. Thus, there

²⁸ Cases M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 37-39; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 18; COMP/M.5480 – *Deutsche Bahn/PCC Logistics*, recitals 12-17.

²⁹ Form CO, paragraph 174 and following.

³⁰ Cases M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 43; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 17.

³¹ Form CO, paragraph 164 and following.

is a vertical relationship between container liner shipping activities and harbour towage services.

- (32) In previous decisions, the Commission left the exact market definition open.³² In case M.3829 – *Maersk/PONL*, the Commission considered that the narrowest possible geographical market definition was limited to individual ports. The Parties did not express any disagreement with this approach.³³
- (33) 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 internal market under any of the abovementioned plausible definition of markets for harbour towage services.

4.3. Introduction to the competitive assessment

4.3.1. General characteristics of the industry

- (34) 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 in slot charter agreements, consortia (also called vessel sharing agreements or VSAs), or alliances.
- (35) 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 or regular 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.
- (36) Consortia are operational agreements between shipping companies established on individual 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 a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity it contributes. 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.
- (37) Alliances can be described as vessel sharing agreements which, as opposed to consortia, cover multiple trades rather than one trade, i.e. they are a matrix of vessel sharing agreements.

³² Cases M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 48-49; M.3829 – *Maersk/PONL*, recital 24.

³³ Form CO, paragraph 174 and following.

- (38) Since 1995 the Commission has put in place several Block Exemption Regulations ("BER") concerning the container liner shipping industry.³⁴ 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, notably 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% on a given trade³⁵ 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.³⁶

4.3.2. *Assessment framework*

- (39) 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/alliances.
- (40) HL submits that consortia/alliances members fiercely compete with each other (and all other container liner shipping companies outside the consortia/alliances) not only on price but also on all the other parameters, such as quality of the overall service offered to the customers, including the quality of the inland transportation element of the service.³⁷ Therefore, HL considers that treating other members of the Parties' consortia/alliances as part of the Parties' economic groups is not justified as it does not reflect the economic reality of the market; the Parties' consortia/alliances market shares should therefore not be attributed to them.³⁸
- (41) In its previous practice concerning the sector, the Commission considered that it was not appropriate to assess the effects of the concentration only on the basis of the Parties' individual market shares. Such an 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

³⁴ 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, 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.

³⁵ Calculated on the basis of the method provided in the BER, see section 4.3.5 below.

³⁶ Articles 5 and 6 of the BER.

³⁷ Form CO, paragraph 221.

³⁸ Form CO, paragraph 224.

consortium/alliance concerning the characteristics of the service provided, in particular its level of capacity.³⁹

- (42) The results of the market investigation tend to confirm the Commission's past findings. On the one hand, the results of market investigation show that there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members. Shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price⁴⁰ and customer service.⁴¹ Moreover, most customers who responded to the market investigation submit that membership in consortia/alliances does not count among the most important criteria in the choice of supplier of container liner shipping services.⁴² Most customers who responded to the market investigation claim that they often or even always invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract on that leg of trade.⁴³
- (43) At the same time, however the majority of customers describes capacity, ports of call and frequencies, on which consortia/alliances members decide jointly, as important criteria in their choice of supplier of container liner shipping services.⁴⁴ As a consequence, the participation in consortia/alliances restricts the flexibility of consortia/alliances members on some of the key parameters of competition.
- (44) Therefore, and in line with the Commission's previous practice, the competitive assessment in this Decision will not only be based on the Parties' individual market shares and the market share increment brought about by the Transaction in the different affected markets.⁴⁵ It will also take into account the aggregate shares of the Parties' consortia/alliances. In so doing, the Commission does not imply that other consortia/alliances members are part of the Parties' undertakings (*quod non*) but simply takes into account the fact that the Parties' consortia/alliances partners exert but a limited competitive constraint on them.⁴⁶
- (45) The part of the market that will remain completely independent from the merged entity and its consortia/alliances on each market (the "free market") will also be considered, as it provides a first indication of the level of unfettered competitive constraint that the Parties would continue to face post-Transaction. Similarly, the number and size of the various independent competitors that will continue

³⁹ Cases M.7908 – *CMA CGM/NOL*, recitals 28-29; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 68–75.

⁴⁰ Q2 to Customers, question 24.

⁴¹ Q2 to Customers, question 24.2.

⁴² Q2 to Customers, question 13.

⁴³ Q2 to Customers, question 14.

⁴⁴ Q2 to Customers, question 13.

⁴⁵ Cases M.7908 – *CMA CGM/NOL*, recital 29; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 73.

⁴⁶ For the methodology for calculating consortia/alliances market shares and the "free market" in 2015 and 2017, see section 4.3.5.

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 of the market significantly smaller than that of the Parties or the members of consortia/alliances over which the Parties may have influence, the Commission will consider this a strong indication that the Transaction would raise serious doubts as to its compatibility with the internal market.

4.3.3. *The 2017 consortia/alliances restructuring*

- (46) According to the Horizontal Merger Guidelines,⁴⁷ in assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.⁴⁸
- (47) HL submits that the consortia/alliances landscape will undergo significant and foreseeable changes in 2017, which the Commission should take into consideration in its analysis of the Transaction.⁴⁹
- (48) In particular, HL is currently a member of the G6 Alliance, which will be terminated in March 2017 and succeeded by THE Alliance.⁵⁰ Similarly, UASC is a member of Ocean Three, which from April 2017 on will be replaced by Ocean Alliance, to which UASC will not be a member.⁵¹ UASC intended to become a member of THE Alliance.⁵²

⁴⁷ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p.5.

⁴⁸ Horizontal Merger Guidelines, paragraph 9.

⁴⁹ Form CO, paragraph 232.

⁵⁰ G6 is currently and THE Alliance will be as of April 2017 active on the two legs of seven overlapping trades, namely Northern Europe – North America, Northern Europe – Far East, Northern Europe – Indian Subcontinent / Middle East, Northern Europe – Mediterranean, Mediterranean – North America, Mediterranean – Far East, Mediterranean – Indian Subcontinent / Middle East. The members of the G6 Alliance are HL, Nippon Yusen Kabushiki Kaisha ("NYK"), Hyundai Merchant Marine Co. Ltd ("HMM"), Mitsui O.S.K. Lines Ltd ("MOL"), Orient Overseas Container Line Ltd ("OOCL") and American President Lines Ltd / Neptune Orient Lines ("APL/NOL"). The members of THE Alliance will be HL, UASC, Kawasaki Kisen Kaisha Ltd. ("K-Line"), MOL, NYK, Yang Ming Marine Transport Corp. ("Yang Ming"). Hanjin Shipping Co. Ltd ("Hanjin") was supposed to become a member of THE Alliance; however, following its filing for bankruptcy protection on 31 August 2016, its joining into THE Alliance is uncertain.

⁵¹ Ocean Three is currently active on both legs of four overlapping trades, namely Northern Europe – Far East, Northern Europe – Indian Subcontinent / Middle East, Mediterranean – Far East and Mediterranean – Indian Subcontinent / Middle East. Ocean Three members are UASC, CMA CGM and China Ocean Shipping (Group) Company ("COSCO"). The members of the Ocean Alliance are expected to be CMA CGM, including APL/NOL, OOCL, COSCO, including China Shipping Container Lines Co ("CSCL"), and the Evergreen Marine Corporation Ltd. ("Evergreen").

⁵² [...] (HL's submission regarding the Northern Europe – North America trade of 28 September 2016).

- (49) The Commission considers that the effects of the Transaction should be evaluated against the consortia/alliances as they stand in 2015 and also those resulting from the planned reshuffling of consortia/alliances in 2017. Therefore, the competitive assessment in this Decision will be carried out taking account of both the 2015 and 2017 situations.

4.3.4. *Overview of the Parties' consortia/alliances membership*

- (50) Table 1 below presents the 11 consortia/alliances to which HL was a member in 2015 or will be a member in 2017 on legs of trade from/to European ports, on which the Parties' container liner shipping services overlap.

Table 1: Information on HL's membership in consortia/alliances on overlapping legs of trade from/to Europe

Consortium / alliance	Members	Overlapping legs of trade ⁵³	Status in 2017
G6 Alliance	HL, NYK, OOCL, APL/NOL, HMM, MOL	Northern Europe – North America Northern Europe – Far East Northern Europe – Indian Subcontinent / Middle East Mediterranean – Far East Mediterranean – Indian Subcontinent / Middle East Northern Europe – Mediterranean	Terminated effective 31 March 2017
G6 / ZIM	HL, NYK, OOCL, APL/NOL, HMM, MOL, ZIM ⁵⁴	Mediterranean – North America Mediterranean – Indian Subcontinent / Middle East	Terminated effective 12 May 2016 (temporarily reactivated between October 2016 and March 2017)
THE Alliance	HL, Hanjin, ⁵⁵ "K"-Line, MOL, NYK, Yang Ming, UASC ⁵⁶	Northern Europe – North America Mediterranean – North America Northern Europe – Indian	Active as of 1 April 2017

⁵³ Unless specified otherwise, the overlap concerns the two legs of the trade.

⁵⁴ ZIM Integrated Shipping Services Ltd.

⁵⁵ Following Hanjin's filing for bankruptcy protection on 31 August 2016, its membership in THE Alliance is unlikely. Nevertheless, HL has adopted a conservative approach and included Hanjin in the projected 2017 HL's consortia/alliances market shares.

