



NYK LINE

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

January 18, 2011

VIA OVERNIGHT MAIL

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capital Street, N.W. Room 1046
Washington, D.C 20573-0001

Re: **CONFIDENTIAL-RESTRICTED**
FMC EU Study-Response to NOI

Dear Secretary Gregory:

Enclosed please find the CONFIDENTIAL-RESTRICTED copy of the "FMC EU Study-Response to NOI" submitted on behalf of NYK Line (North America), Inc. We request confidential and restricted filing of the enclosed response as it may contain commercially sensitive data. Please note that the specific confidential sections are underlined and marked "confidential-restricted" in the margins of the enclosed document.

Also enclosed, please find the original and one (1) copy of the public version of the filing, with confidential material excluded and marked as instructed in your memorandum dated November 1, 2010. This public version was also forward to your attention via e-mail on January 18, 2011.

Should you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely yours,

NYK Line (North America) Inc.

Patricia M. O'Neill
Corporate Counsel

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Confidential Materials Excluded

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FMC EU STUDY-RESPONSE TO NOI

FEB 13 2009 10:12 AM

Name of Respondent: NYK Line (North America) Inc.

Type of Company or Other Entity: Vessel-Operating Ocean Carrier (VOCC)

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Section A: General Questions

1. Based on your experience since September 2006 (when the European Union announced its decision to terminate the block exemption for liner shipping conferences to take effect October 2008), what impacts, if any, have you identified on your company's commercial activities, in any trade lane, that you would attribute to the termination of the E.U. conference block exemption? Please explain. If you believe there have been such impacts, please indicate when that impact first occurred.

The E.U. announcement in September 2006 had no specific impact, nor can a clear impact be identified since October 2008.

2. Based on your experience since October 2008 (when the E.U. exemption for liner conferences was terminated) has any class of shipper or class of vessel-operating common carrier received a competitive advantage or been put at a competitive disadvantage as a result of the E.U. decision to terminate the exemption? If so, please explain.

It is not evident that any particular class of shipper or vessel operating common carrier has had any competitive advantage or disadvantage as a result of the E.U. decision to terminate the exemption.

3. Based on your experience since October 2008 (when the E.U. exemption for liner conferences was terminated), have differences between U.S. and E.U. liner shipping competition regulations created any problems for your company? If so, please explain.

We have not experienced any problems or issues relative to the differences in U.S. and E.U. liner regulations since October 2008 when the E.U. exemption for liner conference was terminated. Since this time, we have not experienced any negative impact from the regulatory changes that took effect on October of 2008. [Confidential materials excluded].

4. Does your company view cooperation among ocean carriers in operational agreements (e.g., vessel sharing agreements, alliances, consortia, etc.) as generally having a positive, neutral or negative impact on the availability or cost of liner shipping services? Please explain. Does the E.U. market share threshold of 30% for such operational agreements have any effect with respect to that impact? If so, please explain.

Based on our experience, Vessel Sharing Agreements (VSAs) bring various advantages to the availability of shipping services and cost advantages to our customers. Specifically, VSAs allow a carrier to offer services which otherwise

might not be viable as an independent operator. With additional tonnage brought through VSAs, we can offer more port coverage, fixed weekly sailings, expansion to new markets, and the ability to adapt based on our customer's changes to their shipping patterns and international markets. For example, in 1995 the first direct calls to Shanghai were established by carriers in the market, but by 2008 there were 52 direct calls to 15 ports in China at a time when ships were getting progressively larger. These expansions of service would not have been possible without vessel sharing agreements. In practice, it appears that any threshold would likely have more of an effect on smaller trades, as it may potentially limit a U.S shipper's choice in the ocean service marketplace.

Section B: Questions about the North Atlantic Trade (North Europe/U.S.)

5. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involves international shipping in the North Europe/U.S. trade? Does your company's business involve US imports (westbound service) only, U.S. exports (eastbound service) only, or both? Please explain briefly.

NYK serves both import and export Trades. [Confidential materials excluded].

6. How, and to what extent, did the recent economic recession (2008 – 2009) affect your company's liner shipping-related business in the North Europe/U.S. trade? Please explain.

