EUROPEAN COMMISSION
DG Competition

Case M.8330 - MAERSK LINE / HSDG

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: 10/04/2017

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 10.4.2017
C(2017) 2475 final

PUBLIC VERSION

To the notifying party:

Subject: **Case M.8330 – MAERSK LINE / HSDG**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 February 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Maersk Line A/S ("Maersk", of Denmark), a wholly-owned subsidiary of A.P. Møller - Mærsk A/S (the "Maersk Group"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft KG ("HSDG", of Germany), a wholly-owned subsidiary of Dr. August Oetker KG, by way of purchase of shares (the "Transaction").[3] Maersk and HSDG are collectively referred to hereinafter as the "Parties".

1. THE PARTIES

(2) **Maersk** is the subsidiary of the Maersk Group and is governed by Danish law. Maersk is active worldwide in the provision of container liner shipping services operating 611 container vessels, 324 of which are chartered. Maersk markets its services through the Maersk Line, Safmarine, SeaLand (Intra-Americas), MCC

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').

3 Publication in the Official Journal of the European Union No C 62, of 25.02.2017, p. 11.

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Transport (Intra-Asia) and SeaGo Line (Intra-EEA) brands. The Maersk Group also provides (i) container terminal services through its subsidiary APM Terminals ("APMT"), (ii) freight forwarding services, via its subsidiary Damco Distribution Services, (iii) inland transportation, via APMT, (iv) container manufacturing, via its subsidiary Maersk Container Industry, (v) harbour towage services, via its subsidiary Svitzer and (vi) tramp services, via its subsidiary Maersk Tankers.

(3) **HSDG** is a German subsidiary of Dr. August Oetker KG. It is active worldwide in the provision of container liner shipping services. HSDG operates 130 container vessels, 82 of which are chartered. HSDG markets its services through its global Hamburg Süd brand and its CCNI (Chile) and Aliança (Brazil) brands.

2. THE OPERATION AND THE CONCENTRATION

(4) On 28 October 2016, the Parties entered into a partially binding term sheet that sets out the terms of the Transaction. The Parties intend to enter into a final and fully binding Sales and Purchase Agreement by March 2017. Post-Transaction, HSDG will become a business unit within Maersk operated under the existing Hamburg Süd brand. The acquisition price is approximately EUR […] billion.

(5) The economic and strategic rationale of the Transaction is to bring two complementary container liner shipping businesses. Maersk Line predominantly focusses on East-West trade routes where HSDG has a limited presence. HSDG has a stronger focus on the North-South trades, particularly to and from South America[4]. The Parties argue that with the expanded scope of the combined network, customers will have access to the services provided by HSDG in the North-South trades as well as the flexibility and reach provided in Maersk Line's network (which includes the East-West trades).

(6) The Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (Maersk Group: EUR 35,668 million; HSDG: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Maersk Group: EUR […] million, HSDG: EUR […] million). Each of the undertakings concerned does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

(8) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

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[4] By volume, [60-70]% of Maersk Line's business is generated on the East-West trades whereas [70-80]% of HSDG's business is generated on the North-South trades.

[5] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

4. MARKET DEFINITION

(9) The Parties' activities mainly overlap horizontally in deep-sea container liner shipping. To a smaller extent, the Parties' activities also overlap in short-sea container shipping and tramp services (notably on the transport of liquid bulk products in tankers, as there is no overlap between the Parties' activities in drybulk vessels). Furthermore, there are vertically related markets, in particular terminal and harbour towage services but also inland transportation, freight forwarding and container manufacturing.

4.1. Deep-sea container liner shipping services

(10) Deep-sea container liner shipping companies offer regular, scheduled services for the sea transportation of containerised cargo. Deep-sea container liner shipping services are provided as door-to-door or port-to-port services (or any combination thereof).[6]

4.1.1. Relevant product market

(11) 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 the regularity and frequency of the service. In addition, the use of container transportation should be distinguished from other non-containerised transport such as bulk cargo.[7]

(12) This product market could be further segmented into 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.[8]

(13) The majority of customers and competitors responding to the Commission's market investigation questionnaires confirmed that the relevant market is that for container liner shipping.[9] Concerning potential sub-segmentations, the majority of customers considered that a distinction between reefer and non-reefer containers would be relevant while the majority of competitors submitted that there is no distinct product market for the transport of refrigerated goods.[10] Moreover, should

6 Form CO, page 33.

7 Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, recital 10; 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.

8 Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, recital 11; M.7908 – *CMA CGM/NOL*, recital 9; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*; M.3829 – *Maersk/PONL*, recital 10.

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

10 Q1 – Questionnaire to competitors, question 5.1; Q2 – Questionnaire to customers, question 5.1.

one consider a market for refrigerated goods only, the majority of competitors consider relevant a segmentation between reefer containers and reefer vessels whereas the majority of customers do not.[11]

(14) In any case, for the purpose of the present decision (the "Decision"), it may be left open whether the deep-sea container liner shipping market could be further segmented into markets for reefer and non-reefer containers as well as for reefer containers and reefer vessels since the competitive assessment of the effects of the Transaction on various markets would not be altered by any such possible segmentation.

4.1.2. Relevant geographic market

(15) Whereas, in prior decisions, the Commission had left open whether the geographic scope should comprise trades, defined as the range of ports which are served at both ends of the service (e.g. Northern Europe – North America) or each individual leg of trade (e.g. westbound and eastbound within a given trade), in its most recent practice[12], the Commission has concluded that container liner shipping services are geographically defined on the basis of the legs of trade (e.g. Northern Europe – North America eastbound).

(16) This is in line with the results of the market investigation as the majority of both customers and competitors responding to the Commission's market investigation questionnaires consider that each leg of trade constitutes a separate geographic market.[13]

(17) The relevant legs of trade for the assessment of the Transaction are those from and to Northern Europe areas and those from and to the Mediterranean in view of the effect of those legs of trade on the internal market.[14] For these legs of trade, the majority of both customers and competitors responding to the Commission's market investigation questionnaires considered that, consistent with precedents, the following ranges of ports constitute a single distinct end of legs:[15]

- Northern Europe ("NE")
- Mediterranean ("MED")
- North America ("NAM")
- East Coast South America ("ECSA")

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11 Q1 – Questionnaire to competitors, question 6; Q2 – Questionnaire to customers, question 6.

12 Case M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, recital 19.

13 Q1 – Questionnaire to competitors, question 9; Q2 – Questionnaire to customers, question 9.

14 Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, recitals 14-16; 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*, recital 14.

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

- West Coast South America ("WCSA")
- Central America/Caribbean ("CAM/CAR")
- Middle East ("MEA")
- Indian Subcontinent ("ISC")
- Far East Asia ("FEA")
- Australia and New Zealand ("AUNZ")
- South Africa ("SAF")

4.2. Short-sea container liner shipping services

4.2.1. Relevant product market

(18) Short-sea container shipping involves the provision of intra-continental (usually costal trade) services for the carriage of cargo by containers liner shipping companies.

(19) In past cases, the Commission has defined a separate product market for short-sea container shipping (i.e. distinct from deep-sea container shipping) involving the provision of regular, scheduled services for the carriage of cargo by container.[16] The Commission has previously considered possible sub segmentations of the market as per the type of cargo carried by containers. In this regard, the Commission has concluded that container shipping is distinct from the transport of bulk cargo (i.e. non-containerised shipping).[17] However, the Commission ultimately left open whether the transport of wheeled cargo[18] should be considered as a different product market.[19]. The Commission also left open whether there should be a sub-segmentation between reefer and dry transport[20] as well as whether short-sea shipping should be part of a broader door-to-door multimodal transport services market[21]. The Notifying Party considers that no distinction should be made between reefer and dry services. Furthermore, they argue that short-sea shipping is part of a broader market encompassing alternatives modes of transports (including rail, truck and inland barging services).[22]

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16 Case M. 7523 – *CMA CGM/OPDR*, recital 49.

17 Case M. 7523 – *CMA CGM/OPDR*, recital 49.

18 Ro-Ro shipping corresponds to the transport of lorries or car on ships.

19 Case M. 7523 – *CMA CGM/OPDR*, recital 50.

20 Case M. 7523 – *CMA CGM/OPDR*, recital 52.

21 Case M. 7523 – *CMA CGM/ OPDR*, recital 48.

22 Form CO, paragraph 516.

4.2.2. Relevant geographic market

(20) The Commission previously concluded that the geographic market should be delineated on the basis of single trades, defined by the range of ports which are called at both ends of service.[23] The Commission also considered a further delineation according to legs of trade but ultimately left open this question.[24] The Parties submit that the geographic market should be defined more broadly to encompass all intra-EEA services including those between Northern Europe and Mediterranean based on Container Trade Statistics ("CTS") data.[25]

(21) At the narrowest possible level, the Notifying Party proposes the following delineation in accordance with the its own service offerings (breaking down intra-Europe):

- Northern Europe – North-East Mediterranean (NEM);
- NE – South-East Mediterranean (SEM);
- NE – West Mediterranean (WME);
- Intra-East Mediterranean (EME);
- Intra-Mediterranean; and
- Intra-WME.[26]

4.2.3. Conclusion

(22) However, it is not necessary to conclude on a precise definition of the relevant product and geographic markets as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition of the markets for short-sea liner shipping.

4.3. Tramp services

4.3.1. Relevant product market

(23) In past cases[27], the Commission has considered that "*the tramp shipping sector relates generally to the transport of a single commodity which fills a single ship.*

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23 Case M. 7523 – *CMA CGM/ OPDR*, recital 59.

24 Case M. 7523 – *CMA CGM/ OPDR*, recital 60.

25 Form CO, paragraph 524. Container Trades Statistics Ltd is 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.

26 In the area of NE, HSDG's market share is close to [0-5] percent (with [below 100,000] TEUs) and therefore this sub-trade is no dealt with in this Decision.

27 Case M.5346 – *APMM/Broström*, recital 9.

Unlike the liner sector, tramp shipping markets are unscheduled in the sense that vessels do not sail on advertised, pre-determined routes on particular days."

(24) In its prior decisional practice[28], the Commission considered potential sub segmentations of the product market according to (i) vessel types (ii) types of cargo (iii) vessel sizes and (iv) contract types.

(25) In particular, in Case M.5346 – *APMM/Broström*, the Commission considered a segmentation between dry and liquid bulk vessels.[29] Moreover, the Commission considered segmentation according to the following DWT[30] ranges: (i) 10 000 – 60 000 DWTs, (ii) 10 000 – 25 000 DWTs and (iii) 25 000 – 60 000 DWTs. A separate market was defined for vessels of less than 10 000 DWT.[31] However, the Commission ultimately left open whether the market should be segmented according to the 25 000 DWTs and 60 000 DWTs dividing lines.[32] The Parties consider that 25 000 DWTs and 60 000 DWTs should be dividing lines.[33]

4.3.2. Relevant geographic market

(26) In its prior decisional practice, the Commission considered the geographic market for tramp services and its possible subsegments to be worldwide. Nevertheless, it considered also a possible narrower geographic scope (regional) for less than 10 000 DWTs tankers, ultimately leaving the exact geographic market definition open.[34] The Parties argue that the geographic market is worldwide.[35] Nevertheless, when inquired about possible narrower geographic markets, the Notifying Party considers that the only plausible regional market would be by reference to a division of the global market between the east of Suez region and the west of Suez region. [36]

4.3.3. Conclusion

(27) However, it is not necessary to conclude on a precise definition of the relevant product or geographic market as the Transaction would not raise serious doubts as

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28 Case M.5346 – *APMM/Broström*, recital 11.

29 Case M.5346 – *APMM/Broström*, recital 13.

30 DWT stands for "deadweight tons". DWTs are a measure of a ship's transport capacity. Cubic metres ("cbm") are also sometimes used to express capacity. This Decision uses DWT figures, in line with previous Commission practice. See also *M.5346 – AMPP/Broström*, recital 2.

31 Case M.5346 – *APMM/Broström*, recital 30.

32 Case M.5346 – *APMM/Broström*, recitals 30-39.

33 Form CO, paragraphs 561-563.

34 Case M.5346 – *APMM/Broström*, recitals 39-40.

35 Form CO, paragraph, paragraph 564.

36 Notifying Party's reply to question 4 of the Commission's Request for information 5 of 28 March 2017 submitted on 30 March 2017.

to its compatibility with the internal market under any plausible definition of the markets for tramp services.

4.4. Vertically affected markets

(28) 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 and container manufacturing, which are offered by Maersk Group or its controlled entities.

4.4.1. Container terminal services

4.4.1.1. Relevant product market

(29) 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 transhipment traffic.[37]

4.4.1.2. Relevant geographic market

(30) In its prior decisional practice, 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 transhipment 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.[38]

(31) The Parties argue that the geographic market should not be defined more narrowly than regional because a national or range of port market definition would be artificial given the international nature of the container liner shipping business and the traffic flows.[39]

4.4.1.3. Conclusion

(32) However, it is not necessary to conclude on a precise definition of the relevant product and geographic market since the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible definitions of the markets for container terminal services.

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[37] Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*¸ recital 21, 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.

[38] Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 22; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 16; M.5066 – *Eurogate/APMM*, recitals 15–20.

[39] Form CO, paragraph 585.

4.4.2. Inland transportation services

(33) 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.

4.4.2.1. Relevant product market

(34) 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 could constitute separate product markets but ultimately left the market definition open.

4.4.2.2. Relevant geographic market

(35) In its prior decisional practice, the Commission considered the geographic scope of the market for inland transportation services as either national or wider.[40] The Parties concur with the Commission's previous decisional practice.[41]

4.4.2.3. Conclusion

(36) However, it is not necessary to conclude on a precise definition of the relevant product or geographic market as the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible definitions of the markets for inland transportation services.

4.4.3. Freight forwarding services

(37) In sea freight forwarding, transportation capacity is provided by container liner shipping companies like Maersk and its competitors. Freight forwarders are thus customers of container liner shipping companies, i.e. freight forwarding is a downstream market to container liner shipping.

4.4.3.1. Relevant product market

(38) In its prior decisional practice, the Commission has defined freight forwarding 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*".[42] The Commission subdivided the market into

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40 Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 29; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recital 43; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 17.

41 Form CO, paragraph 640 and following.

42 Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, recital 37, M.6059 – Norbert Dentressangle/Laxey Logistics, recital 17, M.1794 – *Deutsche Post/Air Express International*, recital 8.

domestic and cross-border freight forwarding and into freight forwarding by air, land and sea. [43] [44]

4.4.3.2. Relevant geographic market

(39) 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.[45] The Parties did not express any disagreement with this approach.[46]

4.4.3.3. Conclusion

(40) However, it is not necessary to conclude on a precise definition of the relevant product or geographic market as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition of the markets for freight forwarding services.

4.4.4. Harbour towage services

4.4.4.1. Relevant product market

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

(42) In previous decisions, the Commission left the exact market definition open.[47] The Notifying Party did not express any disagreement with this approach.

4.4.4.2. Relevant geographic market

(43) In its prior decisional practice, the Commission considered that the narrowest possible geographical market definition was limited to individual ports.[48] The Parties did not express any disagreement with this approach.[49]

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43 Cases M.6059 – *Norbert Dentressangle/Laxey Logistics*, recital 18, M.1794 – *Deutsche Post/Air Express International*, recitals 8-12.

44 In the Commission's practice, the further segmentation of land freight forwarding has been left open, with the exception of the freight forwarding of certain very specific products. For example, in COMP/M.5579 *TLP/Ermewa*, recital 51, the Commission defined a specific market for freight forwarding of cereals.

45 Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 26; 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.

46 Form CO, paragraphs 629 and following.

47 Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 32; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 48-49; M.3829 – *Maersk/PONL*, recital 24.

48 Case M.3829 – *Maersk/PONL*, recital 24.

4.4.4.3.Conclusion

(44) However, it is not necessary to conclude on a precise definition of the relevant product or geographic markets as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible definition of the markets for harbour towage services.

4.4.5. Container manufacturing

(45) Containers constitute an input product for container liner shipping companies. The market for container manufacturing is therefore an upstream market to container liner shipping.

4.4.5.1.Relevant product market

(46) In its prior decisional practice, the Commission ultimately left open whether narrower sub markets regarding the type of container should be defined (i.e. dry freight standard, dry freight special, reefers and tanks).[50] The Parties argue that it would be appropriate to define the container market as comprising all types of containers.[51]

4.4.5.2.Relevant geographic market

(47) In its prior decisional practice[52], the Commission defined the geographic market for container manufacturing as global. The Parties concur with this geographic market definition.[53] In absence of any view to the contrary, the Commission considers that there is no reason to deviate from its prior decisional practice in the case at hand.

4.4.5.3.Conclusion

(48) However, it is not necessary to conclude on a precise definition of the relevant product or geographic market for container manufacturing, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible definition of the markets for container manufacturing.

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49 Form CO, paragraphs 652 and following.

