

***Case No COMP/M.3973 -
CMA CGM / DELMAS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.12.2005

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party :

Dear Sirs,

**Subject: Case No COMP/M.3973 – CMA CGM / Delmas
Notification of 24 October 2005 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 24 October 2005 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking CMA CGM (France) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Delmas (France) by way of purchase of shares.

I. THE PARTIES

2. Both CMA CGM and Delmas are active in containerised liner shipping services and Roll on – Roll off (Ro-Ro) shipping services. CMA CGM has worldwide operations, whereas Delmas has its focus on the trades Europe - Africa, Africa - the Indian-Subcontinent, Africa - Asia and South Europe - Maghreb (the latter trade is operated by its subsidiary Sudcargos). CMA CGM is also active in stevedoring services.

II. THE OPERATION

3. CMA CGM has signed an agreement according to which it will buy 100% of the share capital of Delmas from the Bolloré group. Delmas holds a 50% interest in the container liner operator Sudcargos. The remaining 50% in Sudcargos are held by the State owned Société Nationale Maritime Corse-Méditerranée (SNCM). CMA CGM entered on 15 September 2005 into an agreement with SNCM to acquire the remaining 50%

¹ OJ L 24, 29.1.2004 p. 1.

from SNCM. However, CMA CGM puts forward that this transaction is independent from the acquisition of Delmas and [...]. The notification therefore only covers the acquisition of Delmas.

III. CONCENTRATION

4. After completion of the transaction, CMA CGM will acquire sole control of Delmas and thus indirectly also joint control in Sudcargos together with SNCM.

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of about EUR 4.7 billion². Each of CMA CGM and Delmas has a Community-wide turnover in excess of EUR 100 million³, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. In [>3] Member States, the combined aggregate turnover of CMA CGM is above EUR 100 million⁴, and in [>3] of these Member States the aggregate turnover of each of them is above EUR 25 million⁵. The notified operation therefore has a Community dimension pursuant to Article 1(3) of Council Regulation (EC) No 139/2004.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Containerised liner shipping

6. Containerised liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container. It can be distinguished from non-liner shipping (charter, tramp, specialised transport) because of the regularity and frequency of the service. In addition, the use of containerised transportation separates it from other non-containerised transport such as bulk vessel. Previous merger decisions have defined the market for containerised liner shipping services on one or more trades⁶. A possible narrower product market is that for the transport of refrigerated goods, which could be limited to reefer (refrigerated) containers only or could include transport in conventional reefer (refrigerated) vessels⁷.
7. In line with the recent Maersk/PONL decision, on trades with a share of reefer containers in relation to all containerised cargo below 10% in both directions, transport in reefer containers is not assessed separately, but as part of the overall market for container liner shipping services. On imbalanced trades with high shares of transport in reefer containers in relation to all containerised cargo in one direction and relatively low shares in the other direction, the market position of the parties on a possible market for the transport of reefer containers only will be taken into consideration.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

³ CMA CGM: about EUR [...]; Delmas about EUR [...].

⁴ [...].

⁵ [...].

⁶ M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand; M.3576 – ECT/PONL/Euromax; M.3829 – Maersk/PONL, M.3863 – TUI/CP Ships.

⁷ M.3829 – Maersk/PONL; M.3863 – TUI/CP Ships.

8. The geographical dimension of containerised liner shipping services consists of single trades, defined by the range of ports which are served at both ends of the service. 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. Considering that in liner shipping, supply has to be provided by a sufficient number of vessels to generate a scheduled service, these characteristics influence the level of barriers to entry that may be present on the trade. Relevant trades are those from North Europe to other non European areas⁸ and back and from South Europe to other non European areas and back⁹.
9. The parties put forward that for certain trades North and South European ports should be part of the same market. As regards substitution between North and South European ports, the possibility of inland transport and transshipment between North and South Europe does not seem to lead to substitution to a considerable extent. However it is not necessary to conclude on a precise definition of the geographic dimension because the competition analysis will not significantly differ under both alternative market definitions.

Ro-Ro shipping services

10. The parties suggest defining a separate market for Ro-Ro shipping services, defined as the regular transport of wheeled cargo (trucks, cars) with their load. These services can be distinguished from the transport of containerised or bulk cargo as well as from the transport of new or second-hand vehicles which are for sale¹⁰. This market definition was broadly confirmed by the market investigation. However, the precise definition of the market can be left open because even under the narrowest conceivable definition which is Ro-Ro shipping services for wheeled cargo with their load no competition concerns arise.
11. The geographical dimension of Ro-Ro shipping services is defined in the same way as for containerised liner shipping services, i.e. on the basis of trades to and from Northern and Southern Europe.

