

FEDERAL MARITIME COMMISSION

MEMBERS OF THE U.S. PACIFIC COAST-OCEANIA AGREEMENT; MEMBERS OF THE U.S./ AUSTRALASIA DISCUSSION AGREEMENT; MEMBERS OF THE AUSTRALIA AND NEW ZEALAND-U.S. DISCUSSION AGREEMENT; HAMBURG-SUDMERIKANISCHE DAMPFSCHEIFFFAHRTS-GESELLSCHAFT KG; HAPAG-LLOYD AG; A.P. MOLLER-MAERSK A/S (TRADING UNDER MAERSK LINE); CMA CGM S.A.; ANL SINGAPORE PTE LTD.; COMPAGNIE MARITIME MARFRET, S.A.; WALLENIUS WILHELMOSEN LOGISTICS AS; AMERICAN PRESIDENT LINES, LTD.; MEDITERRANEAN SHIPPING CO. S.A.; ORIENT OVERSEAS CONTAINER LINE, LIMITED; STAR REEFERS, INC.; AND SWIRE SHIPPING LTD.

SECTION 15 ORDER ON COMPETITION, RATES AND SERVICE IN THE U.S.- AUSTRALIA/NEW ZEALAND NORTHBOUND AND SOUTHBOUND TRADE

The Federal Maritime Commission ("Commission" or "FMC") is concerned that the combined effect of activities of certain vessel operating common carriers acting under the U.S. Pacific Coast-Oceania Agreement, FMC No. 011741 ("OVSA"), the U.S./Australasia Discussion Agreement, FMC No. 011117 ("USADA") and the Australia and New Zealand-U.S. Discussion Agreement, FMC No. 011275 ("ANZUSDA") (collectively the "Agreements"), agreements filed and effective under the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. § 40301, *et seq.*, may have the effect of reducing competition in a manner that may affect prices and service in the U.S.-Australia/New Zealand trade to an unreasonable extent, or may otherwise be violative of the Shipping Act.

There are few providers of direct services in the U.S.-Australia/New Zealand trade, and all of them are members of the OVSA agreement. Alternate sources of services for shippers and consignees in this trade are limited. Pursuant to existing agreement authority, OVSA members exchange information and discuss and agree on schedules for services, vessel sharing and space and capacity allocations through meetings and information exchanges. In addition, two related rate discussion agreements, USADA (southbound trade) and ANZUSDA (northbound trade), cover the same geographic scope. The membership of these latter agreements includes the members of the OVSA agreement. Viewed in conjunction with the USADA and ANZUSDA rate discussion agreements, the OVSA members thus have an extraordinary ability to affect the supply, and pricing, of ocean liner service in the trade.

Collectively, these Agreements provide virtually complete control over capacity in the market while simultaneously providing authority to agree on rates in the trade through participation in rate discussion agreements. Consequently, the Commission is seeking information and documents from the carrier members of the Agreements and other carriers in the trade that would assist the Commission in determining whether OVSA, USADA and ANZUSDA, by a reduction in competition, has, or is likely to, result in an unreasonable decrease in service or an unreasonable increase in transportation costs within the meaning of Section 6(g) of the Shipping Act of 1984, 46 U.S.C. § 41307.¹

Acting pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. § 40104, the Commission is requiring member lines of OVSA, AUSDA, ANZUSDA and other carriers in the trade to furnish certain information and documents pertaining to their activities in the northbound and southbound Australia/New Zealand ocean trade. This information is sought to enable the Commission to make the determination contemplated under section 6(g), 46 U.S.C. § 41307, as well as to consider possible actions under sections 5, 8, 10, 11, and 13 of the Shipping Act of 1984, 46 U.S.C. §§ 40301-40305, 40501, 40502, 41101-41109 and 41301-41307. If warranted, the Commission also may seek to enjoin, in whole or in part, the operation of these Agreements pursuant to section 6(h) of the Shipping Act of 1984, 46 U.S.C. § 41307.

