

**NOTICE 585 OF 2014****COMPETITION COMMISSION****APPLICATION FOR AN EXEMPTION**

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Act") that the Association of Shipping Lines ("ASL"), has applied to the Competition Commission ("the Commission"), in terms of section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act. ASL is a voluntary, multi-member association whose members comprise various shipping liner companies, and is duly authorized to seek the exemption contemplated hereunder by, and for the benefit of its members.<sup>1</sup>
2. Members of the ASL are engaged in the provision of liner shipping services, which involves the transportation of goods on scheduled ships or vessels between ports via established sea routes, i.e. ocean trade to and from one or more South African ports.
3. The subject matter of the application is a category of agreements and/or ancillary practices ASL members intend to conclude among them, and implement in the maritime transport industry. The agreements and/or practices of members of ASL are hereby collectively referred to as the "Suite of Agreements". The Suite of Agreements involves the sale, exchange or pooling of spaces or slots between shipping lines on container ships bound to, around and from Southern Africa or in certain instances, agreements between shipping lines and their customers. Some agreements which form part of the Suite of Agreements constitute what may be referred to as "consortia agreements" in that they make provision for joint services by two or more shipping lines to customers. Whilst other agreements are purely vertical as they do not constitute the provision of joint services to customers.

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<sup>1</sup> The current membership of the ASL includes the following shippers: A.P. Moller-Maersk A/S trading as Safmarine and Maersk Line; CMA CGM; DAL Deutsche Afrika-Linen GmbH & Co. KG; Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG; Hapag-Lloyd Africa (Propriety) Limited; Kawasaki Kisen Kaisha Limited; Mediterranean Shipping Company (Propriety) Limited (agent) and Mediterranean Shipping Company S.A. (Principle); Mitsui O.S.K. Lines.

4. In particular, the Suite of Agreements consist of the following four (4) agreements:

- 4.1.1 *The Slot Charter Agreement*- this involves the sale by one shipping line (the vessel provider) of slot or/ capacity aboard one of its vessels on a particular route to another shipping liner (the charterer) or alternatively, to a third party in the habit of chartering capacity aboard vessels. These agreements are generally concluded in respect of specific routes for a specific period of time;
- 4.1.2 *The Slot Exchange Agreement*- this is a two- or/ multiple-way slot charter agreement involving a bilateral (or multilateral) reciprocal exchange of capacity between carriers on respective routes serviced by these carriers. The rationale for entering into a slot exchange agreement is to ensure that each vessel travelling the particular route which is subject of the agreement is operating at optimum capacity. In addition, a slot exchange agreement allows shipping lines to service ports which they otherwise do not or are not able to service;
- 4.1.3 *Vessel Sharing Agreements ("VSA")*- this is an agreement between two or more shipping lines, in terms of which such liner companies agree to provide certain of their vessels for joint use on specific routes – the **"VSA Fleet"**;
- 4.1.4 *The Multi-Carrier Service Contracts*- these are essentially joint negotiations between multiple shipping lines and a customer expressed in the form of a single contract to service the various needs of the customer where one shipping line would otherwise be unable (due to its inability to meet frequency or capacity requirements) or unwilling (owing to the commercial risks involved to provide the service) to meet the customers' needs.

5. In its application, ASL submits that the aforesaid agreements are generally concluded in respect of specific routes and for a specified period of time only.<sup>2</sup> Furthermore, ASL

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<sup>2</sup> The list hereunder captures some examples of the trade routes that are frequented by various ASL members:  
New York – Baltimore – Norfolk – Charleston – Freeport – Port Elizabeth – Durban – Cape Town; Shanghai – Ningbo – Chiwan – Singapore – Santos – Parangua – Buenos Aires – Navengates – Coega – Durban – Colombo – Hong Kong;

asserts that while these agreements are subject to a horizontal relationship (i.e. between shipping lines) they are concluded on a purely vertical willing-buyer/willing-seller basis. According to ASL, each party negotiates with its customers/suppliers on an entirely independent basis.

6. The Suite of Agreements is likely to raise competition concerns in terms of sections 4(1) and 5(1) of the Act. However, ASL submits that the agreements are required to maintain or promote exports in South Africa [section 10(3)(b)(i) of the Act]. ASL considers the Suite of Agreements as vital in ensuring that the export of goods from the South African shores to offshore destinations in the Southern African region is conducted efficiently and in a cost-effective manner to the benefit of local traders.
7. ASL seeks this exemption for a period of five (5) years, starting from the date of approval of the application by the Commission; should the Commission approve the application.
8. The Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties 20 business days from the date of the publication to make written representations to the Commission as to why the exemption should not be granted.

Such representations must be directed to either Ms. Boitumelo Nte or Ms. Selelo Ramohlola on the following electronic mailing addresses, [BoitumeloN@compcom.co.za](mailto:BoitumeloN@compcom.co.za), [SeleloR@compcom.co.za](mailto:SeleloR@compcom.co.za), respectively.

**In correspondence kindly refer to the following Case No: 2014Mar0082**

Felixtowe - Hamburg – Antwerp – Le Havre – Sines – Las Palmas – Cape Town - Coega – Durban; Durban – Coega – Shanghai – Tanjung Pelepas – Ningbo; Durban – Port Elizabeth – Jebel Ali – Salalah; Shanghai – Ningbo – Xiamen – Shekou – Singapore – Durban – Lome – Lagos/Tincan – Cotonou – Durban – Singapore – Shanghai; Beira – Maputo – Durban; Cape Town – Durban – Rotterdam – London Gateway; To and from Africa including the Indian Ocean Islands; Cape Town – Coega – Lome – Tema – Lagos/Tincan – Cotonou – Durban – Singapore – Shanghai; Hamburg – Antwerp – Le Harve – Cape Town – Coega – Durban – Coega – Cape Town – Rotterdam – Felixtowe – Hamburg; Shanghai – Ningbo – Keelung – Xiamen – Hong Kong – Shekou – Singapore – Port Kelang – Durban – Cape Town; Rotterdam – London Gateway – Bremerhaven – Algeciras Apmt – Algeciras TTI – Cape Town – Port Elizabeth – Durban; Jebel Ali – Le Port – Port Louis – Toamassina – Durban – Port Elizabeth; and East London – Port Elizabeth.