50 M.1020 – *GE Capital/Sea Containers*, recital 15.

51 Form CO, paragraph 676.

52 Case M.1020 – *GE Capital/Sea Containers*, recital 16.

53 Form CO, paragraph 677.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal overlaps - Deep-sea container liner shipping services

5.1.1. Introduction

(49) Despite a recent consolidation wave[54] the container liner shipping industry is still rather fragmented. Even the largest carriers such as Maersk, MSC, CMA CGM, COSCO and Hapag-Lloyd[55] individually do not have more than around 15% of world's total fleet capacity, and less than 60% combined.[56] Market shares, however, may be substantially higher depending on the trade.

(50) The customers of deep-sea container liner shipping companies can be divided into two major groups: freight forwarders and direct customers. Freight forwarders (e.g., Kühne & Nagel) organise the transportation of goods on behalf of customers according to their needs as intermediaries or freight 'brokers'. In order to provide these services, freight forwarders purchase deep-sea container liner shipping services (usually port-to-port service, including feeder services where applicable), and inland transportation. Direct customers are typically large manufacturers or distributors of products which in whole or in part require overseas transport (e.g. Ikea or Volkswagen).[57]

5.1.2. Forms of cooperation

(51) Shipping companies provide their services either: (i) individually (i.e. via independent services), (ii) through vessel share agreements ("VSA") or alliances (jointly referred to as "consortia" or iii) by means of slot charter agreements.[58]

(52) In the case of VSAs, all parties provide some vessels for operating a joint service on an individual trade and in exchange receive a number of slots (allocation) across all vessels in the joint service based on the total vessel capacity that they have each put in. The carriers are not compensated if the slots are not used.[59] Consortium members therefore have a strong incentive to offer their slots at a competitive price to their individual customers in order to make use of their slots as much as possible. The costs for the operation of the vessels are borne by the respective vessel provider. There is no sharing of individual, actual costs or discussions of actual costs between consortium members either. Since every party provides vessel capacity the sailing timetable is decided on jointly. Port terminals

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54 In particular when considering the acquisition of UASC by Hapag-Lloyd and the recent announced joint venture between the three Japanese lines, NYK Line, MOL and K line.

55 For the purpose of this decision, United Arab Shipping Company is considered as part of Hapag-Lloyd (cfr. M.8120 – *Hapag-Lloyd/UASC*).

56 Post-Transaction, Maersk's share of total fleet capacity will increase to 19%.

57 Form CO, page 38.

58 Form CO, pages 69-70.

59 This is not different to the situation in which the respective consortium member operates individually outside of the consortium. However, capacity may be adjusted depending on fluctuations in supply and demand.

are also selected jointly, however, each consortium member typically has separate contracts with the port terminal operators. Apart from these activities, there is no cooperation between the parties. In particular, the majority of VSAs explicitly stipulate that there is no price coordination, no joint marketing, no revenue sharing and typically no joint purchasing.

(53) Consortia cover multiple trades rather than one trade and comprise a matrix of VSAs.

(54) Slot charter agreements are a common means in container liner shipping to offer services to customers on a specific trade without deploying ships or where additional space or port-pairs are required by a carrier. The charterer 'rents' a pre-determined number of container slots on a vessel of a different company in exchange for cash (regular slot charter) or slots on its own ships (slot-exchange) with no other form of cooperation between the parties. In particular, there is no joint schedule, joint port terminal services, cost sharing, joint marketing or joint purchasing. Thus, slot charter agreements do not constitute cooperation agreements but agreements for the purchase or exchange of slots.

(55) Although the cooperation of consortium 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 Commission's Block Exemption Regulation ("BER")[60], where the market share of a consortium does not exceed 30% on a given trade[61] 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.[62]

5.1.3. Assessment framework

(56) 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.

(57) According to the Parties, consortium members exercise significant competitive constraints on one another – contrary to the Commission's views in previous cases. As a result, competition relating to container liner shipping services must

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60 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.

61 Calculated on the basis of the method provided in the BER, see section 5.1.4.

62 Articles 5 and 6 of the BER.

be viewed in this context and a consortia market share calculation is therefore not warranted.[63]

(58) In its previous decisional practice, 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 consortia concerning the characteristics of the service provided, in particular its level of capacity.[64]

(59) The results of the market investigation confirm the Commission's past findings. While the majority of respondents consider that the links created by the Transaction would not necessarily lead to exchange of sensitive information between competing container shipping companies (for example, if the combined entity is active on competing consortia),[65] they emphasized that such links may increase the Parties' ability and incentive to control important parameters of competition such as capacity, prices, frequencies, schedule of services, ports of call, etc.[66]

(60) In line with the Commission's previous decisional practice, the competitive assessment in this Decision will therefore 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.[67] It will also take into account the aggregate shares of the Parties' consortia. In so doing, the Commission does not imply that other consortia members are part of the Parties' undertakings but merely takes into account the fact that the Parties' consortium partners exert only a limited competitive constraint on them.[68]

(61) The part of the market that will remain completely independent from the merged entity and its consortia on each market (referred to as 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 operating on each trade post-Transaction will be taken into account in

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63 The Parties submit that while shipping companies engage in operational agreements, each carrier remains independent towards the customer and offers independent pricing, terms, customer service, marketing, etc. Customers often invite different shipping companies belonging to the same consortium to bid for volumes. Pricing is usually key and constitutes the only relevant parameter for the customer's decision of who will be selected as a carrier as consortium members remain entirely free in their price settings – Form CO, page 69.

64 Cases M.7908 – *CMA CGM/NOL*, recitals 28-29; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 68–75, Cases M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 41.

65 Q1 – Questionnaire to competitors, question 35.2 and 35.2.1; Q2 – Questionnaire to customers, question 29.2 and 29.2.1.

66 Q1 – Questionnaire to competitors, question 35.1; Q2 – Questionnaire to customers, question 29.1.

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

68 For the methodology for calculating consortia market shares and the free market in 2015 and 2017, see section 4.3.5.

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 over which the Parties may have influence and in the absence of any other countervailing factors, the Commission will consider this a strong indication that the Transaction raises serious doubts as to its compatibility with the internal market.

5.1.4. Methodology for calculating market shares

(62) The methodology that the Parties applied for the calculation of market shares follows the approach taken in the three most recent Commission's decisions in the container liner shipping sector.[69] First, the volume and market share data are based on the data obtained from CTS and the Parties' best estimates. Second, the Parties' consortia combined market shares are calculated by summing up the total volumes of all the shipping companies participating in any of the Parties' consortia.[70] 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 not members of the Parties' consortia.

(63) The Parties' projected 2017 consortia combined market shares and the projected 2017 free market have been calculated based on container liner shipping companies' 2015 market share data and the expected market structure in 2017.[71] More concretely, the Parties assumed that the current consortia will undergo the changes described in Table 1 below.

(64) For the reefer container market, in line with the Commission's previous decisional practice[72] market shares are only taken into account on those legs of trade where the share of transport in reefer containers in relation to all containerised cargo is 10% or more.

5.1.5. The 2017 consortia restructuring

(65) According to the Horizontal Merger Guidelines[73], 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.[74]

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69 Cases M.7908 – *CMA CGM/NOL*, recitals 30-31; and M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, recitals 57-62, M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recitals 52-54.

70 This approach reduces double-counting compared to the method provided in the BER.

71 Form CO, paragraphs 235-236.

72 Cases M.7908 – *CMA CGM/NOL*, recitals 9; and M.7268 – M.8120 - *Hapag-Lloyd/United Arab Shipping Company*, recital 11.

73 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.

74 Horizontal Merger Guidelines, paragraph 9.

(66) The Parties submit that the consortia landscape will undergo significant and foreseeable changes in 2017, which the Commission should take into consideration in its analysis of the Transaction.

(67) The Parties are members of trade-specific VSAs. HSDG is a member of several VSAs on the North-South trades where Maersk Line is active as an independent carrier. Maersk Line is a member of the 2M alliance with MSC, which is limited to East-West trades.[75]

(68) Other alliances on the East-West trades are Ocean Three, the G6 Alliance and CKYHE (which will be changed into The Alliance, made up of Hapag-Lloyd with UASC, K-Line, MOL, NYK and Yang Ming, and Ocean Alliance, comprising CMA CGM, COSCO, Evergreen and OOCL, in April 2017).[76]

(69) The Commission considers that the effects of the Transaction should be evaluated in the light of the planned changes in consortia in 2017. Therefore, the competitive assessment in this Decision will be carried out taking account of the 2017 changes.

5.1.6. Overview of the Parties' consortia membership

(70) Table 1 lists the Parties' consortia on the affected trades, as well as projections of their status in 2017 (and the intended post-Transaction removal of HSDG from various consortia – see also recital 63 above), to the best of the Parties' knowledge.

Table 1: Parties' consortia on the affected trades, as well as projections of their status in 2017

Trade	Consortium (VSA or Alliance)	Members	Status in 2017
NE – NAM	EUNA	CMA CGM, HSDG, UASC	[…] has served a notice for the termination of the EUNA consortium effective end of March 2017.
	2M	Maersk Line, MSC	No changes forecasted.
	Canada Express	CMA CGM, Maersk Line	No changes forecasted.
NE – CAM/CAR	Eurosal 1 / SAWC[77]	HSDG, Hapag-Lloyd, CMA CGM	HSDG will be withdrawn from the Eurosal 1 / SAWC VSA post-Transaction. It is assumed that Hapag-Lloyd and CMA CGM will resume the Eurosal 1 / SAWC VSA without HSDG.
NE – WCSA	Eurosal 2 / SAWC	HSDG, Hapag-Lloyd, CMA CGM	HSDG will be withdrawn from the Eurosal 2 / SAWC VSA post-Transaction. It is assumed that Hapag-Lloyd and CMA CGM will resume the Eurosal 2 / SAWC VSA without HSDG.

75 Form CO, page 66-67.

76 Form CO, page 67.

77 As of February 2017, Eurosal 1 and 2 (currently: two loops) will be combined into a single loop consortium ("Eurosal") without any significant changes to the current arrangement.

Trade	Consortium (VSA or Alliance)	Members	Status in 2017
NE – ECSA	N/A		
NE – FEA	2M	Maersk Line, MSC	No changes forecasted.
NE – ISC	EPIC 2	HSDG, Hapag-Lloyd, CMA CGM	HSDG will be withdrawn from the EPIC 2 VSA post-Transaction. It is assumed that Hapag-Lloyd and CMA CGM will resume the EPIC 2 VSA without HSDG.
NE – MEA	EPIC 2	HSDG, Hapag-Lloyd, CMA CGM	HSDG will be withdrawn from the EPIC 2 VSA post-Transaction. It is assumed that Hapag-Lloyd and CMA CGM will resume the EPIC 2 VSA without HSDG.
NE – AUNZ	N/A		
MED – NAM	MPS / MCPS	Hapag-Lloyd, HSDG	No changes forecasted.
	2M	Maersk Line, MSC	No changes forecasted.
MED – CAM/CAR	MPS / MCPS	Hapag-Lloyd, HSDG	No changes forecasted.
MED – WCSA	CCWM / MEDANDES	Hapag-Lloyd, HSDG	HSDG will be withdrawn from the CCWM / MEDANDES VSA post-Transaction.
MED – ECSA	MESA	MSC, HSDG	No changes forecasted.
MED – FEA	2M	Maersk Line, MSC	No changes forecasted.
MED – ISC	N/A		
MED – MEA	N/A		
MED – AUNZ	N/A		
MED – SAF	N/A		

***Source**: Form CO*

5.1.7. Overview of affected legs of trade

(71) The Parties 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.

(72) Based on Parties' individual markets shares, the following 14 deep-sea container liner shipping trades comprising 28 affected legs have been identified:

- Northern Europe – Central America/Caribbean ("NE-CAM/CAR")
- Northern Europe – West Coast South America ("NE-WCSA")
- Northern Europe – East Coast South America ("NE-ECSA")

- Northern Europe – Far East ("NE-FEA")
- Northern Europe – Indian Subcontinent ("NE-ISC")
- Northern Europe – Middle East ("NE-MEA")
- Northern Europe – Australia/New Zealand ("NE-AUNZ")
- Mediterranean – Central America/Caribbean ("MED-CAM/CAR")
- Mediterranean – West Coast South America ("MED-WCSA")
- Mediterranean – East Coast South America ("MED-ECSA")
- Mediterranean – Indian Subcontinent ("MED-ISC")
- Mediterranean – Middle East ("MED-MEA")
- Mediterranean – Australia/New Zealand ("MED-AUNZ")
- Mediterranean – South Africa ("MED-SAF")

(73) When attributing the Parties' consortia market shares to them, the list of markets, in which the market share of the Parties and their consortia exceed 20% also include the following additional three trades comprising six affected legs:

- Northern Europe – North America ("NE-NAM")
- Mediterranean – North America ("MED-NAM")
- Mediterranean – Far East ("MED-FEA")

(74) The Parties' individual (i.e. without taking into account the consortia) combined market share, reach at most [60-70]% in the northbound leg of the MED-OCE trade; however, in this specific plausible market the increment brought about by the Transaction is only [0-5]%. When the market shares of consortia are also taken into account, the highest combined market shares and the increment increase are above [70-80]% and [20-30]% respectively.

(75) The competitive situation and the market structure pre- and post-Transaction for the affected legs of trades referred to in recitals 72 and 73 are described and assessed in the following sections of the Decision. In Sections 5.1.7.1., 5.1.7.2, 5.1.7.3., 5.1.7.4, 5.1.7.5, the competitive assessment of the following legs of trades is presented: (i) NE - CAM/CAR northbound and southbound, (ii) NE - WCSA northbound and southbound, (iii) NE - MEA eastbound and westbound, (iv) MED - WCSA northbound and southbound, and (v) MED - ECSA, and Section 5.1.7.6. contains the competitive assessment of all other relevant legs of trade including (i) MED - CAM/CAR, (ii) MED - FEA, (iii) MED - NAM, (iv) MED - ISC, (v) NE - FEA, (vi) NE - ISC, (vii) NE - NAM, (viii) NE - AUNZ, (ix) NE - ECSA, (x) MED - AUNZ, (xi) MED – SAF and (xii) MED – MEA.

5.1.7.1. Northern Europe – Central America/Caribbean northbound/southbound legs of trade

5.1.7.1.1. Market structure

(76) On the northbound and southbound legs of the NE – CAM/CAR trade a total of approximately [0-1] million TEUs[78] was transported in 2015 ([0-1] million TEUs northbound of which [70-80]% reefer containers and [0-1] million TEUs southbound of which [10-20]% reefer containers). The market shares of the Parties, the consortia they belong to and the free market on the NE – CAM/CAR trade are summarized in Table 2.

Table 2: Market shares (in %) on the NE-CAM/CAR trade

NE-CAM/CAR	Leg of trade	Maersk	HSDG	Parties combined	Parties' consortia	Free market
All containers	Northbound	[20-30]	[20-30]	[50-60]	[80-90]	[10-20]
	Southbound	[10-20]	[10-20]	[30-40]	[70-80]	[20-30]
Dry containers	Northbound	[10-20]	[20-30]	[30-40]	[80-90]	[10-20]
	Southbound	[10-20]	[10-20]	[30-40]	[70-80]	[20-30]
Reefer containers and reefer vessels	Northbound	[20-30]	[20-30]	[40-50]	[60-70]	[30-40]
	Southbound	[20-30]	[5-10]	[20-30]	[70-80]	[20-30]
Reefer containers only	Northbound	[30-40]	[20-30]	[60-70]	[80-90]	[10-20]
	Southbound	[20-30]	[5-10]	[30-40]	[70-80]	[20-30]

Source: Form CO

(77) On each leg of the NE - CAM/CAR trade, the Parties' combined market share ranges from [20-30]% (in reefer containers and reefer vessels southbound) to [60-70]% (in reefer containers only northbound), in any plausible market the increments brought about by the Transaction range between [5-10]% and [20-30]%. The Parties' main competitors in container liner shipping are CMA CGM ([20-30]% northbound and [20-30]% southbound in all containers), Hapag-Lloyd ([10-20]% northbound and [20-30]% southbound in all containers), and MSC ([5-10]% northbound and [10-20]% southbound in all containers). There are also

[78] Defined as Twenty-foot Equivalent Unit, the standard unit of measurement for containers.

reefer vessels active on the trade transporting approximately [20-30]% of the entire reefer volumes northbound and [5-10]% southbound.

(78) If the Parties' participations in consortia in the NE – CAM/CAR trade are taken into account, the aggregate market share of the Parties and their consortia increases up to [80-90]% in the northbound legs for reefer containers and [80-90]% in the northbound leg for all containers.

5.1.7.1.2. Parties' arguments

(79) According to the Parties, on the NE – CAM/CAR trade, the merger entity would after the Transaction continue to face fierce competition from the other carriers such as CMA CGM, Hapag-Lloyd and MSC. Moreover, the trade does not present high barriers to entry and any carriers not active on this trade can easily start serving customers also on the NE – CAM/CAR trade.

5.1.7.1.3. Commission's assessment

(80) On the NE – CAM/CAR trade, while Maersk is not a member of any consortium, HSDG is a member of Eurosal 1/SAWC together with CMA CGM and Hapag-Lloyd.

