

Trade Practices Act 1974
Undertaking to the
Australian Competition & Consumer Commission
given under section 87B
by
A.P. Møller - Mærsk.

3 August 2005

1. Background

- 1.1 On 25 May 2005, A.P. Møller - Mærsk (**APMM**) notified the Australian Competition and Consumer Commission (**Commission**) of its proposal to acquire Royal P&O Nedlloyd (**PONL**). References to PONL in this Undertaking include its affiliates and subsidiaries.
- 1.2 APMM has publicly announced that it proposes to withdraw from any conference, discussion agreement or consortia of which PONL is a member but which APMM is not. APMM has offered this Undertaking to the Commission in relation to this proposal.

2. Definitions and interpretation

- 2.1 The following definitions apply unless the context requires otherwise.

APMM means A.P. Møller – Mærsk A/S and includes any affiliated, subsidiary or related companies.

Australian Conferences means the liner shipping conferences on trades into or out of Australia set out in paragraph 4.3.

Australian Consortia means the liner shipping consortia on trades into or out of Australia set out in paragraph 4.6.

Australian Discussion Agreements means the liner shipping discussion agreements on trades into or out of Australia set out in paragraph 4.9

Bay Plan means a stowage plan that shows the locations of all containers on the vessel, including reference to the precise position of the container on the vessel (cell position), together with the line loading the container, the weight (cargo and container), the port of loading and the intended port of discharge.

Completion means the date of the acquisition of control of PONL by APMM.

Conference means a conference agreement as defined by section 10.02(1) of the *Trade Practices Act 1974* (Cth).

Consortium means a conference agreement as defined by section 10.02(1) of the *Trade Practices Act 1974* (Cth).

Discussion Agreement means a conference agreement as defined by section 10.02(1) of the *Trade Practices Act 1974* (Cth).

Parties mean APMM and PONL.

PONL means Royal P&O Nedlloyd N.V. and includes any affiliated, subsidiary or related companies.

Relevant Trade has the meaning set out in the Schedule.

Same Partners means all partners to the individual conference, consortium or discussion agreement concerned except PONL.

TPA means the *Trade Practices Act 1974* (Cth).

- 2.2 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) The singular includes the plural and conversely.
 - (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (c) A reference to a paragraph or schedule is a reference to a paragraph of, or a schedule to, this Undertaking.

3. Commencement of the undertakings

Commencement

- 3.1 This Undertaking comes into effect on the execution of the Undertaking by APMM and the acceptance of the Undertaking by the Commission.

4. Undertakings

Commitment to withdraw from conferences

- 4.1 PONL is currently a member of the Australian Conferences within which the members provide international liner services in respect of which they operate a common freight rate and other agreed general trading conditions, for example, relating to the co-ordination of sailing timetables and the calculation of certain charges and surcharges.
- 4.2 The Australian Conferences have been registered under Part X of the TPA.
- 4.3 APMM will procure that PONL will withdraw from the Australian Conferences listed below, and that PONL will do so by serving notice of termination of its membership within one week of Completion in accordance with the terms of the respective conference agreements, such notice to take effect at the earliest date permitted by each relevant agreement, which according to the constitutions for:
- (a) ACCLA (Australia-Canada Container Liner Association) is 48 hours from the date on which notice is served;
 - (b) AELA (Australia New Zealand to Europe Liner Association) is 3 months from the date on which notice is served;
 - (c) ANSCON (Australia Northbound Shipping Conference) is 6 months from the date on which notice is served;
 - (d) ANZECS (Australian and New Zealand/Eastern Shipping Conference) is 6 months from the date on which notice is served;
 - (e) AUSCLA (Australia – United States Container Line Association) is 48 hours from the date on which notice is served;
 - (f) EANZC (Europe to Australia and NZ Conference Members' Agreement) is 3 months from the date on which notice is served;

- (g) AWIPSL (Australia to West India / Pakistan / Sri Lanka Conference) is 60 days from the date on which notice is served;
- (h) AMEG (Australia to Middle East Gulf Conference) is 60 days from the date on which notice is served.

Commitment to withdraw from consortia

- 4.4 PONL is currently a member of the Australian Consortia within which 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 slot and the pooling of vessels. The members of the consortia do not agree any common freight rate or charges.
- 4.5 The Australian Consortia have been registered under Part X of the TPA.
- 4.6 APMM will procure that PONL will withdraw from the Australian Consortia listed below, and that PONL will do so by serving notice of termination of its membership within one week of Completion in accordance with the terms of the respective consortium agreements, such notice to take effect at the earliest date permitted by each relevant agreement, which according to the constitutions for:
 - (a) New ANZ Consortium is 6 months from the date on which notice is served;
 - (b) AAX Main Agreement / Vessel Provision Agreement is 6 months from the date on which notice is served;
 - (c) North East Asia Australia Express (NEAX) Agreement is 6 months from the date on which notice is served;
 - (d) TRANSTAS - Inter-company Agreement is 3 months from the date on which notice is served;
 - (e) TRANSTAS is 6 months from the date on which notice is served, which notice must not be served prior to 30 November 2005;
 - (f) NZAX Consortium Operating Agreement is 6 months from the date on which notice is served.