The 2008-2009 economic recession had a significant effect on NYK's liner shipping business. Reductions in trade volume and revenues contributed to significant losses, which resulted in organizational contraction, revised asset cost management, and other measures to ensure service continuity was offered to the shipping community while also ensuring we had long term financial viability. Furthermore, the debt capital and long term debt assumed by carriers during the economic recession will continue to be a challenge for carriers to operate given the cost of debt service that will be on the balance sheets going forward. [Confidential materials excluded].

7. Based on your experience prior to July 2008, when the Trans-Atlantic Conference Agreement (TACA) disbanded, did the existence of TACA have any impact on your liner shipping-related business in the North Europe/U.S. trade? If so, please explain.

The main area in which TACA had an impact prior to October 2008 was in the setting of ancillary charges and in setting timings for rate adjustments. [Confidential materials excluded].

8. Based on your experience in the period from October 2008 to the present (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in the North Europe/U.S. trade that you attribute to the E.U. terminating the block exemption? For example, changes in:

- a. the level of freight rates and surcharges;

- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; or
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

With the exception of carriers having to develop their own surcharges and ancillary charges, we have not experienced any significant change to the above listed items since the October 2008 EU block exemption termination took place. [Confidential materials excluded].

9. For CY 2010 to date, please estimate the percentage of your annual business (by volume) in the North Europe/U.S. liner trade that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify). Has that changed significantly since October 2008? If so, please explain.

[Confidential materials excluded].

10. Following repeal of the E.U. block exemption, ocean carriers created a global information system under Container Trade Statistics, Ltd. (CTS) in which a majority of ocean carriers serving the North Europe/U.S. trade participate. CTS provides certain data free on its web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use CTS Europe/U.S. trade data, and (if it does so) for what purpose(s)?

NYK resigned from ELAA in 2009 and has made no subsequent use of CTS data nor was it used for any specific purpose when the company was an ELAA member.

Section C: Questions about the Transpacific Trade (Far East/U.S.)

11. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/U.S. trade? Does your company's business involve U.S. imports (eastbound service) only, U.S. exports (westbound service) only, or both? Please explain.

NYK serves both U.S. imports (eastbound service) and U.S. exports (westbound) trades. [Confidential materials excluded].

12. How, and to what extent, did the recent economic recession (2008-2009) affect your company's liner shipping-related business in the Far East/U.S. trade? Please explain.

The 2008-2009 economic recession had a significant effect on NYK's liner shipping business. Reductions in trade volume and revenues contributed to

significant losses, which resulted in organizational contraction, revised asset cost management, and other measures to ensure service continuity was offered to the shipping community while ensuring we had long term financial viability. Furthermore, the debt capital and long term debt assumed by carriers during the economic recession will continue to be a challenge for carriers to operate given the cost of debt service that will be on the balance sheets going forward. [Confidential materials excluded].

13. Based on your experience from January 2006 to the present, have the activities of the Trans-Pacific Stabilization Agreement (TSA) or the Westbound Trans-Pacific Stabilization Agreement (WTSA) had any significant impact on your company's liner shipping-related business in the Far East/U.S. trades? If so, please explain.

The impacts have been positive with respect to the TSA and WTSA on NYK's liner shipping-related business for the above referenced trades from 2006 to present. Specifically, these agreements encourage and support uniformity and continuity to the market place as it relates to market transparency, common surcharge definition, consistent ancillary cost application, variable cost recovery, and rate stability. In addition, these agreements provide for shipper – carrier forums to take place to better meet shipper requirements and collectively develop solutions to industrial challenges. These shipper – carrier meetings and discussions have proven to be invaluable for ensuring that shipper requirements are being met while at the same time, encouraging achievement of service performance goals and process improvement.

14. Based on your experience in the period from October 2008 to the present, have there been any significant characteristics of liner services in Far East/U.S. trades that you attribute to actions taken by TSA or WTSA member lines acting collectively? For example:

- a. the level of freight rates and surcharges;
- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; and
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

The TSA/WTSA have not had any effect on the level of competition or operators in the market, although during this period, more operators joined the transpacific trade. Capacity, container investment, organizational issues, and service deployment decisions were based on our financial performance and outlook. [Confidential materials excluded].

