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LEAGUE

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

December 23, 2013

Ms. Karen V. Gregory
Secretary, Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Dear Ms. Gregory:

The National Industrial Transportation League (League or NITL) appreciates the opportunity to comment on the pending Agreement No.: 012194-002, covering the proposed activities of a comprehensive, global vessel sharing agreement known as The G6 Alliance Agreement. Notice of the filing of the "G6 Agreement" was published in the Federal Register on December 11, 2013.

The League has represented the views of its member companies in all modes since 1907; that representation extends to proposed legislation, regulations and the policy decisions of federal government agencies which affect the movement of freight in domestic and foreign commerce, including in particular the Federal Maritime Commission. Many League members are U.S. importers and exporters that use the ocean shipping services of one or more of the six carriers which have proposed to participate in this vessel sharing agreement (VSA): American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited and Orient Overseas Container Line Inc. (Operating as one Party). In addition, League member companies also utilize the services of the six carriers' competitors.

The participants in the G6 Agreement are to a large extent blending and building upon two existing VSAs: The New World Alliance and the Grand Alliance. Their new VSA will capture all of the key east/west trades with the addition of full coverage in the transpacific and transatlantic. Filing of the G6 Agreement comes on the heels of the filing of a similar global agreement by the three largest containership operators (Maersk, MSC and CMA-CGM) known as the P3 Agreement. While the Commission will doubtless act upon the two VSAs independently, shippers generally and League members in particular are highly focused on the near term reshaping of the competitive dynamics of the global containership market. For that reason we would urge the Commission not to view each VSA in complete isolation.

We assume the Commission will analyze data and information related to the proposed G6 VSA from the perspective of the legal standards embodied in Section 6(g) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. Those standards require the Commission to assess whether the newly filed G6 Agreement "is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost...."

As was the case only weeks ago with regard to the P3 Agreement, the League does not have access to the data and information necessary to perform an independent analysis of the impact on

competition which might result from the operations of the G6 Agreement. League members have raised broad concerns about the *potential* for negative competitive impacts due to the size and scope of the G6 vessel sharing agreement. The League and its members fully understand that well-structured VSAs and other forms of carrier joint operating agreements can result in greater efficiency, lower carrier operating costs and enhanced service offerings to shippers such as extended port ranges and more frequent sailings. But as noted above, our members' concerns are heightened by the potential for cumulative (or additive) impact on market competition from the combined effects of the G6 and P3 VSAs. And, given there are remaining containership operators who have not yet aligned themselves in such large scale VSAs, League members are left to wonder just how quickly some or all of them may respond to the G6 and P3 initiatives with a global VSA of their own.

The potential impact of the G6 Agreement on competition between these six carriers (and all other carriers serving the trades covered by the G6 Agreement, including of course the P3 Agreement) is not readily apparent to the League and its members. Shippers rightfully expect that all carriers operating outside the protection of a regulated conference, including in particular VSA partners, will operate as bona fide competitors in all regards. We expect the six partner carriers will operate independently of each other in pricing and service offerings. We would therefore ask that the Commission focus its assessment of the G6 Agreement on any and all aspects which might have an impact on competitive behavior and/or competitive results in the U.S. markets covered by the G6 Agreement. We believe the Commission and its professional staff are well positioned to conduct such an analysis.

We note that under the terms of the filed G6 Agreement, a significant number of future decisions and actions remain undefined at this time and subject to a grant of broad authority to the management structure of the Agreement to establish decision-making processes and procedures. We believe the Commission needs to test reasonable future scenarios that will flow from such future decisions to determine what if any impact on competition between the cooperating carriers may result.

The League respectfully offers the following questions which we believe the Commission should pursue with the G6 Agreement partners to discern what if any competitive impacts may result from the Agreement.

1. Will the G6 partners engage in any aspect of joint setting or negotiating member carrier freight rates?
2. Will the operations of the G6 Agreement in any way have an impact on the rates charged shippers by the member carriers?
3. Will the member carriers' information sharing and deliberations in the Transpacific Stabilization Agreement have any competitive impact on pricing, service levels, vessel deployments, aggregate capacity targets, or any other aspect of the joint operations envisioned in the G6 Agreement?
4. How will decisions be made to add or remove available vessel capacity in the trades covered by the Agreement, and what criteria will govern those decisions? Will the Commission monitor G6 decisions on vessel capacity to assure such decisions are made within the parameters of the Agreement?

