



EUROPEAN COMMISSION  
DG Competition

***Case M.7908 - CMA CGM / NOL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 29/04/2016

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## EUROPEAN COMMISSION

Brussels, 29.04.2016  
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PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party:**

Dear Sirs,

**Subject: Case M.7908 – CMA CGM/NOL  
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

## Contents

I.	THE PARTIES AND THE OPERATION .....	4
II.	EU DIMENSION .....	4
III.	MARKET DEFINITION .....	4
III.1.	Deep-sea container liner shipping services .....	5
III.2.	Container terminal services .....	7
IV.	COMPETITIVE ASSESSMENT .....	7
IV.1.	Deep-sea container liner shipping services .....	7
IV.1.1.	General characteristics of the industry .....	7
IV.1.2.	Methodology for calculating market shares .....	9
IV.1.3.	NOL's membership in the G6 consortium .....	10
IV.1.4.	Horizontal overlaps (trade-by-trade assessment) .....	10
IV.1.4.1.	The view of the Notifying party .....	10
IV.1.4.2.	Overview of the overlapping trades .....	11
IV.1.5.	Affected trades where new links are created between previously unconnected consortia .....	13
IV.1.5.1.	Northern Europe – North America (NE–NA) .....	14
IV.1.5.2.	Northern Europe – Middle East (NE–ME).....	16
IV.1.5.3.	Mediterranean – Indian Subcontinent (MED–INSC).....	20
IV.1.5.4.	Other affected trades where new links are created between previously unconnected consortia .....	23
IV.1.6.	Affected trades where no new links are created between consortia .....	26
IV.1.6.1.	Affected trades with market shares above 40% .....	26
IV.1.6.2.	Affected trades with market shares below 40% .....	29
IV.2.	Container terminal services .....	32
IV.2.1.	Overview of vertically affected markets .....	32
IV.2.2.	The view of the Notifying Party .....	36
IV.2.3.	Commission's assessment.....	36
IV.2.4.	Conclusion .....	37
V.	PROPOSED REMEDIES.....	37
V.1.	Commitments submitted by the Parties .....	37
V.1.1.	Procedure .....	37
V.1.2.	Description of the Final Commitments .....	38
V.2.	ASSESSMENT OF THE FINAL COMMITMENTS .....	39
V.2.1.	The view of the Parties .....	39
V.2.2.	NE–NA trade .....	39
V.2.3.	NE–ME trade.....	39
V.2.4.	The results of the market test.....	39
V.2.5.	Commission's assessment.....	40
V.2.6.	Overall conclusion on the Final Commitments .....	41
V.3.	Conditions and obligations .....	41

VI. CONCLUSION .....	42
VII. COMMITMENTS .....	42

- (1) On 8 March 2016, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>3</sup> by which CMA CGM (France) acquires sole control of Neptune Orient Lines ("NOL", Singapore) by public bid ("the Transaction").<sup>4</sup> CMA CGM and NOL are collectively referred to as "Parties".

## **I. THE PARTIES AND THE OPERATION**

- (2) **CMA CGM** is the parent company, governed by French law, of an international group of companies involved in the sectors of containerised liner shipping and port terminal management. CMA CGM offers a complete range of services including shipping, reefer transport, handling facilities in port as well as freight transport and logistics on land. CMA CGM is currently jointly controlled by Merit, the holding company created by CMA CGM's founder, Mr. Jacques R. Saadé, Yildirim, a Turkish company, and by Bpifrance, a French funding organisation.
- (3) **NOL** is Singapore's historical national shipping line. It is currently solely controlled by the Singapore Government-owned investment company, Temasek Holdings. NOL is active through its container shipping brand American President Lines ("APL"). NOL's business activities encompass all aspects of global cargo container transportation.
- (4) On 7 December 2015, CMA CGM formally announced its pre-conditional voluntary offer to acquire the whole of NOL. The acquisition price is approximately USD [...]. The Transaction therefore constitutes a concentration within the meaning of the Merger Regulation.
- (5) Through the Transaction, CMA CGM intends to reinforce its presence in Asia. Singapore would become the main hub for the combined entity's operations in Asia.

## **II. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> (CMA CGM: EUR [...] million; NOL: EUR [...] million). Each of them has a EU-wide turnover in excess of EUR 250 million (CMA CGM: EUR [...] million; NOL: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **III. MARKET DEFINITION**

- (7) The Parties' activities mainly overlap horizontally in deep-sea container liner shipping. The Parties also overlap in short-sea container shipping services from and to Europe, however due to the marginal extent of NOL's activities in this sector, this

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<sup>3</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>4</sup> Publication in the Official Journal of the European Union No C 100, 16. 3.2016, p. 6.

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

will not be discussed any further in this Decision.<sup>6</sup> Furthermore, the Transaction creates vertical links between deep-sea container liner shipping services and container terminal services in which both Parties are active.

### III.1. Deep-sea container liner shipping services

- (8) 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.<sup>7</sup> This market can be distinguished from non-liner shipping (tramp, specialised transport) because of regularity and frequency of the service. In addition, the use of container transportation separates it from other non-containerised transport such as bulk cargo. A possible narrower product market is that for the transport of refrigerated goods, which could be limited to refrigerated (**reefer**) containers only or could include transport in conventional reefer vessels.
- (9) In past cases, the Commission has looked separately at reefer and non-refrigerated (**warm**) containers only in the case of trades with a share of reefer containers in relation to all containerised cargo of 10% or more in both directions.<sup>8</sup> Given the results of the market investigation, the same approach is followed in the present case.
- (10) In the Commission's market investigation, majorities of all groups of respondents confirmed the Commission's previous market definition.<sup>9</sup> However, customers and competitors were evenly split concerning a potential further segmentation between reefer and non-reefer containers.<sup>10</sup> In any case, for the purpose of the present decision, it can remain open whether or not there are separate markets for reefer and non-reefer containers given that the assessment of the Transaction would not differ under either definition.
- (11) The **geographical dimension** of container liner shipping services consists of single trades, defined by the range of ports which are served at both ends of the service.

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<sup>6</sup> NOL does not have any dedicated short-sea activity in Europe and does not have any plans to develop such activity in Europe. Therefore, there is no regularity in terms of routes and volumes. NOL's intra-European shipping activities depend on customer demand at the European ports of call, as well as on the vessels' available capacity. Over the period 2013–2015, NOL has incidentally carried minimal volumes on around 130 different short-sea routes. However, seven country pairs are horizontally affected. On five of these country pairs (France–Egypt, France–Lebanon, Netherlands–Lebanon, Spain–Norway, United Kingdom–Lebanon, NOL transported less than 100 TEUs in 2014. In its decision in case M.7523 – *CMA CGM/OPDR*, the Commission considered that increments below 100 TEUs per year were unproblematic because these volumes were minimal (paragraph 88, footnote 77). In all five country pairs the increment brought about by NOL is less than [0-5]%. The two remaining country pairs are Germany–Lebanon and Germany–Turkey. On Germany–Lebanon, the Parties' combined market share is [20-30]%. However, with [...] TEUs transported in 2014, the market share increment brought about by NOL is negligible ([0-5]) %. On the Germany–Turkey country-pair, the Parties' combined market share is [20-30]% and the increment brought about by NOL is negligible ([0-5]%). No concerns were raised in the Commission's market investigation (see Q1 – Questionnaire to competitors, question 21; Q2 – Questionnaire to customers, question 21). The Transaction therefore does not raise serious doubts concerning container short-sea shipping.

<sup>7</sup> E.g. M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, recital 16; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 13.

<sup>8</sup> M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*; M.3829 – *Maersk/PONL*, recital 10

<sup>9</sup> Q1 – Questionnaire to competitors, question 5 ; Q2 – Questionnaire to customers, question 5.

<sup>10</sup> Q1 – Questionnaire to competitors, question 6 ; Q2 – Questionnaire to customers, question 6.

Each trade has specific characteristics depending on the volumes shipped, the types of cargo transported, the ports served and the length of the journey from the point of origin to the point of destination. Relevant trades are those from Northern European areas and back on the one hand, and from the Mediterranean to other non-European areas and back on the other hand.<sup>11</sup>

(12) In the Commission's market investigation, majorities of competitors and customers alike considered that, consistent with precedents, the following ranges of ports constituted a single end of trade:<sup>12</sup>

- Northern Europe
- Mediterranean
- North America
- South America East Coast
- South America West Coast
- Central America and Caribbean
- Middle East
- Indian Subcontinent
- Far East
- Australia and New Zealand
- North Africa
- West Africa
- East Africa

(13) Market conditions on the two directions of a trade can be different, in particular in case of trade imbalances or different characteristics of the products shipped; a distinction between the two directions (legs) of a trade is therefore warranted.<sup>13</sup> This was confirmed by large majorities of customers and competitors in the Commission's market investigation.<sup>14</sup>

(14) In general, the Notifying Party concurs with this market definition while arguing that there is no separate market for reefer containers.

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<sup>11</sup> M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, recital 23; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14.

<sup>12</sup> Q1 – Questionnaire to competitors, question 7 ; Q2 – Questionnaire to customers, question 7.

<sup>13</sup> E.g. M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, recital 29; M.3829 – *Maersk/PONL*, paragraph 15. The Commission ultimately left the precise scope of the geographic market definition open.

<sup>14</sup> Q1 – Questionnaire to competitors, question 8 ; Q2 – Questionnaire to customers, question 8.

- (15) The Commission concludes that for the purpose of the assessment of the Transaction the relevant market is the market for container liner shipping services in the above-described dimensions.

### **III.2. Container terminal services**

- (16) In previous Commission decisions,<sup>15</sup> the **product market** of container terminal services by terminal operators has been defined as involving the loading, unloading, storage, and land-side handling ("stevedoring") for inland transportation of containerised cargo.
- (17) With respect to deep-sea traffic, a delineation of container terminal throughput has been envisaged as follows:
- (a) hinterland traffic, that is containers transported directly onto/from a container vessel from/to the hinterland (*via* barge, truck or train), and
  - (b) transshipment traffic, that is, containers destined for onward transportation to other ports. Transshipment traffic involves both feeder movements and relay movements.<sup>16</sup>
- (18) The relevant **geographical dimension** of container terminal services is determined by the geographic scope that the terminal generally serves (catchment area). That can be in its broadest scope regions, such as Northern Europe (for transshipment traffic), and in its narrowest possible scope the catchment area of the ports in a certain range, such as Hamburg–Antwerp (for hinterland traffic) or possibly even narrowed down to comprising ports of a single Member State (such as Germany) only.<sup>17</sup> The Commission however left open the precise definition of the geographic market.
- (19) The Notifying Party concurs with this market definition.
- (20) The Commission concludes that for the purpose of the assessment of the Transaction the relevant market is the market for container terminal services in the above-described dimensions.

## **IV. COMPETITIVE ASSESSMENT**

### **IV.1. Deep-sea container liner shipping services**

#### *IV.1.1. General characteristics of the industry*

- (21) Shipping companies provide their services either individually with their own vessels (owned or chartered) or through co-operation agreements with other shipping companies. Cooperation agreements can consist of slot charter agreements, consortia (also called vessel sharing agreements), or alliances.

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<sup>15</sup> M.7523 – CMA CGM/OPDR, recitals 63 and following; M.5398 – Hutchison/Evergreen, recitals 9–10.

<sup>16</sup> M.5398 – Hutchison/Evergreen, recitals 9–11, M.3829 – Maersk/PONL, recitals 17–19, M.3863 – TUI/CP Ships, recital 12

<sup>17</sup> M.7523 – CMA CGM/OPDR, recital 65; M.5450 – Kühne/HGV/TUI/Hapag-Lloyd, recital 16; M.3973 – CMA CGM/Delmas, recital 12.



- (22) Under a slot charter agreement a shipping company ("charterer") "rents" a pre-determined number of container slots on a vessel of another shipping company in exchange for cash (normal slot charter) or slots on its own vessels (slot-exchange). Slot charter agreements do not normally involve joint decision making concerning marketing, ports of call, schedule or the use of the same port terminals.
- (23) Consortia (also called vessel sharing agreements or "VSAs")<sup>18</sup> are operational agreements between shipping companies established on individual or multiple trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides vessels for operating the joint service and in exchange receives a number of container slots across all vessels in the service based on the total vessel capacity contributed. The allocation of container slots is usually pre-determined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of costs between the participants in a consortium.
- (24) As is common industry practice in the container liner shipping business, each of CMA CGM and NOL are members in one or more consortia or co-operation agreements with other shipping companies, depending on the trade.<sup>19</sup>
- (25) Alliances are basically vessel sharing agreements, the main difference as opposed to consortia being that they cover multiple trades rather than one trade, i.e. they are a matrix of vessel sharing agreements. NOL is a member of the global G6 alliance. Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost efficient way. If new larger ships are introduced in one trade, existing tonnage can be more easily and efficiently redeployed or cascaded into other trades. At the same time, the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location. Moreover, by forming alliances, carriers may be better placed to secure sufficient numbers of vessels to offer a fixed or weekly schedule on a more reliable basis for the benefit of their customers who seek not only lower costs, but also require certain frequency of services.
- (26) Since 1995 the Commission had put in place several Block Exemption Regulations ("BER") concerning the container liner shipping industry.<sup>20</sup> The Commission acknowledges that although the cooperation of consortia members in jointly operating container liner shipping services is likely to restrict competition, it also enables achieving certain efficiencies, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress. For customers to benefit from

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<sup>18</sup> M.7268 – *Kühne/HGV/TUI/Hapag-Lloyd*, recital 50.