Container terminal services

12. Previous merger decisions have defined the market for stevedoring services for deep-sea container ships, broken down by traffic flows to hinterland traffic (= direct deep-sea) and transshipment traffic (= relay/feeder)¹¹. The relevant geographic dimension of stevedoring services is in its broadest scope Northern Europe on the one hand and the Mediterranean on the other hand (for transshipment traffic) and in its narrowest possible scope the catchment area of the ports in a certain range (for hinterland traffic, e.g. the port range Le Havre – Rotterdam)¹². The exact geographic scope can be left open, because on the basis of any conceivable market definition, the transaction will not significantly impede effective competition.

⁸ Such as North America, Far East, Indian Subcontinent, Middle East, East Africa, South Africa, West Africa, Caribbean/Central America, East Coast South America, West Coast South America and Australia/New Zealand.

⁹ See M.3829 – Maersk/PONL; M.3863 – TUI/CP Ships.

¹⁰ See for the transportation of vehicles M.2879 – Wallenius/Wilhelmsen.

¹¹ JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.3576 – ECT/PONL/Euromax.

¹² See in more detail M.3829 – Maersk/PONL.

B. ASSESSMENT

13. There are some overlapping activities between CMA CGM and Delmas as well as between CMA CGM and Sudcargos. As Sudcargos will be jointly controlled by CMA CGM and SNCM, Sudcargos' volumes will be attributed to the merged entity. In principle, SNCM's operations have to be taken into account as well, but SNCM has only marginal overlaps with the merged entity in the Ro-Ro market between Southern Europe and the Maghreb.

Containerised liner shipping

14. CMA CGM is according to the information provided by the parties the number three global carrier with a share of capacity of [0-10]%, whereas Delmas and Sudcargos are very small players with an aggregated share of below [0-10]%. The recently created entity Maersk/PONL is the number one global carrier with a worldwide share of capacity of [10-20]%. Number two is the Mediterranean Shipping Company (MSC, Switzerland, [0-10]%). Other important players are Evergreen (Taiwan, [0-10]%) and the recently merged entity Hapag Lloyd/CP Ships (Germany, about [0-10]%). There are number of shipping lines with a share between [0-10]%¹³.
15. The parties have only on some EU trades overlapping activities, which are the
 - North / South Europe – East Africa trades and the
 - South Europe – Maghreb trade.
16. CMA CGM and Delams/Sudcargos are members of a number of liner conferences, consortia and alliances. Conferences, consortia and alliances are arrangements between shipping lines that play an important role in the organisation of the liner shipping industry. They restrict competition between their members.
17. Liner shipping conferences are groups of vessel-operating carriers which engage in price fixing and capacity regulation. These activities are currently exempted from the prohibition contained in Article 81 by Council Regulation 4056/86. Conferences are required to set common or uniform freight rates and may make a common policy on the discounts or rebates which may be offered to shippers in the geographical area covered by the conference. In addition, conferences fix surcharges¹⁴ and ancillary charges¹⁵ per trade, country, port or direction as relevant. Furthermore, conferences discuss capacity utilisation, volume lifted by each member line, evaluate members' market shares and carry out market forecasting through the elaboration of a business plan.
18. There is at present some internal competition within conferences because individual rate fixing between carriers and shippers is allowed. In these cases the conference tariff is not applied but used as a benchmark to fix the price of individual or multi-carrier contracts. The percentage of the parties' cargo that is carried under individual service contracts is an indication of the extent to which internal competition takes place. However it cannot be assumed that the other members of the conference also carry roughly the same percentage of cargo in individual services contracts. Surcharges and

¹³ NOL/APL (Singapore, [0-10]%), Cosco (China, [0-10]%), China Shipping (China, [0-10]%), Hanjin (Korea, [0-10]%), NYK Line (Japan, [0-10]%).

¹⁴ E.g. bunker adjustment factor, currency adjustment factor, congestion surcharge and war risk surcharge.

¹⁵ I.e. those charges triggered by or associated with the operation of moving containers.

ancillary charges are still imposed by all conference members on cargo that transits under individual service contracts. This results in part of the price being fixed jointly. The percentage of surcharges in relation to the price of the sea leg of the journey varies from trade to trade with an average of about [20-30]%. There is no competition between the members of a conference on this important part of the price.