⁵⁶ [...] (HL's submission regarding the Northern Europe – North America trade of 28 September 2016).

		Subcontinent / Middle East Mediterranean – Indian Subcontinent / Middle East Northern Europe – Far East Mediterranean – Far East Northern Europe – Mediterranean	
SLCS	HL, OOCL	Northern Europe – North America	Unchanged
SLCS-MSC	HL, OOCL, MSC	Northern Europe – North America	Unchanged
MPS	HL, Hamburg Süd ⁵⁷	Mediterranean – North America	Unchanged
EAX	HL, CMA CGM	Northern Europe – Indian Subcontinent / Middle East (westbound only) Mediterranean – Indian Subcontinent / Middle East (westbound only) Northern Europe – Far East (westbound only) Mediterranean – Far East (westbound only) Northern Europe – Australia/New Zealand Mediterranean – Australia/new Zealand Northern Europe – Mediterranean	Unchanged
Indamex	HL, CMA CGM, OOCL, NYK	Mediterranean – North America Mediterranean – Indian Subcontinent / Middle East	Unchanged
IOS	HL, Hamburg Süd	Northern Europe – Indian Subcontinent / Middle East Mediterranean – Indian Subcontinent / Middle East Northern Europe –	Unchanged

⁵⁷ Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG.

		Mediterranean	
BLX	HL, MSC	Northern Europe – South America East Coast	Unchanged
WAX	HL, Arkas ⁵⁸	Northern Europe – West Africa Mediterranean – West Africa	Unchanged

- (51) Table 2 below presents the nine consortia/alliances to which UASC was a member in 2015 or will be a member in 2017, on legs of trade from/to European ports, on which the Parties' container liner shipping services overlap.

Table 2: Information on UASC's membership in consortia/alliances on overlapping legs of trade from/to Europe

Consortium / alliance	Members	Overlapping legs of trade ⁵⁹	Status in 2017
NEU 1 (ex-Pendulum)	UASC, CMA CGM, Hamburg Süd	Northern Europe – North America	Possibly terminated in the first half of 2017
Ocean Three	UASC, CMA CGM, CSCL	Northern Europe – Far East Northern Europe – Indian Subcontinent / Middle East Mediterranean – Far East Mediterranean – Indian Subcontinent / Middle East	Terminated effective 1 April 2017
EPIC / IEC 1	UASC, CMA CGM	Northern Europe – Indian Subcontinent / Middle East Mediterranean – Indian Subcontinent / Middle East Northern Europe – Mediterranean (southbound only)	Unchanged
Med - USEC Service (Amerigo/Mena)	UASC, CMA CGM, CSCL, Hanjin	Mediterranean – North America	Unchanged
Ocean Three / Yang Ming	UASC, CMA CGM, CSCL, Yang Ming	Mediterranean – Far East	Terminated in May 2016

⁵⁸ Arkas Container Transport S.A.

⁵⁹ Unless specified otherwise, the overlap concerns the two legs of the trade.

Ocean Three / Evergreen	UASC, CMA CGM, CSCL, Evergreen	Mediterranean – Far East	Terminated effective 1 April 2017
IMEX	UASC, CMA CGM, CSCL, Hanjin	Mediterranean – Indian Subcontinent / Middle East	Unchanged
GEM1	UASC, CMA CGM, CSCL	Mediterranean – Indian Subcontinent / Middle East	Unchanged
Med – West Africa relay Service (WAF I)	UASC, Hanjin, CMA CGM	Mediterranean – West Africa	Possibly terminated in the second half of 2017
THE Alliance	UASC, ⁶⁰ HL, Hanjin, ⁶¹ "K"-Line, MOL, NYK, Yang Ming	Northern Europe – North America Mediterranean – North America Northern Europe – Indian Subcontinent / Middle East Mediterranean – Indian Subcontinent / Middle East Northern Europe – Far East Mediterranean – Far East Northern Europe – Mediterranean	Active as of 1 April 2017

⁶⁰ [...] (HL's submission regarding the Northern Europe – North America trade of 28 September 2016).

⁶¹ Following Hanjin's filing for bankruptcy protection on 31 August 2016, its membership in THE Alliance is unlikely. Nevertheless, HL has adopted a conservative approach and included Hanjin in the projected 2017 HL's consortia/alliances market shares.

4.3.5. Methodology for calculating market shares

- (52) The methodology that HL applied for the calculation of market shares follows the approach taken in the two most recent Commission decisions in the sector.⁶² First, the volume and market share data are based on the data obtained from Container Trades Statistics Ltd ("CTS")⁶³ and the Parties' best estimates. Second, the Parties' consortia/alliances combined market shares are calculated by summing up the total volumes of all the shipping companies participating in any of the Parties' consortia/alliances.⁶⁴ Conversely, the "free market" is calculated by aggregating the market shares of all the container liner shipping companies, active on the respective leg of trade, that are unrelated to the Parties, namely are not members to the Parties' consortia/alliances.
- (53) The Parties' projected 2017 consortia/alliances combined market shares and projected 2017 "free market" have been calculated based on container liner shipping companies 2015 market share data and the expected market structure in 2017.⁶⁵ More concretely, HL has assumed that current consortia/alliances will undergo the changes described in Tables 1 and 2 above and has aggregated the volumes shipped by CMA CGM and APL/NOL on the one hand and by COSCO and CSCL on the other hand as these companies combined their operations in 2016.
- (54) For the reefer container market, in line with the Commission's previous practice, market shares are provided only on those legs of trade where the share of transport in reefer containers in relation to all containerised cargo is 10% or more.⁶⁶

4.4. Horizontal overlaps

4.4.1. Overview of affected legs of trade

- (55) HL and UASC have overlapping container liner shipping services, either directly or through their consortia, on legs of trade connecting Europe with the Americas, Asia, the Middle-East, Africa and Australia/New Zealand.

⁶² Cases M.7908 – CMA CGM/NOL, recitals 30-31; and M.7268 – CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG, recitals 57-62.

⁶³ CTS, a private consultancy which receives information on the individual volumes shipped by twenty of the main companies active in the container liner shipping business serves as one of the main data sources in the container liner shipping industry.

⁶⁴ This approach reduces double-counting compared to the method provided in the BER. Nevertheless, HL indicates that the position of the Parties' consortia/alliances is still overstated, as for the estimation of a consortium/alliance market share, all volumes transported on a particular trade by each of its members are attributed fully to the consortium/alliance, irrespective of whether the volumes are carried within or outside of the consortium/alliance; Form CO, paragraph 123.

⁶⁵ Form CO, paragraphs 235-236.

⁶⁶ Form CO, paragraph 121.

- (56) When attributing the Parties' consortia/alliances market shares to them, the list of markets, in which the market share of the Parties and their consortia/alliances ("affected markets")⁶⁷ exceed 20% would be:
- i. Northern Europe – North America, westbound and eastbound;
 - ii. Northern Europe – Far East, westbound and eastbound;
 - iii. Northern Europe – South America East Coast, southbound and northbound, as well as the southbound and northbound legs for reefer containers only;
 - iv. Northern Europe – Indian Subcontinent, westbound and eastbound;
 - v. Northern Europe – Middle East, westbound and eastbound, as well as the eastbound leg for reefer containers only;
 - vi. Northern Europe – Australia/New Zealand, southbound and northbound, as well as the southbound leg for reefer containers only;
 - vii. Mediterranean – North America, westbound and eastbound;
 - viii. Mediterranean – Far East, westbound and eastbound;
 - ix. Mediterranean – Indian Subcontinent, westbound and eastbound;
 - x. Mediterranean – Middle East, westbound and eastbound, as well as the eastbound leg for reefer containers only;
 - xi. Mediterranean – Australia/New Zealand, southbound and northbound;
 - xii. Mediterranean – West Africa, southbound and northbound; and
 - xiii. the southbound leg of the Northern Europe – Mediterranean trade, as well as the northbound leg for reefer containers only.
- (57) The following table summarises the market shares of the Parties individually and combined, as well as the market shares corresponding to the Parties' and their consortia/alliances and to the "free market", in 2015 and 2017 in all above-mentioned legs of trade.

⁶⁷ For the purpose of this case, the term is used to facilitate the presentation of the analysis, even though not all of the markets in question are affected in the meaning of Section 6.3. Form CO, as the activities of the Parties' consortia/alliances cannot in their entirety be attributed to the Parties; see Section 4.3.5 above for an overview of the methodology applied for the estimation of market shares.