NOW THEREFORE, IT IS ORDERED That, pursuant to section 15 of the Shipping Act of 1984, Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft KG (Hamburg Sud); Hapag-Lloyd AG; A.P. Moller-Maersk A/S (trading under Maersk Line); CMA CGM S.A.; ANL Singapore PTE LTD (ANL); Compagnie Maritime Marfret, S.A. (Marfret); Wallenius Wilhelmsen Logistics AS (Wallenius Wilhelmsen); American President Lines, Ltd. (APL); Mediterranean Shipping Co. S.A.(MSC); Orient Overseas Container Line Limited (OOCL); Star Reefers, Inc.; and Swire Shipping Ltd., shall submit to the Commission, on or before sixty days from the date of this order, responses to the following requests for information and documents:

Definition of Certain Terms

Effective operating capacity – the number of TEU slots actually available for the transportation of loaded or empty re-positioning containers after accounting for all necessary operational considerations, such as container weights, out-of-gauge cargo, draft limitations, etc.

Proprietary dry/reefer loaded containers – revenue generating containers that are being carried under the bill of lading of the steamship company that is operating the ship.

1. Section 6(g) provides:

(g) SUBSTANTIALLY ANTICOMPETITIVE AGREEMENTS. -- If, at any time after the filing or effective date of an agreement, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h).

Document(s) - refers to written, printed, typed, or visually or aurally or electronically reproduced or archived material of any kind, and includes but is not limited to all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of any and all letters, correspondence, recommendations, contracts, spread sheets, agreements, orders, records, minutes, reports, press releases, plans, lists, memoranda, instructions, notes, notices, confirmations, inter-office communications, electronic mail messages or notes, cables, notation or memoranda of any sort of conversations, telephone calls, meetings or other communications, summaries, messages, reviews, opinions, studies and investigations, questionnaires and surveys. The term does not include bills of lading, vessel stowage plans, trucking receipts and payment records for shipments.

For the Parties to FMC Agreement No. 011741 (Maersk Line, Hamburg Sud, Hapag Lloyd and CMA CGM (operating as ANL-USL)):

- 1) Identify, explain and quantify any anticipated efficiency gains once Amendment No. 12 is fully implemented including the expected impact on each carrier's operating costs. Provide any documents that discuss or examine this subject.
- 2) Identify and quantify any economic benefits U.S. exporters and/or importers might expect to gain after Amendment No. 12 becomes effective. Provide any documents that discuss or examine this subject.
- 3) Explain why the ship sizes specified in Articles 5.1(i) through (iii) of FMC Agreement No. 011741 differ markedly from those disclosed in company press releases (e.g., <http://www.shipusl.com/news.php?action=fullnews&id=23>) and trade press reports (e.g., the Journal of Commerce Newswire, June 24, 2008).
- 4) Article 5.2(g) of FMC Agreement No. 011741 states: "Excess capacity is that usable capacity remaining on a vessel after the full declared capacity of the vessel has been utilized." Please define the terms "excess capacity" and "full declared capacity of the vessel."
- 5) Provide a copy of each long-term pro-forma schedule of services that was mutually agreed upon by members of the Agreement between January 1, 2006 and August 31, 2008, as set forth in Article 5.1(e) of FMC Agreement No. 011741.
- 6) Identify any committees or sub-committees established by FMC Agreement No. 011741 as set forth in Article 6(a). For each committee and sub-committee identified, describe its purpose and provide the date of each meeting held since January 1, 2006. Provide copies of the minutes for, and any documents exchanged at, each meeting.

- 7) Identify the amount of capacity provided and the TEU lifted² by each carrier in the southbound and northbound trades separately for each shipping cycle completed since the completion of cycle no. 44 which covered the period May 4, 2007 to June 15, 2007.
- 8) Identify the dates of each shipping cycle completed between January 1, 2003 and December 31, 2007 and the shipping cycle number assigned to each of them.
- 9) Provide a profit and loss statement by carrier for each completed shipping cycle identified in response to Question 8, showing northbound and southbound sailings on a combined basis as well as separately.