Commitment to withdraw from discussion agreements

- 4.7 PONL is currently a member of the Australian Discussion Agreements which provide a forum for members to discuss and share information relevant to the route, including demand and supply forecasts, or reach non-binding agreements on operational issues.
- 4.8 The Australian Discussion Agreements have been registered under Part X of the TPA.
- 4.9 APMM will procure that PONL will withdraw from the Australian Discussion Agreements listed below, and that PONL will do so by serving notice of termination of its membership within one week of Completion in accordance with the terms of the respective discussion

agreements, such notice to take effect at the earliest date permitted by each relevant agreement, which according to the constitutions for:

- (a) A/NZ Forum (Australia/New Zealand Forum Discussion Agreement) is 48 hours from the date on which notice is served;
- (b) CANZDA (Canada Australia New Zealand Discussion Agreement) is immediately from the date on which notice is served.

Ring-fencing

4.10 From the date that notice of withdrawal has been given by PONL regarding the Australian Conferences and the Australian Discussion Agreements until the withdrawal of PONL from those agreements, the Parties will not attend any meetings pursuant to those agreements, will not exercise the right to vote and will not receive information from, or provide information to, the parties to those agreements in the framework of the relevant agreement. APMM will procure that PONL will include these limitations in the letters giving notice of withdrawal.

4.11 From the date that notice of withdrawal is given by PONL from the agreement enumerated at paragraph (m) of the Schedule until the withdrawal of PONL from that agreement, the Parties will procure that, if and to the extent that PONL receives information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of its partners in that agreement, such information is not disclosed to APMM (and vice versa). In particular APMM will procure that:

- (a) the relevant personnel within PONL will sign confidentiality statements which prevent them from disclosing to APMM information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of the other parties to that agreement;
- (b) the relevant personnel within APMM and PCNL will sign confidentiality statements which prevent them from disclosing to the other parties to that agreement information relating to the rates, customers, type of cargo such as reefer or dry, capacities, or volumes shipped of APMM;
- (c) any reconciliation statements relating to the amounts payable to PONL in respect of slot arrangements under that agreement will be redacted before being passed to APMM so that they show only the sums payable;
- (d) any reconciliation statements relating to the amounts payable by PONL in respect of slot arrangements under that agreement will be redacted before being passed to APMM so that they show only the sums payable and the beneficiary account;
- (e) information stored by PONL relating to the Bay Plans of PONL's ships operating in, or the ships of the other parties to, that agreement will be stored on a PONL IT system to which APMM will not have access.

This paragraph 4.11 does not apply to the agreement enumerated at paragraph (m) of the Schedule if PONL has received before Completion written confirmation from the other

parties to these agreements that they will not object to PONL's withdrawal from the consortium concerned on a six months notice or less.

Related commitment

- 4.12 (a) For a period of five years following the date on which the Undertaking comes into effect, APMM will not become a member of any of the Australian Conferences. APMM will also not become a member of any conference with substantially similar terms with the Same Partners as the relevant Australian Conference concerned on the Relevant Trade.
- (b) For a period of five years following the date on which the Undertaking comes into effect, APMM will not become a member of any of the Australian Consortia. APMM will not become a member of any consortium with substantially similar terms with the Same Partners as the relevant Australian Consortium concerned on the Relevant Trade.
- (c) For a period of five years following the date on which the Undertaking comes into effect, APMM will not become a member of any of the Australian Discussion Agreements. APMM will not become a member of any discussion agreement with substantially similar terms with the Same Partners as the relevant Australian Discussion Agreement concerned on the Relevant Trade.
- 4.13 The obligations set out at paragraph 4.12 do not preclude APMM from entering into any other agreement that is exempt from the application of Part IV of the TPA by virtue of the application of Part X of the TPA, nor do they preclude APMM from entering into any *ad hoc* bilateral space or slot-charter agreement with any other carrier(s) on the Relevant Trades, or any other trades, in order to meet customer demand for capacity or frequency at any point in time.

Reporting

- 4.14 APMM will submit a written report to the Commission confirming its compliance with the requirements of this Undertaking no later than one month following Completion. Thereafter, APMM will continue to submit similar reports every six months until the withdrawal of PONL has been completed from all the Australian Conferences, the Australian Consortia and the Australian Discussion Agreements.