19. Consortia and alliances are operational agreements between carriers on a trade-by-trade or global basis for the provision of a joint service. Unlike conferences, consortia do not price fix but carry out extensive co-operation. This co-operation ranges from vessel sharing, exchange of space or slots in vessels, equipment interchange, joint operation or use of port terminals and related services, temporary capacity adjustments to the participation in a revenue or a cargo pool, joint marketing and the issuing of a joint bill of lading. It is exempted from the prohibition contained in Article 81 of the Treaty by Commission Regulation 823/2000 as amended by Regulation 611/2005. The block exemption is predicated on the assumption that in order to fulfil Article 81(3), consortia are subject to internal or external competition¹⁶. The extent to which competition amongst member lines takes place depends on the characteristics of the consortium. Exchange of commercially sensitive information takes place within consortia at least to the extent necessary for the provision of the joint service. This may include for example information on individual members' lifting, actual and future, terms and conditions negotiated with third parties for the provision of port terminal services or customer information. The bundling of several consortia each operating in a different trade is known as an alliance.
20. The combined market position of the members of conferences and consortia can be substantial. Carriers are often members of a conference and of one or more consortia on the same trade. This enables them to cumulate the benefits of the Conference Block Exemption Regulation (price fixing) and of the Consortia Block Exemption Regulation (operational arrangements for the provision of a joint service). In line with previous merger decisions, the parties' membership in conferences and consortia is taken into account in the assessment of the consequences of the operation on the affected markets¹⁷. Therefore, market shares of the merged entity and those of relevant conferences and consortia are considered. The market share of a conference or a consortium is the aggregated market share of their members, calculated on the basis of the members' volume which is carried under the conference or consortium agreement. However, in order to assess the risk of coordination between the members of a conference or a consortium and to evaluate the strength of the carriers interlinked due to their conference or consortium membership, it is appropriate to take into account the total volume transported by the conference or consortium members in the relevant trade¹⁸.
21. Depending on the parties' membership, the proposed transaction will have different effects on conferences and consortia. The following alternatives may occur:

¹⁶ After the adoption of Regulation 1/2003, consortia with a market share above 35% (and 30% if consortia operate within a conference) are under the obligation to self-assess whether their practices fulfil the four cumulative conditions of Article 81(3).

¹⁷ M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand; M.3829 – Maersk/PONL; M.3863 – TUI/CP Ships.

¹⁸ See M.3863 – TUI/CP Ships.

- In cases where the parties are currently in the same conference or consortium and the merged entity maintains the membership, the concentration would not change the total market share of the conference or consortium. Depending on the structure of the conference or consortium, however, this could lead to a strengthening of the internal cohesion and eventually lead to the merged entity controlling the conference.
 - In some instances CMA CGM is in a conference or consortium, but not Delmas or Sudcargos, even though they are active on the same trade. If CMA CGM maintains its membership, Delmas or Sudcargos can be expected to be integrated into the conference or consortium. The market share of the conference or consortium will rise. Even without such integration, Delmas' or Sudcargos' volume is no longer independently competing with the conference or consortium. If only Delmas or Sudcargos are in a conference or consortium, the merger would create a link between CMA CGM and the conference and/or the consortium. This link would enable CMA CGM to take part in the exchange of information within the conference and/or the consortium. CMA CGM could use the commercially sensitive information exchanged therein to adapt over time its conduct on the market, thus increasing the risk of market sharing or lessening of competition between itself and the other members of the conference or the consortium. Even without integrating itself into the conference or the consortium, CMA CGM would no longer be an independent competitor because it controls a member of the conference or the consortium.
22. The effects of the proposed transaction will be assessed for each affected market. The assessment is generally based on the information provided by the parties. In some cases the market investigation has shown a discrepancy between the market shares indicated by the parties and the figures provided by third parties. Where relevant, this is signalled.

Affected Markets

North / South Europe – East Africa

Market shares

CMA CGM	Delmas	Combined CMA CGM / Delmas	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[0-10]%	[10-20]%	[10-20]%	CMOI (CMA CGM and Delmas)	[20-30]%	VSA East Africa and Indian Ocean (CMA CGM and Delmas)	[20-30]%	Maersk	[20-30]%
[0-10]% (South Bound)	[10-20]% (South Bound)	[10-20]% (South Bound)					MSC	[20-30]%
[0-10]% (North Bound))	[10-20]% (North Bound))	[20-30]% (North Bound))					DAL ^{a, b}	[0-10]%

^a Member of Europe to Indian Ocean Islands Trade Agreement (CMOI)