<sup>19</sup> For a list of CMA CGM's consortia memberships, see Table 1.

<sup>20</sup> 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 ("BER"), 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.

those efficiencies, however, sufficient competition should be maintained in the market. This condition is met, according to the BER, where the market share of a consortium does not exceed 30% 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.

- (27) The Notifying Party is of the view that the Transaction should be assessed without taking into account its or NOL's participation in consortia. In this respect, the Notifying Party submits that each member of a vessel sharing agreement or alliance remains independent from the other members and that competition exists between them on essential parameters of competition such as price and that membership in a consortium or alliance is not a key parameter for customer choices.
- (28) In its previous practice concerning the sector, the Commission considered that it was not appropriate to assess the effects of the concentration only on 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 decision of the consortium concerning the characteristics of the service provided, in particular its level of capacity.<sup>21</sup>
- (29) In line with the previous practice, the assessment of this case will also take into account the aggregate shares of the Parties' consortia, thus reflecting the more limited competitive constraints that the Parties' consortia partners exert on them.

#### *IV.1.2. Methodology for calculating market shares*

- (30) The methodology that the Parties applied for the calculation of market shares follows the Commission's precedent in case M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*. First, the Parties identify the markets where their own individual market share leads to a combined market share of 20% or more. Then, the Parties identify the markets in which a 20% combined market share threshold is met when adding to the market share of the Parties that of every single carrier that either of the Parties shares a consortium with.
- (31) Following the method used by the Commission in M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, the total market figures are extracted from the CTS database and so are the volumes of competitors when those were available. When those volumes were not available because the said competitor did not report its volumes to CTS, the Parties have submitted their best estimates following a methodology agreed with [name of an external consultant] a consultancy which provides analysis and advice on strategic, commercial and economic issues mainly related to freight transport and logistics.<sup>22</sup> The Parties each provided their own volumes based on their internal records.
- (32) In terms of timeframe, the Parties based their analysis on the last complete set of yearly data: that is to say 2014. For compliance reasons, CTS has not published competitors' data for 2015. However, the Parties provided their market share based on the total market available on CTS between January and October 2015.<sup>23</sup> The

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<sup>21</sup> See M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, recitals 68–75.

<sup>22</sup> Form CO, Annex 12.

<sup>23</sup> Form CO, Annex 13.

Parties' market shares on the various trades remained stable in 2015 compared to 2014.

#### *IV.1.3. NOL's membership in the G6 consortium*

- (33) NOL is currently a member of the G6 Alliance which is active in Europe on the trades towards Asia and North America.
- (34) CMA COM has already publicly announced that it will withdraw NOL from the G6 Alliance after the closing of the Transaction,<sup>24</sup> subject to the Transaction's being approved by the relevant antitrust authorities.
- (35) As for the rationale of NOL's withdrawal from G6, the Parties submit that CMA CGM wants to [information about CMA CGM's commercial strategy]. To achieve this objective CMA CGM must be able to control entirely the ships owned or leased by NOL. In addition, CMA CGM intends to exploit the complementary footprint between its own and NOL's operations. Therefore, the Parties argue, CMA CGM must be able to redeploy NOL's vessels on its own services. The vessels should be free of any contractual obligations and therefore should no longer be dedicated to G6 services. Instead, NOL would be integrated into CMA CMG's O3 alliance.
- (36) [NOL's expectations on 4 February 2016 regarding the G6 exit].
- (37) [APL's withdrawal from G6 will take effect on] 31 March 2017 .
- (38) The Parties therefore claim that their clear intention for NOL to leave the G6 and the notice served by NOL's G6 partners should be enough to assuage any concern arising from the creation of new links between previously unrelated consortia. However, the Commission notes that the [...] period for leaving G6 is rather long by the Commission's usual standards (divestiture periods in merger cases usually last only six months). There would likewise be no hold separate obligation to avoid the flow of information between competing alliances or any guarantee that NOL would indeed leave G6 as planned.
- (39) For these reasons, the Commission will assess the competitive situation as it presents itself at the time of this decision without anticipating NOL's intended withdrawal from G6.

#### *IV.1.4. Horizontal overlaps (trade-by-trade assessment)*

##### *IV.1.4.1. The view of the Notifying party*

- (40) The Parties submit that the Transaction will not materially affect competition on any of the overlapping trades because of the Parties' moderate individual market shares. Moreover, the Notifying Party submits that the Transaction will not create substantial new links between previously unconnected consortia and that the

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<sup>24</sup> See e.g. *Ship & Bunker*, "Singapore, O3 Alliance Figure Prominently in CMA CGM's NOL Acquisition Plans", <http://shipandbunker.com/news/apac/170713-singapore-o3-alliance-figure-prominently-in-cma-cgms-nol-acquisition-plans> (retrieved on 17 March 2016).

merged entity will continue to face competition from independent shipping companies as well as from third-party consortia and from their own consortia partners.<sup>25</sup>

#### IV.1.4.2. Overview of the overlapping trades

(41) CMA CGM and NOL have overlapping container liner shipping services on 17 trades connecting Europe with the Americas, Asia, and the Middle-East (and correspondingly on 34 legs of trade). These trades are the following:

- Northern Europe – East Asia (NE–EA)
- Mediterranean – East Asia (MED–EA)
- Northern Europe – North America (NE–NA)
- Mediterranean – North America (MED–NA)
- Northern Europe – Middle East (NE–ME)
- Mediterranean – Middle East (MED–ME)
- Northern Europe – Indian Sub-Continent (NE–INSC)
- Mediterranean – Indian Sub-Continent (MED–INSC)
- Northern Europe – Central America & Caribbean (NE–CAC)
- Mediterranean – Central America & Caribbean (MED–CAC)
- Northern Europe – South America West Coast (NE–SAWC)
- Mediterranean – South America West Coast (MED–SAWC)
- Northern Europe – South America East Coast (NE–SAEC)
- Northern Europe – Australasia & Oceania (NE–AO)
- Mediterranean – Australasia & Oceania (MED–AO)
- Northern Europe – Africa East Coast (NE–AEC)
- Mediterranean – Africa East Coast (MED–AEC)

(42) CMA CGM is currently offering container liner services offering services together with other carriers *via* various vessel sharing agreements (consortia). The list of these consortia where CMA CGM is a member for the overlapping trades<sup>26</sup> is presented in the table below:

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<sup>25</sup> Form CO, paragraphs 513–518

<sup>26</sup> Form CO, Annex 8.

**Table 1: Information on CMA CGM's memberships in consortia on overlapping trades from/to Europe**

<i>Name of service</i>	<i>Consortium partners of CMA CGM</i>	<i>Overlap trades</i>
BEX2 , BEX (vessel sharing agreements of O3)	CSCL, UASC	MED-EA
Vespucci	UASC, Hamburg Süd	NE-NA
St Laurent 1	Maersk	NE-NA
Panama Direct Line	Marfret	NE-NA NE-AO NE-CAC
Amerigo Express	UASC, HANJIN Shipping, CSG (CSCL)	MED-NA MED-ME MED-INSC
EPIC	UASC	NE – INSC NE-ME MED-INSC MED-ME NE-AEC MED-AEC
NEMO (EAX)	Hapag Lloyd	NE-AO MED-AO NE-INSC (westbound only) MED-INSC(westbound only)
Europe Caribbean	Hapag Lloyd	NE-CAC
Northern Europe French Guiana	Marfret	NE-CAC NE-EASC MED-CAC
West Coast Chile Eurosail Sling 1	Hapag Lloyd, Hamburg Süd	NE-CAC NE-SAWC
Mediterranean Caribbean	Marfret	MED-CAC

- (43) The Parties' combined market shares when looked at in isolation are below 30% (in fact, they do not exceed 30% on any of the 17 overlapping trades).<sup>27</sup> This picture changes when the market shares of consortia are added.
- (44) On some of the overlapping trades, CMA CGM is a member of the "Ocean Three alliance" ("O3"), currently together with United Arab Shipping Company (UASC) and China Shipping Container Lines (CSCL), whereas NOL is a member of the G6 alliance, currently together with Hapag Lloyd<sup>28</sup>, HMM, NYK, MOL and OOCL. Taken into account CMA CGM's membership in O3 and NOL's membership in G6,

<sup>27</sup> The only exception being the westbound leg of the MED-CAC trade where the Parties' combined market share reaches [30-40]%.

<sup>28</sup> Hapag Lloyd also includes CSAV. This is valid for all instances in which Hapag Lloyd is mentioned throughout the present Decision.

the Transaction would lead to the creation of new links between previously unrelated consortia on 8 of the 17 trades, namely: Northern Europe – North America (NE–NA), Northern Europe – Middle East (NE–ME), Mediterranean – Indian Sub-Continent (MED–INSC), Northern Europe – Far East (NE–FE), Mediterranean – Far East (MED–FE), Mediterranean – North America (MED–NA), Mediterranean – Middle East (MED–ME), and Northern Europe – Indian Subcontinent (NE–INSC).

- (45) The Parties' combined market shares including consortia partners exceed 40% either on one or both legs of trade on 6 out of the 17 trades: Northern Europe – North America (NE–NA), Northern Europe – Middle East (NE–ME), Mediterranean – Indian Sub-Continent (MED–INSC), Northern Europe – Central America and Caribbean (NE–CAC), Mediterranean – Central America and Caribbean (MED–CAC), and Northern Europe – South America West Coast (MED–SAWC).<sup>29</sup>
- (46) Consequently, on these six trades, individual competitors and consortia independent from the Parties represent together less than 60% of the total volumes transported on each trade, except for MED–INSC and MED–CAC trades, where this holds true only on one of the legs of these trades, namely for eastbound Mediterranean–Indian Subcontinent ([50-60]%) and for northbound Mediterranean–Central America–Caribbean ([50-60]%).<sup>30</sup>
- (47) In light of the above, the following assessment distinguishes between trades on which new links between previously unrelated consortia are created and trades where the Parties have market shares above 40%.

*IV.1.5. Affected trades where new links are created between previously unconnected consortia*

- (48) The Parties today are members of different consortia so that there is no consortium that counts both CMA CGM and NOL among its members. Therefore, the Transaction would create links between competing consortia that are currently independent from one another on 8 trades where NOL is a member of the G6 Alliance and CMA CGM is a member of the O3 consortium. In particular, on the NE–NA, NE–ME trades the combined market shares of the two consortia members would be significant (on the NE–INSC trade this would be valid only for one of the legs).
- (49) As a result, post-Transaction, the combined entity would (i) have the ability to influence decisions regarding the level and the allocation of capacity, (ii) participate in the setting of ports of call and schedules, and (iii) have access to information on capacity for a broader range of consortia than CMA CGM and NOL individually have today.

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<sup>29</sup> The trades connecting Northern Europe to the Indian Subcontinent and Mediterranean to Central America/Caribbean are among them to the extent that the Parties' market shares exceed 40% on one of the legs of these trades.

<sup>30</sup> For the NE–INSC and MED–CAC trades, the combined market shares of the Parties and their consortia partners exceed 40% only on one of the legs of these trades, namely [40-50]% for *Eastbound Mediterranean – Indian Subcontinent* and [40-50]% for *Northbound Mediterranean – Central America/Caribbean*.

- (50) Therefore, unfettered competition would only come from those competitors which are unconnected to the Parties and their consortia and account for the "free market". On most of these trades, the market share of the "free market", i.e. competitors not linked to the Parties in any way, would exceed [60-70]%. The Transaction is therefore unlikely to lead to any competition concerns on these trades. However, on the NE–NA trade, the "free market" has less than [40-50]% market share. In addition, on the NE–ME trade, the free market is almost [50-60]%, but actually accounted for mostly by Maersk and MSC which already co-operate *via* their 2M consortium, with a combined market share of [40-50]% (reaching [50-60]% for the westbound leg).
- (51) The Transaction may therefore lead to a decrease of competitive pressure and may create an incentive for the combined entity to reduce the capacity it offers or, in any event, compete less aggressively than today on the NE–NA and NE–ME trades. The combined entity would participate in more consortia than CMA CGM and NOL individually today and would generate profits from consortia that pre-Transaction were independent from one another. As a consequence, the combined entity could benefit from the effects of an increase in prices induced by a reduction in capacity in a consortium through the profits generated in a different consortium in which it participates.
- (52) Thus, the structural links between competing consortia created by the Transaction, in particular on the trades where NOL is a member of G6, could potentially lead to non-coordinated horizontal effects.
- (53) These trades will be assessed in more detail in the following subsections.