(81) Pre-Transaction, there are three independent poles of supply customers could choose, namely the Eurosal 1/SAWC consortium of which HSDG is a member, and Maersk and MSC, both operating outside any consortium. After the Transaction, the number of independent suppliers would be reduced to two, as a link between Maersk and the Eurosal 1/SAWC consortium would be created, and customers on the trade would have only two independent poles of supply: the merged entity and Eurosal 1/SAWC on the one hand and MSC on the other hand.

(82) As explained in recitals 52, 58 and 59, members of consortia 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 that are unconnected to the Parties and their consortia. On the relevant markets with the highest market shares of the NE – CAM/CAR trade, the northbound legs for reefer containers only and for all containers, the percentage of the free market would after the Transaction correspond to approximately only [10-20]% and [10-20]% respectively. MSC accounts for approximately [60-70]% and [50-60]% respectively of that free market and would remain the main independent player post-Transaction.

(83) As a result, by creating a link between the previously independent Maersk and HSDG's consortium on the NE – CAM/CAR trade, the Transaction would likely reduce competition on this 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 on a higher share of the market than each of the Parties currently has. Given that these important parameters will be decided jointly by all members of the consortium, the change brought about by the Transaction would impact the level of competition on all plausible markets in respect of the two legs of the NE – CAM/CAR trade.

(84) Respondents to the market investigation questionnaires did not express significant concerns in relation to this trade.[79] However, the majority of the respondents to the market investigation questionnaires consider Maersk the second closest competitor to HSDG and vice versa on the NE–CAM/CAR trade.[80]

(85) The majority of respondents to the market investigation questionnaires also confirmed that links between the Parties and consortia which were previously independent would increase the ability and the incentive of the merged entity to control important parameters of competition (e.g. capacity, prices, frequencies, schedule of the services, ports of call, etc.).[81]

(86) Finally, concerning barriers to entry, the majority of respondents to the market investigation questionnaires submitted that customers could not entice a container shipping company to enter/expand services on a certain leg of trade.[82] Similarly, the majority of competitors indicated that the Transaction would increase barriers to entry.[83]

(87) In view of the above and in particular of the relatively low percentage of the free market in 2017 and the reduction of independent poles of supply for customers from three to two, the Commission considers that the competitive pressure exerted on the merged entity on the NE – CAM/CAR northbound and southbound legs of trade would likely decrease after the Transaction and not be sufficient to effectively constrain the merged entity.

5.1.7.1.4 Conclusion

(88) 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 respect of the NE – CAM/CAR northbound and southbound legs of trade. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

5.1.7.2. Northern Europe – West Coast South America northbound/southbound legs of trade

5.1.7.2.1 Market structure

(89) On the northbound and southbound legs of the NE – WCSA trade a total of approximately [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [60-70]% reefer containers and [0-1] million TEUs southbound of which [5-10]% reefer containers). The market shares of the Parties,

79 Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

80 Q1 – Questionnaire to competitors, question 22.8; Q2 – Questionnaire to customers, question 22.8.

81 Q1 – Questionnaire to competitors, question 35.1; Q2 – Questionnaire to customers, question 29.1.

82 Q1 – Questionnaire to competitors, question 27; Q2 – Questionnaire to customers, question 27.

83 Q1 – Questionnaire to competitors, question 30.

the consortia they belong to and the free market on the NE – WCSA trade are summarized in Table 3.

Table 3: Market shares (in %) on the NE-WCSA trade

NE-WCSA	Leg of trade	Maersk	HSDG	Parties combined	Parties' consortia	Free market
All containers	Northbound	[20-30]	[10-20]	[30-40]	[60-70]	[30-40]
	Southbound	[10-20]	[20-30]	[30-40]	[60-70]	[30-40]
Dry containers	Northbound	[10-20]	[10-20]	[20-30]	[70-80]	[20-30]
	Southbound	[10-20]	[20-30]	[30-40]	[60-70]	[30-40]
Reefer containers and reefer vessels	Northbound	[20-30]	[10-20]	[30-40]	[40-50]	[50-60]
	Southbound	[10-20]	[10-20]	[20-30]	[60-70]	[30-40]
Reefer containers	Northbound	[20-30]	[10-20]	[40-50]	[60-70]	[30-40]
	Southbound	[10-20]	[10-20]	[30-40]	[60-70]	[30-40]

Source: Form CO

(90) On each leg of the NE – WCSA trade, the Parties' combined market share ranges from [20-30]% (in reefer containers and reefer vessels southbound) to [40-50]% (in reefer containers only northbound), in any plausible market the increment brought about by the Transaction ranges between [10-20]% and [20-30]%. The Parties' main competitors in container liner shipping are MSC ([20-30]% northbound and [20-30]% southbound in all containers), Hapag-Lloyd ([20-30]% northbound and [20-30]% southbound in all containers), and CMA CGM ([5-10]% northbound and [10-20]% southbound in all containers). There are also reefer vessels active on the trade transporting approximately [20-30]% of the entire reefer volumes northbound and [5-10]% southbound.

(91) If the Parties' participations in consortia in the NE – WCSA trade are taken into account, the aggregate market share of the Parties and all their consortia increases up to [70-80]% in the northbound legs for dry containers and is well above 60% in a number of plausible markets on both legs of trade with the exception of reefer containers and vessels where the aggregate market share of the Parties and all their consortia would reach approximately [50-60]% .

5.1.7.2.2. Parties' arguments

(92) According to the Parties, on the NE – WCSA trade, the merged entity would continue to face fierce competition from the other carriers such as MSC, Hapag-Lloyd and CMA CGM. Moreover, the trade does not present high barriers to entry and the idle capacity available could be easily deployed in this trade and defeats any attempt from the Parties to raise prices.

(93) In addition, the Parties claim that Maersk and HSDG are not close competitors on this route since Maersk focuses mainly on providing services from Ecuador, Colombia and Costa Rica with a focus on banana customers and it does not currently offer a direct service from Peru or Chile, while HSDG has a direct service to Peru and Chile, which largely serves producers of cherries, apples, pears, grapes and other fresh fruits.

5.1.7.2.3. Commission's assessment

(94) On the NE – WCSA trade, while Maersk is not a member of any consortium, HSDG is a member of Eurosal 2/SAWC together with CMA CGM and Hapag-Lloyd.

(95) Pre-transaction, customers can choose between three independent poles of supply, namely the Eurosal 2/SAWC consortium, of which HSDG is a member, Maersk and MSC, both operating outside any consortium. After the Transaction, the number of independent suppliers would be reduced to two, as a link between Maersk and the Eurosal 2/SAWC consortium would be created, and customers on the trade would have only 2 independent poles of supply: the merged entity and Eurosal 2/SAWC on the one hand and MSC on the other hand.

(96) As explained in recitals 52, 58, and 59, members of consortia 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 that are unconnected to the Parties and their consortia. On the most problematic plausible markets of the NE – WCSA trade, that are the northbound legs for dry containers and the southbound legs for all containers, the percentage of the free market would correspond post-Transaction to approximately [20-30]% and [30-40]% respectively. MSC accounts for approximately [80-90]% and [80-90]% respectively of that free market and would remain the main independent player post-Transaction.

(97) As a result, by creating a link between the previously independent Maersk and HSDG's consortium on the NE – WCSA trade, the Transaction would likely reduce competition on this 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 on a higher share of the market than each of the Parties currently has. Given that these important parameters will be decided jointly by all members of the consortium, the change brought about by the Transaction would impact the level of competition on all the plausible markets of the two legs of the NE – WCSA trade.

(98) Respondents to the market investigation questionnaires did not express significant concerns in relation to this trade.[84] However, the majority of respondents to the market investigation questionnaires consider Maersk the second closest competitor to HSDG and vice versa on the NE–WCSA trade.

[84] Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

(99) The majority of respondents to the market investigation questionnaires also confirmed that the links between the Parties and consortia which were previously independent would increase the ability and the incentive of the merged entity to control important parameters of competition (e.g. capacity, prices, frequencies, schedule of the services, ports of call, etc.).[85]

(100) Finally, concerning barriers to entry, the majority of respondents to the market investigation questionnaires submitted that customers could not entice a container shipping company to enter/expand services on a certain leg of trade.[86] Similarly, the majority of competitors indicated that the Transaction would increase barriers to entry.[87]

(101) In view of the above and in particular of the relatively low percentage of the free market in 2017 and the reduction of independent poles of supply for customers, the Commission considers that competitive pressure exerted on the merged entity would likely decrease as a result of the Transaction and not be sufficient to effectively constrain the merged entity.

5.1.7.2.4 Conclusion

(102) 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 respect of the NE – WCSA northbound and southbound legs of trade. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

5.1.7.3. Northern Europe – Middle East eastbound/westbound legs of trade

5.1.7.3.1. Market structure

(103) On the eastbound and westbound legs of the NE – MEA trade, a total of approximately [1-2] million TEUs was transported in 2015 ([1-2] million TEUs eastbound of which [10-20]% reefer containers and [0-1] million TEUs westbound of which [0-5]% reefer containers). The market shares of the Parties, the consortia they belong to and of the free market on the NE–MEA trade are summarized in the Table 4.

85 Q1 – Questionnaire to competitors, question 35.1; Q2 – Questionnaire to customers, question 29.1..

86 Q1 – Questionnaire to competitors, question 27; Q2 – Questionnaire to customers, question 27.

87 Q1 – Questionnaire to competitors, question 30.

Table 4: Market shares (in %) on the NE-MEA trade

NE-MEA	Leg of trade	Maersk	HSDG	Parties combined	Parties' consortia	Free market
All containers	Eastbound	[20-30]	[0-5]	[20-30]	[50-60]	[40-50]
	Westbound	[30-40]	[0-5]	[40-50]	[60-70]	[30-40]
Dry containers	Eastbound	[20-30]	[0-5]	[20-30]	[50-60]	[40-50]
	Westbound	[30-40]	[0-5]	[40-50]	[60-70]	[30-40]
Reefer containers and reefer vessels	Eastbound	[10-20]	[0-5]	[10-20]	[40-50]	[50-60]
	Westbound	[30-40]	[5-10]	[30-40]	[60-70]	[30-40]
Reefer containers	Eastbound	[10-20]	[0-5]	[10-20]	[40-50]	[50-60]
	Westbound	[30-40]	[5-10]	[30-40]	[60-70]	[30-40]

Source: Form CO

(104) On each leg of the NE - MEA trade, the Parties' combined market share ranges from [10-20]% (in reefer containers and reefer vessels and reefer containers only) with an increment of less than [0-5]% brought about by the Transaction to [40-50]% (in all containers westbound and dry containers westbound) with an increment brought about by the Transaction of less than [0-5]%. The Parties' main competitors on this trade are MSC ([10-20]% westbound and [10-20]% eastbound), CMA CGM ([10-20]% westbound and [20-30]% eastbound), UASC ([10-20]% westbound and [10-20]% eastbound), and Hapag-Lloyd ([5-10]% westbound and [5-10]% eastbound). There are no reefer vessels active on this trade.

(105) If the Parties' participations in consortia in the NE – MEA trade are taken into account, the aggregate market share of the Parties and all their consortia increases to approximately [60-70]% in the westbound legs for all containers and dry containers.

5.1.7.3.2. Parties' arguments

(106) According to the Parties, on the NE – MEA trade, the merged entity would continue to face fierce competition from the other strong carriers such as CMA CGM, MSC and UASC. In addition, there are several other carriers operating on this trade and also a number of consortia, such as The Alliance and Ocean Alliance. Moreover, the NE – MEA trade would not present high barriers to entry and any carriers not active on this trade could easily start serving customers on the NE – MEA trade in case of an increase in price or a decrease in the quality offered by existing carriers.

5.1.7.3.3. Commission's assessment

(107) On the NE – MEA trade, while Maersk is not a member of any consortium, HSDG is a member of EPIC 2 together with CMA CGM and Hapag-Lloyd. The increment brought about by the Transaction including links with that consortium would amount to at most [20-30]% on any plausible market. The Transaction would lead to the establishment of links between a consortium and the previously independent Maersk.

(108) As explained in recitals 52, 58 and 59, members of consortia 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 that are unconnected to the Parties and their consortia. On the markets of the NE – MEA trade where the Parties would have the highest combined market shares, that is, the westbound legs for all containers and for dry containers, the percentage of the free market would currently correspond to approximately only [30-40]% (increasing to approximately [40-50]% on the eastbound leg). MSC accounts for approximately [10-20]% of that free market and would remain the main independent player post-Transaction.

(109) As a result, by creating a link between the previously independent Maersk and HSDG's consortia on the NE – MEA trade through the participation of the merged entity, the Transaction would likely reduce the intensity of competition on this 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 and competitors than each of the Parties currently has. Given that these important parameters will be decided jointly by all members of the consortium, the change brought about by the Transaction would have a negative impact on the level of competition on the two legs of the NE – MEA trade.

(110) Respondents to the market investigation questionnaires did not express significant concerns in relation to this trade.[88] However, while the majority of customers consider Maersk the second closest competitor to HSDG on the NE–MEA by a narrow margin to the competitor considered closest, CMA CGM/ALP, the majority of competitors consider Maersk as the closest competitor of HSDG.[89]

(111) The majority of respondents also confirmed that the links created by the Transaction could increase the ability and incentive of the merged entity to control important parameters of competition (e.g. capacity, frequencies, schedule of the services, etc.).[90]

88 Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

89 Q1 – Questionnaire to competitors, question 35; Q2 – Questionnaire to customers, question 29.

90 Q2 – Questionnaire to customers, question 27.7.

(112) Finally, concerning barriers to entry, the majority of respondents to the market investigation questionnaires submitted that customers could not entice a container shipping company to enter/expand services on a certain leg of trade. Similarly, the majority of competitors indicated that the Transaction would increase barriers to entry.[91]

(113) In view of the above and in particular of the relatively low percentage of the free market in 2017, the Commission considers that the competitive pressure exerted on the merged entity on both legs of the NE – MEA trade would likely decrease as a result of the Transaction and not be sufficient to effectively constrain the merged entity.

5.1.7.3.4. Conclusion

(114) 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 NE – MEA westbound and eastbound legs of trade. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

5.1.7.4. Mediterranean - West Coast South America northbound/southbound legs of the trade

5.1.7.4.1. Market structure

(115) On the northbound and southbound legs of the MED – WCSA trade a total of approximately [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [70-80]% reefer containers and [0-1] million TEUs southbound of which [0-5]% reefer containers). The market shares of the Parties, the consortia they belong to and the free market on the MED–WCSA trade are summarized in the Table 5.

[91] Q1 – Questionnaire to competitors, question 27 and 30; Q2 – Questionnaire to customers, question 27.

Table 5: Market shares (in %) on the MED-WCSA trade

MED/WCSA	Leg of trade	Maersk	HSDG	Parties combined	Parties' consortia	Free market
All containers	Northbound	[30-40]	[5-10]	[30-40]	[40-50]	[50-60]
	Southbound	[10-20]	[10-20]	[30-40]	[50-60]	[40-50]
Dry containers	Northbound	[10-20]	[10-20]	[20-30]	[30-40]	[60-70]
	Southbound	[10-20]	[10-20]	[30-40]	[50-60]	[40-50]
Reefer containers and reefer vessels	Northbound	[30-40]	[0-5]	[30-40]	[30-40]	[60-70]
	Southbound	[10-20]	[10-20]	[30-40]	[40-50]	[50-60]
Reefer containers	Northbound	[40-50]	[0-5]	[40-50]	[40-50]	[50-60]
	Southbound	[10-20]	[10-20]	[30-40]	[40-50]	[50-60]

Source: Form CO

(116) On each leg of the MED – WCSA trade, the Parties' combined market share ranges from [20-30]% (in dry containers northbound) with an increment of [10-20]% brought about by the Transaction to [40-50]% (in reefer containers northbound) with an increment brought about by the Transaction of less than [0-5]%. The Parties' main competitors are MSC ([40-50]% northbound and [30-40]% southbound), Hapag-Lloyd ([5-10]% northbound and [20-30]% southbound), and CMA CGL/APL ([0-5]% northbound and [5-10]% southbound). There are also reefer vessels active on the trade transporting approximately [20-30]% of the entire reefer volumes northbound and [5-10]% southbound.

(117) If the Parties' participations in consortia that are active on the MED – WCSA trade are taken into account, the aggregate market share of the Parties and all their consortia increases to [50-60]% in the southbound leg for all containers and [50-60]% for dry containers.

5.1.7.4.2. Parties' arguments

(118) According to the Parties, on the MED – WCSA, the merged entity would continue to face fierce competition form the other carriers such as MSC and Hapag-Lloyd and CMA CGL/APL, which is also expected to exert competitive constraints, especially in light of the ease of expansion which characterises the shipping industry[92] Moreover, carriers active on the MED – CAM/CAR trades would also be able to exercise competitive constraint post-Transaction as

92 Form CO, pages 103-104.

transhipment on this trade via Central America/Caribbean is a feasible alternative to transporting cargo to the South America West Coast trade[93]

5.1.7.4.3. Commission's assessment

(119) On the MED – WCSA, while Maersk is not a member of any consortium, HSDG is a member to the CCWM/MedAndes consortium with Hapag-Lloyd. The Transaction would thus lead to the establishment of links between a consortium and the previously independent Maersk.