^b Member of the Vessel Sharing Agreement (VSA) East Africa and Indian Ocean

23. The aggregated market share of CMA CGM and Delmas is about [10-20]% on the trade between Europe and East Africa¹⁹. The most important competitors and their approximate market shares are according to the information provided by the parties: Maersk [20-30]%), MSC [20-30]%) and DAL [0-10]%).
24. According to the information provided by the parties, in both trade directions the transport of refrigerated cargo represents less than 10% of the overall market. However, there are indications that in the trade direction from East Africa to Europe, the transport of refrigerated goods might account for slightly more than 10% of the overall market.
25. Both CMA CGM and Delmas are members of the Europe to Indian Ocean Islands Trade Agreement (CMOI)²⁰. This conference only covers the Indian Ocean Islands²¹, but not the East African mainland and has a market share of about [20-30]%).
26. Both CMA CGM and Delmas are also members of the Vessel Sharing Agreement (VSA) East Africa and Indian Ocean. This consortium covers the whole trade and has a market share of about [20-30]%).

Non-coordinated effects

27. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns on this trade. There are a sufficient

¹⁹ Volumes to the Indian Ocean Island which are closely located to the East African coast are included. The market shares are [20-30]% for North Europe – East Africa and [20-30]% for South Europe – East Africa. As there are no appreciable differences, North and South Europe will be discussed together.

²⁰ Third member of CMOI is DAL.

²¹ Such as Madagascar, Mauritius, Réunion and the Sychelles.

number of competitors with an appreciable presence on these trades which can constrain the behaviour of the parties, in particular Maersk and MSC.

28. The parties appear to have a relatively strong position for the transport of refrigerated goods from East Africa to Southern Europe. The parties put forward that the northbound volumes would be generated by a limited number of customers which export mainly shrimps and litchis from Madagascar and avocados from Kenya. These products would be for historical reasons mainly transported to France and [...]. However, Maersk is transporting an appreciable amount of refrigerated cargo from East Africa to Southern Europe as well. MSC and DAL are also active in reefer transport from East Africa to Southern Europe. The presence of these carriers puts sufficient competitive constraints on the parties.

Coordinated effects

29. Both CMA CGM and Delmas are currently members of the same conference and consortium. Competition between the members of CMOI and of the VSA East Africa and Indian Ocean is restricted²². The transaction reduces the number of members of the conference and the consortium from 3 to 2. The transaction might strengthen the cohesion within the conference and the consortium²³. However, given the market share of the conference [20-30]% and the consortium [20-30]%, this does not give rise to competition concerns, in particular in view of the strong position of the independent competitors Maersk and MSC, which reach market shares which are close to those of the conference and the consortium.
30. Also for the transport of refrigerated goods from East Africa to Southern Europe, Maersk and MSC put sufficient competitive constraints on the conference and the consortium.
31. On the basis of the above, on the East Africa trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

Europe – Maghreb or South Europe – Maghreb

32. The parties are of the opinion that for container transport to and from Maghreb, North and South Europe should not be distinguished. They therefore argue in favour of an overall Europe – Maghreb trade as the relevant geographic market. However, limited substitution between Northern and Southern European ports would support the existence of two separate markets. It is not necessary to decide on the exact geographic dimension, because under both alternatives no competition concerns will arise.

²² The conference sets the tariff which is used as a benchmark for negotiated rates. [50-100]% of CGM CMA's cargo is carried under negotiated rates between individual shippers and individual carriers, but between [10-20]% and [20-30]% of the total price are surcharges and ancillary charges. This means that there continues to be joint price setting for part of the price. Members of the VSA East Africa and Indian Ocean are structurally linked by a vessel sharing agreement and [description of agreement].

²³ The share of CGM CMA and Delmas within the conference will be [>50]%.

Alternative 1: South Europe - Maghreb

Market shares

CMA CGM	Sudcargos	Combined CMA CGM / Sudcargos	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]% [10-20]%(South Bound) [0-10]%(North Bound))	[10-20]%(South Bound) [20-30]%(North Bound))	[20-30]%(South Bound) [20-30]%(North Bound))	France Sud - Tunisie (CMA CGM and Sudcargos)	[0-10]*	Sudcargos/ Marfret (Sudcargos) Conv. Navette (CMA CGM and Sudcargos) Med Line II (Sudcargos)	[0-10]* [0-10]* [0-10]*	Contenemar Tarros ^a Grimaldi ^a Navimed Comanav ^b IMTC ^b CNAN Cotunav ^a MSC Marfret	[10-20]* [10-20]* [10-20]* [0-10]* [0-10]* [0-10]* [0-10]* [0-10]* [0-10]* [0-10]* [0-10]*

* Market shares only relate to southbound trade.