#### IV.1.5.1. Northern Europe – North America (NE–NA)

##### IV.1.5.1.a. Description of the trade

- (54) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–NA trade are summarised in the table below.

Table 2: NE–NA

Entity	Trade	West-	Eastbound
	%	%	%
CMA CGM	[5-10]	[5-10]	[5-10]
NOL	[0-5]	[0-5]	[0-5]
<b>Parties combined</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>
<b>Parties' consortia (G6 excluded)</b>	<b>[20-30]</b>	<b>[20-30]</b>	<b>[20-30]</b>
<b>G6 alliance (NOL excluded)</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[40-50]</b>
<b>Parties' consortia combined (G6 included)*</b>	<b>[60-70]</b>	<b>[60-70]</b>	<b>[60-70]</b>
Independent competitors	[30-40]	[30-40]	[30-40]

*Source Parties' best estimates and CTS data for 2014*

\* Figures may not sum up exactly due to rounding

- (55) On the NE–NA trade, the Parties held a combined share of [10-20]% ([10-20]% westbound and [10-20]% eastbound) in 2014. NOL operates in this trade through

the G6 Alliance. NOL shipped [90-100]% of its total cargo through the G6 Alliance.<sup>31</sup>

- (56) The aggregated share of the total cargo carried by the G6 Alliance (NOL not included) in the NE–NA trade, would amount to [30-40]% ([30-40]% westbound and [40-50]% eastbound). The increment including G6 therefore is [40-50]% for the trade ([30-40]% westbound and [40-50]% eastbound).
- (57) The Parties' main independent competitors include MSC<sup>32</sup> ([20-30]% – westbound [20-30]% and eastbound [20-30]%), ICL ([0-5]% – westbound [0-5]% and eastbound [0-5]%), and Evergreen ([0-5]% – westbound [0-5]% and eastbound [0-5]%). Other independent competitors offering standalone services amount for [5-10]% of the total volume on this trade (westbound [10-20]% and eastbound [5-10]%).
- (58) On the NE–NA trade, the free market amounts to less than 40% ([30-40]% – [30-40]% westbound and [30-40]% eastbound).
- (59) The transport of reefer containers accounted for [5-10]% of the total volumes transported on the trade ([5-10]% westbound and [5-10]% eastbound).<sup>33</sup> Therefore, the effects of the transaction on the transport of reefer containers will not be assessed separately for the NE–NA trade.

*IV.1.5.1.b. Commission's assessment*

- (60) The Parties are rather small players on this trade with low market shares. The Transaction would therefore lead to only a small increase of CMA CGM's market share and result in a combined market share of [10-20]% the total volumes shipped, with similar figures for westbound and eastbound traffic.
- (61) NOL, however, *via* its membership in the G6 consortium, would create a link between G6 and CMA CGM's O3 as well as other VSAs, CMA CGM has on this trade (CMA CGM has VSAs with Maersk, UASC, Hamburg Süd and Marfret on this trade). Taking CMA CGM's VSA and NOL together without G6, the combined market share would still be moderate and account for [20-30]-[20-30]% westbound and [20-30]% eastbound). Adding G6, however, the combined market share would be [60-70]% ([60-70]% westbound and [60-70]% eastbound), whereas the share of the independent competitors and of the consortia not related to the Parties would be [30-40]% ([30-40]% westbound and [30-40]% southbound).
- (62) Independent competition comprises only one sizable competitor (MSC) and a few shipping companies with smaller shares (most notably ICL and Evergreen).
- (63) The majority of respondents to the market investigation consider switching in case of a price increase relatively easy and that sufficient competition would remain in this trade post-Transaction. Nevertheless, while the majority of customers and competitors consider that the closest competitors of CMA CGM are MSC, Maersk and Hapag Lloyd, most customers and competitors that responded to the question-

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<sup>31</sup> Form CO, Annex 11.

<sup>32</sup> "MSC" stands for Mediterranean Shipping Company in this analysis.

<sup>33</sup> Form CO, Annex 11.



naire consider CMA CGM as the second closest competitor to NOL on the NE–NA trade by a narrow margin to the competitor considered closest, Hapag Lloyd. In addition, a significant proportion of customers also consider that the links created by the Transaction could lead to exchange of sensitive information between members of competing services, for instance if the merged entity is active on competing consortia.<sup>34</sup>

- (64) The Transaction would lead to the creation of a new link between CMA CGM which already has vessel sharing agreements with Maersk, UASC, Hamburg Süd and Marfret on this trade. Moreover, the members of the various consortia in which the Parties would be members on this trade jointly establish the main criteria for the operation, including the capacity that will be offered and its allocation among shipping companies as well as the consortia's schedule and ports of call. It appears uncertain that significant new entry could occur on this trade in the near future.
- (65) Post-Transaction, the combined entity would therefore (i) have the ability to influence decisions regarding the level and the allocation of capacity, (ii) participate in the setting of ports of call and schedules, and (iii) have access to information on capacity for a broader range of consortia and competitors than CMA CGM and NOL individually have today.
- (66) Until NOL exits G6, the link created by the Transaction between the G6 consortium and CMA CGM's vessel sharing agreements with Maersk, UASC, Hamburg Süd and Marfret would be likely to lead to a decrease of competitive pressure as it would increase the incentives for the combined entity to reduce the capacity it offers or, in any event, compete less aggressively than today. The combined entity would generate profits from consortia that pre-transaction were independent from one another and could benefit of the effects of an increase in prices induced by a reduction in capacity in a consortium through the profits generated in a different consortium in which it participates.

#### *IV.1.5.1.c. Conclusion*

- (67) In light of the above, 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 and its possible sub-segments in the NE–NA trade.

#### *IV.1.5.2. Northern Europe – Middle East (NE–ME)*

##### *IV.1.5.2.a. Description of the trade*

- (68) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the NE–NA trade\* are summarised in the table below.

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<sup>34</sup> Q2 – Questionnaire to customers, questions 13, 14, 15, 16 and Q1 – Questionnaire to competitors questions 11 and 12.

\* Clerical mistake – the text relates to NE-ME trade.

Table 3: NE–ME

Entity	Trade	West-	Eastbound
	%	%	%
CMA CGM	[10-20]	[10-20]	[20-30]
NOL	[0-5]	[0-5]	[0-5]
<b>Parties combined</b>	<b>[20-30]</b>	<b>[10-20]</b>	<b>[20-30]</b>
<b>Parties consortia (G6 excluded)</b>	<b>[30-40]</b>	<b>[20-30]</b>	<b>[30-40]</b>
<b>G6 alliance (NOL excluded)</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>
<b>Parties' consortia combined (G6 included)*</b>	<b>[40-50]</b>	<b>[40-50]</b>	<b>[50-60]</b>
Independent competitors	[50-60]	[50-60]	[40-50]

Source Parties'

\* Figures may not sum up exactly due to rounding

- (69) On the NE–ME trade, the Parties held a combined share of [20-30]% ([10-20]% westbound and [20-30]% eastbound) in 2014. When looking strictly at the Parties, the increment brought about the Transaction is limited, as NOL's market share does not exceed [0-5]% on any leg, leading to a combined market share of [20-30]% on that trade ([10-20]% westbound and [20-30]% eastbound).
- (70) Nevertheless, the picture is different when taking into account the Parties' membership in various consortia. CMA CGM has a vessel sharing agreement with UASC on this trade whereas NOL operates on this trade through the G6 Alliance. CMA CGM also shipped approximately [50-60]% of its total cargo *via* independent operations (outside the vessel sharing agreement) and [10-20]% through slot chartering or SWAP.<sup>35</sup> NOL shipped all of its cargo *via* G6 on this particular trade.
- (71) Taking into account the total cargo carried by the G6 Alliance on the NE–ME trade, the combined market share would increase further by [10-20]% ([10-20]% westbound and [10-20]% eastbound) to [40-50]% ([40-50]% westbound and [50-60]% eastbound).
- (72) The Parties' main independent competitors include Maersk<sup>36</sup> ([20-30]% – westbound [30-40]% and eastbound [20-30]%), and MSC<sup>37</sup> ([10-20]% – westbound [10-20]% and eastbound [10-20]%). Other independent competitors offering standalone services amount for [5-10]% of the total volume on this trade (westbound [0-5]% and eastbound [5-10]%). These other competitors (and their corresponding market shares on the trade combined) are CSCL ([0-5]%), Hanjin ([0-5]%), PIL ([0-5]%), Cosco ([0-5]%) and Wan Hai ([0-5]%).<sup>38</sup>
- (73) On the NE–ME trade, the free market is [50-60]%, but is actually accounted for mostly by Maersk and MSC which already co-operate *via* their 2M consortium, with a combined market share of [40-50]% (reaching [50-60]% for the westbound leg and [40-50]% for the eastbound leg).

<sup>35</sup> Form CO, Annex 11.

<sup>36</sup> "Maersk" stands for A.P.Møller-Mærsk A/S in this analysis.

<sup>37</sup> "MSC" stands for Mediterranean Shipping Company in this analysis.

<sup>38</sup> Form CO, Footnotes 114 and 115, Annex 11 and Annex 12 to the Form CO.

- (74) The transport of reefer containers accounted for [10-20]% of the total volumes transported on the trade ([10-20]% westbound and [0-5]% eastbound)<sup>39</sup> which is above the 10% threshold the Commission has set as the watershed for requiring a separate analysis.<sup>40</sup>
- (75) As regards reefer the market position of the parties is very similar to the total (reefer and dry combined market. The combined market share of the Parties individually is approx. [20-30]% ([20-30]% eastbound and [5-10]% westbound). The increment brought about by NOL in the reefer market is very limited and not exceeding [5-10]% on either leg of this trade ([0-5]% combined – [0-5]% eastbound and [0-5]% westbound).
- (76) Similar to the wider market including both dry and reefer containers, the situation on the reefer market nevertheless changes when taking into account the Parties memberships in the various consortia. The aggregated share of the total reefer cargo carried by the G6 Alliance in the NE–ME trade would amount to [10-20]% ([10-20]% eastbound and [10-20]% westbound), thus resulting in [40-50]% overall consortia market share including CMA CGM's consortia partner (UASC) as well as G6 ([40-50]% eastbound and [20-30]% westbound).
- (77) The Parties' main independent competitors with regard to reefer traffic are the same as for the combined traffic, including Maersk ([10-20]% – westbound [20-30]% and eastbound [10-20]%), and MSC ([20-30]% – westbound [20-30]% and eastbound [20-30]%). Other independent competitors offering standalone services amount for [10-20]% of the total reefer volume on this trade (westbound [20-30]% and eastbound [10-20]%). Nevertheless, the other competitors corresponding market shares on the reefer market are very small (for instance Hanjin only accounts for [0-5]% – [0-5]% westbound and [0-5]% eastbound and data was not available for Hamburg Süd or any of the others.<sup>41</sup>
- (78) On the NE–ME trade, the free market for reefer is almost [50-60]%, but actually accounted for mostly by Maersk and MSC which already co-operate *via* their 2M consortium, with a combined market share for reefer traffic of [40-50]% (reaching [40-50]% for the westbound leg and [40-50]% for the eastbound leg).

*IV.1.5.2.b. Commission's assessment*

- (79) The Parties together have moderate individual and combined share on this trade. On the one hand, CMA CGM has the second highest individual share on this trade with [10-20]% (after Maersk with [20-30]%) of the total volume shipped. On the other hand, NOL is a very small player on this trade ([0-5]%). The Transaction would therefore lead to a small increase of CMA CGM's market share and result in a moderate combined market share of [20-30]% the total volumes shipped with figures in similar ranges for eastbound traffic ([20-30]%) and even lower than 20% ([10-20]%) westbound.
- (80) NOL, however, also contributes its membership in the G6 consortium to the merged entity, which would then theoretically be a member of several consortia on

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<sup>39</sup> Form CO, Annex 11.

<sup>40</sup> See recital 9 above.

<sup>41</sup> Form CO, Annex 11.

this trade (CMA CGM has a VSA with UASC on this trade accounting for [20-30]% including NOL – [20-30]% westbound and [20-30]% eastbound). The market share of all of the merged entity including both CMA CGM's consortia and G6 would be [40-50]% ([40-50]% westbound and [50-60]% eastbound).