(120) As explained in recitals 52, 58, 59, members of consortia 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 that are unconnected to the Parties and their consortia. On the potential markets of the MED – WCSA with the highest combined market shares, that is the southbound legs for all containers and for dry containers, the percentage of the free market would currently be slightly below [40-50]%. MSC would remain the main independent player post-Transaction.

(121) As a result, by creating a link between the previously independent Maersk and HSDG's consortia on the MED – WCSA trade through the participation of the merged entity, the Transaction would likely reduce the intensity of competition on this 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 and competitors than each of the Parties currently has. Given that these important parameters will be decided jointly by all members of the consortium, the change brought about by the Transaction would have a negative impact the level of competition on both legs of the MED – WCSA trade.

(122) Respondents to the market investigation questionnaires did not express significant concerns in relation to this trade.[94] However, the majority of customers and competitors consider Maersk the second closest competitor to HSDG on the MED-WCSA by a narrow margin to the competitor considered closest, CMA CGM/ALP.[95]

(123) In addition, the majority of customers also consider that the links the created by the Transaction could increase the ability and incentive of the merged entity to control important parameters of competition (e.g. capacity, frequencies, schedule of the services etc.[96]

93 Form CO, page 104.

94 Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

95 Q1 – Questionnaire to competitors, question 35; Q2 – Questionnaire to customers, question 29.

96 Q2 – Questionnaire to customers, question 27.7.

(124) Finally, concerning barriers to entry, the majority of respondents to the market investigation questionnaires submitted that customers could not entice a container shipping company to enter/expand services on a certain leg of trade. In addition, the majority of competitors indicated that the Transaction would increase barriers to entry.[97]

(125) In view of the above and in particular on the relatively low percentage of the free market in 2017, the Commission considers that the competitive pressure exerted on the merged entity on both legs of the MED – WCSA trade would likely decrease after the Transaction and not be sufficient to effectively constrain the merged entity.

5.1.7.4.4. Conclusion

(126) 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 MED – WCSA northbound and southbound legs of trade. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

5.1.7.5. Mediterranean – East Coast South America northbound/southbound legs of trade

5.1.7.5.1. Market structure

(127) On the northbound and southbound legs of the MED – ECSA trade, a total of approximately [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [30-40]% reefer containers and [0-1] million TEUs southbound of which [5-10]% reefer containers). The market shares of the Parties, the consortia they belong to and the free market on the MED–ECSA trade are summarized in Table 6.

[97] Q1 – Questionnaire to competitors, question 27; Q2 – Questionnaire to customers, question 27.

Table 6: Market shares (in %) on the MED-ECSA trade

MED-ECSA	Leg of trade	Maersk	HSDG	Parties combined	Parties' consortia 2017	Free market
All containers	Northbound	[10-20]	[10-20]	[30-40]	[70-80]	[20-30]
	Southbound	[20-30]	[10-20]	[30-40]	[60-70]	[30-40]
Dry containers	Northbound	[10-20]	[10-20]	[30-40]	[70-80]	[20-30]
	Southbound	[20-30]	[10-20]	[30-40]	[60-70]	[30-40]
Reefer containers and reefer vessels	Northbound	[20-30]	[10-20]	[30-40]	[60-70]	[30-40]
	Southbound	[20-30]	[10-20]	[30-40]	[70-80]	[20-30]
Reefer containers	Northbound	[20-30]	[10-20]	[40-50]	[70-80]	[20-30]
	Southbound	[20-30]	[10-20]	[40-50]	[70-80]	[20-30]

Source: Form CO

(128) On each leg of the MED – ECSA trade, the Parties' combined market share ranges from [30-40]% (in dry containers northbound) with an increment of [10-20]% brought about by Maersk to [40-50]% (in reefer containers northbound) with an increment brought about by the Transaction of [10-20]%. The Parties' main competitors are MSC ([30-40]% northbound and [20-30]% southbound), Hapag-Lloyd ([5-10]% northbound and [10-20]% southbound), CMA CGL/APL ([5-10]% northbound and [5-10]% southbound), and ZIM ([0-5]% northbound and [0-5]% southbound). There are also reefer vessels active on the trade transporting approximately [5-10]% of the entire reefer volumes northbound and [0-5]% southbound.

(129) If the Parties' participations in consortia in the MED – ECSA trade are taken into account, the aggregate market share of the Parties and their consortia increases to above [60-70]% on all plausible markets northbound and southbound reaching [70-80]% southbound for reefer containers.

5.1.7.5.2. Parties' arguments

(130) According to the Parties, on the MED – ECSA trade, the merged entity would after the Transaction continue to face fierce competition from other carriers such as MSC, Hapag-Lloyd, CMA CGM (including APL) and ZIM. Further, the fact that excess capacity is available at favourable charter rates for any carrier that is looking to expand or join a new trade, means that new players could easily enter this market. The merged entity would face competition also from providers of dry bulk transportation for agricultural products that are particularly active on the southbound leg of this trade. Finally, Maersk Line and HSDG only provide capacity on one sling (i.e. they each only have one dedicated service) while MSC provides capacity for two slings and is the largest operator on this trade.

(131) The Parties also submit that Maersk and HSDG are not close competitors on this trade. Maersk does not have a dedicated direct service with its own vessel. Instead, it offers slot chartering on MSC's stand-alone service "Bossa Nova" and the MESA consortium between MSC and HSDG as well as so-called sail-by services. Sail-by means the containers are put on a Maersk vessel coming from Northern Europe heading to ECSA in the outermost harbour of the Mediterranean, Algeciras, and vice versa. This means containers with a destination of all other MED harbours has to be on and offloaded for continuation which is less interesting for customers shipping fresh fruit or valuable goods such as cars, as the intermediate handling increases transit time and risk of delays. HSDG, on the other hand, is part of the MESA consortium which is a dedicated direct service calling on a significant number of MED ports.

5.1.7.5.3 Commission's assessment

(132) The combined market share of the Parties, without taking into account consortia, is around [40-50]%. However, the combined market share increases to very high levels if the MESA consortium HSDG is a member of, is taken into account.

(133) Taking into account the MESA consortium, the increment brought about by the Transaction would range from [20-30]% to [40-50]% on all plausible markets. The Transaction would thus lead to the establishment of links between a consortium and the previously independent Maersk sail-by service.

(134) As explained in recitals 52, 58 and 59, members of consortia 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 that are unconnected to the Parties and their consortia. On the potential markets of the MED – ECSA where the Parties' consortia have the highest combined market shares, that is the northbound leg for dry containers and the southbound legs for reefer containers, the percentage of the free market would currently correspond to below 30%. MSC would remain the main independent player post-Transaction.

(135) As a result, by creating a link between the previously independent Maersk and HSDG's consortium on the MED – ECSA trade through the participation of the merged entity, the Transaction would likely reduce the intensity of competition on this 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 have access to information on capacity of a broader range of consortia and competitors than each Party currently individually has. Given that these important parameters would be decided jointly by all members of the consortium, the change brought about by the Transaction would have a negative impact on the level of competition on the two legs of the MED – ECSA trade.

(136) Respondents to the market investigation questionnaires did not express significant concerns in relation to this trade.[98] However, concerning the closeness of

[98] Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

competition between the Parties, while for the majority of customers, Maersk is the second closest competitor to HSDG by a narrow margin to the competitor considered closest, CMA CGM, the majority of competitors consider Maersk as the closest competitor to HSDG on this trade.[99]

(137) In addition, the majority of customers also consider that the links created by the Transaction could increase the ability and incentive of the merged entity to control important parameters of competition (e.g. capacity, frequencies, schedule of the services, etc.).[100]

(138) Finally, concerning barriers to entry, the majority of respondents to the market investigation questionnaires submitted that customers could not entice a container shipping company to enter/expand services on a certain leg of trade. Similarly, the majority of competitors indicated that the Transaction would increase barriers to entry.[101]

(139) In view of the above and in particular of the low percentage of the free market in 2017, the Commission considers that the competitive pressure exerted on the merged entity would likely decrease on both legs of the MED – ECSA trade and not be sufficient to effectively constrain the merged entity.

5.1.7.5.4. Conclusion

(140) 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 respect of container liner shipping services in the MED – ECSA northbound and southbound legs of trade. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

5.1.7.6. Other legs of trade

(141) The market investigation results confirmed that the Transaction would not give rise to competition concerns on any of the affected legs of trade included in this section and assessed more in details in the following paragraphs. The majority of competitors and customers confirmed that there would remain a sufficient number of competing suppliers to prevent the merged entity from raising prices on these trades.[102]

(142) Several competitors responding to the Commission's market investigation questionnaires also indicated that there is spare capacity in the sector.[103] Therefore, should there be an increase in demand on a specific market and in

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99 Q1 – Questionnaire to competitors, question 23.1 and 23.2; Q2 – Questionnaire to customers, questions 23.1 and 23.2.

100 Q2 – Questionnaire to customers, question 29.1.

101 Q1 – Questionnaire to competitors, question 27 and 30; Q2 – Questionnaire to customers, question 27.

102 Q1 – Questionnaire to competitors, question 42; Q2 – Questionnaire to customers, question 36.

103 Q1 – Questionnaire to competitors, question 21.

particular in respect of the legs of trade referred to below, one or more container liner shipping companies active on those trades would be able to increase their capacity on the respective leg of trade, notably as result of the low barriers to expansion which characterise this sector.

(143) **On the northbound and southbound legs of the Mediterranean - Central America/Caribbean trade** a total of [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [50-60]% reefer containers and [0-1] million TEUs southbound of which [0-5]% reefer containers). On each leg of trade, the Parties have a combined share of less than [20-30]% under all plausible markets with an increment brought about by the Transaction ranging from less than [0-5]% in northbound reefer containers to [10-20]% in northbound dry containers.

(144) Additional players would remain active on this trade post-Transaction of which CMA CGM/APL is the largest with a market share of [30-40]% for all containers followed by MSC ([20-30]%), Hapag-Lloyd ([10-20]%) and ZIM ([5-10]%).

(145) In terms of the Parties' consortia on the MED - CAM/CAR trade, only HSDG is a member to the MPS/MCPS consortium with Hapag-Lloyd; Maersk Line is not a member of any consortium on this trade. HSDG only provides one out of five vessels to the MPS/MCPS consortium contributing very little in terms of capacity and volumes shipped.

(146) On a consortia basis, the Parties' combined market share on the dry segment of the trade would amount to [30-40]% ([30-40]% northbound and [30-40]% southbound) and marginally above CMA CGM/APL's individual share of [30-40]%. The free market on this trade would remain above 60%, notably with [60-70]% of the overall market share of the dry segment ([60-70]% northbound and [60-70]% southbound) belonging to independent competitors outside the Parties' consortia.

(147) Finally, for reefer only, the combined consortia market share amounts to [20-30]% northbound and [30-40]% southbound remaining below CMA CGM/APL's individual market share on both legs.

(148) In conclusion, on this trade the free market is above 60% in all plausible markets, the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – CAM/CAR northbound and southbound legs of trade.

(149) **On the westbound and eastbound legs of the Mediterranean – Far East trade** a total of [3-4] million TEUs was transported in 2015 ([1-2] million TEUs eastbound and [2-3] million TEUs westbound). On each leg of trade, the Parties have a combined share of less than 20% under all plausible markets with a marginal increment of approximately [0-5]% due to HSDG's limited presence.

(150) This trade is therefore considered an affected market only when taking into account Maersk Line's participation in the 2M Alliance. HSDG is not a member of any consortium in this trade. The aggregate market share of the Parties and their consortia would be [30-40]% westbound and [20-30]% eastbound.

(151) The Parties' market share is therefore limited compared to the independent market volumes which amount to above 60% on either leg of the MED-FEA trade.

Alternative players would remain active on this trade post-Transaction including notably MSC and CMA CGM/APL, which both have market shares in excess of [10-20]% which are comparable to those of the combined entity.

(152) In conclusion, on this trade the free market is above 60% in all plausible markets, the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – FEA westbound and eastbound legs of trade.

(153) **On the westbound and eastbound legs of the Mediterranean – North America trade** a total of approximately [2-3] million TEUs was transported in 2015 ([0-1] million TEUs eastbound and [1-2] million TEUs westbound). On each leg of trade, the Parties have a combined share of less than 20% under all plausible markets with a marginal increment of less than [0-5]% due to HSDG's limited presence on this trade.

(154) This trade is therefore considered an affected market only when taking into account Maersk Line's participation in the 2M Alliance with MSC and HSDG's participation in the MPS/MCPS consortium with Hapag-Lloyd. The aggregate market share of the Parties and their consortia would be [70-80]% westbound and [60-70]% eastbound.

(155) Alternative players would remain active on this trade post-Transaction such as MSC, ZIM, CMA CGM/APL and Hapag-Lloyd with a market share of [30-40]%, [10-20]%, [5-10]% and [20-30]% respectively.

(156) Despite the high combined market share of the Parties when calculated based on total volumes of all the shipping companies participating in any of the Parties' consortia/alliances, the Transaction is unlikely to lead to serious doubts for the following reasons. Maersk Line's activities on this trade are confined to sailings to the east coast of North America. Therefore, there is no overlap as regards the west coast which is served by HSDG via the MPS/MCPS service with Hapag.

(157) Services to ports on the North American east coast are not close competitors to ports on the west coast, despite the possibility to unload at either coast and to transport the container by rail or road across the continent to its final destination. Customers on the west coast of the United States typically prefer to be served directly through ports on the west coast, and customers on the east coast prefer to be served by services to the east coast ports, as this saves time and in particular money. In this respect, compared to a direct shipment service, Maersk Line estimates the service cost of transporting cargo by rail from the harbour in Houston on the Mexican Gulf coast to Los Angeles or Oakland to be significantly more expensive than a direct sea service into the ports of Los Angeles or Oakland.

(158) Finally, services on the west coast do not actively compete with Great Lakes landings either, given that the physical restrictions of the Great Lakes waterway prevent larger vessels from serving these ports.

(159) On the east coast Maersk is present as part of the 2M alliance while the presence of HSDG is limited ([0-5]% market share); in addition, there are several other carriers operating on this segment and also a number of consortia/alliances, such as The Alliance, Ocean Alliance and MGX.

(160) In conclusion, on this trade, despite high market shares of the Parties and their consortia, for the reasons explained above, the Parties are not close competitors and a number of independent suppliers and consortia, which could easily expand their capacity, will remain active post-Transaction; therefore the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – NAM westbound and eastbound legs of trade.

(161) **On the westbound and eastbound legs of the Mediterranean – Indian Subcontinent** a total of [1-2] million TEUs was transported in 2015 ([0-1] million TEUs eastbound and [0-1] million TEUs westbound). On each leg of trade, the Parties have a combined share of less than [20-30]%. The increment brought about by the Transaction is less than [0-5]% due to HSDG's limited presence on this trade.[104]

(162) Alternative strong players would remain active on this trade post-Transaction such as MSC, CMA CGM/APL, ZIM, UASC and Hapag-Lloyd with a market share of [20-30]%, [10-20]%, [5-10]% and [5-10]% and [5-10]% respectively.

(163) In conclusion, on this trade the free market is above 60% in all plausible markets, the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – ISC westbound and eastbound legs of trade.

(164) **On the westbound and eastbound legs of the Northern Europe – Far East trade** a total of [15-20] million TEUs was transported in 2015 ([4-5] million TEUs eastbound and [5-10] million TEUs westbound). On each leg of trade, the Parties have a combined share of less than [20-30]% with a marginal increment of less than [0-5]% due to HSDG's limited presence.

(165) In terms of the Parties' consortia on this trade, only Maersk is a member to the 2M alliance with MSC, while HSDG is not a member of any consortium.

(166) On a consortia basis, the Parties' combined market share would amount to [30-40]% eastbound and [30-40]% westbound. The free market on this trade would remain above 60%, [60-70]% eastbound and [60-70]% westbound. Alternative players would remain active on this trade post-Transaction including notably CMA CGM/APL and Hapag-Lloyd, as well as Evergreen. The increments are not material ([0-5]% eastbound and [0-5]% westbound).

(167) In conclusion, on this trade the free market is above 60% in all plausible markets, the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – FEA westbound and eastbound legs of trade.

[104] Maersk Line is active on this trade only by virtue of brief calls by the 2M Alliance into ports that form part of the trade scope as part of its wider service on a different trade, namely the NE/MED – FEA trades, on which the overwhelming majority of its capacity is allocated. As a result, for the purposes of the above assessment the 2M Alliance volumes on these trades have not been counted as part of the consortia market share as they will be picked up in the 2M Alliance volumes in the NE/MED – FEA trades.