^a Member of France Sud – Tunisie Conference and of Convention Navette

^b Member of Med Line II

33. If the South Europe – Maghreb trade is considered a distinct market from the North Europe – Maghreb trade, the aggregated market share of CMA CGM and Sudcargos is about [20-30]% on the trade between South Europe and the Maghreb. The most important competitors and their approximate market shares on the southbound trade are according to the information provided by the parties: Contenmar [10-20]%, Tarros [10-20]%, Grimaldi [10-20]%, Navimed [0-10]% and Comanav [0-10]%. The parties were only able to provide the Commission with market share estimates of the competitors for the southbound trade. They put forward that there is a trade imbalance, because the carriers transport volumes from South Europe to Maghreb, but return northbound with important unused ship capacities²⁴.

34. According to the information provided by the parties, in both trade directions the transport of refrigerated cargo represents less than 10% of the overall market.

²⁴ The overall trade volume is about [...] TEU southbound and about [...] TEU northbound. In the following, the effects of the transaction are discussed on the basis of the market share information for the southbound trade. Given the amount of unused capacities on the northbound trade, the competitive constraints are higher than on the southbound trade. The aggregated market share of the parties does not appreciably differ between southbound and northbound trade. Consequently, if there are no competition concerns on the basis of the market share information for the southbound trade, this analysis also applies to the northbound trade.

35. Both CMA CGM and Sudcargos are members of the Conférence France Sud / Tunisie²⁵, which covers the Southern Europe – Maghreb trade and has a market share on the southbound trade of about [0-10]%. CMA CGM does not achieve any container volumes with the conference.
36. Both CMA CGM and Delmas are also members of the consortium Convention Navette Containers Marseille - Tunis²⁶ which has a market share on the southbound trade of about [0-10]%. Sudcargos is a member of two other consortia, the Coopération Marfret/Sudcargos²⁷ with a market share on the southbound trade of [0-10]% and the Med Line II²⁸ with a market share on the southbound trade of [0-10]%.

Non-coordinated effects

37. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns on this trade. There are a sufficient number of competitors with an appreciable presence on these trades which can constrain the behaviour of the parties, in particular the regionally operating companies Contenemar, Tarros, Grimaldi, Navimed, Comanav, IMTC and CNAN.

Coordinated effects

38. Both CMA CGM and Sudcargos are currently members of the Conférence France Sud / Tunisie and of the consortium Convention Navette Containers Marseille - Tunis. Competition between the members of the conference and the consortium is restricted²⁹. The transaction reduces the number of members of the conference and the consortium from 6 to 5. However, CMA CGM does not achieve any container volumes with the conference or the consortium. It can therefore not be expected that the reduction of members from 6 to 5 will appreciably strengthen the cohesion within the conference or the consortium. Furthermore, the market shares of the conference and the consortium are modest and do not give rise to competition concerns.
39. The proposed transaction would create a link between CMA CGM and the consortia Sudcargos/Marfret and Med Line II. Competition between the members of the consortia is restricted³⁰. Even without integrating itself into the consortia, CMA CGM will no longer be an independent competitor of Sudcargos/Marfret and Med Line II because it controls a member of the consortia. Through Sudcargos, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore CMA CGM could influence operational decisions within the consortia. The market shares of the consortia are modest. On the basis of the total volumes carried on the trade, the members of Med Line II reach an aggregated market share of [20-30]% on the southbound trade. If

²⁵ Other members are COTUNAV, SNCM, Grimaldi and Tarros.

²⁶ Other members are COTUNAV, SNCM, Grimaldi and Tarros.

²⁷ Other member is Marfret.

²⁸ Other members are COMANAV and IMTC.

²⁹ The conferences set the tariff which is used as a benchmark for negotiated rates. [...] of CMA CGM's cargo is carried under negotiated rates between individual shippers and individual carriers, and to [50-100]% of the conference cargo the conference surcharges and ancillary charges are applied. This means that there continues to be joint price setting for [certain part of] price. Members of the consortium are structurally linked by a vessel sharing agreement.

³⁰ Members of the Marfret / Sudcargos are structurally linked by a vessel sharing agreement and [description of the agreement].