5. What operational aspects of the six partners will not be conducted jointly under the G6 Agreement?
6. Will the combined operations of the six carriers result in a dominant position in any U.S. market such that they will be able to influence pricing and service levels to an extent they could not achieve in the absence of the G6 Agreement?
7. Across the range of U.S. ports and terminals, will the G6 Agreement offer more, less or about the same level of service to U.S importers and exporters as measured by Agreement member vessel calls (both inbound and outbound) and container capacity?

We appreciate this opportunity to address these questions and concerns to the Commission.

Respectfully submitted,



Bruce J. Carlton
President and CEO
The National Industrial Transportation League

cc:
Chairman Mario Cordero
Commissioner William P. Doyle
Commissioner Rebecca F. Dye
Commissioner Michael A. Khouri
Commissioner Richard A. Lidinsky, Jr.
Tyler J. Wood, Deputy General Counsel

The Federal Maritime Commission - Notice of Request for Additional Information was attached.

My comments on the P3 Alliance were provided to Commissioner Maria Damanaki, European Commission for Maritime Affairs and Fisheries. Commissioner Damanaki's Office has forwarded my comments Commissioner Siim Kallas, European Commission Directorate General for Transport.

The following are my comments in response to the Federal Maritime Commission request for additional information.

The G6 Alliance Agreement - FMC Agreement No. 012194.

On February 1, 2013, the G6 Alliance filed with the Federal Maritime Commission (FMC) an agreement setting forth two principal agreement goals. First, the G6 Alliance authorizes the parties to charter and exchange space on the parties' vessels. Second, the G6 Alliance seeks to coordinate and cooperate with respect to the parties' transportation services and operations in specific trade lanes. This week, the FMC Commissioners voted to allow the new Agreement to go into effect. Notably, this agreement will retain U.S.-Flag vessels in the rotation and increase the frequency of vessel port calls on the U.S. East Coast.

For reference, the G6 Alliance was established in December 2011 and began operations in March 2012. The parties to the G6 Alliance are American President Lines, Ltd. (APL), Hapag-Lloyd Aktiengesellschaft (Hapag-Lloyd), Hyundai Merchant Marine Company (Hyundai), Mitsui O.S.K. Lines (MOL), Nippon Yusen Kaisha (NYK), and Orient Overseas Container Line Limited (OOCL). Furthermore, the G-6 Alliance is a vessel sharing agreement between the New World Alliance (APL, Hyundai, and MOL) and the Grand Alliance (Hapag-Lloyd, NYK, and OOCL).

With this new agreement, the G6 Alliance will deploy more than 50 ships in the Trans-Pacific trade, calling at almost 30 ports in Asia, North America East Coast, Canada, Central America, Caribbean, Indian Sub-continent, Mediterranean, and the Middle East. In particular, the geographic scope of the agreement is between Canada, Egypt, Hong Kong, Italy, Jamaica, Malaysia, Panama, People's Republic of China, Saudi Arabia, Singapore, South Korea, Spain, Sri Lanka, Taiwan, Thailand, United Arab Emirates, and Vietnam—and the East Coast of the United States via the Panama and Suez canals, as well as ports and points served via such U.S. and foreign ports.

Source: Federal Maritime Commission. http://www.fmc.gov/G6_Alliance_Doyle/

P3 Network Vessel Sharing Agreement Agreement No.: 012230

Parties: A.P. Moller-Maersk A/S trading under the name Maersk Line; CMA CGM S.A.; and MSC Mediterranean Shipping Company, S.A.

The three carriers announced they would begin cooperating in 2014 on routes covering Asia to Europe as well as transpacific and transatlantic routes to the United States. Early estimates by Maersk Line's chief trading and marketing officer put market control of such an alliance at about 42 percent on the Asia to Europe route, 24 percent on the transpacific routes, and 40 – 42 percent on the transatlantic route. Indications are that the P3 network will be operated from new management offices in London and Singapore with a staff of approximately 200. The proposed Alliance has already named Maersk Line's Lars Mikel Jensen as its Chief Executive Officer.