(168) **On the westbound and eastbound legs of the Northern Europe – Indian Subcontinent trade** a total of [1-2] million TEUs was transported in 2015 ([0-1] million TEUs eastbound and [1-2] million TEUs westbound). The Parties have a combined share of [20-30]% eastbound (Maersk [20-30]%, HSDG [5-10]%) and [30-40]% westbound (Maersk [20-30]%, HSDG [5-10]%).

(169) In terms of the Parties' consortia on this trade, Maersk is not a member of any consortium, while HSDG is a member to the EPIC 2 consortium with Hapag-Lloyd and CMA CGM. The Parties submit that they plan to withdraw HSDG from EPIC 2 post-Transaction, therefore removing any new link created by the Transaction on this trade.

(170) Taking into account the 2017 market structure and even not considering the Parties Commitment to withdraw HSDG from EPIC 2, on a consortia basis, the Parties' combined market share would amount to [20-30]% eastbound and [30-40]% westbound. The free market on this trade would remain above 60%, [70-80]% eastbound and [60-70]% westbound. Alternative players would remain active on this trade post-Transaction including notably MSC, CMA CGM/APL and Hapag-Lloyd.

(171) In conclusion, on this trade the free market is above 60% in all plausible markets, the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – ISC westbound and eastbound legs of trade.

(172) **On the westbound and eastbound legs of the Northern Europe – North America trade** a total of [4-5] million TEUs was transported in 2015 ([1-2] million TEUs eastbound and [2-3] million TEUs westbound). The Parties have a combined share of [10-20]% eastbound (Maersk [5-10]%, HSDG [0-5]) and [10-20]% westbound (Maersk [10-20]%, HSDG [5-10]%).

(173) In terms of the Parties' consortia on this trade, Maersk is a member of the 2M Alliance with MSC and also of the Canada Express consortium with CMA CGM, while HSDG is a member to the EUNA consortium with CMA CGM. […] sent a notice of termination for the EUNA consortium on 31 December 2016 and, pursuant to the consortium agreement, the termination is effective as of 31 March 2017; the notice also identifies the date of the last sailing, which commenced on 25 March 2017.

(174) Taking into account the 2017 market structure, on a consortia basis, the Parties' combined market share would amount to [40-50]% eastbound and [50-60]% westbound. The free market on this trade would be close to 60%, notably the trade would have [50-60]% eastbound and [40-50]% westbound of its overall volumes belonging to independent competitors outside the Parties' consortia. Alternative players would remain active on this trade post-Transaction including notably Hapag-Lloyd and OOCL.

(175) In light of the termination of the EUNA consortium, the Transaction does not bring about any new links between previously independent competitors since both Maersk and HSDG are in a consortium with CMA CGM, therefore the Transaction brings about on this trade only the individual market share of HSDG which amounts to [0-5]% northbound and [5-10]% southbound.

(176) In conclusion, on this trade, despite the free market being below 60% in all plausible markets, the Transaction does not create any new link between previously independent consortia and the increment is at most [5-10]%; moreover a number of independent suppliers and consortia, which could easily expand their capacity, will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – NAM westbound and eastbound legs of trade.

(177) **On the northbound and southbound legs of the Northern Europe – Australia/New Zealand trade** a total of [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [30-40]% reefer containers and [0-1] million TEUs southbound of which [10-20]% reefer containers). The Parties have a combined share for all containers of [30-40]% northbound (Maersk [30-40]%, HSDG [5-10]%) and [30-40]% southbound (Maersk [30-40]%, HSDG [0-5]%). When considering the narrower market for reefer containers, the Parties have a combined share of [50-60]% northbound (Maersk [40-50]%, HSDG [5-10]%) and [40-50]% southbound (Maersk [30-40]%, HSDG [10-20]%). No reefer vessels are active on this trade.

(178) In terms of the Parties' consortia on this trade, neither Maersk nor HSDG are member to any consortium on the trade, therefore their market shares on a consortia basis are equivalent to the individual market shares of HSDG and Maersk.

(179) On this trade the free market would remain above 60% with the exception of the plausible markets for reefer containers where the free market would not go beyond [40-50]% northbound and [50-60]% southbound. Alternative players would remain active on this trade post-Transaction both in reefer containers as well as in dry containers including notably MSC, CMA CGM and Hapag-Lloyd.

(180) In conclusion, on this trade, in some plausible markets the free market is above 60%, moreover, on all plausible markets the Transaction does not create any new link between previously independent consortia and a number of independent suppliers and consortia will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – AUNZ northbound and southbound legs of trade.

(181) **On the northbound and southbound legs of the Northern Europe – East Coast South America trade** a total of [1-2] million TEUs was transported in 2015 ([0-5] million TEUs northbound of which [30-40]% reefer containers and [0-5] million TEUs southbound of which [10-20]% reefer containers). The Parties have a combined share for all containers of [40-50]% northbound (Maersk [10-20]%, HSDG [20-30]%) and [40-50]% southbound (Maersk [10-20]%, HSDG [20-30]%). When considering the narrower market for reefer containers, the Parties have a combined share of [40-50]% northbound (Maersk [20-30]%, HSDG [20-30]%) and [50-60]% southbound (Maersk [20-30]%, HSDG [20-30]%). There are also reefer vessels active on the trade transporting approximately [5-10]% of the entire reefer volumes northbound and [0-5]% southbound.

(182) In terms of the Parties' consortia on this trade, neither Maersk nor HSDG are member to any consortium on the trade, therefore their market shares on a

consortia basis are equivalent to the individual market shares of HSDG and Maersk.

(183) On this trade the free market would remain close to 60% ranging between [40-50]% in the southbound leg for reefer containers and [50-60]% in the northbound leg for all containers. Alternative players would remain active on this trade post-Transaction both in reefer containers as well as in dry containers including notably MSC, CMA CGM and Hapag-Lloyd; moreover reefer vessels are also active on the trade as alternative to reefer containers.

(184) In conclusion, on this trade, in some plausible markets the free market is above 60%, moreover, on all plausible markets the Transaction does not create any new link between previously independent consortia and a number of independent suppliers and consortia, which could easily expand their capacity, will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – ECSA northbound and southbound legs of trade.

(185) **On the northbound and southbound legs of the Mediterranean – Australia/New Zealand trade** a total of [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [20-30]% reefer containers and [0-1] million TEUs southbound of which [5-10]% reefer containers). Across the plausible markets the Parties have a combined share ranging between [10-20]% for southbound reefer containers and [60-70]% for northbound reefer containers with an increment brought about by the Transaction reaching at most [0-5]%.

(186) In terms of the Parties' consortia on this trade, neither HSDG nor Maersk are member to any consortium on the trade, therefore their market shares on a consortia basis are equivalent to the individual market shares of HSDG and Maersk.

(187) On this trade the free market would remain close to (or above) 60% with the exception of the plausible markets for reefer containers northbound and for reefer containers and reefer vessels northbound where the free market would not go beyond [30-40]%. Alternative players would remain active on this trade post-Transaction both in reefer containers as well as in dry containers including notably MSC, CMA CGM and Hapag-Lloyd. The increments reach at most [0-5]%.

(188) In conclusion, on this trade, in some plausible markets the free market is above 60%, moreover, on all plausible markets the Transaction does not create any new link between previously independent consortia, the increment is at most [0-5]% and a number of independent suppliers and consortia, which could easily expand their capacity, will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – AUNZ northbound and southbound legs of trade.

(189) **On the northbound and southbound legs of the Mediterranean – South Africa trade** a total of [0-1] million TEUs was transported in 2015 ([0-1] million TEUs northbound of which [30-40]% reefer containers and [0-1] million TEUs southbound of which [5-10]% reefer containers). Across the plausible markets the Parties have a combined share ranging between [20-30]% for southbound dry containers and [40-50]% for northbound reefer containers only and reefer

containers with reefer vessels with an increment brought about by the Transaction reaching at most [0-5]%.

(190) In terms of the Parties' consortia on this trade, neither HSDG nor Maersk are member to any consortium on the trade, therefore their market shares on a consortia basis are equivalent to the individual market shares of HSDG and Maersk.

(191) On this trade the free market would remain close to or above 60% ranging between [50-60]% in respect of the northbound leg for reefer containers only and reefer containers with reefer vessels and [70-80]% in respect of the southbound leg for dry containers. Alternative players would remain active on this trade post-Transaction both in reefer containers as well as in dry containers including notably MSC, DAL, CMA CGM and Messina. Further, the increments are not material, reaching at most [0-5]% in the northbound leg for reefer containers only.

(192) In conclusion, on this trade, in some plausible markets the free market is above 60%, moreover, on all plausible markets the Transaction does not create any new link between previously independent consortia, the increment is at most [0-5]% and a number of independent suppliers will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the NE – SAF northbound and southbound legs of trade.

(193) **On the westbound and eastbound legs of the Mediterranean – Middle East trade** a total of approximately [1-2] million TEUs was transported in 2015 ([1-2] million TEUs eastbound of which [10-20]% reefer containers and [0-1] million TEUs westbound of which [0-5]% reefer containers). On each leg of trade, the Parties have a combined share ranging from approximately [30-40]% for dry containers to [50-60]% for reefer containers. The actual increment brought about by the Transaction is marginal and at most [0-5]% on all plausible markets due to HSDG's limited presence on this trade.

(194) Alternative strong players would remain active on this trade post-Transaction both for all containers such as MSC, UASC and CMA CGM/APL with market shares of [20-30]%, [10-20]% (rising to [10-20]% when attributing Hapag-Lloyd's share to UASC), and [10-20]% respectively as well as reefer containers such as CMA CGL/APL UASC and MSC with market shares of [20-30]%, [10-20]% (rising to [10-20]% if Hapag-Lloyd's volumes are attributed together with UASC) and [10-20]% respectively.

(195) In conclusion, on this trade, in some plausible markets the free market is above 60%, moreover, on all plausible markets the Transaction does not create any new link between previously independent consortia, the increment is at most [0-5]% and a number of independent suppliers and consortia will remain active post-Transaction; the Transaction therefore does not raise serious doubts as to its compatibility with the internal market in respect of container liner shipping services in the MED – MEA westbound and eastbound legs of trade.

5.2. Horizontal overlaps - short-sea container shipping

5.2.1. Description of the Parties' activities

(196) Maersk Line offers short-sea container liner shipping services within EEA via SeaGo Line A/S ("SeaGo"), its wholly-owned subsidiary. SeaGo predominantly provides port-to-port services and, to a limited extent, also door-to-door shipments (i.e. the full transportation service including the inland leg of the services).[105]

(197) All of the volumes reported to and recorded by CTS for the NE – MED trade are carried by SeaGo, therefore for the purpose of this Decision, the NE – MED trade is addressed in the short-sea section.[106]

(198) HSDG largely provides deep-sea container liner shipping services and does not have a separate entity comparable to SeaGo offering short-sea services. The "shortest" Europe-related trade on which it operates is the one between Northern Europe and the Eastern Mediterranean (primarily Egypt, Israel, Lebanon, Syria and Turkey). It is a very small player in short-sea container shipping and offers essentially only three intra-EEA services.

(199) The Parties are members of only two consortia on the hypothetical NE-SEM sub-trade (or corridor): (i) "Levant Sea", a VSA between SeaGo, HSDG and CMA (operating on the Levant Sea string) and (ii) "North Sea", a VSA between SeaGo and HSDG (operating on the North-Sea string).

(200) Based on CTS data, the Parties' combined market share at intra-EEA level is only [10-20]%. Other competitors are MSC with [20-30]% market share, followed by APL (CMA CGM's short-sea subsidiary) with [5-10]%, ZIM ([0-5]%), Evergreen ([0-5]%) and Hapag-Lloyd ([0-5]%). The other competitors are accounting for [30-40]% or the intra-EEA market volumes.

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105 Approximately […] TEUs are transported by SeaGo per year and only minute volumes of approximately […] TEUs p.a. in the corridors in which HSDG is active, corresponding to an increment close to [0-5]%. HSDG provides door to door services to a limited extent (mostly between Italy and Spain to the UK and Scandinavia). Given that this overlap between the Parties in intra-European door-to-door transport segment is close to [0-5]%, and hence unlikely to raise any competition concerns, it is not further assessed in this Decision.

106 SeaGo also offers feeder services, mainly to Maersk Line (i.e. captive), but, to a limited extent, also to other shipping companies. HSDG does not provide any stand-alone feeder services in Europe, but merely charters slots from SeaGo and EMES Feedering. As there is effectively no overlap between the Parties' activities in feeder services, feeder services will not be further assessed in this Decision.

Table 7: Volume and market share data for major carriers – intra-EEA (2015)

Intra-EEA (combined)		
Name	**Volume (TEU)**	**Share (%)**
SeaGo	[…]	[10-20]%
HSDG	[…]	[0-5]%
Combined	**[…]**	**[10-20]%**
CMA CGM/APL	[…]	[5-10]%
MSC	[…]	[20-30]%
Hapag-Lloyd	[…]	[0-5]%
Evergreen	[…]	[0-5]%
ZIM	[…]	[0-5]%
Other	[…]	[30-40]%
Total	**[…]**	**100%**

Source: CTS data, Form CO, paragraph 530

(203) On a narrower geographic market confined to sub-trades (or corridors), the only affected short-sea shipping sub-trade is NE-SEM, for all others the combined market share of the parties would not exceed 20%.

Table 8: Parties' market shares data at sub-trade level (2015)

Sub-trades	SeaGo Market shares (in %)	HS Market shares (in %)	Combined
NE – NEM	[10-20]%	[0-5]%	[10-20]%
NE – SEM	[20-30]%	[10-20]%	[30-40]%
NE – WME	[10-20]%	[0-5]%	[10-20]%
EME	[10-20]%	[0-5]%	[10-20]%
MED	[10-20]%	[0-5]%	[10-20]%
WME	[10-20]%	[0-5]%	[10-20]%

Source: Parties best estimates, Form CO paragraph 532

(204) The Parties' combined market share on the total short-sea container shipping market for the NE – SEM sub-trade amounts to [30-40]% ([…] TEU out of a total of […] TEU). On this particular sub-trade, MSC has a market share of [30-40]%, ZIM [5-10]% and CMA [5-10]% on the NE – SEM sub-trade. The other competitors active on this sub-trade (including Evergreen and Borchard) have a combined market share close to [20-30]%. CMA CGM (which is a member of the Levant Sea VSA) has a market share of [40-50]% when assessed by total volumes of all the shipping companies participating in any of the Parties' consortia (by adding the Parties' individual shares to CMA's share). MSC and ZIM are not members of consortia on this sub-trade.

(205) As regards short sea reefer container liner shipping services, the Parties' activities overlap only on three sub-trades, namely on NE-NEM, NE-WME, and NE-SEM. The reefer volumes are below 10% of the total volumes transported on sub-trades NE-NEM and NE-WME. [107]

[107] See Parties reply to question 3 of the Commission's Request for information 5 of 28 March 2017 submitted on 30 March 2017.

(206) On the NE-SEM sub-trade, the Parties' reefer combined market share is [40-50]%, with an increment brought about by the Transaction of [10-20]%. Other carriers with reefer containers on this sub-trade include MSC ([20-30]%), ZIM ([10-20]%), and CMA CGM ([5-10]%), the rest accounting for [10-20]% of the NE-SEM reefer sub-trade.

Table 9: Market shares of the Parties and their main competitors in short sea reefer container shipping on NE-SEM in 2016

Carrier	Market share (in %)
SeaGo	[30-40]%
HSDG	[10-20]%
Combined	**[40-50]%**
MSC	[20-30]%
ZIM	[10-20]%
CMA	[5-10]%
Others	[10-20]%
Total	**100%**

Source: Parties best estimates

5.2.2. Commission's assessment

(207) The Parties' combined market shares on none of the short-sea shipping routes exceed 20%, except for NE-SEM sub-trade. Also on this particular market, the Parties' market shares remain moderate ([30-40]%), and several competitors remain active on these trades post-Transaction, including global competitors such as MSC, CMA CGM (via APL), as well as others, such as ZIM, Evergreen, Borchard, etc. As regards reefer container shipping, the Parties' combined market share reaches [40-50]% on the NE-SEM sub-trade. Therefore, on a narrower market definition, the Transaction would lead to the same affected markets as for the overall short-sea container shipping cargo (dry and reefer). Although the Parties' combined market shares in reefer container shipping are higher than on the combined (dry and reefer) NE-SEM market, most of the main competitors active on the NE-SEM sub-trade are also active in reefer container shipping, and the competitive assessment for overall cargo (dry and reefer) is therefore applicable to reefer container shipping. In addition, none of the respondents to the market investigation questionnaires has raised any substantiated concern as regards the effects of the Transaction over the short sea reefer market, and therefore reefer container shipping is not dealt with separately in the competitive assessment for this sub-trade.

(208) No other consortia, other than the Parties' consortia, are active on the NE – SEM sub-trade and, as explained in recital 190, no new link is created by the Transaction between two previously independent consortia, as the Parties are currently already members of the same VSAs.