Table 3: Overview of affected container liner shipping markets

Trade (separately for reefer, when >10%)	Leg*	Type**	HL (%)	UASC (%)	Parties combined (%)	Aggreg. shares of Parties' consortia/alliances (2015) (%)	Aggreg. shares of Parties' consortia/alliances (2017) (%)	Free market (2015) (%)	Free market (2017) (%)
NE-NA	wb	All	[20-30]	[0-5]	[20-30]	[70-80]	[60-70]	[20-30]	[30-40]
NE-NA	eb	All	[20-30]	[0-5]	[20-30]	[70-80]	[60-70]	[20-30]	[30-40]
NE-FE	eb	All	[5-10]	[0-5]	[5-10]	[40-50]	[30-40]	[50-60]	[60-70]
NE-FE	wb	All	[0-5]	[0-5]	[5-10]	[30-40]	[30-40]	[60-70]	[60-70]
NE-SAEC	sb	All	[10-20]	[0-5]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
NE-SAEC	nb	All	[10-20]	[0-5]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
NE-SAEC	sb	Reefer	[10-20]	[0-5]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
NE-SAEC	nb	Reefer	[10-20]	[0-5]	[10-20]	[20-30]	[20-30]	[70-80]	[70-80]
NE-IS	eb	All	[5-10]	[0-5]	[10-20]	[30-40]	[30-40]	[70-80]	[70-80]
NE-IS	wb	All	[5-10]	[0-5]	[10-20]	[40-50]	[40-50]	[60-70]	[50-60]
NE-ME	eb	All	[5-10]	[10-20]	[10-20]	[40-50]	[40-50]	[50-60]	[60-70]
NE-ME	wb	All	[5-10]	[10-20]	[20-30]	[30-40]	[30-40]	[60-70]	[60-70]
NE-ME	eb	Reefer	[5-10]	[5-10]	[10-20]	[40-50]	[30-40]	[50-60]	[60-70]
NE-AUNZ	sb	All	[10-20]	[0-5]	[10-20]	[20-30]	[20-30]	[70-80]	[70-80]
NE-AUNZ	nb	All	[10-20]	[0-5]	[10-20]	[20-30]	[30-40]	[70-80]	[70-80]
NE-AUNZ	sb	Reefer	[10-20]	[0-5]	[10-20]	[20-30]	[20-30]	[70-80]	[70-80]
MED-NA	wb	All	[20-30]	[5-10]	[20-30]	[50-60]	[40-50]	[50-60]	[50-60]
MED-NA	eb	All	[20-30]	[0-5]	[20-30]	[50-60]	[30-40]	[50-60]	[60-70]
MED-FE	eb	All	[0-5]	[0-5]	[5-10]	[50-60]	[20-30]	[40-50]	[70-80]
MED-FE	wb	All	[0-5]	[0-5]	[5-10]	[40-50]	[30-40]	[50-60]	[60-70]
MED-IS	eb	All	[0-5]	[10-20]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
MED-IS	wb	All	[0-5]	[5-10]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
MED-ME	eb	All	[0-5]	[10-20]	[10-20]	[30-40]	[30-40]	[60-70]	[60-70]
MED-ME	wb	All	[0-5]	[10-20]	[20-30]	[30-40]	[30-40]	[60-70]	[60-70]
MED-ME	eb	Reefer	[0-5]	[10-20]	[20-30]	[40-50]	[40-50]	[50-60]	[50-60]
MED-AUNZ	sb	All	[10-20]	[0-5]	[10-20]	[20-30]	[20-30]	[70-80]	[70-80]
MED-AUNZ	nb	All	[10-20]	[0-5]	[10-20]	[20-30]	[20-30]	[70-80]	[70-80]
MED-WAF	sb	All	[0-5]	[0-5]	[0-5]	[20-30]	[20-30]	[70-80]	[70-80]
MED-WAF	nb	All	[0-5]	[0-5]	[0-5]	[20-30]	[20-30]	[80-90]	[80-90]
NE - MED	sb	All	[0-5]	[0-5]	[0-5]	[20-30]	[20-30]	[70-80]	[70-80]
NE - MED	nb	Reefer	[0-5]	[0-5]	[0-5]	[30-40]	[30-40]	[60-70]	[60-70]

Source: Form CO. Note: Figures may not add up due to rounding.

*: Abbreviations: northbound (nb), southbound (sb), eastbound (eb), westbound (wb).

**:"Reefer" consists of reefer containers and is only considered a separate market, on those legs of trade where the share of transport in reefer containers in relation to all containerised cargo is 10% or more. See footnote 11 and Section 4.3.5 of this Decision.

(58) As can be seen in the table above, the Parties' combined share, when looked at in isolation, is below 30% in all plausible markets and therefore at a level that in other circumstances would not raise competition concerns. This picture changes when the market shares of consortia/alliances are also taken into account. On 12 of the 34 markets listed above, the part of the "free market" is below 60% (in either 2015 or 2017). Out of these markets, on each of the legs of the Northern Europe – North America trade, the Parties and their consortia/alliances would have shares of [70-80]% of the market in 2015, whereas the "free market" would

be as low as [20-30]%, thus warranting a more in-depth assessment. The increment of the Transaction is mainly the result of the link that would be created between HL's consortia/alliances and the unrelated consortium of UASC on that trade.

- (59) The competitive situation and the market structure pre- and post-Transaction for all these abovementioned legs of trades are described and assessed in the following sections of the Decision. In Section 4.4.2 the competitive assessment of the Northern Europe – North America westbound and eastbound legs of trade is presented, whereas section 4.4.3 contains the competitive assessment of all other legs of trade.

4.4.2. *Northern Europe – North America westbound/eastbound legs of trade*

4.4.2.1. Description of the trade

- (60) **Northern Europe – North America** is a thick trade with [4-5] million TEUs transported in 2015 ([2-3] million TEUs westbound and [1-2] million TEUs eastbound). On each leg of the Northern Europe – North America trade, the Parties' combined market share (without consortia/alliances partners) is below [20-30]% and the increment brought about by UASC is very small, amounting to less than [0-5]%. The Parties' main competitors are MSC ([20-30]% westbound and [20-30]% eastbound), CMA CGM ([5-10]% westbound and [10-20]% eastbound) and Maersk ([10-20]% westbound and [5-10]% eastbound).
- (61) If, however, the Parties' participations in consortia/alliances in the Northern Europe – North America trade are taken into account, the part of the market over which the merged entity will have influence amounts to at least [70-80]% of the market on either leg of the trade and the increment brought about by the Transaction would amount to [10-20]% for the westbound leg and [10-20]% for the eastbound leg.

4.4.2.2. Commission's assessment

- (62) Through the Transaction, a link would be created between consortia/alliances that are currently unconnected, as the merged entity would be a member of all the consortia/alliances to which HL and UASC currently are members. Currently, HL and UASC are members of different consortia/alliances on the Northern Europe – North America trade. HL has partnered with APL/NOL, HMM, MOL, NYK and OOCL within the G6 Alliance, with OOCL within the SLCS consortium and with OOCL and MSC within the SLCS-MSK consortium, while UASC, together with CMA CGM and Hamburg Süd, operate the NEU 1 (ex-Pendulum) consortium. The Transaction would thus lead to the establishment of links between the above-mentioned consortia/alliances that were previously not connected.
- (63) Some restructuring is planned to take place in the course of 2017 with regard to the consortia/alliances operating in the legs of the Northern Europe – North America trade, including the termination of the G6 Alliance and the creation of

THE Alliance. HL submits that the NEU 1 (ex-Pendulum) consortium may also be terminated in the first half of 2017.⁶⁸ .

- (64) As previously mentioned, members of consortia/alliances jointly establish the main criteria for the operation of a trade, including the capacity that will be offered, its allocation among shipping companies, the consortia's schedule and ports of call. Therefore, unfettered competition would only come from those competitors which are unconnected to the Parties and their consortia/alliances. On these legs of trade, the percentage of the "free market" would currently correspond to [20-30]%. Maersk, the world's leading company, accounts for [5-10]% of that "free market", whereas the remainder is dispersed among several other shipping companies, such as Evergreen, the Independent Container Line, K-Line, Yang Ming, COSCO and others.
- (65) In April 2017 HL's consortia/alliances partners are expected to be different in light of the termination of G6 Alliance and the creation of THE Alliance, to which both HL and UASC will be members. In addition, CMA CGM will replace its service in the NEU 1 (ex-Pendulum) consortium by a service through Ocean Alliance. Furthermore, Maersk, COSCO, the Independent Container Line and others will remain independent competitors and HMM will also become independent, whereas currently unrelated to the Parties shipping companies, such as K-Line, Yang Ming and potentially also Hanjin,⁶⁹ will become their partners in THE Alliance. Therefore, in 2017, the percentage of the "free market" would be [30-40]% on both legs.
- (66) While market participants consulted for this trade during the market investigation did not express significant concerns,⁷⁰ by creating a link between previously unrelated consortia/alliances through the participation of the merged entity, the Transaction would likely reduce the intensity of competition on these two legs of trade. The merged entity would post-Transaction have the ability to influence decisions regarding the level and the allocation of capacity, the setting of ports of call and the services' schedules, and access to information on capacity of a broader range of consortia/alliances and competitors than each Party individually has today (currently corresponding to more than [70-80]% of the volumes shipped on the two legs of this trade). As mentioned in Section 4.3.2, the majority of respondents to the market investigation indicate that these features, namely capacity, ports of call and frequencies are important for competition and for customers' selection of service provider.⁷¹ Given that these parameters will be decided jointly by all members of the consortium, the change brought about by the Transaction will impact the level of competition on the two legs of the Northern Europe – North America trade.

⁶⁸ During the market test of the Commitments, CMA CGM indicated that it would offer through Ocean Alliance a new service replacing the current NEU-1 (ex-Pendulum) service.

⁶⁹ Hanjin has filed for receivership at the time of this Decision, as a result of which its joining of THE Alliance has become uncertain.

⁷⁰ Q1 to competitors, question 36; Q2 to Customers, question 31.

⁷¹ Q1 to competitors and Q2 to Customers, questions 13.

- (67) On both the westbound and the eastbound legs of the trade, the percentage of the "free market" would thus be reduced to [20-30]% post-Transaction in 2015. In view of such low percentage of the "free market" in 2015, the competitive pressure exerted on the merged entity will likely decrease and not be sufficient to effectively constrain it. This finding is sufficient for the Commission to consider that the Transaction would raise serious doubts on both legs of the Northern Europe – North America trade, notwithstanding the market conditions in 2017.