For the Parties to FMC Agreement No. 011117 and FMC Agreement No. 011275 (Maersk Line, Hamburg Sud, Hapag Lloyd, ANL Singapore PTE LTD, CMA CGM (operating as ANL-USL), Marfret and Wallenius Wilhelmsen):

- 10) List the U.S. and foreign ports of call in the scheduled order of their rotation in the roundtrip voyage for each service loop or string that was operating in the month of August 2006 and provide the following information:
 - a) name of service loop/string
 - b) port city
 - c) port's country
 - d) calling frequency, *e.g.* weekly, bi-weekly, monthly
 - e) average transit time to and from Melbourne, Australia
- 11) List the U.S. and foreign ports of call in the scheduled order of their rotation in the roundtrip voyage for each service loop or string that was operating in the month of August 2007 and provide the following information:
 - a) name of service loop/string
 - b) port city
 - c) port's country
 - d) calling frequency, *e.g.* weekly, bi-weekly, monthly
 - e) average transit time to and from Melbourne, Australia
- 12) List the U.S. and foreign ports of call in the scheduled order of their rotation in the roundtrip voyage for each service loop or string operating in the month of August 2008 and provide the following information:
 - a) name of service loop/string
 - b) port city
 - c) port's country
 - d) calling frequency, *e.g.* weekly, bi-weekly, monthly
 - e) average transit time to and from Melbourne, Australia

2. Responses to this question are to be provided to the FMC by each carrier using a pre-formatted electronic file to be provided by the Bureau of Trade Analysis. The file should be submitted to the FMC on a CD-R compact disk.

13) Provide the following data³ for each southbound and northbound sailing operated by your company within the geographic scope of FMC Agreement No. 011117 or FMC Agreement No. 011275 between January 1, 2006 and August 31, 2008. *(These data are to be provided by the operator of the ship):*

- a) ship's operator
- b) name of the service loop/string
- c) ship's name
- d) ship's IMO number
- e) unique voyage number
- f) voyage direction, *i.e.*, southbound or northbound
- g) sailing date from last port in the continental U.S. for southbound sailings
- h) arrival date at the first continental U.S. port for northbound sailings
- i) ship's effective operating capacity in TEU
- j) number of loaded TEU tendered by all parties, U.S. and non-U.S. cargo
- k) number of dry loaded TEU tendered by all parties, U.S. and non-U.S.
- l) number of reefer loaded TEU tendered by all parties, U.S. and non-U.S.
- m) ship's deadweight tonnage available for cargo (metric tons)
- n) cargo tons tendered by all parties, U.S. and non-U.S. cargo
- o) number of reefer plugs available
- p) number of reefer plugs used by all parties, U.S. and non-U.S. cargo
- q) ship's effective operating capacity (TEU) allocated to the U.S. trade
- r) amount of the ship's available deadweight tons allocated to the U.S. trade
- s) number of reefer plugs allocated to the U.S. trade
- t) number of reefer plugs used by all parties, U.S. cargo
- u) proprietary U.S. dry loaded containers carried (TEU)
- v) revenue earned in U.S. dollars under item (u) above
- w) weight of proprietary U.S. dry cargo put on this sailing
- x) proprietary U.S. reefer loaded containers carried (TEU)
- y) revenue earned in U.S. dollars under item (x) above
- z) weight of proprietary U.S. reefer cargo put on this sailing
- aa) proprietary non-U.S. dry loaded containers put on this sailing
- ab) revenue earned in U.S. dollars under item (aa) above
- ac) weight of proprietary non-U.S. dry cargo put on this sailing
- ad) proprietary non-U.S. reefer loaded containers put on this sailing
- ae) revenue earned in U.S. dollars under item (ad) above
- af) weight of proprietary non-U.S. reefer cargo put on this sailing
- ag) expenses incurred for this sailing (exclude expenses incurred by third party steamship companies)

3. Responses to questions 13 and 14 are to be provided to the FMC by each carrier using a pre-formatted electronic file to be provided by the Bureau of Trade Analysis. The file should be submitted to the FMC on a CD-R compact disk.