(209) Furthermore, as acknowledged by the Commission in its previous decisional practice involving intra-European short-sea shipping, "*barriers to entry appear to be rather low on intra-Europe short-sea shipping markets*", "*entry could take place within a relatively short time frame*" and "*frequent switching between short-sea container shipping providers is a rather customary feature of the industry and takes place with-in relatively short time frames*".[108] In particular, existing carriers

[108] Case M.7523 *CMA CGM/OPDR*, recitals 109, 113 and 132.

can expand easily, with no particular capacity constraints.[109] Therefore, should demand rise, carriers would be in a position to expand their current services, adjusting their rotation to include this trade. Last, as acknowledged in Commission's previous decisional practice[110] , other modes of transport and deep-sea vessels can exercise a certain competitive pressure on short-sea container liner carriers.[111] It is possible for the deep-sea operators to target the short-sea services in case of attempted price increases on the short-sea shipping market segment for the majority of ports into which short-sea carriers typically call. This would also be the case for the NE – SEM sub-trade.

(210) Coordinated effects can be excluded, in particular given the structural overcapacity in the short sea shipping sector in Europe, the strong incentive for carriers to fill the vessels and the low barriers for existing players to expand their services.

(211) The respondents to the market investigation questionnaires did not raise any concerns with regard to the effects of the Transaction on the short-sea shipping markets, including the NE-MED trade.[112]

5.2.3. Conclusion

(212) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of short-sea container shipping services.

5.3. Horizontal overlaps - Tramp services

5.3.1. Description of the Parties' activities

(213) The Maersk Group is active in the market for tramp services (via its affiliate Maersk Tankers) for the transport of refined oil products. Mostly, Maersk Tankers provides services to third parties and only exceptionally provides in-house services to Maersk’s oil business. HSDG, on the other hand, operates eight product tankers/liquid bulk vessels all of which are chartered. Unlike Maersk Group, HSDG is also active in the dry tramp business with approximately 54 vessels, while Maersk Group is not active in this narrower dry tramp market of the overall tramp services market.

(214) With regard to vessel type, the only overlap between the Parties' activities relates to liquid bulk in product tankers. As for the types of cargo, both Maersk Tankers and HSDG transport 'clean' and 'dirty' petroleum products such as gasoline, diesel, kerosene, jet or fuel oil as well as small amounts of light chemicals and vegetable oils. Finally, with regard to vessel sizes, Maersk operates product tankers in the 5 000 – 80 000 DWT range and HSDG operates product tankers in

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109 Ibid., recital 108 (fn. 95).

110 Case M.7523 *CMA CGM/OPDR*, recitals 62, 103 and 104.

111 For instance, deep-sea operators on the route from Asia to Northern Europe will also call at ports in Tangier or Algeciras.

112 Q1 to competitors, question 44; Q2 to Customers, questions 7 and 38.

the 37 000 – 60 000 DWT range. Therefore, in line with the potential market sub-segmentations (explained in paragraph 24 above) the Transaction gives rise to horizontal overlaps only in the transport of liquid bulk products in tankers, notably the 25 000 – 60 000 DWT range for liquid bulk tankers.[113]

5.3.2. *Commission's assessment*

(215) HSDG is not active in the vessel size ranges below 10 000 DWT, between 10 000 DWT and 25 000 DWT and above 60 000 DWT. The only overlaps between Parties in the market for tankers do not give rise to affected markets, the combined market shares of the Parties being [5-10]% in the 25 000 – 60 000 DWT segment, with an increment brought about by the Transaction of only [0-5]%.

Table 10: Parties' market shares in liquid bulk tankers markets

	Segment (DWT)	Maersk Tankers		HSDG		Others	
		Vessels	%	Vessels	%	Vessels	%
Worldwide	25 000-60 000	89	[5-10]%	8	[0-5]%	1,520	[90-100]%
Worldwide	>60,000	21	[0-5]%	0	[0-5]%	2,614	[90-100]%

Source: Parties best estimates, Form CO paragraphs 568-569

(216) As mentioned in recital 212, HSDG only has eight vessels worldwide, all within the 25 000-60 000 DWT range. Therefore, even under a regional market definition, the Transaction would not give rise to competition concerns.

(217) At a narrower geographic level considering a division of the global market between the east of Suez region ([60-70]% of the worldwide market) and the west of Suez region (the remaining [30-40]% of the worldwide market), Based on the Parties' best estimates, Maersk would have a market share of [5-10]% in the east of Suez and [5-10]% on the west of Suez. As HSDG's vessels are divided equally between the two regions, the market share increment for both regions is below [0-5]%, the combined market share of the Parties would not exceed [10-20]% market share, even on such narrower geographic market segmentation[114]. Thus, in absence of any affected markets following the Transaction in the tramp market or any subsegmentation thereof, the Transaction does not raise any competition concerns with respect to tramp services.

5.3.3. *Conclusion*

(218) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of tramp services or its liquid bulk products in tankers subsegments.

[113] Form CO, paragraph 560 and following.

[114] Parties reply to question 4 of the Commission's Request for information 5 of 28 March 2017 submitted on 30 March 2017.

5.4. Vertical relationships

(219) Maersk is active, directly or via subsidiaries, on markets that are vertically related to the container liner shipping business, namely container terminal services, inland transportation, freight forwarding, harbour towage services and container manufacturing.

(220) 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; (iv) the upstream market for harbour towage services; and (v) the upstream market for container manufacturing.

(221) These markets would be vertically affected by the Transaction if Maersk or its controlling entities 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 in the related container liner shipping markets in its assessment of vertical relationships,[115] as consortia members are likely to jointly select their supplier of some of these services.

5.4.1. Container terminal services

5.4.1.1. Description of the Parties' activities

(222) Container terminal services are a necessary input for the provision of container liner shipping services and therefore serve as an upstream market.

(223) Maersk provides container terminal services operations through its subsidiary APMT. HSDG does not provide container terminal services.[116]

(224) Within the EEA, Maersk has interests in operationally active container terminal operators in the following Member States: Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Spain and Sweden. Outside of the EEA, Maersk has interests in operationally active container terminal service operators in the following countries: Angola, Argentina, Bahrain, Benin, Brazil, Cameroon, China, Colombia, Congo, Egypt, Georgia, Ghana, Guinea,[117] India, Ivory Coast, Japan, Jordan, Liberia, Malaysia, Mexico, Morocco, Nigeria, Oman, Peru, Russia, Sri Lanka,[118] Thailand, Turkey, USA and Vietnam.

[115] Cases M.8120- Hapag-Lloyd/United Arab Shipping Company; M.7908- CMA CGM/NOL, recitals 148-150; M.7268-CSAV/HGV/Kuhne Maritime/Hapag-Lloyd AG, recital 206.

[116] For completeness, HSDG holds […] in the Itapoa Terminais Portuarios S.A. terminal in Itapoa, Brazil but […].

[117] APMT has a [20-30]% interest in Conakry Terminal S.A. but […].

[118] APMT has a [30-40]% interest in the South Asia Gateway Terminal Ltd but […].

(225) APMT is a relatively small player in all relevant world regions and does not have a market share of more than 30% in container terminal services. In fact, APMT's market share is below [10-20]% in all instances, as indicated in Table 11.

Table 11: APMT's market shares for container terminal services at regional level in 2015

Region	APMT's market share at regional level (in ~%)
Northern Europe	[5-10]%
Mediterranean	[10-20]%
Eastern Mediterranean Sea / Black Sea (Eastern Europe)	[0-5]%
South America (including West Coast and East Coast)	[5-10]%
Indian Subcontinent (South Asia)	[5-10]%
Middle East	[0-5]%
Far East (North Asia and South East Asia)	[0-5]% (North Asia) and [0-5]% (South East Asia)
North America	[5-10]%

Source: Form CO

(226) If the geographic market were limited to the national level, that is, at the narrowest plausible geographic market definition, then APMT's market share would exceed 30% in Denmark ([70-80]%), Spain ([30-40]%) and Sweden ([40-50]%). Regarding ports outside of the EEA, APMT's market share is above 30% in the following countries: Bahrain, Jordan and Liberia, with [90-100]%; Ghana and Oman with [70-80]%; Georgia, with [60-70]%; Egypt, with [40-50]% and Angola with [30-40]%.

(227) The Parties' combined market shares, including consortia partners, are above the 30% threshold in the majority of the downstream container liner shipping markets served by the terminals in which the Parties have controlling interests. Therefore, all markets for container terminal services in which the Parties are active are vertically affected by the Transaction.[119] As a result, the Transaction would give rise to affected markets between both legs of trade from/to a) Northern Europe and CAM/CAR, WCSA, ECSA, ISC, MEA, AUNZ, NAM, FEA and b) MED and CAM/CAR, WCSA, ECSA, MEA, AUNZ, SAF, NAM and FEA.

5.4.1.2. Commission's assessment

(228) The Commission considers that the merged entity would neither have the ability nor the incentive to engage in any input or customer foreclosure strategy,

[119] More specifically, the downstream deep-sea container liner shipping markets that are vertically linked to the activities of Maersk's subsidiary APMT in the upstream market for container terminal services, and on which the Parties have market shares of 30% or more, are: NE-CAM/CAR, NE-WCSA, NE-ECSA, NE-ISC, NE-MEA, NE-AUNZ, MED-WCSA, MED-ECSA, MED-MEA, MED-AUNZ and MED-SAF. If consortia level 'market shares' are taken into account, the following additional downstream deep-sea container liner shipping trades would also be vertically affected: NE-NAM, NE-FEA, MED-NAM, MED-CAM/CAR and MED-FEA.

regardless of whether the vertical links brought about by the Transaction are assessed at individual or at consortia level.

(229) First, the market shares of Maersk and its controlling entities in any of the regional markets are low, below [10-20]% (see Table 11). Even for the narrowest plausible geographic market for national ports, APMT's market share exceeds 30% in only three countries in the EEA, that is, for the ports in Denmark, Spain and Sweden, and eight countries outside the EEA. As a significant part of APMT's container terminal services are captive, that is, they are provided to Maersk only,[120] its market share is likely to be substantially lower if these captive sales are excluded.[121]

(230) Even in those countries, the change brought about by the merger is limited. The market position of HSDG in the vertically related markets for container liner shipping on the East-West trades from/to Northern Europe and the Mediterranean is marginal, with a market share ranging between [0-5]% and [5-10]%. More importantly, HSDG is not calling at any ports in Denmark and Sweden, so there is no change brought about by the merger. Concerning Spain, the change brought about by the merger would also be limited as around [60-70]% of APMT's services are captive[122] and HSDG's volumes are very small, only around [0-5]%.

(231) As regards ports outside the EEA, HSDG does not call in the ports in Bahrain, Georgia, Ghana, Jordan, Liberia and Oman. Therefore, the Transaction would not change the competitive situation in these countries. Regarding the ports in Angola, APMT's market share is only slightly above 30% and several alternative ports exist in this country. Furthermore, as APMT only has joint control in the relevant terminal companies, any strategic decisions would need consent from the jointly controlling shareholder. This is also the case for Port Said in Egypt, where APMT has joint control over the entity providing container terminal services. In Egypt, APMT's market share is below [50-60]% and the captive volumes to Maersk amount to around [40-50]%. HSDG would bring only around [0-5]% extra volumes. An alternative container terminal services operator is also active in Port Said and several alternative ports in Egypt provide container terminal services.[123]

(232) Second, any <u>input foreclosure</u> strategy of the merged entity would be unlikely, because other container liner shipping companies could procure port terminal services from several alternative providers and, in most cases, significant spare capacity exists among terminal operators to serve carriers. For instance, for the Northern Europe area, container terminal services are not only offered by Maersk

[120] For Spain the captive volumes were around [60-70]%, while for Denmark and Sweden they were around [30-40]% and [30-40]% respectively. See Parties' response of 29 March 2017 to question 2 of the Commission's RFI of 27 March 2017. Moreover, in Tanger Med, more than [90-100]% of APMT's throughput was handled for Maersk alone. Form CO, p.167.

[121] In the Commission's standard practice, captive volumes are taken out of the Commission's assessment, see, for instance, Case COMP/JV.55-Hutchison/RCP/ECT, paragraphs 44 and 71.

[122] For instance, in Algeciras, more than [90-100]% of APMT's throughput was handled for Maersk only. Form CO, p.167.

[123] For instance, Port Said competes with Damietta (Egypt), Piraeus (Greece) and Istanbul (Turkey).

but also by Hutchison Port Holdings, Hamburger Hafen und Logistik, Eurogate and PSA International, which operate, among others, also in the ports in Stockholm, Hamburg and Bremenhaven and Wilhelmshaven as well as from Terminal Investment Ltd., COSCO Group and PSA International which operate in the Southern Europe/Mediterranean region.. In addition, alternative ports are located in close proximity and are in direct competition, such as Hamburg or Aarhus in the Northern range and Valencia, Sines or Naples in the Mediterranean/South Europe region.

(233) In any case, for the ports where HSDG currently does not call, such as ports in Denmark and Sweden (and for the ports where no volumes are intended to be moved post-Transaction, for instance, Wilhelmshaven), the Transaction does not have any impact on the upstream market. This is also the case where pre-Transaction APMT's throughput was captive i.e. volumes were handled for Maersk only. Finally, in multiple ports and countries (for instance, in South America), regulations require terminal operators to grant open and non-discriminatory access to carriers. Therefore, even if HSDG's volumes would be concentrated in harbours with Maersk terminals, as carriers have sufficient alternatives, the Parties' competitors in container liner shipping services would not be dependent on the services offered by Maersk and any concerns that the merged entity would have either the ability or the incentive to foreclose access to container terminal services can be excluded.

(234) Third, any <u>customer foreclosure</u> strategy of the merged entity, namely, foreclosing terminal operators' access to container liner shipping companies as customers, would be unlikely, as other carriers/container liner shipping companies such as MSC, CMA CGM and Hapag-Lloyd, operating individually, with significant share of the container terminal services demand are active on the downstream container liner shipping markets for all these trades. Moreover, the increment brought about by the Transaction on the East-West trades is, in most cases, marginal as HSDG's volumes are quite limited. In addition, regarding the trades where the Parties are and would continue to be members of consortia, Maersk would not be able to redefine the port of call and other services thereby moving business away from other terminal operators, without the consent of its consortia partners.

(235) Fourth, the majority of customers and competitors responding to the market investigation questionnaires did not raise any concerns with regard to vertical integration between the Parties' activities in container liner shipping and the operation of container terminals. More specifically, the majority of both customers and competitors do not consider that the Transaction would increase the merged entity's ability or incentive to restrict access of container shipping companies to container terminal services or of container terminal operators to container shipping companies as customers.[124]

5.4.1.3. Conclusion

(236) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal

[124] Q1-Questionnaire to Competitors, question 37; Q2-Questionnaire to customers, question 31.

market as a result of input or customer foreclosure on the market for container terminal services.

5.4.2. *Harbour towage services*

5.4.2.1. Description of the Parties' activities

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

(238) HSDG is not active in harbour towage services. Maersk Group provides harbour towage services via its subsidiary Svitzer.[125] Within the EEA, Svitzer provides harbour towage services in Denmark ([70-80]% market share in number of tug jobs), Germany ([5-10]%), the Netherlands ([5-10]%), Portugal ([30-40]%), Sweden ([70-80]%) and the United Kingdom ([20-30]%). Outside of the EEA, Svitzer is mainly active through various joint ventures in Australia ([10-20]%), Canada (less than [10-20]%), the Dominican Republic ([80-90]%) and Mexico (less than [5-10]%), and individually in Brazil ([0-5]%) and the Bahamas ([30-40]%).

(239) Thus, the Transaction gives rise to vertically affected markets between the activities of Maersk's subsidiary Svitzer in the upstream market for harbour towage services and the Parties' activities on the downstream markets for container liner shipping from/to Northern Europe and Mediterranean.[126]

5.4.2.2. Commission's assessment

(240) In most countries where Maersk provides harbour towage services, its market shares are moderate. Even in those countries with high market shares, a foreclosure scenario is highly unlikely.

(241) First of all, in both European countries, where Maersk's market shares are very high, i.e. Denmark and Sweden, HSDG is not calling, and, therefore, no change is brought about by the Transaction.

(242) Second, in all EEA countries where Maersk's subsidiary Svitzer is currently active (Denmark, Germany, the Netherlands, the United Kingdom and Portugal) providers of towage services are subject to a regulatory obligation to grant non-

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125 Svitzer also provides terminal towage services, mainly in Australia, Canada, China, Denmark and the UK. Nevertheless, there is no vertical link between terminal towage and container liner shipping since the customers of terminal towage providers are the ports/terminals and not carriers. Therefore, terminal towage services are not assessed in this Decision.

