

(S E R V E D)
(JANUARY 11, 2011)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL MONITORING REQUIREMENTS FOR CERTAIN GLOBAL ALLIANCE AGREEMENTS

ORDER

I. Background

In October 2008, demand for vessel space in the U.S. trades plunged dramatically. Vessels that had been sailing 95 percent full from Asia to the United States were soon sailing 75 percent full. U.S. exports fell by 14 percent and imports fell by 16 percent. At one point, carriers laid up more than 575 vessels worldwide, idling about 12 percent of the world's containership fleet. However, in the fourth quarter of 2009, and continuing into 2010, cargo volumes shipped to the United States from Asia began to recover and demand for U.S. exports surged.

By early 2010, increases in import volumes collided with previous vessel capacity reductions. The resulting supply and demand mismatch created serious supply chain disruptions for American importers and exporters. Cargo bookings under service contracts were denied, abruptly cancelled, or rolled to a later voyage. Carriers imposed a rapid series of incremental price increases. U.S. exporters experienced severe problems with the availability of shipping containers for their goods.

Due to these problems, the Commission instituted an investigation in March 2010 into Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades. The Order of Investigation identified as worthy of review the “[c]urrent practices and plans of [vessel operating common carriers] regarding the deployment of vessel capacity in the U.S. trades.” Order of Investigation, 75 Fed. Reg. 13,761, 13,762 (March 17, 2010).

At the Commission meeting held on June 23, 2010, the Commission adopted the recommendations of the investigation’s interim report. One of these recommendations directed Commission staff to prepare recommendations for Commission action on ways to increase oversight of global vessel alliances. The “alliances” referenced in the Commission’s vote comprise three agreements filed with the Commission: (1) the New World Alliance (Agreement No. 011960); (2) the Grand Alliance (Agreement No. 011602); and (3) COSCO/KL/YMUK/Hanjin Worldwide Slot Allocation and Sailing Agreement (“CKYH Alliance”) (Agreement No. 011794). Each of these is a cooperative working arrangement among vessel operating common carriers that operate shared services in multiple trades under a single agreement.

Each of these three “alliance” agreements gives their members authority, in multiple U.S. trade lanes, to discuss and collectively implement “capacity rationalization,” which is defined as “concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever . . . on the size or number of vessels or available space offered . . . to shippers in any trade or service.” 46 C.F.R. § 535.104(e). When the Commission implemented the current regulations governing reporting requirements, it stated that global alliances, while potentially efficiency enhancing, also

have the potential to be “complex and anticompetitive operational agreements with capacity rationalization authority” that allow “manipulation or restriction of the potential supply of vessel capacity in a trade.” Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984, 69 Fed. Reg. 64398, 64401, 64406 (Nov. 4, 2004) (quoting 68 Fed. Reg. 67510, 67525 (proposed Dec. 2, 2003)). The Commission observed that “a concerted reduction in vessel capacity and the restrictions imposed by capacity rationalization authority can result in a shortage of vessel space in a trade lane leading to an unreasonable decrease in service” and “artificially induced upward pressure on rate levels, potentially leading to an unreasonable increase in rates.” *Id.* at 64407.

When the Commission implemented the current reporting requirement regulations, it emphasized the need for “timely notice” of “pending action” so that the Commission can “take any necessary action under the Shipping Act to prevent a concerted action by carriers that would likely cause harm in the agreement trade *prior to its implementation.*” *Id.* (emphasis added). Accordingly, “the Commission must first be informed in advance of the parties’ pending action under the agreement.” *Id.* Timely information on agreement actions is particularly important where agreements specify a range of vessel capacity “spanning multiple trade lanes . . . , especially in cases where the geographic scope covers all the U.S. trades.” *Id.*

The Commission’s current regulations set a general deadline to file most categories of monitoring reports within 75 days of the end of each calendar quarter. See 46 C.F.R. § 535.701(f). As a result, the Commission may receive some reports with data and capacity information up to five and a half months after the beginning of

the reporting period covered. When parties make “significant reductions in vessel capacity” under an agreement, the current regulations require them to submit a narrative statement no later than 15 days after agreeing on the reduction, and in any event prior to its implementation. 46 C.F.R. § 535.703(c). In recognition that conditions from time to time may warrant more timely reports for certain agreements, the regulation’s general filing times expressly provide for exceptions “where otherwise instructed.” 46 C.F.R. § 535.701(f). Last year’s “severe disruptions in the ocean leg of the global supply chain experienced by U.S. exporters and importers,”¹ have led the Commission and staff to conclude that more timely notice and reporting are needed for global alliances, which have the potential to be “complex and anticompetitive operational agreements with capacity rationalization authority”² in multiple trade lanes.

Based on the Commission’s review of the available information and staff recommendation, the Commission hereby orders, pursuant to 46 C.F.R. Part 535, Subpart G, and underlying statutory authorities, the New World Alliance (Agreement No. 011960), the Grand Alliance (Agreement No. 011602), and the CKYH Alliance (Agreement No. 011794), and each of the member carriers comprising the respective agreements,³ to comply with the reporting requirements that follow. Pursuant to 46 U.S.C. §§ 41104(b), 40302(c), and 40306, information filed with the Commission

¹ *Update on Federal Maritime Commission’s Examination of Vessel Capacity: Hearing Before the Subcomm. on Coast Guard and Maritime Transportation of the H. Comm. on Transportation and Infrastructure*, 111th Cong. 3 (June 30, 2010) (statement of Rebecca F. Dye, Federal Maritime Commissioner).