14) Provide the following data⁴ for all containers your company placed on sailings between January 1, 2006 and August 31, 2008 operated by other parties to FMC Agreement No. 011117 or FMC Agreement No. 011275:

- a) ship's operator
- b) name of the service loop/string
- c) ship's name
- d) ship's IMO number
- e) unique voyage number
- f) voyage direction, *i.e.*, southbound or northbound
- g) sailing date from last port in the continental U.S. for southbound sailings
- h) arrival date at the first continental U.S. port for northbound sailings
- i) U.S. dry loaded containers put on this sailing (TEU)
- j) revenue earned in U.S. dollars under item (i) above
- k) weight of U.S. dry cargo put on this sailing (metric tons)
- l) U.S. reefer loaded containers put on this sailing (TEU)
- m) revenue earned in U.S. dollars under item (l) above
- n) weight of U.S. reefer cargo put on this sailing (metric tons)
- o) non-U.S. dry loaded containers put on this sailing (TEU)
- p) revenue earned in U.S. dollars under item (o) above
- q) weight of non-U.S. dry cargo put on this sailing (metric tons)
- r) non-U.S. reefer loaded containers put on this sailing (TEU)
- s) revenue earned in U.S. dollars under item (r) above
- t) weight of non-U.S. reefer cargo put on this sailing (metric tons)
- u) expenses incurred for this sailing by your company (not the ship operator)

15) With respect to the container cargo your company placed on services operating between Australia/New Zealand and the U.S. east coast, provide separately for the southbound and northbound directions the percent of U.S. containers on these services that were transshipped in 2007 at ports in Central America and/or the Caribbean.

16) Describe the extent to which your company has gained shipper accounts from, or lost shipper accounts to, transshipment container operators and/or the operators of non-container services (*e.g.*, regularly scheduled break-bulk liner services, specialized reefer or lumber services, or contract of affreightment carriers) in the U.S.–Australia/New Zealand trade between January 1, 2006 and August 31, 2008. Provide any documents that discuss or examine competition with transshipment container operators and/or operators of non-container services in this trade.

For Maersk Line only:

4. See instructions in Footnote 3 above.

- 17) Provide the number of TEU transshipped from the U.S. Pacific Northwest to Australia/New Zealand, and the average monthly revenue per TEU in U.S. dollars, by month between January 1, 2006 and August 31, 2008.
- 18) Provide the number of TEU transshipped from the U.S. Pacific Southwest to Australia/New Zealand, and the average monthly revenue per TEU in U.S. dollars, by month between January 1, 2006 and August 31, 2008.
- 19) Provide the number of TEU transshipped from Australia/New Zealand to the U.S. Pacific Northwest, and the average monthly revenue per TEU in U.S. dollars, by month between January 1, 2006 and August 31, 2008.
- 20) Provide the number of TEU transshipped from Australia/New Zealand to the U.S. Pacific Southwest, and the average monthly revenue per TEU in U.S. dollars, by month between January 1, 2006 and August 31, 2008.

For CMA-CGM (operating as ANL-USL) only:

- 21) Provide a profit and loss statement for each southbound sailing, including date of sailing, from the U.S. west coast to Australia/New Zealand when the USL "Triangle Service" was in operation. The statements must itemize all revenue earned and expenses incurred.
- 22) Provide a profit and loss statement for each southbound and northbound sailing, including date of sailing, between the U.S. west coast and Australia/New Zealand since the start-up of the ANL-USL direct end-to-end service. The statements must itemize all revenue earned and expenses incurred.