4.4.2.3. Conclusion

- (68) In light of the above considerations, the Commission concludes that the Transaction would raise serious doubts as to its compatibility with the internal market on the markets for container liner shipping services in the Northern Europe – North America westbound and eastbound legs of trade.

4.4.3. *Other legs of trade*

4.4.3.1. Description of the trades

- (69) The other legs of trade affected by the Transaction are described in the following paragraphs.
- (70) **The westbound and eastbound legs of the Northern Europe – Far East trade** are very thick markets, on which a total of [15-20] million TEUs was transported in 2015 ([9-10] million TEUs westbound and [4-5] million TEUs eastbound). On each leg of trade, the Parties held a combined share of less than [5-10]% in 2015.
- (71) In terms of consortia/alliances, HL is a member to (i) the G6 Alliance, and (ii) the EAX consortium (on the westbound leg only) with CMA CGM. UASC is a member to the Ocean Three consortium (which will be terminated as of 1 April 2017). The aggregate market shares of the Parties and all their consortia/alliances would be [30-40]% westbound and [40-50]% eastbound.
- (72) The largest independent competitors on these legs of trade are Maersk ([20-30]% westbound and [10-20]% eastbound), MSC ([5-10]% westbound and [5-10]% eastbound) and COSCO ([0-5]% on both legs). Two other consortia/alliances not linked to the Parties are active on these legs of trade, namely 2M consisting of Maersk and MSC ([30-40]% westbound and [20-30]% eastbound) and CKYHE consisting of COSCO, K-Line, Yang Ming, Hanjin, and Evergreen ([20-30]% westbound and [20-30]% eastbound).
- (73) The 2017 restructuring of consortia and alliances will lead to the replacement of G6 Alliance by THE Alliance and the replacement of Ocean Three by Ocean Alliance on the two legs of the trade. Both Parties are expected to be members of THE Alliance. Therefore, under the 2017 market conditions, the Transaction would only bring about a marginal increment of less than [5-10]% on these two markets, corresponding only to the individual market share of UASC, which will not participate in any other consortium or alliance, other than THE Alliance, on the trade.
- (74) **The southbound and northbound legs of the Northern Europe – South America East Coast trade**, as well as **the southbound and northbound reefer**

container markets constitute fairly thick markets with [1-2] million TEUs transported in 2015 ([0.5-1] million TEUs southbound, of which [10-20]% reefer containers, and [0.5-1] million TEUs northbound, of which [30-40]% reefer containers). On each leg of the trade, the Parties held a combined share of less than [10-20]% in 2015. The Transaction results in an increment of around [0-5]% on each leg.

- (75) In terms of consortia/alliances, HL is a member to only one consortium, namely BLX with MSC, and UASC does not operate in any consortia/alliances on this trade. In the reefer container market, the Parties have combined market shares of [30-40]% on the southbound leg and [20-30]% on the northbound leg.
- (76) The independent competitors account for [60-70]% on the southbound leg and [60-70]% on the northbound leg. The Parties' independent competitors are Hamburg Süd ([20-30]% southbound, [20-30]% northbound), Maersk ([10-20]% southbound, [10-20]% northbound) and CMA CGM ([10-20]% southbound, [10-20]% northbound). On the reefer container markets, the "free market" corresponds to [60-70]% on the southbound leg and [70-80]% on the northbound leg.
- (77) The 2017 restructuring of consortia and alliances will not impact the two legs of the Northern Europe – South America East Coast trade, as the only consortium of the Parties is expected to remain unchanged. Therefore, the assessment of the Transaction would be the same, also under the 2017 market conditions.
- (78) **The westbound and eastbound legs of the Northern Europe – Indian Subcontinent trade** are fairly thick markets, with [1-2] million TEUs transported in 2015 ([1-2] million TEUs westbound and [0.5-1] million TEUs eastbound). On each leg of trade, the Parties held a combined share of around [10-20]% in 2015.
- (79) In terms of consortia/alliances, HL is a member to (i) G6 Alliance (on the westbound only), (ii) the EAX consortium (on the westbound leg only), and (iii) the IOS consortium with Hamburg Süd. UASC is a member to the EPIC consortium with CMA CGM. The aggregate market shares of all consortia/alliances to which Parties are members would be [30-40]% westbound and [20-30]% eastbound.
- (80) The largest independent competitors on these legs of trade are MSC ([20-30]% westbound and [20-30]% eastbound) and Maersk ([20-30]% westbound and [10-20]% eastbound). Three other consortia/alliances not linked to the Parties are active on the trade, namely 2M ([40-50]%, active eastbound only), CKYHE ([5-10]% both westbound and eastbound) and Himalaya Express between MSC and SCI ([20-30]% westbound and [30-40]% eastbound).
- (81) The 2017 restructuring of consortia and alliances will lead to the replacement of G6 Alliance with THE Alliance on the two legs of the trade. The market shares corresponding to the Parties and their consortia/alliances would be [40-50]% westbound and [30-40]% eastbound and the increment of the Transaction on the two legs of trade would remain unchanged.
- (82) **The westbound and eastbound legs of the Northern Europe – Middle East trade**, as well as **the eastbound reefer container market** constitute a fairly

thick trade with [1-2] million TEUs transported in 2015, of which [10-20]% reefer containers ([0-0.5] million TEUs westbound, [1-2] million TEUs eastbound, of which [10-20]% reefer containers). On each of the legs of the trade, the Parties held a combined share of less than [20-30]% in 2015. The Transaction results in an increment of less than [5-10]%.

- (83) In terms of consortia/alliances, HL is a member to (i) G6 Alliance, and (ii) the IOS consortium. UASC is a member to (i) the Ocean Three consortium, and (ii) the EPIC consortium. On the eastbound reefer container market, the Parties and their consortia/alliances have a market share of [40-50]%.
- (84) The independent competitors account for [60-70]% on the westbound leg, [50-60]% on the eastbound leg and [50-60]% on the eastbound reefer container market. The Parties' main competitors are Maersk ([30-40]% westbound, [10-20]% eastbound and [10-20]% on the eastbound reefer container market) and MSC ([10-20]% westbound, [20-30]% eastbound and [20-30]% on the eastbound reefer container market).
- (85) The 2017 restructuring of consortia and alliances will lead to the replacement of G6 Alliance by THE Alliance and the replacement of Ocean Three by the Ocean Alliance on the two legs of the trade. Both Parties are expected to be members of THE Alliance and UASC would not join the Ocean Alliance. The market shares corresponding to the Parties and their consortia/alliances would be [30-40]% both westbound and eastbound. On the eastbound reefer containers' market, the market share of the Parties and their consortia/alliances would be [30-40]%.
- (86) **The southbound and northbound legs on the Northern Europe – Australia/New Zealand trade**, as well as the also affected **southbound reefer container market** do not constitute a very thick trade with [0-0.5] million TEUs transported in 2015 ([0-0.5] million TEUs southbound, of which [10-20]% reefer containers, [0-0.5] million TEUs northbound). On each of the legs of the trade, the Parties held a combined share of less than [10-20]% in 2015. The Transaction results in an increment of less than [0-5]%. On the southbound reefer container market, the Parties have combined market shares of [20-30]%.
- (87) In terms of consortia/alliances, HL is a member to only one consortium, namely EAX/New Nemo with CMA CGM and UASC does not operate in any consortia/alliances on this trade.
- (88) The independent competitors account for [70-80]% southbound, [70-80]% northbound and [70-80]% on the southbound reefer container market. The Parties' main independent competitors are Maersk ([30-40]% southbound, [20-30]% northbound) and MSC ([10-20% southbound, [10-20]% northbound).
- (89) The 2017 restructuring of consortia and alliances will not impact the two legs of the Northern Europe – Australia/New Zealand trade, as the only consortium of the Parties is expected to remain unchanged. Therefore, the assessment of the Transaction would be the same, also under the 2017 market conditions.
- (90) **The westbound and eastbound legs of the Mediterranean – North America trade** constitute a fairly thick trade with [2-3] million TEUs transported in 2015 ([1-2] million TEUs westbound and [0.5-1] million TEUs eastbound). The

Parties held a combined share of [20-30]% westbound and [20-30]% eastbound in 2015.