Review

- 4.15 The Commission may, where appropriate, in response to a request from APMM showing good cause and accompanied by appropriate information:
- (a) grant an extension of the time periods foreseen in the Undertaking; or
- (b) waive, modify or substitute, in exceptional circumstances, one or more of the commitments in this Undertaking.

Where APMM seeks an extension of a time period, it shall submit a request to the Commission no later than one week before the expiry of that period, showing good cause.

- 4.16 If there is a material change of circumstances, APMM may make a request to the Commission that this Undertaking be reviewed.

5. Service of Notices

Service of Notice on Commission

- 5.1 Any notice or other communication to the Commission pursuant to this undertaking must be sent to:

Mr Tim Grimwade
General Manager - Mergers
Australian Competition and Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602
Facsimile: (02) 6243 1199

or in whatever manner the Commission subsequently notifies APMM.

Service of Notice on Parties

- 5.2 Any notice or other communication from the Commission to the Parties pursuant to this undertaking must be sent to (as the case may be):

David Brewster
Partner
Allens Arthur Robinson
Level 27
530 Collins Street
Melbourne VIC 3000
Facsimile: (03) 9614 4661

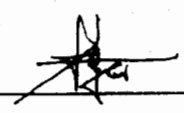
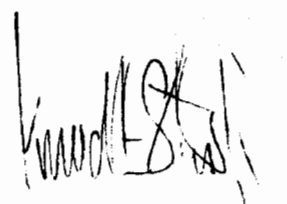
or in whatever manner APMM subsequently notifies the Commission.

Schedule

For each agreement set out below, **Relevant Trade** means the corresponding trade route set out below:

Agreement	Relevant Trade
(a) ACCLA (Australia-Canada Container Liner Association)	Australia and New Zealand – North America East and West Coasts
(b) AELA (Australia New Zealand to Europe Liner Association)	Australia and New Zealand – North Europe
(c) ANSCON (Australia Northbound Shipping Conference)	Australia and New Zealand – North East Asia
(d) ANZECS (Australian and New Zealand/Eastern Shipping Conference)	Australia and New Zealand – North East Asia
(e) AUSCLA (Australia – United States Container Line Association)	Australia and New Zealand – North America East and West Coasts
(f) EANZC (Europe to Australia and NZ Conference Members' Agreement)	Australia and New Zealand – North Europe and Mediterranean
(g) AWIPSL (Australia to West India / Pakistan / Sri Lanka Conference)	Australia and New Zealand – Middle East
(h) AMEG (Australia to Middle East Gulf Conference)	Australia and New Zealand – Middle East
(i) New ANZ Consortium	Australia and New Zealand – North America East and West Coasts, and North Europe
(j) AAX Main Agreement / Vessel Provision Agreement	Australia – South East Asia
(k) North East Asia Australia Express (NEAX) Agreement	Australia – North East Asia
(l) TRANSTAS - Inter-company Agreement	Australia – New Zealand (trans-Tasman)
(m) TRANSTAS	Australia – New Zealand (trans-Tasman)
(n) NZAX Consortium Operating Agreement	Australia and New Zealand – South East Asia
(o) A/NZ Forum (Australia/New Zealand Forum Discussion Agreement)	Australia and New Zealand – North America East and West Coasts, North Europe and Mediterranean
(p) CANZDA (Canada Australia New Zealand Discussion Agreement)	Australia and New Zealand – North America East and West Coasts

Signed for and on behalf of APMM by its
duly authorised officer in the presence of:



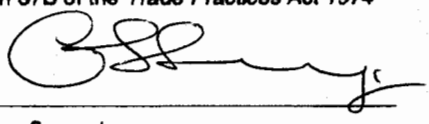
KNUD E. STUBBKJÆR PARTNER
Date 3.8.2005

Witness

KNUD E. STUBBKJÆR

Print Name

Accepted by the Australian Competition
and Consumer Commission pursuant to
section 87B of the Trade Practices Act 1974



Graeme Samuel

Chairman

4/8/05

Date

Trade Practices Act 1974
Variation to Undertaking to the
Australian Competition & Consumer Commission
given under section 87B
by
A.P. Møller - Mærsk.

