
FEDERAL MARITIME COMMISSION

MEMBERS OF THE U.S. PACIFIC COAST-OCEANIA AGREEMENT; MEMBERS OF THE HAMBURG-SUD/MAERSK LINE VESSEL SHARING AGREEMENT; MEMBERS OF THE CMA CGM/MARFRET VESSEL SHARING AGREEMENT; MEMBERS OF THE U.S./ AUSTRALASIA DISCUSSION AGREEMENT; MEMBERS OF THE AUSTRALIA AND NEW ZEALAND-U.S. DISCUSSION AGREEMENT; HAMBURG-SUDAMERIKANISCHE DAMPFSCIFFFAHRTSGESELLSCHAFT KG; HAPAG-LLOYD AG; A.P. MOLLER-MAERSK A/S (TRADING AS MAERSK LINE); CMA CGM S.A.; ANL SINGAPORE PTE LTD; AND COMPAGNIE MARITIME MARFRET, S.A.

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

On August 26, 2008, the Federal Maritime Commission (“FMC” or “Commission”) issued an Order pursuant to Section 15 of the Shipping Act of 1984 (“Shipping Act”), 46 U.S.C. § 40301, *et seq.*, to vessel-operating common carriers operating in the United States-Australia/New Zealand trade to obtain certain information. That Order was issued due to the Commission’s concerns that the combined effect of activities of vessel-operating common carriers acting under the U.S. Pacific Coast-Oceania Agreement, FMC No. 011741, the Hamburg-Sud/Maersk Line Vessel Sharing Agreement, FMC No. 012034, the CMA CGM/Marfret Vessel Sharing Agreement, FMC No. 011931, the U.S./Australasia Discussion Agreement, FMC No. 011117 and the Australia and New Zealand-U.S. Discussion Agreement, FMC No. 011275 (collectively the “Agreements”), agreements effective under the Shipping Act, may reduce competition in a manner that may unreasonably increase prices or decrease service in the U.S.-Australia/New Zealand trade, or may otherwise violate the Shipping Act.

There are few vessel-operating common carriers providing direct services in the U.S.-Australia/New Zealand trades with the U.S. West Coast and U.S. East Coast, and all of these carriers are members of at least one set of overlapping rate discussion and

vessel sharing agreements (“VSAs”) listed above. Alternate sources of services for shippers and consignees in this trade are limited. As identified by the Commission’s Order of August 26, 2008, Respondents exchange information and discuss and agree on rates, schedules for services, vessel sharing and space and capacity allocations. The Agreements’ members thus have an extraordinary ability to affect both the supply and the pricing of ocean liner service in the trades. The Commission, therefore, continues to be concerned that the combined effect of activities of these vessel-operating common carriers, acting under the Agreements, may have the effect of reducing competition in a manner that may unreasonably affect prices and service in the U.S.-Australia/New Zealand trades.

Consequently, the Commission is seeking information and documents from the members of these agreements and the Agreements separately on an ongoing basis, in order to determine whether, by a reduction in competition, the Agreements are likely to result in an unreasonable decrease in service or an unreasonable increase in transportation costs within the meaning of Section 6(g) of the Shipping Act of 1984, 46 U.S.C. § 41307.¹

Therefore, pursuant to Section 15 of the Shipping Act of 1984, 46 U.S.C. § 40104, the Commission now requires the members of the U.S. Pacific Coast-Oceania Agreement, FMC No. 011741, the Hamburg-Sud/Maersk Line Vessel Sharing Agreement, FMC No. 012034, the CMA CGM/Marfret VSA, FMC No. 011931, the U.S./Australasia Discussion Agreement, FMC No. 011117 and the Australia and New Zealand-U.S. Discussion Agreement, FMC No. 011275 to furnish certain information and documents pertaining to their past and ongoing operations in the oceanborne trades between Australia/New Zealand and the U.S. East Coast and between Australia/New Zealand and the U.S. West Coast. This information is sought to enable the Commission to meet its obligations, inclusive of making a determination under Section 6(g) of the Shipping Act of 1984, 46 U.S.C. § 40301, *et seq.*

NOW THEREFORE, IT IS ORDERED, pursuant to Section 15 of the Shipping Act of 1984, that the Companies designated in Appendix A are named Respondents herein;

IT IS FURTHER ORDERED, that Respondents shall file with the Commission’s Bureau of Trade Analysis according to the deadlines below, the following information:

1. Section 6(g) provides:

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

If warranted, the Commission may seek to enjoin, in whole or in part, the operation of these agreements pursuant to Section 6(h) of the Shipping Act of 1984, 46 U.S.C. § 41307.

- I. Meeting minutes.** For meetings held on or prior to the date of this Order, minutes of FMC Agreement Nos. 011741, 011931 and 012034, shall be submitted within 60 days of the issuance of this Order. For meetings held after the issuance of this Order, minutes shall be submitted within 21 days of the date of the meeting.