126 In particular, the downstream deep-sea container liner shipping markets that are vertically linked and on which the parties have market shares above 30% are the following: NE – CAM/CAR, NE – WCSA, NE – ECSA, NE – ISC NE – MEA, NE – OCE, MED – WCSA, MED – ECSA, MED – MEA, MED – OCE, MED – SAF. Based on consortia market shares, an additional number of downstream deep-sea trades would also be above the 30% threshold: NE-NAM, NE-FEA, MED-NAM, MED-CAM/CAR and MED-FEA. Other additional affected deep-sea container liner shipping markets may arise due to Svitzer's market share exceeding 30% on the upstream towage markets, but that will not change the competitive assessment.

discriminatory access to all customers. The only exception is Sweden, where Regulation (EU) 2017/352 will come into force on 24 March 2019.[127]

(243) Third, other providers of comparable size are already present in all these countries and able to provide harbour towage services should customers of towage services look for alternatives to the merged entity. These include regional or national operators such as Hanstholm Bugserservice A/S, Svendborg Bugser A/S, Nordane Shipping A/S and Bukser og Berging AS in Denmark, Bogser Team Öresund (BTÖ), Marin og Haverikonsult KA AB and Bukser og Berging AS (in Sweden), and international operators such as Boluda Corporation Maritima, Dutch Caribbean Towing and Shipping in the Dominican Republic. [128]

(244) Likewise, there is no risk of customer foreclosure with respect to towage. Large players such as MSC, CMA CGM and Hapag-Lloyd and other similar carriers generate significant demand for harbour towage services in the countries referred to in recital 228 and the merged entity would only account for a negligible part of the demand in harbour towage.

(245) Also when taking into account the Parties' various consortia partners, it is unlikely that foreclosure would occur. The Parties' combined market shares including their consortium partners are moderate on most downstream markets. In addition, on those trades where such market shares are high (NE-CAM/CAR, NE-WCSA, NE-MEA, MED-WCSA and MED-ECSA), any potential competition concerns would be removed as HSDG's membership of the various consortia on these trades will be terminated as part of the Commitments (see section 6). Furthermore, on the NE – FEA and MED – FEA trades, no competition concerns arise as Maersk would not be able to redefine the ports of call and other services without the consent of its alliance partner MSC (within the 2M alliance). For the MED-CAM/CAR trade, no competition concerns arise either as market shares based on total volumes of all the shipping companies participating in any of the Parties' consortia are moderate ([30-40]%) and the merged entity would not be able to redefine the ports of call and other services without the consent of its consortium partner (Hapag-Lloyd). Lastly, MED – NAM is a trade where other strong players are active (MSC, ZIM, CMA CGM) , HSDG’s market share is very small ([0-5]%), and the merged entity would will not be able to redefine the ports of call and other services without the consent of its consortium partner (Hapag-Lloyd).

(246) The majority of customers and competitors responding to the market investigation questionnaires did not raise any concerns with regard to the vertical integration between the Parties' activities in harbour towage and container liner shipping markets.[129]

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[127] Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, OJ L 57, 3.3.2017, p. 1-18., available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0352

[128] See Notifying Party's reply to question 1 of the Commission's Request for information 5 of 28 March 2017 submitted on 30 March 2017.

[129] Q1-Questionnaire to Competitors, question 39; Q2-Questionnaire to customers, question 33.

(247) In light of the responses collected during the market investigation and the other information available to it, the Commission considers that given the moderate market shares of the Parties in most markets and the specific anti-discriminatory requirements applicable also in countries where the Parties would have significant market shares (for instance Denmark and Sweden), the presence of several harbour towage providers, and the countervailing buyer power of big players in the container shipping liner market, it is unlikely that the merged entity would engage in any foreclosure strategy. Moreover, in those countries outside the EEA where Maersk operates towage via joint ventures with a third party, all strategic decisions need consent from the joint venture's jointly controlling parent, making such a foreclosure scenario unlikely even with a relatively high market share (such as in the Dominican Republic).[130]

5.4.2.3. Conclusion

(248) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure in respect of harbour towage services.

5.4.3. Freight forwarding

5.4.3.1. Description of the Parties' activities

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

(250) HSDG is not active in freight forwarding. Maersk provides air as well as sea freight forwarding services in a number of countries worldwide (via its subsidiary, Damco Distribution Services, Inc. ("Damco"). Damco provides sea-freight forwarding in most EEA countries. Outside of the EEA, Damco is active in sea-freight forwarding services in various countries globally.

(251) Based on Maersk's best estimates, Damco's market shares in each of the countries where it is active do not exceed [5-10]% (and are above [0-5]% only in 16 countries). The highest market shares are in Denmark ([0-5]%), Slovenia ([0-5]%), Cape Verde ([0-5]%) Malta ([0-5]%), etc.

5.4.3.2. Commission's assessment

(252) In light of the low market share of Maersk via Damco 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 the merged entity would have the ability and incentive to foreclose access of other sea freight forwarders to container liner shipping services on any trade.

[130] In the Dominican Republic, Svitzer is active through a joint venture with International Towing and Salvage Ltd, who needs to be consulted in case of any strategic decisions. See Notifying Party's reply to question 2 of the Commission's Request for information 5 of 28 March 2017 submitted on 30 March 2017.

(253) The majority of customers and competitors responding to the market investigation questionnaires did not raise any concerns with regard to the vertical integration between the Parties' activities in freight forwarding and container liner shipping markets.[131]

5.4.3.3. Conclusion

(254) 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 in respect of freight forwarding services.

5.4.4. Container manufacturing

5.4.4.1. Description of the Parties' activities

(255) Maersk Group is active in container manufacturing via its subsidiary MCI. MCI produces dry and reefer containers. MCI does not produce special dry freight containers or tanks. HSDG is not active as a container manufacturer. The Transaction therefore gives rise to vertical relationships only with regard to the dry freight standard and the reefer segments.

(256) Based on the information provided by Maersk, MCI's market shares remains moderate, with only [5-10]% of all containers worldwide and not exceeding [20-30]% for reefer containers. These market shares are conservative, given that they also include MCI's reefer container production sold to Maersk.[132]

Table 12: MCI container production volumes (2015)

Type	MCI volumes (TEU)	Total market volumes (TEU)	MCI market share (%)
Dry freight standard	[…]	[…]	[5-10]%
Reefer	[…]	[…]	[20-30]%
Total market	[…]	[…]	[5-10]%

Source: Form CO, paragraph 678

5.4.4.2. Commission's assessment

(257) Both taken overall and under any narrower segmentation of the market for container manufacturing (including reefer only), MCI's global market share is moderate. In addition, several alternative providers which have the power and capacity to serve additional demand for containers, including reefer, are available in the market. These include CIMC ([40-50]% market share of containers worldwide), Singamas ([10-20]%), CXIC ([10-20]%) and Dong Fang ([10-20]%). As regards reefer container only, there are currently three companies producing reefer containers in the world including Maersk's MCI ([30-40]% market

131 Q1-Questionnaire to Competitors, question 40; Q2-Questionnaire to customers, question 34.

132 Should internal sales be excluded, MCI's worldwide market share would reach only [5-10]% of the global reefer production.

share).[133] The other two competitors are CIMC ([50-60]% market share) and Singamas ([10-20]%). [134] They are able to supply any specification reefer containers, and would be available to serve additional demand in case of a price rise by MCI post-Transaction. As a result, it is unlikely that the merged entity would have the ability and incentive to foreclose its competitors at the downstream markets with respect to containers manufacturing in general or with reefer containers in particular, as any carrier could choose an alternative provider.

(258) There is also no risk of customer foreclosure as MCI only accounts for a very small proportion of demand in container manufacturing and a number of large carriers, such as MSC, CMA CGM, COSCO, Evergreen and Hapag-Lloyd with significant container demand are active on the market. Additionally, providers of marine container operating leasing such as Seaco, Triton International, Textainer and Florens would continue to generate significant demand for containers post-Transaction.

(259) The majority of customers and competitors responding to the market investigation questionnaires did not raise any concerns with regard to the vertical integration between Maersk's activities in container manufacturing and the container liner shipping markets.[135]

5.4.4.3. Conclusion

(260) 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 in respect of container manufacturing.

5.4.5. Inland transportation services

5.4.5.1. Description of the Parties' activities

(261) 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.

(262) Maersk provides inland (railway and road) transportation activity via its subsidiary APMT.[136] Within the EEA, APMT provides inland transportation in Belgium, France, Germany, Netherlands, Romania, Spain and the UK. Outside of

[133] This is the most conservative scenario, as in fact almost [60-70]% of MCI's reefer container production was sold captively to Maersk. When captive sales are excluded, the market share of MCI would be considerably smaller.

[134] The Notifying Party submits that a fourth entity, Fuwa, has just established a factory in South China, with the intention to start production of reefer containers in the near future. Nevertheless, there is not sufficient information on its capacity and estimate future volumes in order to consider it as a newly established supplier.

[135] Q1-Questionnaire to Competitors, question 41; Q2-Questionnaire to customers, question 35.

[136] Maersk submits that the vast majority of its inland transportation business is carried out as in-house (captive) service for Maersk Line, i.e. it is largely not active on the market.

the EEA, APMT is active in inland transportation services with controlling stakes in the operating companies in various countries.

(263) Based on the Parties estimates, APMT's market shares are estimated to be below 10% in all countries, within and outside of the EEA, even when segmenting between truck and rail operations. HSDG's activities in inland transportation are negligible (only a few trucks are operated; in principle, HSDG purchases inland transportation services if requested by customers).

5.4.5.2. Commission's assessment

(264) The markets for inland transportation are relatively fragmented and a number of companies offer inland transportation services. Large operators offering inland transportation services include Kühne & Nagel, DB Schenker and HUPAC. The Commission considers that given the low market shares of the Parties 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.

(265) 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.

(266) The majority of customers and competitors responding to the market investigation questionnaires did not raise any concerns with regard to the vertical integration between the Parties' activities in inland transportation and the container liner shipping markets.[137]

5.4.5.3. Conclusion

(267) 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 in respect of inland transportation services.

5.5. Conclusion on competitive assessment

(268) 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 ten legs of the following five trades, where it would give rise to non-coordinated horizontal effects: NE-CAM/CAR, NE-WCSA, NE-MEA, MED-WCSA and MED-ECSA. However, Maersk has offered Commitments to address the Commission's competition concerns (see section 6).

(269) As for co-ordinated horizontal effects, absent the commitments, coordination appears to be unlikely. First, the sector is fragmented with several players operating on different trades; second, there is a lack of transparency on prices, which makes it difficult to reach a coordination across competitors and also

[137] Q1-Questionnaire to Competitors, question 38; Q2-Questionnaire to customers, question 32.

impedes the monitoring of deviations; in addition, capacity expansion on existing trade is easy (as also explained in section 5.1.8 above), which would make any coordination difficult; finally, the degree of vertical integration also differs between different market players.

(270) On the other hand, even if the Transaction were to give rise to co-ordinated effects on the ten legs of these five trades, the Commitments offered by Maersk would 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. Therefore, the Commitments offered would render any potential coordination even less likely.

6. PROPOSED COMMITMENTS

6.1. Commitments submitted by Maersk

6.1.1. Procedure

(271) In order to address the serious doubts raised by the Transaction regarding the provision of container liner shipping services on both legs of the (i) NE-CAM/CAR, (ii) NE-WCSA, (iii) NE-MEA, (iv) MED-WCSA and (v) MED-ECSA trades ('the Relevant Trades') and to render the concentration compatible with the internal market, Maersk has modified the Transaction by entering into commitments, which are annexed to this Decision and form an integral part thereof.

(272) Maersk provided a set of commitments on 20 March 2017 (the "Commitments").

6.1.2. Description of the Commitments

(273) In order to address the serious doubts raised by the Commission for both legs of the Relevant Trades, Maersk commits that HSDG will withdraw, or will procure that HSDG will withdraw, from the following VSAs (together, the Relevant Agreements), by serving notice of termination at the latest within one week from the closing of the Transaction:

a. "Vessel Sharing Agreement Mediterranean to the West Coast of South America Med Andes", between HSDG and Hapag-Lloyd, covering the MedAndes service on the MED – WCSA trade (the **CCWM/MedAndes Agreement**);

b. “EPIC Operating Agreement” between HSDG and HL, as amended from time to time, covering the EPIC 2 service on the NE – ISC and NE – MEA trades (the **EPIC 2 Agreement**);

c. “Operating Agreement North Europe / Caribbean / Central America / South America West Coast Service Eurosal 2 and Eurosal 1 Services” between HSDG, CMA CGM and Hapag-Lloyd, covering both the Eurosal 1 and Eurosal 2 services on the NE – CAM/CAR and NE – WCSA trades respectively (the **Eurosal Agreement**); and

d. "Vessel Sharing Agreement WMED to SAEC" between HSDG and MSC, covering the MESA service on the MED – ECSA trade (the **MESA Agreement**).

(274) The Commitments aim at addressing the Commission's serious doubts with respect to the provision of container liner shipping services on both legs of the Relevant Trades by removing the link which would have been created between the previously independent Maersk and HSDG's consortia active on those trades which, in line with the Commission's approach to calculating market shares, would have led to a high combined market share and a limited free market post-Transaction. More specifically, for the **NE-CAM/CAR** and the **NE-WCSA trade**, the Commitments would remove the link which would have been created between Maersk and HSDG's Eurosal 1 and Eurosal 2 consortium partners, which are Hapag-Lloyd and CMA CGM. For the **NE-MEA** and the **MED-WCSA trades,** the Commitments would remove the link which would have been created between Maersk and HSDG's EPIC 2 Agreement consortium partners Hapag-Lloyd and CMA CGM and CCWM/MedAndes Agreement consortium partner, Hapag-Lloyd, respectively. Finally for the **MED-ECSA trade**, the Commitments would remove the link which would have been created between Maersk and HSDG's MESA Agreement consortium partner, MSC.

(275) In order to avoid any circumvention of the commitment to withdraw from the Relevant Agreements, Maersk further commits that the Parties will not, within […] from the date of the adoption of this Decision, become a member of any consortia to which any of the following parties are members on the Relevant Trades: (i) on the NE-CAM/CAR, NE-WCSA and NE-MEA trades, Hapag-Lloyd and/or CMA; (ii) on the MED-WCSA trade, Hapag-Lloyd; and (iii) on the ME-ECSA trade, MSC.

(276) The Parties can join consortia or any other agreement, such as slot charter agreements compatible with Article 101 of the Treaty on the Functioning of the European Union, provided that any such consortia are not with the same partners and those other agreements are not of substantially similar terms, as the Relevant Agreements on their respective Relevant Trades.

(277) As concerns ring-fencing, Maersk offers that, from the date of closing of the Transaction until the date on which the last of HSDG's withdrawals from the Relevant Agreements takes effect, Maersk shall procure that, if and to the extent that HSDG receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in these agreements, or any other information considered as commercially sensitive, such information will not be disclosed to Maersk, or any other members of the consortia of which Maersk is a member (and *vice versa*).

(278) In the transitional period between the closing of the Transaction and the date on which the termination of the Relevant Agreements takes effect, only the Monitoring Trustee will have the power to exercise any veto rights HSDG may have with respect to decisions taken within the "Relevant Consortia" (that is, (i) the CCWM/MedAndes, (ii) the EPIC 2, (iii) the Eurosal 1, (iv) the Eurosal 2 and (v) the MESA Consortia), except to the extent that any decision would adversely affect HSDG's allocation in each of the VSAs.

(279) As explained in section 6.2, the Commission considers that the Commitments are sufficient to clearly remove the serious doubts as to the compatibility of the Transaction with the internal market as identified in sections 5.1.7.1 to 5.1.7.5.

6.2. Assessment of the proposed Commitments

6.2.1. Maersk's view

(280) Maersk submits that the Commitments are sufficient to remove the serious doubts as to the compatibility of the Transaction with the internal market since, rather than creating new links between or strengthening existing consortia, the Transaction would create a stronger independent player that would be able to compete more effectively with the consortia.[138]

(281) HSDG is a member of the Eurosal 1/SAWC, Eurosal 2/SAWC and EPIC 2 consortia with Hapag-Lloyd and CMA CGM. It is also a member of the CCWM/MedAndes consortium with Hapag-Lloyd and to the MESA consortium with MSC.

(282) Maersk submits that, pursuant to the Commitments, HSDG will withdraw from the consortia referred to in recital (277), thereby entirely eliminating the overlap between the Parties on the two legs of trade for the (i) NE-CAM/CAR, (ii) NE-WCSA, (iii) NE-MEA, (iv) MED-WCSA and (v) MED-ECSA trades at consortia level.

(283) Maersk further notes that, as a result of this withdrawal the merged entity would only offer independent services on the Relevant Trades and the overall number of VSAs on these trades would be reduced post-Transaction.[139]

6.2.2. The results of the market test

(284) In the market test, a majority of both customers and competitors expressing an opinion indicated that the Commitments are sufficiently clear to form a view[140] and are suitable to remove all competition concerns identified by the Commission.[141]

(285) Moreover, the majority of the customers expressing an opinion stated that they would continue to use the various consortia HSDG was a member of despite HSDG's withdrawal, if the remaining partners continued to provide the service either on their own or with another consortium partner.[142]

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[138] Form CO, pages 7 and 8.

[139] Form CO, page 7.

[140] R1-Market test of commitments-Competitors, question 9; replies to R2-Market test of commitments-Customers, question 25.