15. For CY 2010 to date, please estimate the percentage of your annual business (by volume) in the Far East/U.S. liner trade that moves under (a) annual (or longer) service

contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

[Confidential materials excluded].

Section D: Questions about the Europe – Asia Trade (Far East/Europe)

16. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/Europe trade? Does your company's business involve European imports (westbound service) only, European exports (eastbound service) only, or both? Please explain briefly.

[Confidential materials excluded].

17. How, and to what extent, did the recent economic recession (2008-2009) affect your company's liner shipping-related business in the Far East/Europe trade? Please explain.

The 2008-2009 economic recession had a significant effect on NYK's liner shipping business. Reductions in Trade volume and Revenues contributed to significant losses. This resulted in organizational contraction, revised asset cost management, and other measures to ensure service continuity was offered to the shipping community while ensuring we had long term financial viability. Furthermore, the debt capital and long term debt assumed by carriers during the economic recession will continue to be a challenge for carriers to operate given the cost of debt service that will be on the balance sheets going forward.
[Confidential materials excluded].

18. Based on your experience prior to October 2008 (i.e., before the Far East Freight Conference (FEFC) disbanded), did the existence of FEFC have any impact on your liner shipping-related business in the Far East/Europe trade? Please explain.

[Confidential materials excluded].

19. Based on your experience in the period from October 2008 to the present (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in the Far East/Europe trade that you attribute to the E.U.'s ending of the block exemption? For example, changes in:

- a. the level of freight rates and surcharges;
- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; and
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

There has not been any significant change to any of the above items since October 2008 E.U. block exemption termination, with the only exception being that carriers became obliged to develop their own levels of surcharges and ancillary charges. It appears that customers must now compare and work with varying surcharge and ancillary charges between ocean providers in the market for similar activities. It further appears that customers in this trade now work with varying dates of implementation of freight rate adjustments between carriers.

20. For CY 2010 to date, please estimate the percentage of your annual business (by volume) in the Far East/Europe liner trade that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

[Confidential materials excluded].

21. Following repeal of the E.U. block exemption, ocean carriers created a global information system under Container Trade Statistics, Ltd. (CTS), in which a majority of ocean carriers serving the Far East/Europe trade participate. CTS makes certain data free on its web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use Far East/Europe trade data, and (if it does so) for what purpose(s)?

NYK resigned from ELAA in 2009 and has made no subsequent use of CTS data nor was it used for any specific purpose when the company was an ELAA member.

Section E: Comparisons Among Trades

22. Based on your experience since October 2008 (since the E.U. block exemption was terminated) are there differences in the characteristics of the Far East/U.S. trade versus the Far East/Europe or North Europe/U.S. trades that you attribute to differences between U.S. and European liner competition regulations? For example, differences in:

- a. the level of freight rates and surcharges;
- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; and
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

No we do not see any significant difference in the characteristics between these trades as a result of the E.U. regulations. The only notable differences are the continuity of ancillary and surcharges to the shipping public and filing requirements.

23. Please identify any significant similarities and dissimilarities (for example, cargo volumes, scope or scale of operations, shipper mix, geography, market concentration levels, contracting practices, legal requirements, etc.) that existed in liner shipping markets in the (1) Far East/U.S. trade and the (2) Far East/Europe trade during the period 2006-2010. In your opinion, how (if at all) would those similarities and dissimilarities likely impact a comparison of liner pricing and service behavior across those two trades?

These periods are difficult to compare based on economic challenges experienced during that time, which has no precedent during the period of containerization. The Asia-Europe Trade and U.S. Trade have very different histories which have created some unique characteristics (such as inland transport, chassis supply, and distribution operations) that affect shipper mix, geography, and market concentration. These factors are based on the Trade and Supply Chain development, and do not appear to be result from regulation changes. There are no differences between pre and post conference legal requirements as there is no legal formality remaining. There is no difference in the free market nature of liner pricing in the above referenced markets, with the only exception being more harmonized ancillary and surcharge application in the shipping community.

Section F: Additional Questions for Vessel-Operating Common Carriers

FOR VOCCs ONLY:

24. Please estimate the percentage of your liner revenues (globally) that were earned in each of the following trade lanes during CY 2010 to date:

[Confidential materials excluded].