For the Parties to FMC Agreement No. 011741 (ANL Singapore; Hamburg Sud; Hapag Lloyd; and Maersk Line):

- 1) Identify all committees or sub-committees established by FMC Agreement No. 011741. For each committee and sub-committee identified, describe its purpose and provide the date of each meeting held from July 31, 2008 onward. Provide copies of the minutes for, and any documents exchanged at, each such meeting of the Agreement or any committee or subcommittee thereof.

For the Parties to FMC Agreement No. 012034 (Maersk Line and Hamburg Sud):

- 2) Identify all committees, sub-committees, or other groups established by FMC Agreement No. 012034. For each committee, sub-committee, or other group identified, describe its purpose and provide the date of each meeting held from January 1, 2008 onward. Provide copies of the minutes for, and any documents exchanged at, each such meeting of the Agreement or any committee or subcommittee thereof.
- 3) Provide all documents and correspondence pertaining to the establishment of the Hamburg Sud/Maersk Line VSA (FMC Agreement No. 012034).
- 4) Provide all documents and correspondence pertaining to the change in scope and services in the Hamburg Sud/Maersk Line VSA (FMC Agreement No. 012034) in 2009.

For the Parties to FMC Agreement No. 011931 (ANL Singapore; CMA CGM; and Marfret):

- 5) Identify all committees, sub-committees, or other groups established by FMC Agreement No. 011931. For each committee, sub-committee, or other group identified, describe its purpose and provide the date of each meeting held from January 1, 2008 onward. Provide copies of the minutes for, and any documents exchanged at, each such meeting of the Agreement or any committee or subcommittee thereof.

- II. Vessel Sailing Data.** For all sailings concluded on or prior to November 30, 2009, the following data shall be submitted within 60 days of the issuance of this Order. For all sailings concluded after November 30, 2009, the data shall be submitted within 45 days after the end of the month in which the sailing was concluded.²

Each Respondent carrier individually (ANL Singapore; CMA CGM; Hamburg Sud; Hapag Lloyd; Maersk Line; and Marfret):

- 1) Provide the following data³ for each southbound and northbound sailing operated by your company between the United States and Australia/New Zealand from September 1, 2008 through November 30, 2009, and thereafter on a monthly basis. *(This data to be provided by the operator of the ship):*
 - a) ship's operator
 - b) name of the service loop/string
 - c) ship's name
 - d) ship's IMO number
 - e) unique voyage number
 - f) voyage direction, *i.e.*, southbound or northbound
 - g) U.S. coast, *i.e.*, east or west
 - h) sailing date from last port in the continental U.S. for southbound sailings
 - i) arrival date at the first continental U.S. port for northbound sailings
 - j) ship's effective operating capacity (TEU) allocated to the U.S. trade
 - k) number of loaded TEU tendered by all parties, U.S. cargo
 - l) number of dry loaded TEU tendered by all parties, U.S. cargo
 - m) number of reefer loaded TEU tendered by all parties, U.S. cargo
 - n) amount of the ship's available deadweight tons allocated to the U.S. trade (metric tons)
 - o) dry loaded cargo tons tendered by all parties, U.S. cargo (metric tons)
 - p) reefer loaded cargo tons tendered by all parties, U.S. cargo (metric tons)
 - q) proprietary U.S. dry loaded containers carried (TEU)
 - r) revenue earned in U.S. dollars under item (q) above
 - s) weight of proprietary U.S. dry cargo put on this sailing (metric tons)
 - t) proprietary U.S. reefer loaded containers carried (TEU)
 - u) revenue earned in U.S. dollars under item (t) above
 - v) weight of proprietary U.S. reefer cargo put on this sailing (metric tons)

2. For example, the data on a sailing that concluded on December 1, 2009 would be submitted along with the data on all other sailings that took place in December 2009, and that data would be due on or by February 15, 2010.

3. Responses to questions in 1 and 2 are to be provided to the FMC by each Respondent using the pre-formatted electronic spreadsheet file provided by the Bureau of Trade Analysis ([sample spreadsheet](#)). Please note that the electronic spreadsheet file used to submit the data required in Part II of this Order is **not** a copy of the electronic spreadsheet file used to respond to questions 13 and 14 of the August 26, 2008 Commission Order.

2) Provide the following data⁴ for all U.S. containers⁵ your company placed on each southbound and northbound sailing between the United States and Australia/New Zealand, operated by other parties to FMC Agreements Nos. 011741, 011931, and 012034, from September 1, 2008 through November 30, 2009, and thereafter on a monthly basis.