CMA CGM's total volume is added, the combined market share would amount to [30-40]%. Sudcargos and Marfret would reach a market share of [10-20]%. The combined market share of all members of the consortia Med Line II and Sudcargos/Marfret would amount to [40-50]%. Nevertheless, given the existence of other important players on this trade which are not members of the consortia such as Contenmar, Navimed and CNAN, a link of CMA CGM to these consortia does not give rise to competition concerns.

40. On the basis of the above, on a possible South Europe – Maghreb trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

Alternative 2: Europe – Maghreb

Market shares

CMA CGM	Sudcargos	Combined CMA CGM / Sudcargos	Conferences to which parties are member		Consortia to which parties are member		Individual carriers	
[10-20]% [10-20]%(South Bound) [0-10]%(North Bound))	[0-10]%(South Bound) [0-10]%(North Bound))	[20-30]%(South Bound) [10-20]%(North Bound))	France Sud - Tunisie (CMA CGM, Sudcargos)	[0-10]%^*	Sudcargos/Marfret (Sudcargos)	[0-10]%^*	Comanav ^{b,d,e}	[0-10]%^*
			EMTA (CMA CGM)	[10-20]%^*	Conv. Navette (CMA CGM and Sudcargos)	[0-10]%^*	Contenemar	[0-10]%^*
			EMC (CMA CGM)	[10-20]%^*	Med Line II (Sudcargos)	[0-10]%^*	Tarros ^a	[0-10]%^*
					MoA (CMA CGM)	[10-20]%^*	Grimaldi ^a	[0-10]%^*
							IMTC ^{b,d,e}	[0-10]%^*
							MSC ^c	[0-10]%^*
							Navimed	[0-10]%^*
							Maersk ^c	[0-10]%^*
							CNAN	[0-10]%^*
							Cotunav ^a	[0-10]%^*
							Hamburg Süd ^c	[0-10]%^*
							OPDR ^{d,e}	[0-10]%^*
							Marfret	[0-10]%^*
							Van Uden ^{d,e}	[0-10]%^*

* Market shares only relate to southbound trade.

^a Member of France Sud – Tunisie Conference and of Convention Navette

^b Member of Med Line II

^c Member of European Mediterranean Trade Agreement (EMTA)

^d Member of Europe Morocco Conference (EMC)

^e Member of the consortium Memorandum of Agreement Northern Europe – Morocco (MoA)

41. If a wider Europe – Maghreb trade is considered, the combined market share of the parties would be slightly lower [20-30], because Sudcargos is not active from North Europe. The most important competitors and their approximate market shares on the southbound trade are according to the information provided by the parties: Comanav [0-10]%, Contenmar [0-10]%, Tarros [0-10]%, Grimaldi [0-10]%, IMTC [0-10]% and MSC [0-10]%. The parties were only able to provide the Commission with market share estimates of the competitors for the southbound trade. They put forward that there is a trade imbalance, because the carriers transport volumes from Europe to Maghreb, but return northbound with important unused ship capacities³¹.
42. CMA CGM is member of two additional conferences operating from North Europe, the European Mediterranean Trade Agreement (EMTA), which covers North Europe – Mediterranean routes, but as regards the Maghreb, only the North Europe – Tunisia route, and the Europe Morocco Conference (EMC). A number of important carriers are members of EMTA³², but the conference reaches a market share of only [10-20]% on the southbound trade. The EMC³³ has a market share of [10-20]% on the southbound trade.
43. CMA CGM is also a member of the consortium Memorandum of Agreement Northern Europe – Morocco³⁴, which covers the North Europe – Casablanca trade route and reaches a market share of [10-20]% on the southbound trade.

Non-coordinated effects

44. The aggregated market share of the parties on the market for containerised liner shipping does not give rise to competition concerns on this trade. There are a sufficient number of competitors with an appreciable presence on these trades which can constrain the behaviour of the parties, in particular the regionally operating companies Comanav, Contenemar, Tarros, Grimaldi, Navimed, IMTC and CNAN, but also MSC and Maersk.

Coordinated effects

45. The proposed transaction would create a link between the conferences EMTA and EMC on the one hand and Sudcargos on the other hand. Competition among the EMTA and EMC members is restricted. The members of the conferences benefit from the price fixing³⁵ and exchange of sensitive information which takes place within the

³¹ The overall trade volume is about [...] TEU southbound and about [...] TEU northbound. In the following, the effects of the transaction are discussed on the basis of the market share information for the southbound trade. Given the amount of unused capacities on the northbound trade, the competitive constraints are higher than on the southbound trade. The aggregated market share of the parties does not appreciably differ between southbound and northbound trade. Consequently, if there are no competition concerns on the basis of the market share information for the southbound trade, this analysis also applies to the northbound trade.

