



Dr. Stephan Simon  
Senior Expert Mergers-Case Manager  
DG Competition, Merger Control Unit  
Transport, Post and Other Services (COMP.F4)  
Madou; 8/066, B1049  
Brussels  
Belgium

Global Shippers' Forum  
Hermes House  
St Johns' Road  
Tunbridge Wells  
Kent TN4 9UZ  
United Kingdom

tel: +44 (0)1892 552384  
fax: +44 (0)1892 552352  
www.globalshippersforum.com

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Dear Mr. Simon,

### **Case M.8330- Maersk Lines/ HSDG**

#### **GSF concerns relating to the proposed acquisition of Hamburg Sud by Maersk Line**

Thank you for the opportunity of commenting on aspects of the proposed acquisition of Hamburg Sud by Maersk Line. This matter is of considerable concern to shippers' internationally, but particularly to GSF's European members represented by the European Shippers' Council as customers of the parties to the proposed acquisition.

1. The Global Shippers' Forum (GSF) represents the interests of 40 Shippers' organisations in Africa, Asia, Australasia, Europe, and North America and South America. The GSF was incorporated as an NGO in the United Kingdom in June 2011 and represents shippers' interests in the main UN-based transport and trade organisations such as IMO, ILO, UNECE, ICAO, WCO and other inter-governmental organisations such as ITF/OECD and APEC. The GSF is focused on the impact of commercial developments in the international transportation supply chain and regarding policy decisions by these international organisations as they impact shippers and receivers of freight in international commerce.
2. The GSF is broadly concerned with the growing impact of concentration in the container shipping industry and the reduced choice this presents shippers in the world's key liner trades, but especially in so-called "thin trade routes" where competition can be restricted to monopoly or duopoly services for customers<sup>1</sup>. Our concern also relates to inter-linking vessels sharing agreements (VSAs) and consortia agreements of the parties to the proposed merger which could potentially enable the merged undertaking to extend their influence on the relevant markets in which the entities trade in terms of rates and services available to customers. We would ask the Commission to carefully examine the impacts of the proposed merger, in particular where it may have a decisive influence on the strategies of members of the various VSA and consortia agreements to which Maersk Line and Hamburg Sud currently belong, especially where the merger could significantly impede effective competition in the markets affected.

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<sup>1</sup> See GSF's recent paper: "The Implications of Mega Vessels And Alliances for Competition and Total Supply Chain Efficiency: An Economic Perspective".

3. The Commission will be aware of the recent history of the container shipping market and its tendency towards cooperation and anti-competitive pricing agreements and behaviour. While the EU has repealed anti-trust immunity for liner conferences and discussion agreements, both carriers currently participate in legally permissible discussion agreements in Asia, U.S. based trades and in Intra-Asia markets, including Australia and New Zealand. The GSF is concerned that participation in such agreements resulting from a merger between Maersk and Hamburg Sud may have impacts on EU trade, especially for EU shippers and receivers for goods shipped via the main Asian transshipment ports such as Singapore and Hong Kong to onward destinations in Asia and Australia and New Zealand. The GSF would urge the Commission to closely examine the merger parties' membership of such conference and discussion agreements and the potential impact on effective competition resulting from merged operations.
4. GSF members have raised concern with regard to the Australian and New Zealand reefer market as a result of the proposed merger. The Australian Peak Shippers' Association Inc (APSA) have advised the GSF that Hamburg Sud and Maersk dominate the ANZ reefer trade in the region and beyond. APSA estimate that the combined entity would represent 60% of the trade in the region where Hamburg Sud and Maersk are number 1 and 2 in these trades. This is likely to impact EU receivers and exporters of reefer products including meat and other agricultural produce, see the attached APSA submission to the Australian Competition and Consumer Commission Mergers and Acquisitions Review Division (ACCC). In addition to the significant market power enjoyed by both carriers in the EU and Australia-New Zealand reefer markets, APSA members have raised concerns regarding Maersk line's visibility of confidential VSA information, including strategic information on, for example, utilisation factors and of alignment of business strategies in VSA and Discussion Agreements, such as the AADA and ANZDA. At present, APSA members report that Maersk and Hamburg Sud offer different products on the market and there is serious concern that competition in the markets currently served, and space in the reefer segment of the market, will be restricted in a considerably concentrated overall reefer market.
5. As the Commission, will be aware, the liner reefer market is a specialist area of the shipping market. Equipment can often be in short supply and competition in the global reefer/cool market can be restricted. The Market has also been subject to several anti-trust investigations. We would therefore request the Commission to undertake a thorough analysis of the impacts of the proposed merger on competition and choice for shippers in this important sector.
6. In general terms, GSF members in South Africa have expressed similar concerns to those in Para 4 above regarding the North-South trades and reefer markets and on trade routes to North and South America.
7. In public statements issued by Maersk Line and Hamburg Sud to customers, the lines' have indicated that there will be "no changes (*to services-GSF emphasise*) during 2017" and that this will apply to existing contractual arrangements with shippers. GSF's main concern is not the short-term implications of the proposed merger, but to the wider long-term competitive impact and loss of competing services for shippers in the specialist trades currently operated independently by the lines', especially by Hamburg Sud which is generally considered to be a specialist operator in the markets in which it trades. Indeed, in response to a question a posed by Hamburg Sud as to whether the takeover

by Maersk was necessary, Hamburg Sud states that the takeover is “not absolutely essential”, see the attached advice to customers.

8. In the context of global alliances which from 1 April 2017 will be reduced from four to three in the world’s main trade routes , where there may be only two alliances on a specific trade in future, each with 40% or 45% market share, there is likely to be a duopoly with 80% or 90% market share which will be capable of eliminating effective competition on the trade concerned as there will be no incentive for one alliance (or its members) to compete with the other alliance (or its members), if they are sharing commercially sensitive information and discussing that data with competitors within VSAs, and even making recommendations/voluntary agreements, under the authority a VDA which includes members from both alliances.
  
9. In this context, it is pertinent to recall the significant potential for elimination of effective competition in oligopolistic markets. Albeit in the area of merger control, the European Commission has warned of the non-coordinated (or unilateral) effects of a merger in oligopolistic markets where the merger may result in a significant elimination of competition (paragraph 25, Commission Notice (Guidelines on assessment of horizontal mergers, 2004). The simultaneous operation of alliances, VSAs and VDAs in oligopolistic markets could involve: “the elimination of important competitive constraints that the [merging] parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition” (or the elimination of effective competition).

The GSF trusts the above comments will be of assistance to the Commission in its investigation. Should the Commission require any further information or clarification regarding this submission, please do not hesitate to contact me.

Yours Sincerely,



Chris Welsh MBE  
Secretary General  
Global Shippers’ Forum  
Tel: + 44 (0) 1892 552308  
Mob: +44 (0) 7818 450556  
Email: [cwelsh@globalshippersforum.com](mailto:cwelsh@globalshippersforum.com)  
Web: [www.globalshippersforum.com](http://www.globalshippersforum.com)