- (91) In terms of consortia/alliances, HL is a member to (i) the G6 Alliance / ZIM consortium together with APL/NOL, HMM, MOL, NYK, OOCL, and ZIM, (ii) the MPS consortium with Hamburg Süd, and (iii) the Indamex consortium with CMA CGM, NYK and OOCL. UASC is a member to the MED – USEC (Amerigo) consortium with CMA CGM, CSCL and Hanjin. The aggregate market shares of all consortia/alliances to which Parties are members would be [40-50]% both westbound and eastbound.
- (92) The largest independent competitors on these legs of trade are MSC ([30-40]% westbound and [30-40]% eastbound) and Maersk ([5-10]% westbound and [10-20]% eastbound). One other consortium not linked to the Parties is active on the trade, namely 2M ([40-50]% westbound and [40-50]% eastbound).
- (93) The 2017 restructuring of consortia and alliances will lead to the termination of the G6 Alliance / ZIM consortium and the creation of THE Alliance on the two legs of the trade. The market shares corresponding to the Parties and their consortia/alliances would be [40-50]% westbound and [30-40]% eastbound.
- (94) **The westbound and eastbound legs of the Mediterranean – Far East trade** constitute a very thick trade with [7-8] million TEUs transported in 2015 ([5-6] million TEUs westbound and [2-3] million TEUs eastbound). The Parties held a combined share of less than [5-10]% on each leg of trade in 2015.
- (95) In terms of consortia/alliances, HL is a member of (i) G6 Alliance and (ii) the EAX consortium on the westbound leg only. UASC is a member to (i) the Ocean Three consortium, (ii) a consortium between Ocean Three and Evergreen and (iii) a consortium between Ocean Three and Yang Ming. The aggregate market shares of all consortia/alliances to which Parties are members would be [40-50]% westbound and [50-60]% eastbound.
- (96) The largest independent competitors on these legs of trade are Maersk ([10-20]% both westbound and eastbound), MSC ([10-20]% westbound and [5-10]% eastbound). Three other consortia/alliances not linked to the Parties are active on the trade, namely 2M ([30-40]% westbound and [20-30]% eastbound), CKYHE ([20-30]% westbound, [20-30]% eastbound) and EMX consisting of ZIM and OOCL ([5-10]% westbound, [5-10]% eastbound).
- (97) The 2017 restructuring of consortia and alliances will lead to the replacement of G6 Alliance with THE Alliance, the replacement of Ocean Three by the Ocean Alliance and the termination of the Ocean Three/Evergreen and Ocean Three/Yang Ming on the two legs of the trade. Both Parties are expected to be members of THE Alliance and UASC would not join the Ocean Alliance. The market shares corresponding to the Parties and their consortia/alliances would be [20-30]% on the eastbound leg and [30-40]% on the westbound leg. Moreover, the Transaction would only bring about a limited increment of approximately [0-5]% on these two markets, corresponding only to the market share of UASC, which will not participate in any other consortium or alliance, other than THE Alliance, on the trade.

- (98) **The westbound and eastbound legs of the Mediterranean – Indian Subcontinent trade** constitute a fairly thick trade with [1-2] million TEUs transported in 2015 ([0.5-1] million TEUs westbound and [0-0.5] million TEUs eastbound). On each leg of trade, the Parties held a combined share of less than [10-20]% in 2015.
- (99) In terms of consortia/alliances, HL is a member to (i) a consortium between the G6 Alliance and ZIM, (ii) the Indamex consortium, (iii) the EAX consortium, westbound only, and (iv) the IOS consortium. UASC is a member to (i) the IMEX consortium between Ocean Three and Hanjin and (ii) the EPIC consortium. The aggregate market shares of all consortia/alliances to which Parties are members would be [30-40]% westbound and [30-40]% eastbound.
- (100) The largest independent competitors on these legs of trade are MSC ([20-30]% westbound and [20-30]% eastbound) and Maersk ([20-30]% westbound and [10-20]% eastbound). Four other consortia/alliances not linked to the Parties are active on the trade: CKYHE ([10-20]% active eastbound only), 2M ([40-50]% westbound, [40-50]% eastbound), EMX ([10-20]% active eastbound only) and Himalaya Express ([20-30]% westbound and [20-30]% eastbound).
- (101) The 2017 restructuring of consortia and alliances will lead to the termination of the G6/ZIM alliance and the creation of with THE Alliance on the two legs of the trade. The market shares corresponding to the Parties and their consortia/alliances would be [30-40]% westbound and [30-40]% eastbound.
- (102) **The westbound and eastbound legs of the Mediterranean – Middle East trade**, as well as **the eastbound reefer container market**, constitute a fairly thick trade with [1-2] million TEUs transported in 2015 ([0.5-1] million TEUs westbound, [1-2] million TEUs eastbound, of which [10-20]% reefer containers). On each of the legs of the trade, the Parties held a combined share of less than [20-30]% in 2015. The Transaction results in an increment of less than [5-10]%. On the eastbound reefer container market, the Parties have a combined market share of [40-50]%.
- (103) In terms of consortia/alliances, HL is a member to (i) the G6 Alliance, (ii) a consortium between the G6 Alliance and ZIM (eastbound only), (iii) the Indamex consortium, and (iv) the IOS consortium. UASC is a member to (i) the Ocean Three consortium, (ii) the IMEX consortium between Ocean Three and Hanjin, (iii) the EPIC consortium, and (iv) the GEM1 consortium with CMA CGM and CSCL.
- (104) The independent competitors account for [60-70]% on the westbound leg and [60-70]% on the eastbound leg and include Maersk ([30-40]% westbound, [20-30]% eastbound), MSC ([10-20]% westbound, [20-30]% eastbound) and CMA CGM ([10-20]% westbound, [10-20]% eastbound). On the eastbound reefer container market, the "free market" corresponds to [50-60]%.
- (105) **Mediterranean – Australia/New Zealand trade** do not constitute a very thick trade with [0-0.5] million TEUs transported in 2015 ([0-0.5] million TEUs southbound, [0-0.5] million TEUs northbound). On each of the legs of the trade, the Parties held a combined share of less than [10-20]% in 2015. The Transaction results in an increment of less than [0-5]%.

- (106) In terms of consortia/alliances, HL is a member to only one consortium, namely EAX/New Nemo and UASC does not operate in any consortia/alliances on this trade.
- (107) The Parties' independent competitors account for [70-80]% southbound and [70-80]% northbound. The Parties' main independent competitors are MSC ([20-30]% southbound, [20-30]% northbound) and Maersk ([10-20]% southbound, [30-40]% northbound).
- (108) The 2017 restructuring of consortia and alliances will not impact the two legs of the Mediterranean – Australia/New Zealand trade, as the only consortium of the Parties is expected to remain unchanged. Therefore, the assessment of the Transaction would be the same, also under the 2017 market conditions.
- (109) **The southbound and northbound legs of the Mediterranean – West Africa trade** do not constitute a very thick trade with [0.5-1] million TEUs transported in 2015 ([0-0.5] million TEUs southbound and [0-0.5] million TEUs northbound). On each of the legs of trade, the Parties held a combined share of less than [0-5]% in 2015.
- (110) In terms of consortia/alliances, HL is a member to only one consortium, namely WAX with Arkas. UASC is a member to Med – West Africa relay Service (WAF I) with CMA CGM and Hanjin. The aggregate market shares of all consortia/alliances to which Parties are members are [20-30]% both southbound and northbound.
- (111) The largest independent competitors on these legs of trade are MSC ([10-20]% southbound and [10-20]% northbound) and Maersk ([10-20]% both southbound and northbound). Three other consortia/alliances not linked to the Parties are active on the trade, namely Spain - WAF Service, Delmas / Messina and MAF.
- (112) The 2017 restructuring of consortia and alliances may result in the termination of the WAF I consortium. However, as this development is not certain, following the more conservative approach for the purpose of assessing the Transaction, it will be considered that WAF I will continue operating. Therefore the assessment of the Transaction would be the same, also under the 2017 market conditions.
- (113) **The southbound leg of the Northern Europe – Mediterranean trade**, as well as the also affected **northbound reefer container market** constitute a fairly thick trade with [1-2] million TEUs transported southbound and [0-0.5] million TEUs transported on reefer containers northbound in 2015. On the southbound leg of trade, the Parties held a combined share of [0-5]% in 2015. The Transaction results in an increment of less than [0-5]%. On the northbound reefer container market, the Parties have combined market shares of [0-5]%.
- (114) In terms of consortia/alliances, HL is a member to: (i) the G6 Alliance; (ii) the EAX consortium; and (iii) the IOS consortium. UASC is a member of the EPIC consortium.
- (115) The independent competitors account for [70-80]% southbound. The Parties' main competitors are MSC ([30-40]% southbound) and Maersk ([10-20]%

southbound). On the northbound reefer container market, the "free market" corresponds to [60-70]%.

- (116) The 2017 restructuring of consortia and alliances will lead to the replacement of G6 Alliance by THE Alliance on the two legs of the trade. The market shares corresponding to the Parties and their consortia/alliances would be [20-30]% westbound and [30-40]% eastbound.

4.4.3.2. Commission's assessment

- (117) The Commission notes that in almost all the abovementioned legs of trades, the "free market" is higher than 50%;⁷² a number of independent competitors will therefore constrain the merged entity post-Transaction.
- (118) Moreover, with the exception of the two legs of the Northern Europe – Middle East trade, the Transaction does not lead to the creation of new links between previously unconnected consortia/alliances on the abovementioned legs of trade.⁷³
- (119) HL submits that there is significant overcapacity in the sector globally.⁷⁴ Several competitors responding to the Commission's market investigation also indicate that there is spare capacity in the sector.⁷⁵ Therefore, should there be an increase in demand on a specific market among the abovementioned legs of trade, one or more container liner shipping companies active on those trades would be able to increase their capacity on the respective leg of trade.
- (120) The market investigation confirms that the Transaction would not give rise to competition concerns on any of the affected legs of trade. Indeed, in the Commission's market investigation, the majority of competitors and customers alike confirm that there would remain a sufficient number of competing suppliers to prevent the merged entity from raising prices on these trades.⁷⁶
- (121) Overall, the Commission considers that the low to moderate combined market share of the Parties and their consortia, the presence of strong competitors, as

⁷² There is an exception for the eastbound leg of the Mediterranean – Far East trade, where the percentage of the "free market" is slightly lower, amounting to [40-50]% in 2015. However, as previously indicated, on this leg of trade several strong competitors are active, such as Maersk or MSC, as well as three other consortia/alliances not linked to the Parties. In addition, in light of the envisaged restructuring of the Parties' consortia/alliances on that trade, the "free market" would in 2017 amount to [70-80]%.