For APL, the MSC and OOCL only:

- 23) Provide the number of TEU carried from U.S. west coast ports to Australia/New Zealand, and the average monthly revenue per TEU in U.S. dollars, on a monthly basis between January 1, 2006 and August 31, 2008.
- 24) Provide the number of TEU carried from U.S. east coast ports to Australia/New Zealand, and the average monthly revenue per TEU in U.S. dollars, on a monthly basis between January 1, 2006 and August 31, 2008.
- 25) Provide the number of TEU carried from Australia/New Zealand to U.S. west coast ports, and the average monthly revenue per TEU in U.S. dollars, on a monthly basis between January 1, 2006 and August 31, 2008.
- 26) Provide the number of TEU carried from Australia/New Zealand to U.S. east coast ports, and the average monthly revenue per TEU in U.S. dollars, on a monthly basis between January 1, 2006 and August 31, 2008.

- 27) Identify the top two trans-shipment ports, by TEU volume, your company used in 2007 to transship containers moving between the U.S. west coast and Australia/New Zealand.
- 28) Identify the top two trans-shipment ports, by TEU volume, your company used in 2007 to transship containers moving between the U.S. east coast and Australia/New Zealand.
- 29) Identify the main commodity, by TEU volume, shipped by each of your company's top three U.S. exporter accounts to Australia/New Zealand in 2007.
- 30) Identify the main commodity, by TEU volume, shipped by each of your company's top three Australia/New Zealand exporter accounts to the U.S. in 2007.
- 31) Describe the extent to which your company has gained shipper accounts from, or lost shipper accounts to, the operators of direct container services in the U.S.–Australia/New Zealand liner trade between January 1, 2006 and August 31, 2008. Provide any documents that discuss or examine competition with the operators of direct container services in this trade.

For Star Reefers, Inc. and Swire Shipping Ltd.:

- 32) Identify each regular liner shipping service your company scheduled in August 2008 between Australia/New Zealand and the U.S. and provide the following information:
 - a) name of service
 - b) name of each ship deployed in the service
 - c) list the ports of call in the scheduled order of their rotation in the roundtrip voyage
 - d) calling frequency at each scheduled port, e.g., weekly, bi-weekly, monthly
 - e) average transit time to/from each U.S. port call from/to each foreign port call
- 33) Describe the extent to which the service(s) identified in response to Questions 32 are able to compete with the services provided by container shipping companies operating in the U.S.-Australia/New Zealand liner trade.
- 34) Describe the extent to which your company has gained shipper accounts from, or lost shipper accounts to, container carriers engaged in the U.S.–Australia/New Zealand trade between January 1, 2006 and August 31, 2008. Provide any documents that discuss or examine competition with container carriers providing direct container services in this trade lane.
- 35) Identify the top five commodities, by weight, for which your company actively competes against the container carriers providing direct container services from the U.S. to Australia/New Zealand. Provide any documents that discuss or examine competition with container carriers providing direct container services in this trade lane.

36) Identify the top five commodities, by weight, for which your company actively competes against the container carriers providing direct container services from Australia/New Zealand to the U.S. Provide any documents that discuss or examine competition with container carriers providing direct container services in this trade lane.

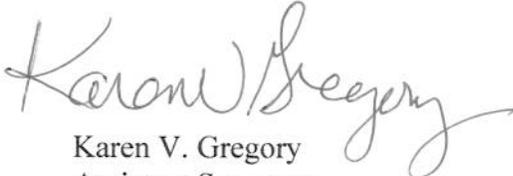
IT IS FURTHER ORDERED That responses and documents provided pursuant to this order shall identify by number the question or request being responded to.

IT IS FURTHER ORDERED That documents provided pursuant to this order must be accompanied by a certification by an official from each carrier organization or individual line and from each of the Agreements indicating that a thorough search of its files and records has been made, and that all documents or information responsive to this order within the possession, custody, or control of the carrier have been provided.

IT IS FURTHER ORDERED That every document, exhibit, or other paper written in a language other than English and provided in response to this order shall be provided in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be an accurate translation in accordance with 46 C.F.R. §502.7; and

FINALLY, IT IS ORDERED That all information and documents collected pursuant to this order shall be treated confidentially to the full extent permitted by law; provided, however, that this shall not preclude the use of such information and documents by the Commission, as necessary, in any Commission or court proceeding.

By the Commission.


Karen V. Gregory
Assistant Secretary

Appendix

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