

**COMPETITION TRIBUNAL**

**REPUBLIC OF SOUTH AFRICA**

**Case No.: 48/LM/May05**

**In the large merger between:**

AP Moller-Maersk

And

Royal P & O Nedlloyd N.V.

---

**NON-CONFIDENTIAL ORDER**

---

Further to the recommendation of the Competition in terms of section 14A(1)(b), the Competition Tribunal orders that the merger between AP Moller-Maersk and Royal P & O Nedlloyd N.V. be approved in terms of section 16(2)(b), subject to the following conditions:

**Section A. Definitions**

1. For the purposes of the Commitment, the following terms shall have the meaning defined below:

**Closing:** the transfer of the legal title of the Divestment Business to the Purchaser(s).

**Divestment Business:** the business of P&O Nedlloyd on the Identified trade as defined in paragraph 7 of this Commitment that the Parties have undertaken to divest pursuant to a commitment offered to and accepted by the European Commission pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004.

**Effective Date:** the date of this order by the South African Competition Tribunal.

**Identified Trade:** the trade between Europe and South Africa.

**IOS:** Indian Ocean Vessel Sharing Agreement Slot Rationalisation and Scheduling Agreement, which is a consortium agreement on the South Africa/Middle East trade. The following carriers are members of IOS: P&O Nedlloyd, Laurel Navigations (Mauritius) Limited, Pacific International Lines.

**Purchaser:** the acquirer of the Divestment Business.

**Relevant Trade:** for IOS this is the trade to and from South Africa/Middle East.

**SAECS:** consortium operating on the Northern Europe/Southern Africa trade. The following carriers are members of the SAECS consortium: Deutsche Afrika-Linien, Safmarine, Maersk Sealand and P&O Nedlloyd.

**Sale and Purchase Agreement:** the binding agreement(s) entered into between the Parties and the Purchaser (including all ancillary agreements relating thereto) concerning the transfer of the Divestment Business to the Purchaser.

**Same Partners(s):** all partners to IOS except P&O Nedlloyd, namely, Laurel Navigation (Mauritius) Limited and Pacific International Lines Ltd.

**TEU:** Twenty-foot Equivalent Unit.

## **Section B. The Divestment Business**

### ***Commitment to Divest***

2. AP Moller shall divest, or procure the divestiture of the Divestment Business, on the understanding that AP Moller shall use its best efforts to procure the transfer of the relevant personnel and contracts referred to below at paragraphs 7(d) - (h).
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of [**Confidential**] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the South African Competition Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary.

### ***Divestment Period***

4. AP Moller shall find one Purchaser for the Divestment Business and enter into a final binding Sale and Purchase Agreement with such Purchaser for the transfer of the Divestment Business within [**Confidential**] from the Effective Date.
5. Should AP Moller be unable to enter into binding agreements for the transfer of the Divestment Business within the [**Confidential**] period referred to in paragraph 4, the period shall be extended by another [**Confidential**] from the date of the expiry of the [**Confidential**] period following the Effective Date.

### ***Closing***

6. AP Moller shall be deemed to have complied with this undertaking if, within a period not exceeding [**Confidential**] from the Effective Date, it has entered into a binding Sale and Purchase Agreement for the transfer of the Divestment Business in accordance with paragraphs 4 and 5, above, provided that the Divestment Business is transferred to the Purchaser either upon Closing or within [**Confidential**] from Closing.

### ***Divestment Business***

7. The Divestment Business consists of those assets, rights and obligations which relate to P&O Nedlloyd's activities on the Identified Trade, namely:

- (a) P&O Nedlloyd's rights, interests and obligations in two time-charters with Offen Reederei GmbH & CO, Hamburg:
  - (i) the PONL Heemskerck, under time-charter dated 26 March 2003 for a duration of [Confidential] from 15 February 2005, being the date of delivery, with P&O Nedlloyd's option of [Confidential] further one year periods;
  - (ii) the PONL Livingstone, under time-charter dated 26 March 2003 for a duration of [Confidential] from 28 February 2005, being the date of delivery, with P&O Nedlloyd's option of [Confidential] further one-year periods.
- (b) P&O Nedlloyd's rights, interests and obligations in a time-chartered vessel, the P&O Nedlloyd Portbury, chartered for [Confidential] with effect from 15 July 2004. This is a B170 vessel with a nominal capacity of 1,728 TEUs (allocated capacity of [Confidential]) having 200 reefer plugs.
- (c) P&O Nedlloyd's rights, interests and obligations whether as owner or lessee, of the following number of dry and reefer containers used by it on the Identified Trade: P&O Nedlloyd estimates that the number of containers required to service its volume on the Identified Trade would be approximately [Confidential] general purpose 20' containers (or equivalent mixture of 20' and 40') together with approximately [Confidential] 40' high cube integral (i.e. reefer) containers.
- (d) Relevant personnel employed by P&O Nedlloyd in South Africa in the management, operation and marketing of its liner shipping activities on the Identified Trade.
- (e) The contracts to which P&O Nedlloyd (whether individually or jointly with one or more other liner shipping companies) is party for the provision of liner shipping services on the Identified Trade.
- (f) The contracts to which P&O Nedlloyd (whether individually or jointly with one or more other liner shipping companies) is party for the provision of goods and services to P&O Nedlloyd in the operation of its liner shipping services on the Identified Trade.
- (g) The rights and obligations associated with P&O Nedlloyd's membership of the SAECS consortium, including P&O Nedlloyd's rights and obligations as a member of SAECS under special berthing arrangements negotiated with terminals in South Africa.
- (h) The rights and obligations associated with P&O Nedlloyd's membership of the Europe South Africa Conference.