⁷³ As mentioned in Section 4.4.3.1 above, in terms of consortia/alliances on the Northern Europe – Middle East trade, HL is a member to (i) the G6 Alliance, and (ii) the IOS consortium, while UASC is a member to (i) the Ocean Three consortium, and (ii) the EPIC consortium. The Transaction would thus lead to the creation of new links between previously unconnected consortia/alliances on this trade. However, unlike the other trade where new links are created Northern Europe – North America, despite these new links, on the Northern Europe – Middle East trade independent competitors still account for [60-70]% on the westbound leg and [50-60]% on the eastbound leg. In 2017, the "free market" would account for [60-70]% on the westbound leg and [60-70]% on the eastbound leg.

⁷⁴ Form CO, paragraphs 512-513.

⁷⁵ Q1 to competitors, question 21.

⁷⁶ Q1 to competitors, question 36; Q2 to Customers, question 31.

described in Section 4.4.3.1 above and the available capacity on the market, together with the fact that no competition concerns were raised in the market investigation, support the conclusion that the Transaction would not lead to any competition concern on these legs of trade.

- (122) Moreover, these conclusions would also hold if the market conditions following the 2017 restructuring are taken into account. In particular, in 2017 the "free market" would be higher than 50% in all these legs of trade, and strong competitors would remain. Furthermore, no competition concerns were raised in the market investigation concerning the post-2017 situation.

4.4.3.3. Conclusion

- (123) In light of the above considerations, 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 on the following markets: westbound and eastbound legs of the Northern Europe – Far East trade; southbound and northbound legs of the Northern Europe – South America East Coast trade; southbound and northbound reefer container markets on the Northern Europe – South America East Coast trade; westbound and eastbound legs of the Northern Europe – Indian Subcontinent trade; westbound and eastbound legs of the Northern Europe – Middle East trade; eastbound reefer container market on the Northern Europe – Middle East trade; southbound and northbound legs of the Northern Europe – Australia/New Zealand trade; southbound reefer container market of the Northern Europe – Australia/New Zealand trade; westbound and eastbound legs of the Mediterranean – North America trade; westbound and eastbound legs of the Mediterranean – Far East trade; westbound and eastbound legs of the Mediterranean – Indian Subcontinent trade; westbound and eastbound legs of the Mediterranean – Middle East trade; eastbound reefer container market on the Mediterranean – Middle East trade; southbound and northbound legs of the Mediterranean – Australia/New Zealand trade; southbound and northbound legs of the Mediterranean – West Africa trade; southbound leg of the Northern Europe – Mediterranean trade; and northbound reefer container market of the Northern Europe – Mediterranean trade.

4.5. Vertical relationships

- (124) HL and some of its controlling parents are active on markets that are vertically related to the container liner shipping business, namely container terminal services, freight forwarding, harbour towage, and inland transportation services.⁷⁷
- (125) The Transaction would thus 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.

⁷⁷ Form CO, paragraph 156 and following.

- (126) These markets would be vertically affected by the Transaction, if HL or its controlling parents hold a 30% share in one of those upstream or downstream markets or if the Parties are over 30% in the related container liner shipping markets. In its prior decision practice, the Commission has also taken into account the market shares of the Parties' consortia/alliances in its assessment of vertical relationships,⁷⁸ as consortia/alliances members are likely to jointly select their supplier of some of these services.⁷⁹

4.5.1. Container terminal services

4.5.1.1. Description of the Parties' activities

- (127) Container terminal services are a necessary input for the provision of container liner shipping services. Both HGV, via its subsidiary HHLA Hamburger Hafen- und Logistik AG ("HHLA"), and HL provide container terminal services in Hamburg through a joint venture (HHLA Container Terminal Altenwerder GmbH). HL has no additional container terminal operations in Europe, whereas HGV, via its joint venture HHLA, also operates further container terminals in Germany. The market share of HL and HGV amount to less than [30-40]% in the catchment area of the range of ports between Antwerp and Hamburg. If the geographic market were limited to German ports only, the market share of HGV would amount to approximately [40-50]%.
- (128) HGV also operates a terminal at the port of Odessa. Its market share on the narrowest plausible geographic market for container terminal services in Ukraine is [40-50]%.
- (129) SM SAAM S.A. ("SAAM"), a subsidiary belonging to the same group as HL's controlling parent CSAV operates a container terminal at Port Everglades in Florida, in the USA and has a market share of [10-20]% in the narrowest plausible geographic market for container terminal services in Florida, as well as the Terminal Portuario Mazatlan in Mexico and has a market share of approximately [0-5]% in West Mexico. Last, SAAM also operates a number of terminals at the West Coast of South America, where UASC, however, does not provide container liner shipping services.⁸⁰
- (130) The Transaction would therefore give rise to affected markets between all legs of trade from/to Northern Europe and the Mediterranean, if the narrowest geographic market for container terminal services in Germany and the Ukraine were considered. Moreover, the Transaction would also give rise to affected markets as a result of the relationship between the Parties' activities in container liner shipping activities on the two legs of the Northern Europe – North America and Mediterranean – North America trades, where the market share of the

⁷⁸ Cases M.7908 – *CMA CGM/NOL*, recitals 148-150; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 206.

⁷⁹ The Parties' consortia/alliance agreements encourage the joint negotiation of their members with terminal operators and provide that all members to the agreement must consent, on the basis of previously set criteria, on the selection of terminal operator at each port of call, Annexes 6.6 and 6.7 to the Form CO.

⁸⁰ Form CO, paragraphs 156 and following; HL's response to question 6 of RFI 6.

Parties' and their consortia/alliances exceeds [30-40]%, and HL's parent container terminal activities in Florida and Mexico.

4.5.1.2. Commission's assessment

- (131) The Commission considers that the merged entity would neither have the ability nor the incentive to engage in any input or customer foreclosure strategy, regardless of whether the vertical links brought about by the Transaction are assessed at individual or at consortia/alliances level.
- (132) First, the market shares of HL and its controlling entities do not exceed [40-50]%, even on the narrowest plausible geographic market for German ports only. Moreover, the market position of UASC is rather marginal on container liner shipping markets from/to Northern Europe and the Mediterranean. The Transaction is therefore unlikely to lead to any significant changes in the competitive environment in those areas.
- (133) Second, any input foreclosure strategy of the merged entity would be unlikely, because other container liner shipping companies could procure port terminal services from several alternative providers. At the Hamburg port, container terminal services are not only offered by HHLA but also by the Eurogate Group, which operates the Eurogate Container Terminal Hamburg. In addition, the Hamburg port is constrained by other ports in the Northern range (between Hamburg and Antwerp) such as the Bremerhaven or the Rotterdam port.⁸¹ Similarly, a host of alternative container terminal service providers are active in the Mediterranean and in North America, so that the Parties' competitors on the container liner shipping services would not be dependent on the services offered by HL or its controlling parents.
- (134) Third, any customer foreclosure strategy of the merged entity would be unlikely, as purchases from the Parties represent a limited part of the total sales of container terminal activities in the markets concerned. At Hamburg, the Parties' purchases do not exceed [20-30]% at any of the three terminals operated by HL and HGV. Looking at all terminals in the Hamburg-Antwerp catchment area, the Parties' purchases are below 15%. At Florida, HL purchases less than 40% of the SAAM operated container terminal services, whereas in the broader catchment area of the terminal in Miami, the Parties' total purchases are below 10%.⁸² Last, in relation to the Ukraine, HL submits that the Parties only call at the port of Odessa on two instances, UASC as part of its AMC5 service on the MED-FE trade and HL in its BMX intra-Mediterranean Service, which serves also as a feeder service for some of HL's Mediterranean trades.⁸³ 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.
- (135) Fourth, the majority of customers and competitors responding to the market investigation did not raise any concerns with regard to vertical integration

⁸¹ Case M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 207-209.

⁸² HL's response to question 4 of RFI 6.

⁸³ Form CO, footnote 50.

between the Parties' activities in container liner shipping and the operation of container terminals.⁸⁴

4.5.1.3. Conclusion

- (136) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure on the market for container terminal services.

4.5.2. *Freight forwarding services*

4.5.2.1. Description of the Parties' activities

- (137) Sea freight forwarders are among the most important customers of container liner shipping companies. Kühne, one of HL's controlling parents, is active in freight forwarding in a number of EEA countries. Its market shares on the narrower market for sea freight forwarding in each of these countries are limited, not exceeding 20% in any country.⁸⁵ Kühne also provides freight forwarding services in North America, South America East Coast, Far East, Indian Subcontinent and the Middle East; its estimated market shares are, however, marginal in all these regions.⁸⁶
- (138) The Transaction would therefore lead to affected markets between the Parties' activities for freight forwarding and the container liner shipping markets from/to Northern Europe and the Mediterranean, in which the activities of the Parties and their consortia/alliances exceed 30%.

4.5.2.2. Commission's assessment

- (139) In light of the low market share of Kühne in freight forwarding markets, irrespective of any plausible 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.
- (140) The majority of customers and competitors responding 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.⁸⁷

⁸⁴ Q1 to competitors, question 32; Q2 to Customers, question 27.

⁸⁵ Form CO, paragraph 179 and following; Annex 7.11 to the Form CO.

⁸⁶ CSAV, another controlling parent of HL also has some marginal activities on freight forwarding markets in South America. As these activities of CSAV would not give rise to any vertically affected market, they will not be further analysed in this Decision.