- a) ship's operator
- b) name of the service loop/string
- c) ship's name
- d) ship's IMO number
- e) unique voyage number
- f) voyage direction, *i.e.*, southbound or northbound
- g) U.S. coast, *i.e.*, east or west
- h) sailing date from last port in the continental U.S. for southbound sailings
- i) arrival date at the first continental U.S. port for northbound sailings
- j) company name (your company's name)
- k) VSA number (for sailings covered under a VSA, provide VSA number)
- l) U.S. dry loaded containers put on this sailing (TEU)
- m) revenue earned in U.S. dollars under item (l) above
- n) weight of U.S. dry cargo put on this sailing (metric tons)
- o) U.S. reefer loaded containers put on this sailing (TEU)
- p) revenue earned in U.S. dollars under item (o) above
- q) weight of U.S. reefer cargo put on this sailing (metric tons)

III. Effective Operating Capacity and Loadings Data. For the months ending no later than November 30, 2009, the data shall be submitted within 60 days of the issuance of this Order. For all months thereafter, the data shall be submitted within 45 days of the end of the month.

For the three VSAs (FMC Agreement Nos. 011741, 011931, and 012034 collectively members of which are CMA CGM/ANL Singapore, Hamburg Sud, Hapag Lloyd, Maersk Line and Marfret):

- 1) From July 2006 to November 30, 2009, provide the effective operating capacity and loadings for U.S. cargo (in TEUs) by month and direction (*i.e.*, northbound and southbound) for each service operated by the VSA.
- 2) From July 2006 to November 30, 2009, provide the effective operating capacity and loadings for all cargo (U.S. and non-U.S. in TEUs) by month and direction (*i.e.*, northbound and southbound) for each service operated by the VSA.

4. See instructions in Footnote 3 above.

5. "U.S. containers" means containers with cargo originating in or destined for the United States.

IV. Terms of Shipment. This data shall be submitted by each Respondent individually in the format provided herein. Responses to this part of the Order should be submitted 45 days after the end of this year (2009).⁶

All Respondents individually (ANL Singapore; CMA CGM; Hamburg Sud; Hapag Lloyd; Maersk Line; and Marfret):

Using the format provided below, provide the following data in an excel spreadsheet:

- 1) What proportion of U.S. southbound (outbound) cargo from the U.S. west coast was shipped under specified contract terms (CIF, FOB, and IPI respectively) in 2007, 2008 and 2009?
- 2) What proportion of Australia/New Zealand northbound (U.S. inbound) cargo to the U.S. west coast was shipped under specified contract terms (CIF, FOB, and IPI respectively) in 2007, 2008 and 2009?
- 3) What proportion of U.S. southbound (outbound) cargo from the U.S. east coast was shipped under specified contract terms (CIF, FOB, and IPI respectively) in 2007, 2008 and 2009?
- 4) What proportion of Australia/New Zealand northbound (U.S. inbound) cargo to the U.S. east coast was shipped under specified contract terms (CIF, FOB, and IPI respectively) in 2007, 2008 and 2009?

Carrier Name:

CIF Cargo

Year	US West Coast Southbound	US West Coast Northbound	US East Coast Southbound	US East Coast Northbound
2007				
2008				
2009				

FOB Cargo

Year	US West Coast Southbound	US West Coast Northbound	US East Coast Southbound	US East Coast Northbound
2007				
2008				
2009				

6. There is no ongoing filing requirement for questions 1-4 of part IV of this Order.

IPI Cargo

Year	US West Coast Southbound	US West Coast Northbound	US East Coast Southbound	US East Coast Northbound
2007				
2008				
2009				

IT IS FURTHER ORDERED that responses and documents provided pursuant to this Order shall identify by number the question or request to which it responds;

IT IS FURTHER ORDERED that documents provided pursuant to this Order must be accompanied by a certification by an official from each carrier organization (i.e. FMC Agreement) or individual Respondent indicating that a thorough search of its files and records has been made, and that all documents or information responsive to this Order within the possession, custody, or control of the carrier have been provided;

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

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

By the Commission.

Karen V. Gregory
Secretary

Appendix A

Respondents

A.P. Moller-Maersk A/S (trading under the name "Maersk Line")
2 Giralda Farms, Madison Ave.
Madison, NJ 07940-0880
United States

Hamburg-Sudamerkanische
Damfschiffahrtsgesellschaft KG
465 South St., Ste 3
Morristown, NJ 07960-6439
United States

CMA-CGM S.A.
5701 Lake Wright Dr.
Norfolk, VA 23502-1868
United States

ANL Singapore Pte Ltd. and U.S. Lines, Ltd.
c/o ANL-USL LLC
3601 South Harbor Boulevard, Suite 200
Santa Ana, California 92704
United States

Hapag-Lloyd AG
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Tampa, FL 33602-5228
United States

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Norfolk, VA 23510-2327
United States

U.S. Pacific Coast-Oceania Agreement (FMC Agreement No. 011741)
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Hamburg-Sud/Maersk Line Vessel Sharing Agreement (FMC Agreement No. 012034)
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CMA CGM/Marfret Vessel Sharing Agreement (FMC Agreement No. 011931)
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U.S./Australasia Discussion Agreement (FMC Agreement No. 011117)
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Australasia and New Zealand-U.S. Discussion Agreement (FMC Agreement No. 011275)
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Appendix B

Definitions

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

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

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