24 August 2005

1. Background

- 1.1 The Australian Competition and Consumer Commission (**Commission**) accepted an undertaking offered on 3 August 2005 by A.P. Møller - Mærsk (**APMM**) in accordance with section 87B of the *Trade Practices Act 1974* (Cth) (the **Undertaking**) in relation to the then-proposed merger between APMM and Royal P&O Nedlloyd (**PONL**).
- 1.2 Paragraph 4.11 of the Undertaking provided for certain ring-fencing obligations in relation to the TRANSTAS agreement (as enumerated in paragraph (m) of the Schedule to the Undertaking), which were entered into because the terms of that agreement precluded the giving of 6 months' notice to exit prior to 30 November 2005.
- 1.3 APMM has procured agreement from the other party to the TRANSTAS agreement, ANL Container Line Pty Ltd, to give notice of termination before 30 November. Accordingly, PONL has given 6 months' notice of its withdrawal from the TRANSTAS agreement, which notice took effect on 11 August 2005.
- 1.4 Given that PONL's withdrawal from the TRANSTAS agreement will take effect within six months and one week after Completion, which is in accordance with the timing of PONL's withdrawals from the other Australian Consortia specified in the Undertaking, the Commission has consented to a variation to the Undertaking which relieves APMM of its obligations set out in paragraph 4.11 of the Undertaking.

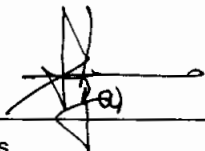
2. Commencement of the variation of the undertaking

- 2.1 This variation comes into effect on the execution of this variation by APMM and the acceptance of the variation by the Commission.

3. Variation to undertaking

- 3.1 **Delete** paragraph 4.11 of the Undertaking, including all sub-paragraphs of paragraph 4.11.


Signed for and on behalf of **APMM** by its)
duly authorised officer in the presence of:)



Witness

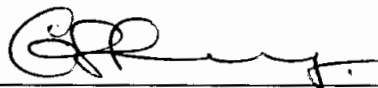
LARS KJÆR

Print Name


SØREN LAUNHAARD
24/8-05

Date

**Accepted by the Australian Competition
and Consumer Commission** pursuant to
section 87B of the *Trade Practices Act 1974*



Graeme Samuel

Chairman

2-09-05

Date



Trade Practices Act 1974
Variation to Undertaking to the
Australian Competition & Consumer Commission
given under section 87B
by
A.P. Møller - Mærsk.

4 October 2005

1. Background

- 1.1 The Australian Competition and Consumer Commission (**Commission**) accepted an undertaking offered on 3 August 2005 by A.P. Møller - Mærsk (**APMM**) in accordance with section 87B of the *Trade Practices Act 1974* (Cth) (the **Undertaking**) in relation to the then-proposed merger between APMM and Royal P&O Nedlloyd (**PONL**).
- 1.2 Paragraph 4.6(d) of the Undertaking provides for APMM to procure that PONL will withdraw from the TRANSTAS Inter-company consortium agreement within 3 months.
- 1.3 Paragraph 4.6(e) of the Undertaking provides for APMM to procure that PONL will withdraw from the TRANSTAS consortium agreement within 6 months. APMM has given such notice, with withdrawal to occur no later than 12 February 2006.
- 1.4 APMM has submitted to the Commission that the difference in the dates of withdrawal between the TRANSTAS Inter-company Agreement and the TRANSTAS Agreement is likely to create practical difficulties for APMM, as well as to other shippers who are parties to those agreements. APMM has requested that the Undertaking be varied so as to provide that PONL will withdraw from both Agreements on the same date.
- 1.5 APMM has otherwise fulfilled its obligations to procure the withdrawal of PONL from the conference, consortia and discussion agreements listed in the Undertaking.
- 1.6 The Commission has consented to a variation to the Undertaking which provides for the withdrawal of PONL from the TRANSTAS Inter-company Agreement and the TRANSTAS Agreement to occur on the same date.

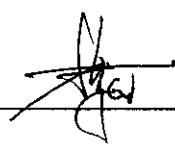
2. Commencement of the variation of the undertaking

- 2.1 This variation comes into effect on the execution of this variation by APMM and the acceptance of the variation by the Commission.

3. Variation to Undertaking

- 3.1 **Replace** paragraph 4.6(d) with the following: "TRANSTAS Inter-company Agreement is 12 February 2006".
- 3.2 **Replace** paragraph 4.6(e) with the following: "TRANSTAS is 12 February 2006".

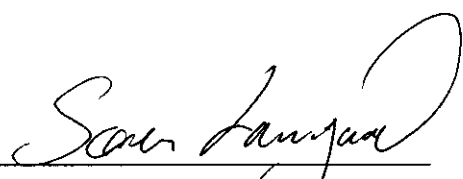
Signed for and on behalf of APMM by its)
duly authorised officer in the presence of:)
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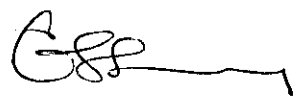
Witness

WARS KESLER

Print Name


Date 3/11-05 SPREIN LAONGARD

Accepted by the Australian Competition
and Consumer Commission pursuant to
section 87B of the Trade Practices Act 1974



Graeme Samuel

Chairman

1st November 2005

Date