Joining in the call for the Summit is Commissioner William P. Doyle, who stated: "One of my concerns relates to media reports that a combined east-west fleet of 346 vessels will be reduced to 255 vessels once the proposed Alliance is consummated. I am interested in learning more about the impact this Alliance will have on services provided to consumers, shippers and U.S. terminal operations." Commissioner Doyle added, "Maersk Line, Limited is the largest U.S.-flag carrier in the international fleet. To this end, I do not want the Alliance's operations to harm or otherwise negatively impact the U.S.-flag international fleet when decisions are made to cascade or otherwise eliminate ships from service."

Commissioner Richard A. Lidinsky, Jr. also stated, "It is clear this Alliance is moving forward as if it has already met regulatory approval despite the lack of any significant filing with regulatory authorities in Europe, China or the U.S. Pushing behind the scenes and placing positive stories with the press is not a substitute for proper consideration of the consequences of this massive carrier alignment."

Source: Federal Maritime Commission. <http://www.fmc.gov/NR13-14/>

CONCLUSION

1. The P3 Network Vessel Sharing Agreement supplements and provides further coverage of the G6 Alliance Agreement approved by the Federal Maritime Commission in February 2013.
2. Denying and/or Excluding A.P. Moller-Maersk A/S (Maersk Line) to fully compete in the European and international trade lanes is contrary to the Federal Maritime Commission purpose and mission to foster, promote and secure a fair, efficient and reliable international ocean transportation system for all U.S.-flag carriers.
3. A.P. Moller-Maersk A/S (Maersk); CMA CGM S.A.; and MSC Mediterranean Shipping Company, S.A. are parties to the Transpacific Stabilization Agreement - FMC Agreement No. 011223-039, approved on November 6, 2003. The parties to the G6 Alliance Agreement are parties to the Transpacific Stabilization Agreement .
- 3.

Thank you very much for the opportunity to provide further comments.

My warmest personal wishes to you during this Holiday Season.

Respectfully,

Electronically Signed

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2 attachments

CMH Signature.jpg
280K

A handwritten signature in cursive script, appearing to read "Clayton M. Ferguson".

 **P3 RFAI FR Notice.pdf**
11K

**Federal
Maritime
Commission**

**Fwd: P3 Network Vessel Sharing Agreement Agreement No.: 012230 -
Comments**

Secretary Mailbox <secretary@fmc.gov>

Tue, Dec 17, 2013 at 4:18 PM

To: Karen Gregory <kgregory@fmc.gov>, Rachel Dickon <rdickon@fmc.gov>

Karen V. Gregory

Secretary, Federal Maritime Commission

800 North Capitol Street NW | Washington, DC 20573 | Tel: 202.523.5725

kgregory@fmc.gov

----- Forwarded message -----

From: **Clif Hasegawa** <clifhasegawa@gmail.com>

Date: Tue, Dec 17, 2013 at 4:02 PM

Subject: P3 Network Vessel Sharing Agreement Agreement No.: 012230 - Comments

To: Secretary Mailbox <secretary@fmc.gov>

Cc: Harold.NYSSSENS@ec.europa.eu

FEDERAL MARITIME COMMISSION

Office of the Secretary

Karen V. Secretary, Secretary

Rachel E. Dickon, Assistant Secretary

Dear Ms. Gregory and Ms. Dikon,

On December 6, 2013, I received the following email from the Federal Maritime Commission:

Pursuant to the Commission's regulations at 46 C.F.R. 535.606(d), and as a commenter on the subject agreement, you are being served with a copy of the Federal Register Notice indicating that the Federal Maritime Commission has determined to request additional information from the parties to the P3 Network Vessel Sharing Agreement, FMC Agreement No. 012230. This notice will be published in the Federal Register next week and interested parties will have fifteen (15) days *after publication of the notice* to file further comments on the agreement.