- (81) On the NE–ME trade, the share of independent competitors and of consortia not related to the Parties is [50-60]% ([50-60]% westbound and [40-50]% eastbound), but actually accounted for mostly by Maersk and MSC which already co-operate *via* their 2M consortium, with a combined market share of [40-50]% (reaching [50-60]% for the westbound leg and [40-50]% for the eastbound leg). The very few shipping companies operating independently on the trade (most notably CSCL, Hanjin, PIL, Cosco and Wan Hai) have very small individual market shares. A very similar picture arises with respect to reefer traffic, where the share of the independent competitors not affiliated with the parties reaches [50-60]% but where [40-50]% is represented by the biggest competitors' consortium 2M (reaching almost [50-60]% for the westbound leg) and where the remaining unaffiliated individual competitors have very small individual market shares.
- (82) The Parties explain that they only represent approximately [10-20]% of the available capacity on this trade, and therefore that customers have many alternatives available to them. Even if G6 members were also aggregated, the Parties claim that this would lead to a combined share of only [30-40]% of the available capacity on this trade. Moreover, the Parties claim that other carriers are present on this trade beyond MSC and Maersk (including its subsidiary Safmarine), namely CSCL, Hanjin, PIL, Cosco, K-Line, Wan Hai etc.
- (83) The Parties explain that to their best knowledge there has been no significant entry or exit on this trade for the last years. Nevertheless, the Parties submit that NE-ME is in itself a large and attractive trade which, in addition, it easily accessible to carriers already active on the trades from Northern Europe and the Mediterranean regions to Far East Asia, the two largest trades calling Europe (with respectively [more than 14] and [more than 7] million TEUs a year). Therefore, in the Parties view, entry on this trade is easy and particularly likely if concentration on this trade became excessive for customers. In particular, the Parties explain that entry is easy since *"all it takes is to charter slots on third-party vessels. Indeed, to offer container liner shipping on a particular trade (and therefore enter the market), one does not need to possess or operate one's own ship: one can merely rent slots on the ships operated by a third party via a slot charter agreement. Therefore, the barriers to entry on a particular trade are low"*.
- (84) The majority of respondents to the market investigation consider switching in case of a price increase relatively easy and that sufficient competition would remain in this trade post-Transaction. Nevertheless, while the majority of customers consider that the closest competitors of CMA CGM are MSC and Maersk, most customers that responded to the questionnaire indicated CMA CGM as the closest competitor to NOL on the NE–ME trade. In addition, a significant proportion of customers also consider that the links created by the Transaction could lead to exchange of sensitive information between members of competing services, for instance if the

merged entity is active on competing consortia.<sup>42</sup> It appears uncertain that significant new entry could occur on this trade in the near future.

- (85) The Transaction would lead to the creation of a new link between CMA CGM which already has a vessel sharing agreements with UASC<sup>43</sup> on this trade and the remaining G6 members (Hapag Lloyd, HMM, MOL, NYK and OOCL). As a result, the members of the various consortia in which the Parties would be members on this trade jointly establish the main criteria for the operation, including the capacity that will be offered and its allocation among shipping companies as well as the consortia's schedule and ports of call.
- (86) Post-Transaction, the combined entity would therefore (i) have the ability to influence decisions regarding the level and the allocation of capacity, (ii) participate in the setting of ports of call and schedules, and (iii) have access to information on capacity for a broader range of consortia and competitors than CMA CGM and NOL individually have today.
- (87) Until NOL exits G6, the link created by the Transaction between the G6 consortium and CMA CGM's vessel sharing agreements with UASC would be likely to lead to a decrease of competitive pressure as it would increase the incentives for the combined entity to reduce the capacity it offers or, in any event, compete less aggressively than today. The combined entity would generate profits from consortia that pre-transaction were independent from one another and could benefit of the effects of an increase in prices induced by a reduction in capacity in a consortium through the profits generated in a different consortium in which it participates.

*IV.1.5.2.c. Conclusion*

- (88) In light of the above, 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 and its possible sub-segments in the NE–ME trade.

*IV.1.5.3. Mediterranean – Indian Subcontinent (MED–INSC)*

*IV.1.5.3.a. Description of the trade*

- (89) The market positions of the Parties, of the consortia they belong to, and of their independent competitors on the MED–INSC trade are summarised in the table below.

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<sup>42</sup> Q2 - Questionnaire to customers, questions 13, 14, 15, 16 and Q1 - questionnaire to competitors, questions 11, 12, 13 and 23.

<sup>43</sup> Form CO table following paragraph 539.

Table 4: MED–INSC

Entity	Trade	West-	Eastbound
	%	%	%
CMA CGM	[10-20]	[10-20]	[10-20]
NOL	[0-5]	[0-5]	[0-5]
<b>Parties combined</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>
<b>Parties consortia (G6 excluded)</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[30-40]</b>
<b>G6 alliance (NOL, Hapag Lloyd excluded)</b>	<b>[0-5]</b>	<b>[0-5]</b>	<b>[0-5]</b>
<b>Parties' consortia combined (G6 included)*</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[40-50]</b>
Independent competitors	[60-70]	[60-70]	[50-60]

Source Parties'

\* Figures may not sum up exactly due to rounding

- (90) On the MED–INSC trade, the Parties held a combined share of [10-20]% ([10-20]% westbound and [10-20]% eastbound) in 2014. When looking strictly at the Parties, their combined market share remains [...] below 20% while the increment brought about by the Transaction is limited, as NOL's market share does not exceed [0-5]% on that trade nor on any of the two legs.
- (91) Even when taking into account the Parties' membership in various consortia (CMA CGM entered into a VSA with Hapag Lloyd to operate a service on the trade Mediterranean – Indian Sub-Continent, the so-called "NEMO" service<sup>44</sup> whereas NOL operates in this trade through the G6 Alliance together with Hapag Lloyd, HMM, MOL, NYK and OOCL), the combined market share of the parties would remain below [40-50]% except for the eastbound leg ([30-40]% - westbound [30-40] and eastbound [40-50]%). CMA CGM also shipped approximately [10-20]% of its total cargo through a few independent operations and slot chartering agreements.<sup>45</sup>
- (92) The aggregated share of the total cargo carried by the G6 Alliance (NOL not included) in the MED–INSC trade amounts to [0-5]% ([0-5]% westbound and [0-5]% eastbound). Therefore, when taking into account the newly created links with the G6 Alliance in the MED–INSC trade, the market share of the parties would increase with an increment of [0-5]% ([0-5]% westbound and [5-10]% eastbound).<sup>46</sup>
- (93) The Parties' main independent competitors offering standalone services include Maersk<sup>47</sup> ([20-30]% – westbound [20-30]% and eastbound [20-30]%), MSC<sup>48</sup> ([20-30]% – westbound [20-30]% and eastbound [10-20]%) and ZIM ([5-10]% – westbound [5-10]% and eastbound [5-10]%). Other independent competitors are active on the trade *via* the CKYHE consortium (namely COSCO, K Line, Yang Ming,

<sup>44</sup> Table following paragraph 232 of the Form CO.

<sup>45</sup> Form CO, paragraph 599 and following, Annex 11.

<sup>46</sup> Note that on this trade Hapag Lloyd is already "linked" to CMA CGM pre-Transaction and therefore the market share increment linked to G6 does not take into account Hapag Lloyd's corresponding market share.

<sup>47</sup> "Maersk" stands for A.P.Møller-Maersk A/S in this analysis.

<sup>48</sup> "MSC" stands for Mediterranean Shipping Company in this analysis.

Hanjin and Evergreen) and altogether amount for [5-10]% of the total volume on this trade (westbound [5-10]% and eastbound [10-20]%).<sup>49</sup>

- (94) The transport of reefer containers accounted for [0-5]% of the total volumes transported on the trade ([5-10]% westbound and [0-5]% eastbound).<sup>50</sup> Therefore, the effects of the transaction on the transport of reefer containers will not be significantly different from those on the combined (reefer and dry) transport and hence, reefer container transport will not be assessed separately for the NE–ME trade.

*IV.1.5.3.b. Commission's assessment*

- (95) The Parties together have moderate individual and combined share on this trade. CMA CGM has [10-20]% (after Maersk with [20-30]% and MSC with [20-30]%) of the total volume shipped on the ME-INSC trade. NOL has a very small market share ([0-5]%) on the trade combined. The Transaction would therefore lead to a small increase of CMA CGM's market share and result in a combined market share well below 20% ([10-20]% of the total volumes shipped with figures in similar ranges for westbound traffic ([10-20]%) and eastbound traffic ([10-20]%).
- (96) Post-Transaction, the combined market share of the Parties would be below 20% with a small increment of up to [0-5]% (eastbound). The Transaction will create a link between the Parties' consortia due to NOL's membership in G6 (except for Hapag Lloyd, due to the existing joint NEMO service with CMA CGM on this trade). When NOL's membership in the G6 alliance is taken into account, the market share of the Parties and their consortia combined would slightly exceed 40% only on one leg of the trade ([30-40]% – [30-40]% westbound and [40-50]% eastbound). Moreover, the increment brought about by the Transaction would also not exceed [5-10]% on either leg. The "free market", that is the aggregated market share of individual competitors and of the consortia not related to the Parties would be more than [60-70]% on the trade (reaching more than [70-80]% on the westbound leg and almost [60-70]% on the eastbound leg).
- (97) Therefore, post-Transaction the market structure on this trade will ensure the existence of effective competition. In particular, in addition to sizeable carriers like Maersk, MSC and ZIM, each of them operating as standalone competitors on this trade, one alternative consortium which would not be connected to the Parties' operations will continue to operate on this trade (CKYHE). The share of the independent competitors and of a consortium not linked to the Parties would be [60-70]% (combined) or in any event close to [60-70]% ([60-70]% westbound, [50-60]% eastbound) depending on the possible segmentation of the market.
- (98) As confirmed by the respondents to the market investigation, the moderate combined market share of the Parties, the small increment brought about by the Transaction even when taking into account G6 in full and the presence of sizeable third parties and consortia independent of the Parties would ensure effective competition post-Transaction on this particular trade.

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<sup>49</sup> Form CO, Footnotes 114 and 115, Annex 11 and Annex 12 to the Form CO.

<sup>50</sup> Form CO, Annex 11 and Annex 16.

- (99) In light of the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments in the MED–ISME trade.

IV.1.5.4. Other affected trades where new links are created between previously unconnected consortia

- (100) The Transaction would lead to the creation of new links between CMA CGM and G6 on five further trades:
- a. Northern Europe – Far East (NE–FE)
  - b. Mediterranean – Far East (MED–FE)
  - c. Mediterranean – North America (MED–NA)
  - d. Mediterranean – Middle East (MED–ME)
  - e. Northern Europe – Indian Subcontinent (NE–INSC)
- (101) The table below shows the Parties' market shares excluding and including their various consortia as well as the size of the "free market" of completely independent competitors unaffiliated with any of the Parties' consortia.

Table 5: Other affected trades on which the Transaction leads to the creation of new links with G6

<i>Trade</i>	<i>CMA CGM (%)</i>	<i>NOL (%)</i>	<i>Parties (%)</i>	<i>Parties with con- sortia excluding G6 (%)</i>	<i>Parties' consortia combined including G6 (%)</i>	<i>"Free" market<sup>51</sup> (%)</i>
<i>NE–FE</i>	[5-10]	[0-5]	[10-20]	[10-20]	[30-40]	~[60-70]
<i>MED– FE</i>	[10-20]	[0-5]	[10-20]	[20-30]	[30-40]	~[60-70]
<i>MED– NA</i>	[5-10]	[0-5]	[5-10]	[10-20]	[30-40]	~[60-70]
<i>MED– ME</i>	[10-20]	[0-5]	[10-20]	[30-40]	[30-40]	~[60-70]
<i>NE– INSC</i>	[10-20]	[0-5]	[20-30]	[30-40]	[30-40]	~[60-70]

- (102) On all of the trades listed above (except for MED–ME) reefer traffic accounts for less than 10% of the overall volumes shipped; reefer will therefore not be assessed separately for these trades. On the MED–ME trade the share of reefer volumes was [5-10]% overall reaching [10-20]% on the eastbound leg and only [0-5]% on the westbound leg; therefore, reefer will be taken into account separately for this trade.

<sup>51</sup> Market on which the Parties have no influence, either directly or through consortia they participate in.



- (103) Moreover, on none of these trades do market shares differ by more than [5-10]% between the total volume of a trade and the volumes transported by leg of trade (eastbound and westbound) and are overwhelmingly no more than [0-5]% apart regardless of whether they are looked at by leg of trade or by overall trade. Therefore, the following assessment will not make explicit reference to market shares by leg of trade because the marginally different market shares by leg of trade would not alter the Commission's assessment.