³² Members with market shares on this trade are Maersk, MSC, and Hamburg Süd. Other members of the conference, which do however not carry any volumes on this trade, are Andrew Weir, Armada Lines, Comtaz, DSR Senator, ZIM and Navigation Maritime Bulgare.

³³ Members are Comanav, IMTC, OPDR and Van Uden.

³⁴ Members are Comanav, IMTC, OPDR, Van Uden and Atlas.

³⁵ The conference sets the tariff which is used as a benchmark for negotiated rates. For both EMTA and EMC, [...] of CMA CGM's cargo is carried under negotiated rates between individual shippers and individual carriers, and to [50-100]% of the conference cargo the conference surcharges and ancillary charges are applied. This means that there continues to be joint price setting for [certain part of] price.

conference. EMTA has a market share of [10-20]% on the southbound trade and EMC of [10-20]%. On the basis of the total volume transported on the southbound trade, the aggregated market share of the members of EMTA would be [30-40]%, of the members of EMC [30-40]%. If Sudcargo's volume is added, the market share would reach [30-40]% and [40-50]%. With a market share of [10-20]%, CMA CGM is the most important member of both conferences. The aggregated market share of all members of both EMTA and EMC would amount to [50-60]% on the southbound trade.

46. However, the effects of the proposed transaction on the conferences and CMA CGM's position within these conferences seem to be limited. It cannot be expected that CMA CGM integrates Sudcargos' volume into the conferences, because the geographic scope of the conferences is limited to routes from and to North Europe, whereas Sudcargos only operates from South Europe. Under the hypothesis of a geographically broader market which covers routes from North Europe to the Maghreb as well as from South Europe to the Maghreb, competition between the conferences and Sudcargos is possible. It can therefore not be excluded that post-merger CMA CGM uses its influence over Sudcargos in a way that Sudcargos no longer independently competes with the conferences. However, even though operating in the same market, Sudcargos has a different geographic emphasis than the conferences or its members which operate from North Europe. A number of local carriers operating from South Europe to the Maghreb such as Cotenmar, Navimed and CNAN have the same geographic emphasis as Sudcargos, a comparable market share to that of Sudcargos and remain independent of the conferences. The elimination of Sudcargos as a competitor of the conferences will therefore not significantly change the competitive situation in the Europe – Maghreb trade.
47. The proposed transaction would also create a link between the MoA consortium and Sudcargos. Competition between the members of the consortium is restricted³⁶. MoA has a market share of [10-20]% on the southbound trade. On the basis of the total volume transported on the southbound trade, the aggregated market share of the members of MoA would be [30-40]%. If Sudcargo's volume is added, the market share would reach [40-50]%.
48. However, the effects of the proposed transaction on the MoA consortium and CMA CGM's position within this consortium seem to be limited. It cannot be expected that CMA CGM integrates Sudcargos' volume into the consortium, because the geographic scope of the consortium is limited to North Europe and Morocco, whereas Sudcargos only operates from South Europe. Post-merger, CMA CGM might use its influence over Sudcargos in a way that Sudcargos no longer independently competes with MoA. However, a number of local and international carriers such as Cotenmar, Navimed, CNAN, Maersk and MSC continue to compete with the MoA consortium. The elimination of Sudcargos as a competitor of the consortium will therefore not significantly change the competitive situation in the Europe – Maghreb trade.
49. On the basis of the above, on a possible Europe – Maghreb trade the transaction would not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

³⁶ Members of the MoA are structurally linked by a vessel sharing agreement. [Description of the agreement].

Ro-Ro shipping services

50. In Ro-Ro shipping services, the parties have an overlap only on the Southern Europe – Maghreb trade. As in container liner shipping, providers of Ro-Ro shipping services co-operate in conferences and consortia³⁷.