⁸⁷ Q1 to competitors, question 35; Q2 to Customers, question 30.

4.5.2.3. Conclusion

- (141) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure on the market for freight forwarding services.

4.5.3. *Inland transportation services*

4.5.3.1. Description of the Parties' activities

- (142) 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.
- (143) HL's parents are active in the provision of inland transportation in different geographies. HGV offers inland transportation services through its subsidiaries (i) Metrans which has railway transport operations and limited activities in road transportation, and is active in a limited number of Central European Member States, (ii) Polzug Intermodal GmbH which has railway transportation operations in Poland and (iii) CTD Container Transport Dienst GmbH which offers road transportation in Germany. In each of these Member States, HHLA's market share is very limited and, in any case, well below [10-20]%. Kühne has limited activities in the road transportation segment in the EEA, where its market shares are below [0-5]% in any national transportation market, and outside the EEA.⁸⁸
- (144) The Transaction would thus create vertically affected markets between the activities of HL's parents in the upstream market for inland transportation and the Parties' activities in downstream markets for container liner shipping services from/to Northern Europe and the Mediterranean, in which the activities of the Parties and their consortia/alliances exceed 30%.

4.5.3.2. Commission's assessment

- (145) The Commission considers that given the low market shares of HGV and Kühne on markets for inland transportation services, it is unlikely that the merged entity would have the ability and incentive to foreclose its competitors at the downstream markets for 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.

⁸⁸ Form CO, paragraph 463 and following. CSAV, another controlling parent of HL also provides inland transportation services through its subsidiary Norgistics, with market shares below [0-5]% in all South American countries. As these activities would not give rise to any vertically affected market, they will not be further analysed in this Decision.

- (146) The majority of customers and competitors responding to the market investigation did not raise any concerns as a result of input or customer foreclosure on the inland transportation and container liner shipping markets.⁸⁹

4.5.3.3. Conclusion

- (147) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure on the market for inland transportation services.

4.5.4. *Harbour towage services*

4.5.4.1. Description of the Parties' activities

- (148) Harbour towage services are a necessary input for the provision of container liner shipping services.
- (149) Through a JV with Boskalis/SMIT, SAAM, a subsidiary belonging to the same group as HL's controlling parent CSAV, operates tugboats in Canada, Mexico. On a national level, SAAM has a market share of about [40-50]% in Canada and [30-40]% in Mexico. SAAM does not provide harbour towage services in Europe.⁹⁰
- (150) The Transaction would thus give rise to vertically affected markets between the activities of HL's parent in the upstream market for harbour towage services and the Parties' activities on the downstream markets for container liner shipping from/to North America.

4.5.4.2. Commission's assessment

- (151) 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 liner shipping market, it is unlikely that the merged entity would engage in any foreclosure strategy. Moreover, UASC does not call Canada or Mexico on its container liner shipping operations from and to Europe (Northern Europe or Mediterranean).⁹¹ The Transaction is therefore unlikely to impact the competitive environment.
- (152) The majority of customers and competitors responding to the market investigation did not raise 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.⁹²

⁸⁹ Q1 to competitors, question 33; Q2 to Customers, question 28.

⁹⁰ Form CO, paragraph 185 and following; SAAM also provides harbour towage services in Panama and Mexico; as however these do not give rise to any vertically affected market, they will not be further analysed in this Decision.

⁹¹ Form CO, paragraph 188.

⁹² Q1 to competitors, question 34 ; Q2 to Customers, question 29.

4.5.4.3. Conclusion

- (153) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure on the market for harbour towage services.

4.6. Conclusion on competitive assessment

- (154) In light of the above considerations, 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 two legs of the Northern Europe – North America trade, where it would give rise to non-coordinated effects.
- (155) As for co-ordinated effects, even if the Transaction were to give rise to co-ordinated effects on the two legs of the Northern Europe – North America trade, the commitments offered by HL would also remove any serious doubts as to its compatibility with the internal market based on co-ordinated effects, by severing the additional link between previously unrelated consortia, which would have been created by the Transaction.

5. COMMITMENTS

5.1. Commitments submitted by HL

5.1.1. Procedure

- (156) In order to address the serious doubts raised by the Transaction regarding the provision of container liner shipping services on the westbound and eastbound legs of the Northern Europe – North America trade and to render the Transaction compatible with the internal market, HL has modified the Transaction by entering into commitments, which are annexed to this Decision and form an integral part thereof.
- (157) HL provided that set of commitments on 28 October 2016, which were replaced by a final version submitted on 21 November 2016 to clarify the entities to which the commitments apply (the "Commitments").

5.1.2. Description of the Commitments

- (158) In order to resolve the serious doubts raised by the European Commission for both legs of the Northern Europe – North America trade, HL offers that UASC will withdraw, or will procure that UASC will withdraw, from the Vessel Sharing Agreement For Pendulum Service between UASC, CMA CGM and Hamburg Süd (NEU 1 Agreement), by serving notice of termination within one week of the closing of the Transaction.
- (159) The Commitments aim at addressing the Commission's serious doubts with respect to the provision of container liner shipping services on the westbound and eastbound legs of the Northern Europe – North America trade by removing the link which would have been created between HL's current consortia/alliances (G6 Alliance with APL/NOL, HMM, MOL, NYK and

OOCL; SLCS with OOCL; SLCS-MSK with OOCL and MSK) and UASC's current consortium (NEU 1 (ex-Pendulum) with CMA CGM and Hamburg Süd) active on those markets.

- (160) [...], HL further commits that the Parties will not, within [...] years from the date of the adoption of this Decision, become a member of any consortia/alliances of which CMA CGM and/or Hamburg Süd are members on the Northern Europe – North America trade.
- (161) The Parties can join consortia/alliances or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided that those agreements are not of substantially similar terms and with the same partners as the NEU 1 (ex-Pendulum) Agreement.
- (162) As concerns ring-fencing, HL offers that, from the date of closing of the Transaction until the date on which UASC's withdrawal from the NEU 1 (ex-Pendulum) Agreement takes effect, HL will procure that, if and to the extent that UASC receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in the NEU 1 (ex-Pendulum) Agreement, or any other information considered as commercially sensitive, such information will not be disclosed to HL, or any other members of consortia/alliances to which HL is a member (and vice versa).
- (163) In the transitional period from the closing of the Transaction until UASC's withdrawal from the NEU 1 (ex-Pendulum) Agreement takes effect, only the Monitoring Trustee will have the power to exercise any veto rights UASC may have with respect to decisions taken within the NEU 1 (ex-Pendulum) consortium, except to the extent that any decision would adversely affect UASC's allocation in this vessel sharing agreement (currently 660 TEU and 60 plugs on each voyage).
- (164) As explained in Section 6 below, the Commission considers that the Commitments are suitable to entirely remove the serious doubts as to the compatibility of the Transaction with the internal market as identified in Section 4 above.

6. ASSESSMENT OF THE COMMITMENTS

6.1.1. HL's view

- (165) HL submits that the Commitments are sufficient to remove the serious doubts as to the compatibility of the Transaction with the internal market by severing the new links between previously independent consortia/alliances which would have been created by the Transaction on the Northern Europe – North America trade.
- (166) HL is a member to the G6 Alliance together with APL/NOL, HMM, MOL, NYK and OOCL; to the SLCS consortium with OOCL; and to the SLCS-MSK consortium with OOCL and MSK. UASC is a member to the NEU 1 (ex-Pendulum) consortium with CMA CGM and Hamburg Süd.
- (167) HL submits that, pursuant to the Commitments, UASC will terminate the NEU 1 (ex-Pendulum) Agreement, thereby entirely eliminating the overlap between the

Parties on the two legs of the Northern Europe – North America trade at consortium/alliance level.

- (168) HL further notes that, on the Northern Europe – North America trade, the market shares of the Parties and their consortia/alliances will be reduced to [60-70]% on the westbound leg and [60-70]% on the eastbound leg. Accordingly, the "free market" will increase from [20-30]%, to which it would correspond absent the Commitments, to [30-40]% on the westbound leg and from [20-30]%, absent the Commitments, to [30-40]% on the eastbound leg.

6.1.2. The results of the market test

- (169) The results of the market test of the Commitments are overall positive, as a majority of both customers and competitors expressing an opinion indicate that the Commitments are sufficiently clear to form a view⁹³ and are suitable to remove all competition concerns identified by the Commission.⁹⁴
- (170) In addition, a majority of customers expressing an opinion declare that they would continue to use the NEU 1 (ex-Pendulum) service without UASC, if the two remaining NEU 1 (ex-Pendulum) partners continue operating the service as it stands today.⁹⁵
- (171) CMA CGM indicated that as of April 2017, it will offer through Ocean Alliance the "Liberty" service, which will replace the current NEU 1 (ex-Pendulum) service, with the same frequency and ports of call and no reduction in the service capacity.⁹⁶

6.1.3. Commission's assessment

- (172) The Commitments remove the only link between the Parties' consortia/alliances which would be created by the Transaction on the westbound and eastbound legs of the Northern Europe – North America trade, i.e. the link between HL's consortia/alliances and UASC's NEU 1 (ex-Pendulum) consortium.⁹⁷
- (173) As a result, two credible carriers, CMA CGM and Hamburg Süd, which account for the most substantial part of the volumes currently transported in the framework of the NEU 1 (ex-Pendulum) service,⁹⁸ will not be related to the

⁹³ See replies to R1 – Market test of commitments – Competitors, question 4; e-mail of 13 November 2016 entitled "FW: M.8120 - Hapag-Lloyd/UASC - Market test to Hamburg Süd"; replies to R2 - Market test of commitments – Customers, question 5.