*IV.1.5.4.a. Description of the trades*

- (104) **NE–FE** is a very thick trade with [more than 14 million] million TEUs transported in 2014. On the NE–FE trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM does not operate in any consortia on this trade and NOL is a member of G6. The increment brought about by NOL's G6 membership amounts to [20-30]% resulting in [30-40]% overall consortia market share including G6. The largest competitors on this trade are Maersk ([20-30]%), MSC ([5-10]%), Evergreen ([5-10]%), Cosco ([5-10]%) and Hanjin ([5-10]%). Two other consortia are active on the trade: 2M consisting of Maersk and MSC ([20-30]%) and CKYHE consisting of Cosco, K-LINE, Yang Ming, Hanjin Shipping, and Evergreen Line ([20-30]%).
- (105) **MED–FE** is thick trade with [more than 7 million] TEUs transported in 2014. On the MED–FE trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates in the O3 consortium with UASC ([0-5]%) and CSCL ([0-5]%) on this trade and NOL is a member of G6. The increment brought about by NOL's G6 membership amounts to [10-20]% resulting in [30-40]% overall consortia market share including G6. The largest competitors unaffiliated with the Parties on this trade are Maersk ([10-20]%), MSC ([10-20]%), Evergreen ([5-10]%), ZIM ([0-5]%) and Hanjin ([5-10]%). Two other consortia are active on the trade: 2M consisting of Maersk and MSC ([30-40]%) and CKYHE consisting of Cosco, K-LINE, Yang Ming, Hanjin Shipping, and Evergreen Line ([20-30]%).
- (106) **MED–NA** is a fairly thick trade with [more than 2 million] TEUs transported in 2014. On the MED–NA trade, the Parties held a combined share of [5-10]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates in vessel sharing agreements with UASC ([0-5]%), CSCL ([0-5]%) and Hanjin ([0-5]%) on this trade and NOL is a member of G6. The increment brought about by NOL's G6 membership amounts to [20-30]% resulting in [30-40]% overall consortia market share including G6. The largest competitors unaffiliated with the Parties on this trade are Maersk ([10-20]%), MSC ([30-40]%), Turkon ([0-5]%), ZIM ([0-5]%) and ZIM ([10-20]%). The 2M consortium consisting of Maersk and MSC ([40-50]%) is also active on the trade.
- (107) **MED–ME** is a fairly thick trade with [more the one million] TEUs transported in 2014. On the MED–ME trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates in the O3 consortium and has vessel sharing agreements with UASC ([10-20]%), CSCL ([0-5]%) and Hanjin ([0-5]%) on this trade; NOL is a member of G6. The increment brought about by NOL's G6 membership amounts to [0-5]% resulting in [30-40]% overall consortia market share including G6. The largest competitors unaffiliated with the Parties on this trade are Maersk ([30-40]%) and MSC ([20-30]%). Two other consortia are active on the trade: 2M consisting of Maersk and MSC ([50-60]%) and CKYHE consisting of Cosco, K-LINE, Yang Ming, Hanjin

Shipping, and Evergreen Line ([0-5]%). Reefer market shares on this trade differ only marginally from overall market shares (Parties together: [10-20]%; and with consortia: [30-40]%).

- (108) **NE–INSC** is a fairly thick trade with [more than one million] TEUs transported in 2014. On the NE–INSC trade, the Parties held a combined share of [20-30]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates has vessel sharing agreements with UASC ([10-20]%), and Hapag-Lloyd ([0-5]%) on this trade; NOL is a member of G6. The increment brought about by NOL's G6 membership amounts to [0-5]% resulting in [30-40]% overall consortia market share including G6. The largest competitors unaffiliated with the Parties on this trade are Maersk ([20-30]%) and MSC ([20-30]%). Two other consortia are active on the trade: 2M consisting of Maersk and MSC ([40-50]%) and CKYHE consisting of Cosco, K-LINE, Yang Ming, Hanjin Shipping, and Evergreen Line ([0-5]%).

*IV.1.5.4.b. Commission's assessment*

- (109) The Commission considers that on all of the above trades the Parties' combined market shares will remain low and would, by themselves, not even lead to affected markets (except on the NE–INSC trade where the Parties barely exceed the 20% threshold). In the same vein, the increment brought about by the Transaction on all of these trades remains firmly below [0-5]%. Taking into account the reefer market separately on the MED–ME trade does not change this assessment.
- (110) While the Transaction will lead to the creation of a new link between CMA CGM and G6, market shares still remain moderate on all of the above trades if the Parties' consortia are taken into account, nowhere exceeding 40% even including NOL's membership in G6. Without G6, the Parties' consortia market shares are even less prone to give reason for concern.
- (111) On all of these trades, strong competitors are active individually or in the form of competing consortia. The share of the "free market", i.e. competitors completely unaffiliated with the Parties is higher than [60-70]% without exception on all of these five trades.
- (112) In the Commission's market investigation, large majorities of competitors and customers alike said that there would remain sufficient competitive pressure post-Transaction to constrain the merged entity.<sup>52</sup>
- (113) Overall, the Commission considers that the low to moderate combined market shares of the Parties and their consortia as well as the presence of strong competitors and the fact that no competition concerns were raised in the market investigation support the conclusion that the Transaction would not lead to any competition concern on these trades.

*IV.1.5.4.c. Conclusion*

- (114) In light of the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments on the Northern Europe – Far East (NE–FE), Mediterranean – Far East (MED–FE), Mediterranean

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<sup>52</sup> Q1 – Questionnaire to competitors, question 19, Q2 – Questionnaire to customers, question 18.

– North America (MED–NA), Mediterranean – Middle East (MED–ME), and Northern Europe – Indian Subcontinent (NE–INSC) trades.

#### IV.1.6. Affected trades where no new links are created between consortia

##### IV.1.6.1. Affected trades with market shares above 40%

(115) The Transaction would lead to affected markets with combined market shares in excess of 40% including consortia memberships without the creation of any further links between previously unrelated consortia on three trades:

- a. Northern Europe – Central America and Caribbean (NE–CAC)
- b. Mediterranean – Central America and Caribbean (MED–CAC)
- c. Northern Europe – South America West Coast (MED–SAWC)

(116) As regards these three trades with high market shares, the Transaction does not lead to the creation of new links between previously unconnected consortia, as NOL is not a member of any such consortium for any of the trades towards South America or Central Asia and Caribbean.

(117) The table below shows the Parties' market shares excluding and including their various consortia as well as the size of the "free market" of completely independent competitors unaffiliated with any of the Parties' consortia.

**Table 6: affected trades where no new links between unconnected consortia are created and market shares in excess of 40% on at least on leg of the trade (nb = northbound)**

<i>Trade (dry and reefer bined)</i>	<i>CMA CGM (%)</i>	<i>NOL (%)</i>	<i>Parties (%)</i>	<i>Parties with consortia (%)</i>	<i>"Free" market<sup>53</sup> (%)</i>	<i>Reefer ratio (%)</i>
NE–CAC	[20-30]	[0-5]	[20-30]	[60-70]	[30-40]	[30-40] ([70-80] nb)
MED–CAC	[20-30]	[0-5]	[20-30]	[30-40]	[60-70]	[10-20] ([50-60] nb)
NE–SAWC	[10-20]	[0-5]	[10-20]	[50-60]	[40-50]	[40-50] ([60-70] nb)

**Table7: affected trades where no new links between unconnected consortia are created and market shares in excess of 40% on at least on leg of the trade (reefer only)**

<i>Trade (reefer only)</i>	<i>CMA CGM (%)</i>	<i>NOL (%)</i>	<i>Parties (%)</i>	<i>Parties with consortia (%)</i>	<i>"Free" market<sup>54</sup> (%)</i>	<i>Reefer ratio (%)</i>
NE–CAC	[20-30]	[0-5]	[20-30]	[50-60]	[50-60]	[30-40] ([70-80] nb)
MED–CAC	[40-50]	[0-5]	[40-50]	[40-50]	[50-60]	[10-20] ([50-60] nb)
NE–SAWC	[5-10]	[0-5]	[5-10]	[40-50]	[50-60]	[40-50] ([40-50] nb)

<sup>53</sup> Market on which the Parties have no influence, either directly or through consortia they participate in.

<sup>54</sup> Market on which the Parties have no influence, either directly or through consortia they participate in.

- (118) On all of the trades listed above reefer traffic accounts for more than 10% of the overall volumes shipped; reefer will therefore be assessed separately for each of these trades.

*IV.1.6.1.a. Description of the trades*

- (119) **NE–CAC** is a trade with [less than 1 million] TEUs transported in 2014. On the NE–CAC trade, the Parties held a combined share of [20-30]% ([20-30]% southbound and [20-30]% northbound) in 2014. The Transaction results in an overall increment of [0-5]%. NOL does not operate in any consortia on this trade and CMA CGM is a member of vessel sharing agreements with Marfret, Hapag Lloyd and Hamburg Süd. The increment brought about by NOL is very limited and not exceeding [0-5]% on either leg of this trade resulting in [60-70]% overall consortia market share including CMA CGM's consortia partners ([60-70]% southbound and [50-60]% northbound). One other consortium is active on the trade, 2M, accounting for [30-40]% of the market and consisting of the two largest individual competitors on this trade Maersk ([20-30]%) and MSC ([10-20]%). Other individual competitors not part of any consortium account for [0-5]% of the remaining market shares. As regards reefer the market position of the Parties is very similar to the total combined market. The combined market share of the Parties individually is approx. [30-40]% ([30-40] % southbound and [20-30]% northbound). The increment brought about by NOL in the reefer market is very limited and not exceeding [0-5]% on either leg of this trade resulting in [50-60]% overall consortia market share including CMA CGM's consortia partners ([60-70]% southbound and [40-50]% northbound).
- (120) **MED–CAC** is a relatively thin trade with [less than 0.5 million] TEUs transported in 2014. On the MED–CAC trade, the Parties held a combined share of [20-30]% ([20-30] southbound and [30-40]% northbound) in 2014. The Transaction results in an overall increment of [0-5]%. NOL does not operate in any consortia on this trade and CMA CGM is a member of vessel sharing agreements with Marfret. The increment brought about by NOL is very limited and remaining far below [0-5]% on either leg of this trade and resulting in [30-40]% overall consortia market share including CMA CGM's consortia partner ([20-30]% southbound and [40-50]% northbound). The two largest individual competitors on this trade are Maersk ([10-20]%) and MSC ([20-30]%) operating together *via* the 2M consortium on this trade. Other individual competitors not part of any consortium are Hapag Lloyd ([10-20]%) and ZIM ([10-20]%). As regards reefer traffic, the market position of the Parties is relatively stronger than that on that on the wider (reefer and dry combined) market. The combined market share of the Parties individually is approx. [50-60]% ([20-30]% southbound and [50-60]% northbound). Nevertheless, the increment brought about by NOL in the reefer market on this trade is close to [0-5]% (as well as the increment related to the consortium of CMA CGM on this trade) on either leg of this trade resulting in approx. [50-60]% overall consortia market share including CMA CGM's consortia partners ([20-30]% southbound and [50-60]% northbound).
- (121) **NE–SAWC** is a trade with [less than 1 million] TEUs transported in 2014. On the NE–SAWC trade, the Parties held a combined share of [10-20]% ([10-20]% southbound and [10-20]% northbound) in 2014. The Transaction results in an overall increment of [0-5]%. NOL does not operate in any consortia on this trade and CMA CGM is a member of vessel sharing agreements with Hapag Lloyd and Hamburg Süd. The increment brought about by NOL is very limited and does not exceed [0-5]% on either leg of this trade resulting in [50-60]% overall consortia market share

including CMA CGM's consortia partners ([50-60]% southbound and [40-50]% northbound). No other consortium is active on this trade. The largest individual competitors on this trade are Maersk ([10-20]%), MSC ([20-30]%). Other individual competitors active on this trade account for [5-10]% of the remaining market volume. As regards reefer traffic, the market position of the Parties is very similar to the wider (reefer and dry combined) market. The combined market share of the Parties individually is approx. [5-10] % ([5-10]% southbound and [5-10]% northbound). The increment brought about by NOL in the reefer market is very limited and not exceeding [0-5]% on either leg of this trade resulting in [40-50]% overall consortia market share including CMA CGM's consortia partners ([60-70]% southbound and [40-50]% northbound).

*IV.1.6.1.b. Commission's assessment*

- (122) The Commission considers that, despite significant market shares of the combined entity on all of the above trades, the Transaction does not lead to a significant change in the market structure as there are no new links being created between previously unconnected consortia and because the increment corresponding to NOL's market share is always significantly below [0-5]%, independently of the possible market segmentation.
- (123) Specifically, on the NE–SAWC and NE–CAC trades, while the combined market shares of the Parties and their consortium partners exceed [40-50]%, the increment brought about the Transaction is less than [0-5]%. On the MED–CAC trade, the combined market shares of the Parties and their consortium partners exceeds [40-50]% only on one of the trade legs, with an increment of less than [0-5]%.
- (124) As regards reefer traffic, the Parties combined market shares do not exceed [50-60]% even when consortia are accounted for. Again, the increment corresponding to NOL's market share remains significantly below [5-10]% on either legs of the trade. In particular, on the MED–CAC trade where the Parties and their consortia partners combined market shares are highest ([40-50]% overall – [20-30]% southbound and [50-60]% northbound) the market share of NOL is less than [0-5]%.
- (125) NOL is not a member of any consortium on these trades. Therefore, the Transaction will not lead to the creation of a new link between a consortium where CMA CGM is a member of G6 or any other consortium on the above-mentioned trades.
- (126) In the Commission's market investigation, large majorities of competitors and customers alike said that there would remain sufficient competitive pressure post-Transaction to constrain the merged entity.<sup>55</sup>
- (127) Overall, the Commission considers that the negligible increment brought about the transaction even on those potential markets where the market shares of the Parties and their consortia partners would exceed 40% as well as the presence of strong competitors and the fact that no competition concerns were raised in the market investigation support the conclusion that the Transaction would not lead to any competition concern on these trades.