South Europe – Maghreb

Market shares

CMA CGM	Sudcargos	Combined CMA CGM / Sudcargos	Conferences to which parties are member	Consortia to which parties are member	Individual carriers						
[0-10]% [0-10]%(South Bound) [0-10]%(North Bound)	[0-10]%(South Bound) [0-10]%(North Bound)	[0-10]%(South Bound) [0-10]%(North Bound)	France Sud - Tunisie (CMA CGM and Sudcargos)	[10-20]%	Sudcargos/Marfret (Sudcargos) Accord d'affrètement Sudcargos/CETAM Ro-Ro Med Line II (Sudcargos)	[0-10]%	COMANAV ^b IMTC ^b COTUNAV ^a COMARIT	[20-30]%	[20-30]%	[10-20]%	[0-10]%

^a Member of the France Sud – Tunisie conference

^b Member of Med Line II

51. The combined market share of the parties is below [0-10]%, (CMA CGM [0-10]% and Sudcargos [0-10]%). This would be the case even if the marginal activities of SNCM in this Ro-Ro market are taken into account as its market share does not exceed [0-10]%. Important competitors are COMANAV [20-30]%, IMTC [20-30]%, COTUNAV [10-20]% and COMARIT [0-10]%.
52. Both CMA CGM and Sudcargos are members of the France Sud – Tunisie Conference³⁸ which has a market share of about [10-20]%.
53. Sudcargos is also a member of the Ro-Ro Med Line II Consortium (Med II)³⁹ and two other consortia with Marfret. The combined market share of the consortia is below [10-20]%.
Non-coordinated effects

Non-coordinated effects

54. The aggregated market share of the parties on the market for Ro-Ro shipping services is below [0-10]% and does not give rise to competition concerns on this trade. There are a sufficient number of competitors with an appreciable presence on this trades

³⁷ As Ro-Ro transport is organised as a liner shipping service, the Block Exemption Regulations apply as well. In the framework of the merger analysis, membership in conferences and consortia in Ro-Ro shipping is treated in the same way as for container liner shipping (see paragraph 16 ff.).

³⁸ Other members are COTUNAV, SNCM, Grimaldi and Tarros

³⁹ Other members are COMANAV and IMTC

which can constrain the behaviour of the parties, in particular COMANAV, IMTC, COTUNAV and COMARIT.

Coordinated effects

55. At the conference level, the transaction reduces the number of members of France Sud – Tunisie Conference from 6 to 5. Competition between the members of the conference and the consortium is restricted⁴⁰. However, as decisions within the conference are in principle taken on the basis of simple majority and each member has one vote, it cannot be expected that the reduction of members from 6 to 5 will appreciably strengthen the cohesion within the conference. Furthermore, given the market share of the conference of below [10-20]% the transaction does not give rise to competition concerns, in particular in view of the position of other competitors such as COMANAV and IMTC.
56. As only Sudcargo is a member of Med II consortium, the transaction creates a link between CMA CGM and this consortium. Competition between the members of the consortium is restricted⁴¹. Even without integrating itself into the consortium, CMA CGM will no longer be an independent competitor of Med Line II because it controls a member of the consortium. Through Sudcargos, it has access to commercially sensitive information about its competitors enabling it over time to adjust its own behaviour in the market accordingly. Furthermore CMA CGM could influence operational decisions within the consortium. The market share of Med II is [0-10]% as the consortium covers only the South of France – Morocco line and not the entire South Europe – Maghreb trade. In case all volumes of the Med II members operating in this trade are taken into account, it would be almost [50-60]%. However, the addition of [0-10]% market share of CMA CGM brought about by the transaction does not change the situation to any appreciable extent. Furthermore, competitors with substantial markets shares such as COTUNAV and COMARIT will put sufficient competitive constraints on the consortium and its members. Therefore, the link of CMA CGM to the Med II consortium and its members will not significantly impede effective competition on this trade.
57. On the basis of the above, on the South Europe – Maghreb Ro-Ro trade the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

Container terminal services

⁴⁰ The conferences set the tariff which is used as a benchmark for negotiated rates. [...] of CMA CGM's cargo is carried under negotiated rates between individual shippers and individual carriers, and to [50-100]% of the conference cargo the conference surcharges and ancillary charges are applied. This means that there continues to be joint price setting for [certain part of] price. Members of the consortium are structurally linked by a vessel sharing agreement.

⁴¹ The Med II Line is a highly integrated consortium. and [description of the agreement].

58. CMA CGM controls some stevedoring operations in Europe, mainly in Le Havre, Marseille and Malta. Its market share is below [10-20]% on any possible market⁴². None of the target companies provide stevedoring services. There is therefore no horizontal overlap. Post-merger, CMA CGM will not be able to foreclose its competitors from the access to relevant port terminal services in Europe or to foreclose other container terminals from their customer base.

VI. CONCLUSION

59. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission

⁴² The only exception is a possible hinterland market in Malta, for which the market share would be [60-70]%. However, the transaction will not lead to any changes on such a market because Delmas and Sudcargos do not operate to or from Malta.