² 69 Fed. Reg. at 64406 (quoting 68 Fed. Reg. at 67525).

³ The Grand Alliance consists of Hapag-Lloyd, Nippon Yusen Kaisha (NYK), and Orient Overseas Container Line (OOCL). The New World Alliance members include American President Lines Ltd. and APL Co. Pte. Ltd. (APL), Hyundai Merchant Marine Co., Ltd., and Mitsui O.S.K. Lines (MOL). The CKYH Alliance consists of COSCO Container Lines Company Ltd., Kawasaki Kisen Kaisha, Ltd. (“K” Line), Yangming Marine Transport Corp., and Hanjin Shipping Co., Ltd.

pursuant to this Order shall remain confidential, and will not be made public except as provided by statute.

II. Minutes

THEREFORE, IT IS HEREBY **ORDERED** THAT the New World Alliance, the Grand Alliance, and the CKYH Alliance file minutes with the contents described in 46 C.F.R. § 535.704(c) for meetings conducted by the following groups:

- The senior-most committee that approves the capacity and schedule planning recommendations developed by lower level committees or subcommittees; including any Chief Executive Officer Committee Meeting or Principals Committee Meeting of the alliance members.

This obligation applies to any “meeting” as that term is defined in Commission regulations at 46 C.F.R. § 535.704(b), including:

all discussions at which any agreement is reached among any number of the parties to an agreement relating to the business of the agreement, and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement. This includes, but is not limited to, meetings of the members’ agents, principals, owners, officers, employees, representatives, committees, or subcommittees, and communications among members facilitated by agreement officials. Discussions conducted by telephone, electronic device, or other means are included.

46 C.F.R. § 535.704(b). Minutes shall be filed electronically in a word-searchable format within 21 days of the date of the meeting.

III. Monitoring Reports

IT IS FURTHER **ORDERED** THAT the three alliances (the New World Alliance, the Grand Alliance, and the CKYH Alliance), electronically file monitoring reports monthly, rather than quarterly. The alliance agreements or individual carrier members must file monitoring reports within 30 days of the end of a calendar month. This

increase in frequency and timeliness will allow the Commission to assess the actions of the alliances and competitive conditions in each major U.S. trade on a contemporary basis.

These monthly monitoring reports, which are limited to capacity allocated to the U.S. market and U.S. cargo loadings inbound and outbound, shall contain the following service-related information:

- The number of sailings by service string during the month.
- Total available Twenty-Foot Equivalent Unit (TEU) capacity by service string overall and the amount made available to each agreement member.
- Total TEUs loaded on each service string overall and the amount loaded by each agreement member.
- The total deadweight capacity by service string overall and the amount made available to each agreement member.
- Total deadweight loaded on each service string overall and the amount loaded by each agreement member.
- If individual members use different names to identify service strings, a legend must be provided to allow accurate comparison of the reported data.

These monitoring reports will contain information substantially similar to what the Commission currently receives in quarterly reports. While the increased frequency of filing monitoring reports could result in an additional burden on alliance agreements, that burden will be minimal. As noted, the agreements already possess this information and use it to prepare monitoring reports. This burden is also outweighed by the benefit that the Commission will gain in having timely information to use when analyzing the alliance parties' behavior.

IV. Advance Notice

IT IS FURTHER **ORDERED** THAT the three named alliances (the New World Alliance, the Grand Alliance, and the CKYH Alliance) shall provide notice of planned changes in capacity, whether temporary or permanent in duration, subject to the threshold noted below. The alliances shall provide notice of both increases and decreases in capacity, and shall provide notice when carriers substitute vessels or adjust sailings that have the effect of changing the *pro forma* weekly capacity for an individual string in the amount of five percent or more. Notice shall be provided to the Director, Bureau of Trade Analysis, within five business days after the agreement or decision, or prior to the implementation of the decision or agreement, if sooner than five business days.

This advance notice must describe any planned change in the amounts of capacity to be implemented under the agreement (above the threshold amount) in any of the individual liner services (strings) that are covered by the agreement within the entire geographic scope of the agreement. Specifically, each notice shall identify the string or strings affected, the nature of the change (i.e., an increase or decrease in capacity and its amount), the proposed date of implementation of the change, the cause of the change (e.g., the planned elimination, introduction, or merger of a service), the effect of the planned change on the string's average weekly capacity, and whether the planned change is temporary or permanent. If a planned change is temporary in duration, the notice shall contain the planned duration. For planned changes caused by vessel substitutions, the notice shall identify the ship by name, operator and IMO

number. For planned changes caused by sailing cancelations, the notice shall identify the voyage number(s), operator, and direction.

FINALLY, IT IS **ORDERED** THAT this special reporting requirement shall take effect on January 24, 2011, and remain in effect thereafter; provided, however, that two calendar years from the date of service of this Order, the Commission shall affirmatively review the requirements and determine whether they should be continued for an additional period of time, modified, or terminated. The members of the Grand Alliance, the New World Alliance, or the CKYH Alliance may request that Commission staff members attend any meeting in lieu of the alliance preparing and filing minutes for that meeting. Such request will be reviewed by the Director of the Commission's Bureau of Trade Analysis, in consultation with the Commission's General Counsel. All other requirements, regulations, and rules are unaffected by this Order.

By the Commission.

Karen V. Gregory
Secretary