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<sup>55</sup> Q1 – Questionnaire to competitors, question 19, Q2 – Questionnaire to customers, question 18.

*IV.1.6.1.c. Conclusion*

- (128) In light of the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments on the Northern Europe – Central America & Caribbean (NE–CAC), Mediterranean – Central America & Caribbean (MED–CAC) and the Northern Europe – South America West Coast (NE–SAWC) trades.

*IV.1.6.2. Affected trades with market shares below 40%*

- (129) The Transaction would lead to affected markets with combined market shares below 40% including consortia memberships without the creation of any further links between previously unrelated consortia on six further trades:

- a. Mediterranean – South America West Coast (MED–SAWC)
- b. Northern Europe – South America East Coast (NE–SAEC)
- c. Northern Europe – Australasia & Oceania (NE–AO)
- d. Mediterranean – Australasia & Oceania (MED–AO)
- e. Northern Europe – Africa East Coast (NE–AEC)
- f. Mediterranean – Africa East Coast (MED–AEC)

- (130) The table below shows the Parties' market shares excluding and including their various consortia as well as the size of the "free market" of completely independent competitors unaffiliated with any of the Parties' consortia.

**Table 8: Affected trades without creation of new links with G6 and market shares below 40% (nb = northbound, sb = southbound)**

<i>Trade</i>	<i>CMA CGM (%)</i>	<i>NOL (%)</i>	<i>Parties (%)</i>	<i>Parties with consortia</i>	<i>"Free" market<sup>56</sup> (%)</i>	<i>Reefer ratio (%)</i>
<i>MED–SAWC</i>	[5-10]	[0-5]	[5-10]	[5-10]	[90-100]	[40-50] ( [60-70] nb)
<i>NE–SAEC</i>	[10-20]	[0-5]	[10-20]	[10-20]	[80-90]	[20-30] ([40-50] nb)
<i>NE–AO</i>	[10-20]	[0-5]	[10-20]	[30-40]	[60-70]	[10-20] ([30-40]nb)
<i>MED–AO</i>	[10-20]	[0-5]	[10-20]	[30-40]	[60-70]	[10-20] ([20-30]nb)
<i>NE–AEC</i>	[20-30]	[0-5]	[20-30]	[20-30]	[70-80]	[5-10] ([5-10] (sb)
<i>MED–AEC</i>	[10-20]	[0-5]	[10-20]	[10-20]	[80-90]	[5-10] ([5-10]nb)

- (131) On all of the trades listed above (except for NE–AEC and MED–AEC) reefer traffic accounts for more than 10% of the overall volumes shipped; reefer will therefore be assessed separately for these trades.

<sup>56</sup> Market on which the Parties have no influence, either directly or through consortia they participate in.

- (132) Moreover, only on one of these trades (NE–AEC) do market shares differ by more than [5-10]% between the total volume of a trade and the volumes transported by leg of trade (northbound and southbound) and are overwhelmingly no more than [0-5]% apart regardless of whether they are looked at by leg of trade or by overall trade. Therefore with the exception of the NE–AEC trade, the following assessment will not make explicit reference to market shares by leg of trade because the marginally different market shares by leg of trade would not alter the Commission's assessment.

*IV.1.6.2.a. Description of the trades*

- (133) **MED–SAWC** is a thin trade with [less than 0.5 million] TEUs transported in 2014. On the MED–SAWC trade, the Parties held a combined share of [5-10]% in 2014. The Transaction results in an increment of [0-5]%. Neither CMA CGM nor NOL operate in any consortia on this trade. The largest competitors on this trade are MSC ([30-40]%), Maersk ([20-30]%), Hapag Lloyd ([10-20]%), and Hamburg Süd ([5-10]%). There are no other consortia active on the trade. In the reefer market, the Parties have similar combined market shares ([5-10]%); however their two largest competitors have somewhat higher shares (MSC: [40-50]%; Maersk: [40-50]%).
- (134) **NE–SAEC** is a fairly thick trade with [more than 1 million] TEUs transported in 2014. On the NE–SAEC trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. Neither CMA CGM nor NOL operate in any consortia on this trade. The largest competitors unaffiliated with the Parties on this trade are Hamburg Süd ([20-30]%), MSC ([20-30]%), Maersk ([10-20]%), and Hapag Lloyd ([10-20]%). There are no other consortia active on the trade. In the reefer market, the Parties have similar combined market shares ([10-20]%; their competitors' market shares do not differ markedly either (Hamburg Süd ([20-30]%), MSC ([10-20]%), Maersk ([20-30]%), and Hapag Lloyd ([10-20]%).
- (135) **NE–AO** is a rather thin trade with [less than 0.5 million] TEUs transported in 2014. On the NE–AO trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates in vessel sharing agreements with Hapag Llyod ([10-20]%) and Marfret ([0-5]%) on this trade; NOL is not a member of any consortium. The increment brought about by CMA CGM's vessel sharing agreements amounts to [10-20]% resulting in [30-40]% overall consortia market share. The largest competitors unaffiliated with the Parties on this trade are Maersk ([20-30]%), MSC ([10-20]%), OOCL ([5-10]%), and Hamburg Süd ([0-5]%). There are no other consortia active on the trade. In the reefer market, the Parties have similar combined market shares ([10-20]%; their competitors' market shares differ somewhat without changing the overall picture too much (Maersk ([30-40]%), MSC ([10-20]%), OOCL ([0-5]%), and Hamburg Süd ([10-20]%).
- (136) **MED–AO** is a thin trade with [less than 0.5 million] TEUs transported in 2014. On the MED–AO trade, the Parties held a combined share of [10-20]% in 2014. The Transaction results in an increment of [0-5]%. CMA CGM operates in vessel sharing agreements with Hapag Lloyd ([10-20]%) on this trade; NOL is not a member of any consortium. The increment brought about by CMA CGM's vessel sharing agreements amounts to [10-20]% resulting in [30-40]% overall consortia market share. The largest competitors unaffiliated with the Parties on this trade are MSC ([20-30]%), Maersk ([10-20]%), OOCL ([0-5]%), and Hamburg Süd ([0-5]%). There are no other consortia active on the trade. In the reefer market, the Parties

have similar combined market shares ([10-20] %); their competitors' market shares differ somewhat without changing the overall picture too much (MSC ([30-40] %), Maersk ([30-40] %), OOCL ([0-5] %), and Hamburg Süd ([0-5] %)).

- (137) **NE–AEC** is a thin trade with [less than 0.5 million] TEUs transported in 2014. On the NE–AEC trade, the Parties held a combined share of [20-30] % in 2014. The Transaction results in an increment of [0-5] %. CMA CGM operates in vessel sharing agreements with UASC ([0-5] %) on this trade; NOL is not a member of any consortium. The increment brought about by CMA CGM's vessel sharing agreements amounts to [0-5] % resulting in [20-30] % overall consortia market share. The largest competitors unaffiliated with the Parties on this trade are Maersk ([30-40] %) and MSC ([20-30] %). There are no other consortia active on the trade. In the southbound leg of trade the Parties have combined market shares of [30-40] % with an increment of [0-5] %; CMA CGM's consortium partner, UASC, has [0-5] %; and Maersk and MSC have [40-50] % and [20-30] %, respectively. In the northbound leg of trade the Parties have combined market shares of [10-20] % with an increment of [0-5] %; CMA CGM's consortium partner, UASC, has [0-5] %; and Maersk and MSC have [30-40] % and [20-30] %, respectively.
- (138) **MED–AEC** is a fairly thin trade with [less than 0.5 million] TEUs transported in 2014. On the MED–AEC trade, the Parties held a combined share of [10-20] % in 2014. The Transaction results in an increment of [0-5] % given NOL's marginal activities on this trade of [...] TEUs transported in 2014. CMA CGM operates in vessel sharing agreements with UASC ([0-5] %) on this trade; NOL is not a member of any consortium. The increment brought about by CMA CGM's vessel sharing agreements amounts to [0-5] % resulting in [10-20] % overall consortia market share. The largest competitors unaffiliated with the Parties on this trade are Maersk ([20-30] %) and MSC ([20-30] %). There are no other consortia active on the trade.

#### *IV.1.6.2.b. Commission's assessment*

- (139) The Commission considers that on all of the above trades the Parties' combined market shares will remain low and would, by themselves, not even lead to affected markets (except on the NE–AEC trade where the Parties exceed the 20% threshold by five percent). In the same vein, the increment brought about by the Transaction on all of these trades remains firmly below [5-10] % and is almost [0-5] % on four trades. Taking into account the reefer market separately on the MED–SAWC, NE–SAEC, NE–AO, MED–AO trades does not change this assessment. Likewise, taking into account the northbound and southbound legs separately in the NE–AEC trade does not lead to a different overall assessment: while combined market shares are moderately high with [30-40] % on the southbound leg, the increment remains miniscule with [0-5] %; conversely, on the northbound leg the Parties have much lower combined market shares.
- (140) The Transaction will not lead to the creation of a new link between CMA CGM and G6 or any other consortium on the above trades and market shares still remain moderate on all of the above trades if CMA CGM's consortia memberships are taken into account, nowhere exceeding 40% and generally remaining in the low 30s. NOL is not a member of any consortium on these trades.
- (141) On all of these trades, strong competitors are active individually or in the form of competing consortia. The share of the "free market", i.e. competitors completely unaffiliated with the Parties is much higher overall than [60-70] % without excep-



tion on all of these six trades. The "free market" equally exceeds [60-70]% on the southbound leg of the NE–AEC trade.

- (142) In the Commission's market investigation, large majorities of competitors and customers alike said that there would remain sufficient competitive pressure post-Transaction to constrain the merged entity.<sup>57</sup>
- (143) Overall, the Commission considers that the low to moderate combined market shares of the Parties and their consortia as well as the presence of strong competitors and the fact that no competition concerns were raised in the market investigation support the conclusion that the Transaction would not lead to any competition concern on these trades.

#### *IV.1.6.2.c. Conclusion*

- (144) In light of the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in the market for container liner shipping services and its possible sub-segments on the Mediterranean – South America West Coast (MED–SAWC), Northern Europe – South America East Coast (NE–SAEC), Northern Europe – Australasia & Oceania (NE–AO), Mediterranean – Australasia & Oceania (MED–AO), Northern Europe – Africa East Coast (NE–AEC), Mediterranean – Africa East Coast (MED–AEC) trades.

### **IV.2. Container terminal services**

- (145) Given that each of CMA CGM and NOL have controlling shareholdings in several container terminals in the EEA and worldwide, the transaction will also give rise to a number of vertically affected markets, notably for those trades where the Parties (and their consortium partners) combined market shares exceed 30% on the downstream market for container liner shipping.<sup>58</sup>

#### *IV.2.1. Overview of vertically affected markets*

- (146) CMA CGM holds [business secret] stakes<sup>59</sup> in a number of container terminals:

- *Inside EU:*
  - Antwerp Gateway (Antwerp, Belgium),
  - Générale de Manutention Portuaire (Le Havre, France),
  - Terminal des Flandres SAS (Dunkirk, France),
  - Terminal du Grand Ouest (Saint Nazaire, France),
  - Eurofos (Fos, France),

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<sup>57</sup> Q1 – Questionnaire to competitors, question 19, Q2 – Questionnaire to customers, question 18.

<sup>58</sup> There is no additional terminal where the Parties' market share would exceed 30% based on the upstream terminal services markets.

<sup>59</sup> In Europe, the CMA CGM Group also holds [business secret] stakes in Rotterdam World Gateway (Rotterdam, The Netherlands).

- Intramar (Marseille, France), and
- Malta Freeport Terminals (Malta),
- Générale de la Manutention de Guadeloupe (GMG) (Pointe à Pitre, France),
- Somarig (Dégrad des Cannes – France), and
- Générale de Manutention de Martinique (GMM) (Pointe des Grives, France).
- *Outside EU:*
  - Somaport (Casablanca, Morocco),
  - Brooklyn Kiev Port (Odessa, Ukraine),
  - South Florida Container Terminal LLC (Miami, US),
  - Terminal Link Texas LLC (Houston, US),
  - Kingston Freeport Terminal (Kingston, Jamaica),
  - Lekki International Container Terminal (Lekki, Nigeria),
  - Lattakia International Container Terminal (Lattakia, Syria),
  - Umm Qasr. Berth No. 4 (Umm Qasr, Iraq),
  - Mundra CT4 (Mundra, India),
  - Gemalink (Cai Mep, Vietnam), and
  - Xiamen Haicang Hinhaida Container Terminals (Xiamen, China).