⁹⁴ See replies to R1 – Market test of commitments – Competitors, question 3; e-mail of 13 November 2016 entitled "FW: M.8120 - Hapag-Lloyd/UASC - Market test to Hamburg Süd"; replies to R2 - Market test of commitments – Customers, question 4.

⁹⁵ See replies to R2 - Market test of commitments – Customers, question 2.

⁹⁶ See e-mail of 14 November 2016 entitled "RE: M.8120 - Hapag-Lloyd/UASC - Market test CMA CGM".

⁹⁷ By severing the link between previously independent consortia, the Commitments would also remove doubts, if any, as to the compatibility of the Transaction with the internal market based on co-ordinated effects.

⁹⁸ UASC only represents [0-5]% of the volumes shipped by the NEU 1 (ex-Pendulum) consortium on the westbound leg and [0-5]% on the eastbound leg (Form CO, table 7.B.I.(iii)).

merged entity through any of the consortia/alliances it belongs to on both legs of the Northern Europe – North America trade. If CMA CGM and Hamburg Süd continue offering services on the Northern Europe – North America trade, the share of independent competitors will, *ceteris paribus*, increase by [10-20]% on the westbound leg and [10-20]% on the eastbound leg through the Commitments.

- (174) In light of the termination clauses included in the NEU 1 (ex-Pendulum) Agreement, any termination of UASC's membership in the NEU 1 (ex-Pendulum) consortium is not likely to become effective before April 2017. CMA CGM stated in its response to the market test that it intends to propose a service similar to the NEU 1 (ex-Pendulum) service in the framework of Ocean Alliance, which will replace Ocean Three as of April 2017. Therefore, any termination of the NEU 1 (ex-Pendulum) service in the first half of 2017 would not stem from the Commitments; instead, it would result from the broader restructuring of consortia/alliances that will take place in 2017.⁹⁹
- (175) Therefore, the Commitments would not disrupt the service level or impact the available capacity on those two markets, while severing the link that would be created between previously unconnected consortia/alliances.
- (176) Moreover, HL commits that, during [...] years, neither Party will become a member of any consortia/alliances to which CMA CGM and/or Hamburg Süd is a member on a leg of the Northern Europe – North America trade. The Commission considers that this commitment safeguards the effectiveness of the Commitments, while being of a duration that does not go beyond what is necessary for protecting effective competition on the two legs of the Northern Europe – North America trade.
- (177) For those reasons, the Commission considers that the Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

6.1.4. Conclusion

- (178) In light of the above considerations, the Commission concludes that the 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 markets for container liner shipping services on the westbound and eastbound legs of the Northern Europe – North America trade.

7. CONDITIONS AND OBLIGATIONS

- (179) 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

⁹⁹ The fact that any termination of the NEU 1 (ex-Pendulum) service after April 2017 would not result from the Transaction is further reflected in the indication given by HL already at the time of the notification of the Transaction that NEU 1 (ex-Pendulum) Agreement may be terminated in the first half of 2017; Form CO, table 7.A.(iv).

commitments they have entered into vis-à-vis the Commission with a view to rendering a notified concentration compatible with the internal market.

- (180) The fulfilment of the measures that give 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 6(3) 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.
- (181) In accordance with the distinction described above, the Commitments set out in section B of Annex 1 constitute conditions attached to this Decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in sections C, D, and F of Annex 1 constitute obligations as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market. Accordingly, the Decision not to raise objections is made conditional on full compliance by HL with Section B of the Commitments and the remaining sections of the Commitments constitute obligations on HL.
- (182) The detailed text of the Commitments is attached as Annex 1 to the present Decision. The full text of the Commitments forms an integral part to this decision.

8. CONCLUSION

- (183) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the 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 Commitments annexed to the present Decision and to the fulfilment of the obligations contained in sections C, D and F of the Commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Tubor NAVRACSICS
Member of the Commission

Case M.8120 – HL AG / UASC

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the *Merger Regulation*), Hapag-Lloyd AG (*HL AG*) (together with its *Affiliated Undertakings*, the *Notifying Party*) hereby enters 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 HL AG and United Arab Shipping Company S.A.G. (*UASC*) (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 UASC will be contributed to HL AG and the Concentration 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 Notifying Party, and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

NEU1 Consortium: vessel sharing agreement between UASC, CMA CGM SA (*CMA*) and Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG (*HSDG*), covering the NEU1 service (ex-Pendulum) on the Northern Europe – North America trade.

Notifying Party: Hapag-Lloyd AG and all of its Affiliated Undertakings.

Parties: the Notifying Party and UASC.

Relevant Trade: the trade from Northern Europe to North America (*NE – NA*).

Trustee: the Monitoring Trustee.

UASC: United Arab Shipping Company S.A.G. and all of its Affiliated Undertakings.

Section B. Commitment to terminate the vessel sharing agreement

2. The Notifying Party commits that UASC will withdraw, or will procure that UASC will withdraw, from the Vessel Sharing Agreement For Pendulum Service dated 16 April 2015 between UASC, CMA and HSDG (*NEU1 Agreement*), as amended by the Amendment No.1 of 6 August 2016 (*Amendment No.1*), by serving notice of termination within one week of Closing.

Section C. Related commitments

3. In order to avoid any circumvention of the previous provision, the Notifying Party further commits that the Parties will not, within [...] from the Effective Date, become a member of any consortia to which CMA and/or HSDG are members on the Relevant Trade. This commitment is subject to the review clause set out in paragraph 29 below.
4. Subject to the Commitments in paragraph 3, these Commitments do not preclude the possibility that the Parties join consortia or any other agreements, such as slot charter 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

5. The Parties note that within the NEU1 consortium, the members provide international liner services in respect of which they cooperate in the joint operation of a maritime transport service, including any one or more of the following: the coordination of sailing timetables and the exchange of vessel space or slots. The members of the consortia do not agree upon any common freight rate or charges.
6. Notwithstanding the above, from the date of Closing until the date on which UASC's withdrawal from the agreement referred to in paragraph 2 takes effect, the Notifying Party shall procure that, if and to the extent that UASC receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in this agreement, or any other information considered as commercially sensitive, such information will not be disclosed to HL AG, or any other members of consortia to which HL AG is a member (and vice versa).

The Notifying Party also undertakes that to the extent UASC's partners in the NEU1 consortium, i.e. CMA and HSDG, elect to discuss or engage in contingency planning for the consortium in the period following the serving of the termination notice by UASC, UASC shall be excluded from those discussions, and shall not receive any information regarding such planning except to the extent reasonably necessary to planning and completing UASC's withdrawal from the NEU1 consortium.

7. The Notifying Party also commits that during the period between Closing and the date on which the termination of the agreement referred to in paragraph 2 takes effect, only the Monitoring Trustee will have the power to exercise any veto rights UASC may have with respect to decisions taken within the NEU1 consortium, except to the extent that any decision would adversely affect UASC's allocation in this vessel sharing agreement [...].¹

Section E. Reporting

8. The Monitoring Trustee shall submit written reports in English confirming the Notifying Party's 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.

¹ See clauses 6.3 and 6.7 of the Amendment No.1.

Section F. Trustee

I. Appointment procedure

9. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
10. The Trustee shall:
 - (i) at the time of appointment, be independent of the Parties;
 - (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.
11. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Notifying Party

12. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes 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 10 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

13. 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 Notifying Party 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 Notifying Party 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 Notifying Party

14. If all the proposed Trustees are rejected, the Notifying Party 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 9 and 13 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

16. The Trustee shall assume its specified duties and obligations in order to ensure compliance with: (i) the Notifying Party's commitment to terminate the NEU1 Agreement; (ii) the related ring-fencing commitment; and (iii) the restriction on consortium re-entry set out in paragraph 3. 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 Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
17. The Trustee shall:
 - (i) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision;
 - (ii) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is 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 Notifying Party

18. The Notifying Party 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 Notifying Party shall provide the Trustee upon request with copies of any document. The Notifying Party shall make available to the Trustee one or more offices on the Parties' premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
19. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request while carrying out its duties. The Notifying Party shall keep the Monitoring Trustee informed of all developments related to the termination of the vessel sharing agreement required under these Commitments.
20. The Notifying Party 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 Notifying Party 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.
21. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 20 of these Commitments shall apply mutatis mutandis.
22. The Notifying Party agrees 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.
23. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and it shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

24. For a period of 10 years from the Effective Date the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

25. 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 Notifying Party, require the Notifying Party to replace the Trustee; or
 - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
26. If the Trustee is removed according to paragraph 25 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 9-15 of these Commitments.
27. Unless removed according to paragraph 25 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the duties and obligations with which the Trustee has been entrusted at paragraph 16 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

28. The Commission may extend the time periods as set out in paragraph 2 of the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests 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 Notifying Party.
29. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. For example, significant changes in the alliance and/or consortia structure on the Relevant Trade may constitute an exceptional

circumstance for the purposes of this paragraph 29 to the extent they lead to a significant change in the competitive conditions on the Relevant Trade. For the avoidance of doubt, the currently envisaged consortia and alliance restructuring in April 2017, as described at paragraphs 232 and 233 of the Form CO, will not trigger the Commission's review. 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 Notifying Party. 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

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