If those percentages changed significantly during the 2006 through 2010 period, please describe and explain the change.

No significant changes occurred during the 2006 through 2010 period.

25. In each of the three major East-West trades, please estimate the percent of cargo your company carried for beneficial cargo owners (BCO) accounts, (b) OTI accounts, (c) other accounts (if any, please explain) during CY 2010 to date:

[Confidential materials excluded].

Has the relative ranking of shipper types in these trade lanes changed significantly during the 2006 through 2010 period? If so, please describe and explain the change.

No significant changes in the ranking of shipper types have occurred during the 2006 through 2010 period.

26. In each of the three major East-West trade lanes, please indicate which lanes have tended to be the relatively most profitable and which was the relatively least profitable for each year between 2006 and 2010 (inclusive). [Write M for most, and L for least.]

[Confidential materials excluded].

If those rankings changed significantly during the 2006 through 2010 period, please explain the reason(s) for the change.

Generally speaking, the Far East to U.S. Trade in general saw more competition and rate competitiveness during the 2006 & 2007 period. During 2008 the recession had an earlier impact on the Far East-Europe Trade, and then pressure shifted to the Far East-U.S. Trade, and then to the North Europe-U.S. Trade.

27. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the North Europe/U.S. liner shipping market related to changes in:

- a. Seasonality of cargo movements
- b. Commodity values
- c. Directional cargo imbalances (imports vs. exports
- d. Number of carriers serving the trade; or
- e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

There have been no significant changes to the seasonality of our business in the Transatlantic during this period with the exception of sharp volume changes due to the global economic factors. Commodity values vary greatly with Import and Exports and it would appear that it would be better reported by the U.S. Importers and Exporters. There have been no significant changes in the number of carriers serving the Trade. Weekly service offerings between main ports both in U.S. East Coast and Europe determines ship numbers and is therefore entirely dependent on how many ports a carrier serves. There is not a set minimum number of ships or sizes, as this is contingent upon port coverage, network configuration, and port capabilities. [Confidential materials excluded].

28. Based on your company's experience in the North Europe/U.S. trade, please identify any substantial changes that occurred in your liner business (operations, marketing, pricing, etc.) in the two years following repeal of the E.U. liner conference exemption (CY 2009 and 2010) as compared with the two years preceding the repeal (2006 – 2007)? If any, please explain.

There have been no significant changes apart from the development of charges mentioned, and impacts from the recent economic recession.

29. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the Far East/U.S. liner shipping market related to changes in:

- a. Seasonality of cargo movements,
- b. Commodity values
- c. Directional cargo imbalances (imports vs. exports)
- d. Number of carriers serving the trade; or
- e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

There have been no significant changes to the seasonality of our business in the Transpacific apart from the severe downturn due the recession. Commodity values vary greatly with Import and Exports and would be better reported by the U.S. Importers and Exporters. There have been many new carriers entering the Transpacific market, or significantly growing their market share. The Transpacific is characterized by multiple fixed weekly vessel string rotations, and the size and number of ships is wholly dependent on the network structure. [Confidential materials excluded].

30. Based on your experience during the period from January 2006 to the present, have there been any significant changes in the nature of your business in the Far East/E.U. liner shipping market related to changes in:

- a. Seasonality of cargo movements;
- b. Commodity values;
- c. Directional cargo imbalances (imports vs. exports);
- d. Number of carriers serving the trade; or
- e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

There have been no significant changes to the seasonality of business in the Asia-Europe Trade apart from the severe downturn due the recession. Commodity values vary greatly with Import and Exports and it appears this would be better reported by the European and Asian Importers and Exporters. The Trade remains imbalanced, although there have been some improvements in the Europe to Asia Trade while Asia to Europe was more severely affected by the recession. There have been a few new carriers entering the Trade since 2006. The Asia-Europe Trade also has multiple strings and geographic rotation options. We have not had any significant changes in our scale or service network during this period.

NOW THEREFORE, it is ordered that Notice of this Inquiry be published in the Federal Register.

By the Commission.

Karen V. Gregory

Secretary