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EUROPEAN SHIPPERS' COUNCIL

Monday, November 03, 2014

Federal Maritime Commission
800, North Capitol Street, N.W
Washington, DC 20573

Re: FMC Agreement NO. 0123000 (slot allocation agreement and sailing agreement)

Dear Sir or Madam,

In my capacity as chairman of the European Shippers' Council, I am writing to you to express our comments about the agreement between Cosco Container Lines Company, Kawasaki Kisen Kaisha, Yangming, Hanjin Shipping Co, and Evergreen better known as the CKYHE alliance.

The agreement itself

Firstly, we want to acknowledge that in the introduction of the agreement, the different ship owners want to cooperate to "*offer improved services to the shipping public*". Let's consider this "*public*" positively and take it for importers, exporters and consumers. Furthermore, we support the approach of the ship owners to submit only one agreement to FMC covering all east-west trade. We find it much more valuable to have this approach than to extend, step by step, the scope of an already agreed agreement (like the 2M Alliance with several amendments to Agreement No. 012293).

Article 5.1.1 authorizes the parties to agree on the management of the capacity available in the respective trades. As you know, maritime liner business is submitted to offer and demand constraints so giving supplier the right to play, to such an extent, with available capacity will pervert the fair competition rules.

Furthermore, allowing, as stated in article 5.4.1, parties to agree on common negotiation with port, port services (and third parties in general) will give the CKYHE alliance a dominant position over these third parties due to the huge size and bargaining power of the ship owners (as a reminder, CKYHE parties operate 20% of the global container fleet).

The terms related to the exchange of commercially sensitive information (article 5.6.1), as they are written, may create opportunities for the Parties to exchange commercial information beyond such apparently well-defined border lines and therefore it should be clearly stated that any exchange of sensitive commercial information is forbidden.





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Then, according to our analysis, article 5.9 allows ship owners to discuss and agree on a lot of things including surcharges. These must be excluded from the agreement. Indeed, with the low level of freight rates, ship owners often rely on surcharges to increase their revenues. Temptation to jointly create new surcharges in order to virtually increase freight rate will be very strong.

Agreeing on “consequences for delays” (article 5.9) is unacceptable for shippers. It would allow ship owners to set a common pricing policy in that matter. This sole possibility will clearly be in contradiction of the interest of importers, exporters and consumers.

Article 11.2 expresses the conditions for a party to change vessel from the Trade. It gives obligation to provide a ship “in the same or better condition in terms of its service performance, which includes speed and transit time in the Trade”. Capacity is a very important condition of service performance. The replacing vessels must be equivalent or better also in term of capacity. In the opposite case, this provision can be used to play on the supply side and increase prices. Article 11.4.1 takes the capacity into account; there is no reason for the previous ones not to do it.

Last but not least, as many competition controls are based on the market share, article 16.2 of the agreement raises concerns that the Parties take advantage of slot allocation to third parties to blur the figures related to their actual market share whereas market share is key to determine the applicable antitrust regulation.

More general comment

Not only the shipping lines are now obliged to live with alliances, but also shippers, ports and competition authorities have to address the consequences of creation of huge global players. In this respect, no one can look at this tremendous modification of the shipping market on a national point of view only. Analysis must be carried out globally. Competition authorities need to assess global alliances from a global point of view.

The CKYHE will be a very big player in the market and their plan is to continue growing in terms of market share as well as size of ships used (to rationalize and get economies of scale). However, increasing size of ships as already started to cause a lot of logistical problem in several parts of the world such as in many Asian ports and in Los Angeles. In addition to suffering delays for deliveries, shippers are compelled to pay surcharges due to congestion although the problem comes from the sea side and the new organization of alliances. This is not acceptable for shippers.

Furthermore, bigger ships will push the alliances to rationalize services even further. The risk is that the number of direct calls will be reduced to make “better use” of ultra-large container ships. Any reduction in direct transit options and an increase in transshipment could prove counter-productive to the region’s trades. These maritime pattern modifications will lead to increase of costs and cause delays to the US import and export.

Broader view and proposed action plan

We, as European shippers, have already seen that service quality (through reliability) decreases drastically due to more and more integration between ship owners' operations.

2M as well as Ocean Three have already been granted a go ahead by your organization.





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This new move by major ship owners clearly demonstrates that there will be no way back in the race for concentration in this industry and that both regulation authorities and stake holders must adapt to this new deal.

Therefore, we suggest taking the opportunity of this CKYHE file to make a further step forward than what was achieved during the previous alliances reviews, by imposing to CKYHE the implementation of some kind of control on the possible effects of any anti-competitive behavior on the domestic US markets. This step could pave the way of similar steps taken by the other major regulation authorities. In that respect the cooperation with Chinese and European authorities which you called for in your latest statements is essential.

Of course, once established with the opportunity of the CKYHE alliance review, such coordinated monitoring system by the major regulation authorities should be extended to all global alliances' operations.

These future systems should encompass the observation of many data related to capacity, filling rates, prices and revenues per trade lane, advance notice on service modification and of course service performance.

We, as representing body of the shippers from Europe, as well as our partners representing shippers from Asia, are ready to pool information resources with shippers from United States to be part of an observatory which may feed some input to these systems.

We remain available to meet you in your offices to detail out how such a system could be established based on data from the shipping industry and from its customers, us the shippers.

We intend to push forward this proposal also to the new DG Competition commissioner Mrs. Estager once she is fully established in her new function.

Sincerely yours,

Denis Choumert

Chairman, European Shippers' Council