### **Section C. Withdrawal**

#### ***Withdrawal from consortia***

- 8. AP Moller shall procure that P&O Nedlloyd will withdraw from the IOS liner shipping consortium. It shall do so by serving notice of termination of its membership within [Confidential] of the Effective Date in accordance with the terms of the relevant consortium agreement, such notice to take effect at the earliest date permitted by such agreement, namely, [Confidential] from the date on which notice is served.

9. In summary, within the above liner shipping consortium the members provide international liner services, chiefly by container, in respect of which they cooperate in the joint operation of a maritime transport service, including any one or more of the following: the coordination of sailing timetables, the exchange of vessel space or slots and the pooling of vessels. The members of consortia do not agree any common freight rates or charges.

#### ***Related Commitment***

10. AP Moller shall not, for a period of [*Confidential*] following the Effective Date, become a member of the IOS consortium. AP Moller also shall not become a member of any consortium with substantially similar terms and with the Same Partners as the IOS consortium on the Relevant Trade.
11. The obligations set out in paragraph 10 shall lapse if the South African Competition Commission has previously found (as a matter of priority) that the structure of the market has changed to such an extent that the withdrawal of the membership of or participation in the consortium is no longer necessary.
12. The obligations described above at paragraphs 10 do not preclude the Parties from joining other conferences, consortia or any other agreements between container shipping lines, nor do they preclude the Parties from entering into any *ad hoc* bilateral space or slot chartering arrangements with any carrier(s) on the Relevant Trade or any other trades in order to meet customer demands for capacity and/or frequency on such trades at any given time, provided the *ad hoc* bilateral space or slot chartering arrangements with any carrier(s) on the Relevant Trade are not in substantially similar terms to the agreement referred to at paragraph 8.

#### **Section D. Reporting**

##### ***Divestment Business***

13. AP Moller shall submit a written report to the South African Competition Commission within [*Confidential*] after the end of each month following the Effective Date in relation to progress of the divestiture process. In addition, AP Moller shall ensure that appropriate waivers are in place in order that the South African Competition Commission can liaise and communicate with the European Commission and its Monitoring Trustee to monitor the divestiture of the Divestment Business in accordance with the procedures contemplated by the commitment offered to and accepted by the European Commission pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004.
14. AP Moller shall inform the South African Competition Commission on the preparation of any data room documentation, information memorandum and due diligence procedure arranged by AP Moller.

### ***Further notification***

15. AP Moller shall be required to notify the transfer of the divestment business as a merger to the Competition Commission, irrespective of whether the transaction falls within the thresholds for notification as a merger.

### ***Withdrawal from consortia***

16. No later than [*Confidential*] following the Effective Date, AP Moller shall confirm in writing to the South African Competition Commission that P&O Nedlloyd has given notice to terminate its membership of IOS. Upon completion of the withdrawal of P&O Nedlloyd from the IOS agreement, AP Moller shall inform the South African Competition Commission in writing of the withdrawal.

### **Section E. Review**

17. The South Africa Competition Commission may, where appropriate, in response to a reasoned request from AP Moller showing good cause and, if requested by the Commission:
  - (i) grant an extension of the time periods foreseen in the Commitments, or
  - (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where AP Moller seeks an extension of a time period, it shall submit a request to the South African Competition Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall AP Moller be entitled to request an extension within the last month of any period.

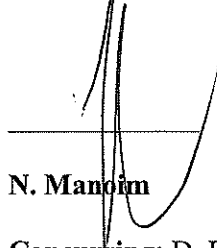
18. In case of a material change of circumstances, AP Moller reserves its rights to request the Commission to review the whole or any specific undertakings relating to this Commitment as set out above.

### **Section F. Public Interest**

19. AP Moller shall not retrench any unskilled employees of the merged firm (being employees who mainly perform manual or technical labour primarily outside an office environment) due to the merger for a period of twelve (12) months from the Effective Date. During the twelve (12) month period AP Moller must notify the Commission of the retrenchment of any unskilled employee within 14 business days of the date of the retrenchment taking effect. The notice must include the name of the employee, the date that the retrenchment becomes effective, and the reasons for the retrenchment.

**Section G. A merger clearance certificate**

20. A Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



A handwritten signature in black ink, appearing to read 'N. Manojm', is written over a horizontal line. The signature is stylized and somewhat cursive.

**N. Manojm**

**Concurring:** D. Lewis, Y. Carrim

01 November 2005

**Date**