(147) NOL holds [business secret] stakes in a number of container terminals (all outside EU):

- APL Dutch Harbor (Dutch Harbor, USA),
- Global Gateway South (GGS) (San Pedro, USA),
- APL Kaohsiung Terminal (Kaohsiung, Taiwan),
- Qingdao Qianwan United Advance Container Terminal (Qingdao, China),
- Vietnam International Container Terminal (Ho Chi Minh City, Vietnam),
- APL Kobe Terminal (Kobe, Japan), and
- APL Yokohama Terminal (Yokohama, Japan).

- (148) Markets for container terminal services are considered as vertically affected by the present Transaction if (i) one or both Parties hold a 30% market share on the container terminal services market or the container liner shipping market and (ii) one or both Parties are active on the respective upstream (i.e. container terminal services market that serves one of the trades on which one or both Parties are active) or downstream market (i.e. container liner shipping on a trade including the concerned terminal).
- (149) The Parties themselves have more than 30% market share in container terminal services in the following ports:

**Table 9: Parties' market shares above 30% in container terminal services**

<i>Ports</i>	<i>Volume (TEU) stevedored by</i>		<i>Total size (TEU)</i>	<i>Market share</i>
	CMA CGM	NOL		
[Port located in Central America]	[...]	-	171,889	[90-100]%
[Port located in Central America]	[...]	-	183,922	[90-100]%
[Port located in South America]	[...]	-	54,797	[70-80]%

- (150) Moreover, the Parties' combined market shares, including all consortia partners and G6 members, 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:

Table 10: Parties' combined market shares in container shipping services by trade

<i>TRADES/legs of trade (dry &amp; reefer combined)</i>	<i>Total market volume (TEUs)</i>	<i>CMA CGM market share</i>	<i>NOL market share</i>	<i>Parties combined</i>	<i>G6 (including NOL)</i>	<i>Parties &amp; Consortia combined</i>
<b>Northern Europe–North America</b>	<b>[4-5 million]</b>	<b>[5-10]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>[40-50]%</b>	<b>[60-70]%</b>
Westbound	[2-3 million]	[5-10]%	[0-5]%	[10-20]%	[30-40]%	[60-70]%
Eastbound	[1-2 million]	[5-10]%	[0-5]%	[10-20]%	[40-50]%	[60-70]%
<b>Mediterranean–North America</b>	<b>[2-3 million]</b>	<b>[5-10]%</b>	<b>[0-5]%</b>	<b>[5-10]%</b>	<b>[20-30]%</b>	<b>[30-40]%</b>
Westbound	[1-2 million]	[5-10]%	[0-5]%	[5-10]%	[20-30]%	[30-40]%
Eastbound	[0-1 million]	[5-10]%	[0-5]%	[10-20]%	[20-30]%	[30-40]%
<b>Northern Europe–Middle East</b>	<b>[1-2 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	<b>[40-50]%</b>
Eastbound	[1-2 million]	[20-30]%	[0-5]%	[20-30]%	[10-20]%	[50-60]%
Westbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%
<b>Mediterranean–Middle East</b>	<b>[1-2 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>[5-10]%</b>	<b>[30-40]%</b>
Eastbound	[1-2 million]	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[30-40]%
Westbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[30-40]%
<b>Northern Europe–Indian Sub-Continent</b>	<b>[1-2 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	<b>[30-40]%</b>
Eastbound	[0-1 million]	[10-20]%	[0-5]%	[20-30]%	[10-20]%	[30-40]%
Westbound	[1-2 million]	[10-20]%	[0-5]%	[20-30]%	[10-20]%	[30-40]%
<b>Mediterranean–Indian Sub-Continent</b>	<b>[1-2 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>[10-20]%</b>	<b>[30-40]%</b>
Eastbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%
Westbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[30-40]%
<b>Northern Europe–Central America &amp; Caribbean</b>	<b>[0-1 million]</b>	<b>[20-30]%</b>	<b>[0-5]%</b>	<b>[20-30]%</b>	<b>N.A.</b>	<b>[60-70]%</b>
Southbound	[0-1 million]	[20-30]%	[0-5]%	[20-30]%	N.A.	[60-70]%
Northbound	[0-1 million]	[20-30]%	[0-5]%	[20-30]%	N.A.	[50-60]%
<b>Mediterranean–Central America &amp; Caribbean</b>	<b>[0-1 million]</b>	<b>[20-30]%</b>	<b>[0-5]%</b>	<b>[20-30]%</b>	<b>N.A.</b>	<b>[30-40]%</b>
Southbound	[0-1 million]	[20-30]%	[0-5]%	[20-30]%	N.A.	[20-30]%
Northbound	[0-1 million]	[30-40]%	[0-5]%	[30-40]%	N.A.	[40-50]%
<b>Northern Europe–West Coast South America</b>	<b>[0-1 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>N.A.</b>	<b>[50-60]%</b>
Southbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	N.A.	[50-60]%
Northbound	[0-1 million]	[5-10]%	[0-5]%	[10-20]%	N.A.	[40-50]%
<b>Northern Europe–Australasia &amp; Oceania</b>	<b>[0-1 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>N.A.</b>	<b>[30-40]%</b>
Southbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	N.A.	[30-40]%
Northbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	N.A.	[30-40]%
<b>Mediterranean–Australasia &amp; Oceania</b>	<b>[0-1 million]</b>	<b>[10-20]%</b>	<b>[0-5]%</b>	<b>[10-20]%</b>	<b>N.A.</b>	<b>[30-40]%</b>
Southbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	N.A.	[30-40]%
Northbound	[0-1 million]	[10-20]%	[0-5]%	[10-20]%	N.A.	[30-40]%

(151) Given that all container terminals in which the Parties hold controlling stakes serve at least one of the trades on which the Parties' combined market shares exceed

30%, all container terminal markets in which the Parties' terminals are active are vertically affected by the Transaction.

#### *IV.2.2. The view of the Notifying Party*

- (152) The Notifying Party submits that any vertical foreclosure scenarios are remote.
- (153) As regards the terminals linking trades on which the Parties combined market shares exceed 30% in the downstream container liner shipping markets, CMA CGM submits that it will have no ability to foreclose access to its terminals, as competing liner shipping companies active to/from the respective end of trades/catchment areas of the terminals will continue to have several alternatives post-transaction. Furthermore, the increment brought about the Transaction is very small (NOL's market share never exceeds [5-10]% on any of these trades) and CMA CGM only jointly controls these terminals.
- (154) As regards customer foreclosure, the Notifying Party notes that (i) the joint services are already defined, including the port of calls of these services and the change in control of NOL, hence CMA CGM itself could not oblige G6 to redefine these services, (ii) G6 members have no incentive to favour the CMA CGM's container terminals as in all the areas where either of the Parties have terminals there are many other competing container terminals; (iii) even if the G6 members decided to call in CMA CGM's container terminals and if this reason was linked to the proposed Transaction, it is even less likely that competitors in the market for container terminal services would be foreclosed from access to a significant customer base, since the Parties, together with their consortia partners, do not represent the majority of the demand for container terminal services in either Northern Europe or Mediterranean catchment areas.

#### *IV.2.3. Commission's assessment*

- (155) The Commission considers that the Transaction does not raise any competition concerns on any of the vertically affected markets for the following reasons.
- (156) First, the Parties' overall market shares in container terminal services exceed 30% only in three ports [located in Central America and South America],. On all other ports, the Parties' combined market shares are lower than 30% and therefore make any anti-competitive effects from the Transaction unlikely. In the ports [located in Central America and South America], which are linked to Europe through the trades to Central America and the Caribbean as well as to South America, NOL has only marginal market shares in container liner shipping on those trades so that the Transaction does not lead to any significant changes in the competitive environment.
- (157) Secondly, on any of the vertically affected markets, the increment brought about by NOL in the downstream market for container liner shipping is indeed marginal and does not exceed [5-10]% on any of the vertically linked trades.
- (158) Thirdly, except for the NE–NA, NE–ME, NE–CAC and NE–SAWC trades, the Parties' combined market shares in container liner shipping including consortia remain moderate, thus mitigating against any danger of anticompetitive effects.

- (159) On the NE–CAC and NE–SAWC trades, G6 is not active and NOL's own market shares are so small (below [0-5]%) that the Transaction will not change the current competitive environment.
- (160) On the NE–NA and NE–ME trades, the Commission raised serious doubts due to high combined market shares including consortia, especially G6. However, especially on these trades, competitors have a host of alternative container terminal providers to turn to should the Parties attempt to engage in any form of customer of input or customer foreclosure. This is corroborated by the fact that the Parties do not wield more than 30% market share on any container terminal service market directly linked to any of those trades. In any event, the commitments submitted by the Parties to sever all ties with the G6 consortium would also eliminate any potential competition concerns concerning vertical links between these trades and the Parties' container terminal services activities.
- (161) In the Commission's market investigation, large majorities of competitors and customers alike expressing an opinion stated that the Transaction would have a neutral effect with regard to vertical links between container terminal services and container shipping services.<sup>60</sup>
- (162) Taking into account the view of the Notifying Party, the results of the market investigation, and its own assessment, the Commission therefore considers that the Transaction is unlikely to increase the merged entity's ability or incentive to engage in any foreclosure strategy. This is mostly due to the fact that the addition of NOL's market shares does not significantly increase the market shares of the merged entity. Moreover, even adding consortia market shares, the competitive position would not be impacted significantly or there would still be enough alternative container terminal providers to exert competitive pressure on the merged entity.

#### *IV.2.4. Conclusion*

- (163) In view of the above, the Commission concludes that the Transaction does not raise serious doubts with regard to the vertical links between container terminal services and container liner shipping services brought about by the Transaction.

### **V. PROPOSED REMEDIES**

#### **V.1. Commitments submitted by the Parties**

##### *V.1.1. Procedure*

- (164) In order to address the serious doubts raised by the Transaction regarding the provision of container liner shipping services on the NE–NA and NE–ME trades and to render the Transaction compatible with the internal market, the Parties have modified the Transaction by entering into commitments, which are annexed to this Decision and form an integral part thereof.
- (165) The Parties provided a set of commitments on 7 April 2016.

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<sup>60</sup> Q1 – Questionnaire to competitors, question 20; Q2 – Questionnaire to customers, question 20.

- (166) Following a written exchange with the case-team on 7 April 2016, the Parties provided a slightly amended<sup>61</sup> final set of commitments on 8 April 2014 (the "Final Commitments").

*V.1.2. Description of the Final Commitments*

- (167) The Final Commitments aim at addressing the Commission's serious doubts with respect to the provision of container liner shipping services on the NE–NA trade and on the NE–ME trade by removing the link which would have been created between NOL's consortium G6 (active on both NE–NA and NE–ME trades) and CMA CGM.
- (168) [APL's withdrawal from G6] will take effect on 31 March 2017.
- (169) In order to resolve the serious doubts raised by the European Commission for the trades NE–NA and NE–ME, the Parties make a commitment for NOL not to re-join the G6 alliance or any substantially similar form of the terminated G6 alliance within five years from the date on which the termination of the G6 agreement takes effect.
- (170) [Should APL's withdrawal from G6 not materialise on 31 March 2017], CMA CGM shall undertake to cause NOL to withdraw from the G6 Agreement at the earliest date permitted by such agreement.
- (171) As concerns ring-fencing, the Parties offer that from the date of Closing until the date on which NOL's withdrawal from the G6 Agreement takes effect, the Parties procure that, if and to the extent that NOL receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its Partners in the G6 Alliance, or any other information considered as commercially sensitive, such information will not be disclosed to CMA CGM, or any other members of consortia to which CMA CGM is a member (and *vice versa*).
- (172) The Parties also undertake that to the extent NOL's Partners in the G6 Alliance elect to discuss or engage in contingency planning for the alliance in the period following NOL's disengagement from the G6 Alliance, NOL 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 NOL's disengagement from the G6 Alliance.
- (173) The Parties further undertake that during the period between the closing of the Transaction and the date on which the termination of the G6 Agreement takes effect, the Monitoring Trustee will participate in meetings of the CEO Committee and the Principals Committee and exercise any veto rights NOL may have with respect to decisions taken within these committees, with the exception of decisions that would adversely affect NOL's volume allocation under the G6 Agreement.
- (174) CMA CGM undertakes that after the closing of the Transaction NOL will continue to operate on a stand-alone basis until at least the date on which NOL's withdrawal

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<sup>61</sup> In the Final Commitments the period during which the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of the Commitments was increased from [...] to ten years to correspond to standard Commission case practice (see e.g. the commitments in case M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*).

from the G6 Agreement takes effect. For purposes of the Commitments, operation on a stand-alone basis shall mean that neither CMA CGM nor any of its employees (i) will be involved in the G6 committees in which NOL will continue to participate until the date on which NOL's withdrawal from the G6 Agreement takes effect; and (ii) will have access to any of the information related to the Partners in the G6 Alliance as set out in clause 6 above.