[141] R1-Market test of commitments-Competitors, question 10; replies to R2-Market test of commitments-Customers, question 26.

[142] R2-Market test of commitments-Customers, questions 4 on the NE-CAM/CAR trade, question 9 on the NE-WCSA trade, question 14 on the NE-MEA trade, question 19 on the MED-WCSA trade and question 22 and 23 on the MED-ECSA trade.

6.2.3. Commission's assessment

(286) The Commitments remove the link which would have been created by the Transaction between the previously independent Maersk and HSDG's consortia on the Relevant Trades post-Transaction. As a result, the merged entity will face competition from other independent operators not linked to the merged entity which will continue to provide services on these trades.

(287) On the **NE-CAM/CAR** trade, following the withdrawal of HSDG from the Eurosal 1/SAWC consortium, two credible carriers, namely Hapag-Lloyd and CMA CGM, will not be related to the merged entity through any of the consortia they belong to and will become a competitor independent from the Parties on both legs of this trade. If Hapag-Lloyd and CMA CGM continue offering services on the NE-CAM/CAR trade, the share of independent competitors would increase by around [30-40]% on the northbound leg of trade and by [40-50]% on the southbound leg of trade through the Commitments. Post-Transaction, the share of independent competitors (the free market) will therefore increase and will reach, for instance, around [70-80]% for the southbound leg on the market for reefer containers and reefer vessels (from around [20-30]% absent the Commitments) and around [50-60]% in the overall market for all containers (that is to [40-50]% for the northbound and [60-70]% the southbound leg), up from around [10-20]% absent the Commitments (from around [10-20]% for the northbound and [20-30]% southbound leg, respectively). The Commitments will therefore ensure that there is a larger free market and that the pre-Transaction situation with the existence of three independent poles of supply, namely the Eurosal 1/SAWC consortium (of which Hapag-Lloyd and CMA CGM are members), MSC and the merged entity will remain post-Transaction.

(288) On the **NE-WCSA** trade, following the withdrawal of HSDG from the Eurosal 2/SAWC consortium, two credible carriers, that is, Hapag-Lloyd and CMA CGM, will not be related to the merged entity through any of the consortia it belongs to and will become a competitor independent from the Parties on both legs of this trade. If Hapag-Lloyd and CMA CGM continue offering services on the NE-WCSA trade, the share of independent competitors will increase by around [30-40]% on the northbound leg of trade and by around [30-40]% on the southbound leg of trade through the Commitments. Post-Transaction, the share of the free market will therefore increase reaching, for instance, around [70-80]% for the southbound leg on the market for reefer containers and reefer vessels (from around [30-40]% absent the Commitments) and around [60-70]% in the overall market for all containers (that is, to around [60-70]% for the northbound and [60-70]% for the southbound leg) from around [30-40]% absent the Commitments (that is, from [30-40]% and [30-40]%, respectively). The Commitments will therefore ensure that the free market is larger and that the pre-Transaction situation with the existence of three independent poles of supply namely the Eurosal 2/SAWC consortium (of which Hapag-Lloyd and CMA CGM are members), MSC and the merged entity will remain post-Transaction.

(289) On the **NE-MEA** trade, following the withdrawal of HSDG from the EPIC 2 consortium, two credible carriers, namely Hapag-Lloyd and CMA CGM, will not be related to the merged entity through any of the consortia they belong to and

will become a competitor independent from the Parties on both legs of this trade. If Hapag-Lloyd and CMA CGM continue offering services on the NE-MEA trade, the share of independent competitors will increase by around [20-30]% on the eastbound leg of trade and by around [20-30]% on the westbound leg of trade through the Commitments. Post-Transaction, the share of the free market will therefore increase, reaching, for instance, around [80-90]% for the eastbound leg on the market for reefer containers[143] (from around [50-60]% absent the Commitments) and around [60-70]% in the overall market for all containers (that is, around [70-80]% for the eastbound and [50-60]% for the westbound leg) from around [40-50]% absent the Commitments (that is, from around [40-50]% and [30-40]%, respectively). Moreover, the increment brought about by the Transaction is only [0-5]% for the eastbound and [0-5]% for the southbound leg of trade in the overall market for all containers and is overall very small in this trade, ranging between [0-5]% and [5-10]%. The Commitments will therefore ensure that there is a larger free market post-Transaction with, in addition to CMA CGM and Hapag-Lloyd, also MSC with its Himalaya Express services and several other carriers and consortia independent from the merged entity.

(290) On the **MED-WCSA** trade, following the withdrawal of HSDG from the CCWM/MedAndes consortium, Hapag-Lloyd will not be related to the merged entity through any of the consortia it belongs to and will become a competitor independent from the Parties on both legs of this trade. If Hapag-Lloyd continues offering services on the MED-WCSA trade, the share of independent competitors will increase by around [5-10]% on the northbound leg of trade and by around [20-30]% on the southbound leg of trade through the Commitments. Post-Transaction, the share of the free market would therefore increase reaching, for instance, around [60-70]% for the southbound leg on the market for reefer containers and reefer vessels (from around [50-60]% absent the Commitments) and around [60-70]% in the overall market for all containers (that is around [60-70]% for the northbound leg and [70-80]% for the southbound leg) from around [40-50]%, absent the Commitments (from around [40-50]% and [50-60]% for the northbound and southbound leg, respectively).

(291) Finally, on the **MED-ECSA** trade, following the withdrawal of HSDG from the MESA consortium, MSC will not be related to the merged entity through any of the consortia it belongs to and will become a competitor independent from the Parties on both legs of this trade. If MSC continues offering services on the MED-ECSA trade, the share of independent competitors will increase by [30-40]% on the northbound leg of trade and by [20-30]% on the southbound leg of trade through the Commitments. Post-Transaction, the share of the free market would therefore increase, reaching, for instance, around [60-70]% for the southbound leg on the market for reefer containers and reefer vessels (from around [20-30]% absent the Commitments) and around [60-70]% in the overall market for all containers (that is around [60-70]% for the northbound and [60-70]% for the southbound leg) from [20-30]% absent the Commitments (from around [20-30]% and [30-40]% for the northbound and southbound legs, respectively).

[143] As mentioned in section 5.1.7.3.1, there are no reefer vessels operating in this trade.

(292) Following the withdrawal of HSDG from the MESA consortium, MSC could either run MESA on its own or replace HSDG with somebody else. If HSDG is replaced, there is no effect for customers in terms of number of vessel operators on this trade. If MSC decided to run the service on its own, its potential to increase prices vis-à-vis all those competitors slot chartering on it is limited by the threat of entry of a new consortium formed by these competitors. In this respect, the Commitments will likely lower barriers to entry as volumes slot chartered increase which would form the base load of a new consortium, as confirmed by the market test.[144]

(293) Regarding all the Relevant Trades, the majority of the customers expressing an opinion during the market investigation stated that they would continue to use the services of the various consortia (namely, Eurosal 1/SAWC, Eurosal 2/SAWC, EPIC 2, CCWM/MedAndes as well as MESA) despite HSDG's withdrawal from them.[145] This also indicates that the various consortia services will remain sustainable post-Transaction and will exert significant competitive constraint on the merged entity.

(294) Moreover, Maersk commits that, during […], the Parties will not become a member of any consortia to which Hapag-Lloyd and/or CMA CGM are members on the NE-CAM/CAR, NE-WCSA and NE-MEA trades. It also commits that the Parties will not become a member to any consortia where Hapag-Lloyd is a member on the MED-WCSA trade nor to any consortia where MSC is a member on the MED-ECSA 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 Relevant Trades.

(295) For the above reasons, the Commission considers that the Commitments are suitable and eliminate the serious doubts as to the compatibility of the Transaction with the internal market on the aforementioned markets. Moreover, the Commitments are comprehensive and effective from all points of view, and are capable of being implemented effectively within a short period of time.

6.2.4. Overall conclusion on the Commitments

(296) In light of the above considerations and on the basis of the information available to it, the Commission concludes that the Commitments clearly eliminate the serious doubts to which the Transaction would give rise as to its compatibility with the internal market in respect of container liner shipping services on the northbound and southbound legs of the (i) NE-CAM/CAR, (ii) NE-WCSA, (iii) MED-WCSA and (iv) MED-ECSA trades as well as on the eastbound and westbound legs of the (v) NE-MEA trade.

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[144] R1 – Market test of commitments – competitors, questions 7 and 8; R2-Market test of commitments-customers, questions 21.2, 21.2.1, 21.4 and 22.

[145] See replies to R2-Market test of commitments-Customers, questions 4 on the NE-CAM/CAR trade, question 9 on the NE-WCSA trade, question 14 on the NE-MEA trade, question 19 on the MED-WCSA trade and question 22 and 23 on the MED-ECSA trade.

6.3. Conditions and obligations

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

(298) 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 Article 14(2) and 15(1) of the Merger Regulation.

(299) In accordance with the distinction described in recital (296), the Commitments set out in section B of the Annex 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 the Annex 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 the full compliance by the Notifying Party with the requirements set out in Section B of the Commitments which constitute conditions and the remaining sections of the Commitments which constitute obligations on the Notifying Party.

(300) The full text of the Commitments is annexed to the present Decision. The full text of the Commitments forms an integral part of this Decision.

7. CONCLUSION

(301) For the above reasons, the Commission has decided not to oppose the notified operation 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 with the obligations contained in the other sections of the said 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)

Tibor NAVRACSICS
Member of the Commission

CASE M.8330 – MAERSK LINE / HSDG

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the ***Merger Regulation***), Maersk Line A/S (***ML***) (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 ML and Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft KG (***HSDG***) (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***).

CCWM/MedAndes Consortium: vessel sharing agreement between HSDG and Hapag-Lloyd AG (***HL***), covering the MedAndes service on the Mediterranean – West Coast South America trade.

Closing: the date on which the container shipping activities of HSDG will be contributed to ML 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.

EPIC 2 Consortium: vessel sharing agreement between HSDG, HL and CMA CGM SA (***CMA***), covering the EPIC service on the Northern Europe – Indian Subcontinent and Northern Europe – Middle East Asia trades.

Eurosal 1 Consortium: vessel sharing agreement between HSDG, HL and CMA, covering sling 1 of the Eurosal service on the Northern Europe – Central America/Caribbean trade.

Eurosal 2 Consortium: vessel sharing agreement between HSDG, HL and CMA, covering sling 2 of the Eurosal service on the Northern Europe – West Coast South America trade.

HSDG: Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft KG and all of its Affiliated Undertakings.

MESA Consortium: vessel sharing agreement between HSDG and Mediterranean Shipping Company S.A. (***MSC***) covering the MESA service on the Mediterranean – East Coast South America trade.

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.

Notifying Party: Maersk Line A/S and all of its Affiliated Undertakings.

Parties: the Notifying Party and HSDG.

Relevant Consortia: the CCWM/MedAndes Consortium, the EPIC 2 Consortium, the Eurosal 1 Consortium, the Eurosal 2 Consortium and the MESA Consortium.

Relevant Trades: Northern Europe – Central America/Caribbean (***NE-CAM/CAR***), Northern Europe – West Coast South America (***NE-WCSA***), Northern Europe – Middle East Asia (***NE-MEA***), Mediterranean – West Coast South America (***MED-WCSA***) and Mediterranean – East Coast South America (***MED-ECSA***).

Trustee: the Monitoring Trustee.

Section B. Commitment to terminate the vessel sharing agreements

2. The Notifying Party commits that HSDG will withdraw, or will procure that HSDG will withdraw, from the following vessel sharing agreements (together, the ***Relevant Agreements***), at the earliest date permitted by such agreements and in accordance with the following indicative timetables, by serving notice of termination at the latest within one week of Closing:

    a. "Vessel Sharing Agreement Mediterranean to the West Coast of South America Med Andes" dated 26 September 2016, between HSDG and Hapag-Lloyd, covering the MedAndes service on the MED – WCSA trade (***CCWM/MedAndes Agreement***). A notice of termination for the CCWM/MedAndes Agreement was validly served and accepted on 13 January 2017, with a notice period of six months. The service will continue to operate after the effective termination date of 13 July 2017 set out in the notice of termination. The expected date of last sailing of the CCWM/MedAndes Consortium is six months and 77 days after Closing;

    b. "EPIC Operating Agreement" between HSDG and HL dated 22 August 2008, as amended from time to time, covering the EPIC 2 service on the NE – ISC and NE – MEA trades (the ***EPIC 2 Agreement***). A notice of termination for the EPIC 2 Agreement will be served at the latest on the seventh day after Closing, with effective termination six months thereafter. The expected date of last sailing of the EPIC 2 Consortium is six months and 63 days after Closing;

    c. "Operating Agreement North Europe / Caribbean / Central America / South America West Coast Service Eurosal 2 and Eurosal 1 Services" dated 27 November 2014, between HSDG, CMA CGM and Hapag-Lloyd, covering both the Eurosal 1 and Eurosal 2 services on the NE – CAM/CAR and NE – WCSA trades respectively (***Eurosal Agreement***). A notice of termination for the Eurosal Agreement will be served at the latest on the seventh day after Closing, with effective termination of the Eurosal Agreement six months thereafter. The expected date of last sailing of both the Eurosal 1 Consortium and Eurosal 2 Consortium is six months and 70 days after Closing; and

    d. "Vessel Sharing Agreement WMED to SAEC" dated 10 June 2013, between HSDG and MSC, covering the MESA service on the MED – ECSA trade (***MESA Agreement***). A notice of termination for the MESA Agreement will be served at the latest on the seventh day after Closing, with effective termination of the MESA Agreement six months thereafter. The expected date of last sailing of the MESA Consortium is six months and 63 days after 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 any of the following parties are members on the Relevant Trades:

   a. on the NE-CAM/CAR, NE-WCSA and NE-MEA trades, HL and/or CMA;

   b. on the MED-WCSA trade, HL; and

   c. on the MED-ECSA trade, MSC.

4. Subject to the Commitments in paragraph 3, these Commitments do not preclude the possibility that the Parties join consortia provided that any such consortia are not with the same partners as the agreements enumerated in paragraph 2, 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 any such agreements are not of substantially similar terms as the Relevant Agreements on their respective Relevant Trades.

Section D. Ring-fencing

5. The Parties note that within each of the Relevant Consortia, 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 the last of HSDG's withdrawals from the agreements referred to in paragraph 2 takes effect, the Notifying Party shall procure that, if and to the extent that HSDG 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 ML, or any other members of consortia to which ML is a member (and vice versa).

7. The Notifying Party also undertakes that to the extent HSDG’s partners in the Relevant Consortia, i.e. CMA and/or HL as the case may be, elect to discuss or engage in contingency planning for the relevant consortium in the period following the serving of the termination notice by HSDG, HSDG 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 HSDG’s withdrawal from the Relevant Consortia.

8. The Notifying Party also commits that during the period between Closing and the date on which the termination of the agreements referred to in paragraph 2 takes effect, only the Monitoring Trustee will have the power to exercise any veto rights HSDG may have with respect to decisions taken within the Relevant Consortia, except to the extent that any decision would adversely affect HSDG's allocation in each of the vessel sharing agreements.

Section E. Reporting

9. 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.

Section F. Trustee

I. Appointment procedure

10. 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.

11. The Trustee shall:

(i) at the time of appointment, be independent of the Parties and their Affiliates Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

12. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Notifying Party

13. 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 11 and shall include:

   (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

   (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

14. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the 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

15. 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 10 and 14 of these Commitments.

Trustee nominated by the Commission

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

II. <u>Functions of the Trustee</u>

17. The Trustee shall assume its specified duties and obligations in order to ensure compliance with: (i) the Notifying Party's commitment to terminate the Relevant Agreements; (ii) the related ring-fencing commitments; and (iii) the restriction on consortia re-entry set out in paragraph 3. The duties of the Trustee shall cease two weeks following the expiry of the restriction on consortia 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.

18. 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

19. 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.

20. 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 agreements required under these Commitments.

21. 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.

22. 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 21 of these Commitments shall apply *mutatis mutandis*.

23. 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.

24. 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.

25. 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

26. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee and the 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.

27. If the Trustee is removed according to paragraph 26 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 10-16 of these Commitments.

28. Unless removed according to paragraph 26 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments, and the duties and obligations with which the Trustee has been entrusted at paragraph 17, have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section G. The review clause

29. The Commission may extend the time periods as set out in paragraph 2 of the Commitments in response to a request from the 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.

30. 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 Trades may constitute an exceptional circumstance for the purposes of this paragraph 30 to the extent they lead to a significant change in the competitive conditions on the Relevant Trades. For the avoidance of doubt, the currently envisaged consortia and alliance restructuring in April 2017, as set out in paragraph 141 of the Form CO and as portrayed in the 2017 projections set out in 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. Given the speed at which the industry may develop, it is expected that the Monitoring Trustee can prepare such a report within two weeks where the request relates to one or two trades. The request shall not have the effect of suspending the application of the commitment and, in particular, of suspending the expiry of any time period in which the commitment has to be complied with.

Section H. Entry into force

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