(175) The Parties can join consortia or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided those agreements are not of substantially similar terms as the G6 Agreement on the Relevant Trades and with the G6 Signatories as a group.

(176) As will be explained in section V.2, the Commission considers the Final Commitments suitable to entirely remove the serious doubts as to the compatibility of the Transaction with the internal market as identified in section IV.1.5 above.

## **V.2. ASSESSMENT OF THE FINAL COMMITMENTS**

### *V.2.1. The view of the Parties*

(177) The Parties submit that the Final Commitments are sufficient to remove the serious doubts as to the compatibility of the Transaction with the internal market.

### *V.2.2. NE–NA trade*

(178) NOL is a member of the G6 consortium on this trade; CMA CGM has VSAs with Maersk, UASC, Hamburg Süd and Marfret.

(179) The increment brought about by NOL's membership in G6 amounts to [40-50]% overall ([30-40]% westbound and [40-50]% eastbound).

(180) Without G6 the Parties' combined shares including CMA CGM's VSA partners would amount to [20-30]% overall ([20-30]% westbound and [20-30]% eastbound).

### *V.2.3. NE–ME trade*

(181) NOL is a member of the G6 consortium on this trade; CMA CGM has a VSA with UASC.

(182) The increment brought about by NOL's membership in G6 amounts to [10-20]% overall ([10-20]% westbound and [10-20]% eastbound).

(183) Without G6 the Parties' combined shares including CMA CGM's VSA partners would amount to [30-40]% overall ([20-30]% westbound and [30-40]% eastbound).

### *V.2.4. The results of the market test*

(184) In the market test, a majority of both customers and competitors (including NOL's G6 partners) expressing an opinion indicated that the Final Commitments would be sufficient to eliminate all serious doubts on the NE–NA and NE–ME trades as



identified by the Commission.<sup>62</sup> A large majority of respondents stated that the Final Commitments were sufficiently clear.<sup>63</sup>

- (185) Furthermore, a majority of customers expressing an opinion said that they would continue to use the G6 services without NOL by reallocating their volumes previously shipped with NOL to the carrier(s) that would continue the G6 services on these two trades.<sup>64</sup> In general, customers confirmed that they are keen to multi-source among different consortia and service providers. Some customers also pointed out to the low overall shares of NOL within the G6 alliance as a reason for sticking with the G6 carriers absent NOL. Only a small minority would stop using the G6 service absent NOL.<sup>65</sup>
- (186) As for the remaining G6 partners, they are currently evaluating the situation and the various options for continuing the services on the two relevant trades.<sup>66</sup>

#### V.2.5. *Commission's assessment*

- (187) The Final Commitments address the issues described above and remove the link which would be created between NOL's consortium G6 and CMA CGM post-closing of the Transaction.
- (188) On the NE–NA trade, following the withdrawal of NOL from the G6 alliance, G6 will become a competitor independent from the Parties; post-Transaction the share of independent competitors will therefore increase to [70-80]% ([70-80]% westbound – [70-80]% eastbound) in the overall market.
- (189) On the NE–ME trade, following the withdrawal of NOL from the G6 alliance, G6 will become a competitor independent from the Parties; post-Transaction the share of independent competitors will therefore increase to [60-70]% ([70-80]% westbound – [60-70]% eastbound) in the overall market and to [70-80]% ([70-80]% westbound – [70-80]% eastbound) for reefer containers.
- (190) The fact that NOL has very low market shares and that some G6 carriers have strong market positions on these trades is an indication that upon NOL's exit, they have the ability to take on additional volumes either on basis of the remaining G6 members themselves or by finding a new partner to replace NOL. Therefore, it is most likely that the G6 service will impose a significant constraint on the Parties and the consortium in which the merged entity will participate (O3).

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<sup>62</sup> Most customers and competitors (including remaining G6 members) stated that they did not know the answer; replies to questions 5.1 and 5.2 of the market test questionnaire to customers of 7 April 2016; replies to questions 4.1 and 4.2 of the market test questionnaire to competitors of 7 April 2016, and replies to questions 4.1 and 4.2 of the market test questionnaire to remaining G6 members of 7 April 2016.

<sup>63</sup> Replies to question 6 of the market test questionnaire to customers of 7 April 2016; replies to question 5 of the market test questionnaire to competitors of 7 April 2016.

<sup>64</sup> Replies to questions 1 and 3 of the market test questionnaire to customers of 7 April 2016.

<sup>65</sup> Replies to questions 1.2 and 3.2 of the market test questionnaire to customers of 7 April 2016.

<sup>66</sup> Replies to questions 1 and 2 of the market test questionnaire to remaining G6 members of 7 April 2016.

- (191) Customers stated during the market investigation that they would continue to use the G6 service despite NOL's withdrawal. This also indicates that the G6 service will remain sustainable after the Transaction and will exert significant competitive constraints on the consortium in which the merged entity will participate (the O3 service).
- (192) For those reasons, the Final Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

*V.2.6. Overall conclusion on the Final Commitments*

- (193) In light of the above and on the basis of the information available to it, the Commission concludes that the Final Commitments are sufficient to eliminate all serious doubts to which the Transaction would give rise as to its compatibility with the internal market in the market for container liner shipping services on the NE–NA and the NE–ME trades.

**V.3. Conditions and obligations**

- (194) 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.
- (195) The achievement of the measure that gives 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 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (196) In accordance with the distinction described above, the Decision in this case is conditioned on the full compliance with the requirements set out in section B of the Final Commitments (conditions), whereas sections C, D, and F of the Final Commitments constitute obligations on CMA CGM and NOL.
- (197) The detailed text of the Final Commitments is annexed to the present Decision. The full text of the Final Commitments forms an integral part of this decision.

## **VI. CONCLUSION**

- (198) 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 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)*

*Margrethe VESTAGER*

*Member of the Commission*

## VII. COMMITMENTS

### Case M.7908 – CMA CGM / NEPTUNE ORIENT LINES

#### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the ***Merger Regulation***), CMA CGM S.A. (“***CMA CGM***”) and Neptune Orient Lines Limited (“***NOL***”, together with CMA CGM the “***Parties***”) hereby enter into the following Commitments (the ***Commitments***) vis-à-vis the European Commission (the ***Commission***) with a view to rendering the acquisition of NOL by CMA CGM (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***”).

**APL:** NOL Affiliated Undertaking, that includes APL Co Pte Ltd and American President Lines limited, which is a Signatory of the G6 Agreement.

**CEO Committee:** Committee of the G6 Alliance composed of the CEOs of the G6 Signatories that provides strategic direction to the G6 Alliance.

**Closing:** the date on which 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.

**Decision:** the Commission’s decision pursuant to Council Regulation (EC) No. 139/2004 (the “***Merger Regulation***”) to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement.

**Effective Date:** the date of adoption of the Decision.

**G6 Agreement:** the G6 Operating Agreement as signed on 1 March 2012, including all amendments thereto.

**G6 Alliance:** cooperation framework between signatories of the G6 Agreement, in accordance with the provisions of the G6 Agreement.

**Monitoring Trustee:** one or more natural or legal person(s) who is approved by the Commission and appointed by the Parties, and who has the duty to monitor the Parties' compliance with the Commitments.

**Principals Committee:** Committee of the G6 Alliance composed of one representative of each G6 Signatory that decides on major strategic and business decisions for the G6 Alliance.

**Relevant Trades:** collectively, the trades on which the G6 Alliance is active and specifically the Northern Europe/Far East; Mediterranean/Far East; and Northern Europe/North America trades.

**G6 Signatory(ies):** signatory(ies) of the G6 Agreement. In addition to APL, signatories of the G6 Agreement include Hapag-Lloyd Aktiengesellschaft ("**HL**"), Hyundai Merchant Marine Co. Ltd ("**HMM**"), Mitsui O.S.K Lines, Ltd ("**MOL**"); Nippon Yusen Kaisha ("**NYK**"); and Orient Overseas Container Line Limited ("**OOCL**") (jointly the "**Partners**").

**Trustee:** the Monitoring Trustee.

## **Section B – Commitment related to the termination of APL's participation in the G6 Agreement**

2. [*APL's withdrawal from G6*] will take effect on 31 March 2017.
3. [*Should paragraph 2 not materialise*], CMA CGM undertakes to cause APL to withdraw from the G6 Agreement at the earliest date permitted by such agreement.
4. The Parties undertake that they will not, within [*confidential business secret*] years from the date on which [*APL's withdrawal from G6*] takes effect, re-join any substantially similar form of the [*confidential business secret*] G6 Alliance on the Relevant Trades with the G6 Signatories as a group.
5. Without prejudice to paragraph 4, the Commitments do not preclude the possibility that the Parties join consortia or any other agreements that are compatible with Article 101 of the Treaty on the Functioning of the European Union, provided those agreements are not of substantially similar terms as the G6 Agreement on the Relevant Trades and with the G6 Signatories as a group.

## **Section C - Ring-fencing**

6. The Parties note that, for the Relevant Trades, the G6 Signatories provide international container liner shipping services in respect of which they co-operate 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.
7. Notwithstanding the above, from the date of Closing until the date on which APL's withdrawal from the G6 Agreement takes effect, the Parties procure that, if and to the extent that

APL receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its Partners in the G6 Alliance, or any other information considered as commercially sensitive, such information will not be disclosed to CMA CGM, or any other members of consortia to which CMA CGM is a member (and *vice versa*).

The Parties also undertake that to the extent APL's Partners in the G6 Alliance elect to discuss or engage in contingency planning for the alliance in the period following APL's disengagement from the G6 Alliance, APL 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 APL's disengagement from the G6 Alliance.

The Parties further undertake that during the period between Closing and the date on which **[APL's withdrawal from G6]** takes effect as per Section B, the Monitoring Trustee will participate in meetings of the CEO Committee and the Principals Committee and exercise any veto rights APL may have with respect to decisions taken within these committees, with the exception of decisions that would adversely affect **[confidential business secret]**.

8. CMA CGM undertakes that after Closing APL will continue to operate on a stand-alone basis until at least the date on which APL's withdrawal from the G6 Agreement takes effect. For purposes of the Commitments, operation on a stand-alone basis shall mean that neither CMA CGM nor any of its employees (i) will be involved in the G6 committees in which APL will continue to participate until the date on which APL's withdrawal from the G6 Agreement takes effect; and (ii) will have access to any of the information related to the Partners in the G6 Alliance as set out in clause 6 above.

## **Section D - Reporting**

9. The Monitoring Trustee shall submit written reports in English confirming the Parties' compliance with the Commitments to the Commission no later than **[confidential business secret]** (or at any other time requested by the Commission, if necessary) following Closing. Thereafter, the Monitoring Trustee will submit compliance reports every **[confidential business secret]** (or at any other interim periods as requested by the Commission, if necessary) as well as a final compliance report within **[confidential business secret]** following the expiry of the restriction on consortium re-entry set out in paragraph 4.

## **Section E - Trustee**

### **I. Appointment procedure**

10. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. The Parties undertake 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 Affiliated 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 Parties in a way that does not impede the independent and effective fulfilment of its mandate.

### *Proposal by the Parties*

13. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose 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:
  - (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under the Commitments;
  - (ii) 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 Parties 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 Parties 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 Parties*

15. If all the proposed Trustees are rejected, the Parties 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 the 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 Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

## II. Functions of the Trustee

17. The Trustee shall assume its specified duties and obligations in order to ensure compliance with: (i) the Parties' commitment to terminate the G6 Agreement in case [**paragraph 2 does not materialise**], (ii) the ring-fencing commitments related to the termination of APL's participation in the G6 Agreement; and (iii) the restriction on alliance re-entry set out in paragraphs 4 and 5. The duties of the Trustee shall cease two weeks following the expiry of the restriction on consortium re-entry set out in paragraph 4 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 Parties, 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 Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the Commitments;
- (ii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with the 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 Parties

- 19. The Parties 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 Parties shall provide the Trustee upon request with copies of any document. The Parties shall make available to the Trustee one or more offices on their 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 Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request while carrying out its duties. The Parties shall keep the Monitoring Trustee informed of all developments related to the termination of APL's participation in the G6 Agreement.
- 21. The Parties 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 Parties 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 Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' 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 Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 21 of the Commitments shall apply mutatis mutandis.
- 23. The Parties agree 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 Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they 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 Parties that is reasonably necessary to monitor the effective implementation of the 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:
- (i) the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or
  - (ii) the Parties may, with the prior approval of the Commission, replace the Trustee.
27. If the Trustee is removed according to paragraph 26 of the 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 the Commitments.
28. Unless removed according to paragraph 26 of the Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the duties and obligations with which the Trustee has been entrusted at paragraph 17 have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that its duties and obligations have not been fully and properly implemented.

#### **Section F - The review clause**

29. The Commission may, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. 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 Parties. 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 G - Entry into force**

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

Duly authorised for and on behalf of

CMA CGM S.A.

*(Signed)*

Neptune Orient Lines Limited

*(Signed)*