

Case AT.39850 – Container Shipping

Commitments offered to the European Commission under Article 9 of Council Regulation (EC) No 1/2003

Preamble

In accordance with Article 9 of Council Regulation (EC) No 1/2003 ("Regulation 1/2003"), CMA CGM offers the following commitments ("Commitments") to the European Commission (the "Commission") with a view to meeting the Commission's concerns as set out in the Commission's preliminary assessment ("Preliminary Assessment") dated 26 November 2015 in the context of its investigation in Case AT/39.850 – Container Shipping and enabling the Commission to adopt a decision pursuant to Article 9 of Regulation 1/2003 confirming that the Commitments address its concerns and making them binding on CMA CGM ("Commitment Decision").

Consistent with Article 9 of Regulation 1/2003, these Commitments are given on the understanding that the Commission will confirm, by adoption of its Commitment Decision, that there are no grounds for further action in relation to CMA CGM in Case AT/39.850 and will close the Commission proceedings opened on 21 November 2013. The Commission has not established that there is any evidence that an infringement of EU or EEA competition law has occurred and makes no determination as to the existence of such an infringement.

For the avoidance of doubt, these Commitments are offered without admission of infringement or liability. CMA CGM strongly contests the concerns expressed by the Commission in the Preliminary Assessment and does not accept that it has engaged in unlawful conduct contrary to Article 101 TFEU or Article 53 EEA or any other aspect of EU or EEA competition law.

These Commitments are offered on the basis that, in accordance with the principle of proportionality, the Commission will not take enforcement action in relation to non-material breaches of these Commitments.

Article 1 - Definitions

For the purpose of these Commitments, the terms listed below shall have the following meaning:

"CMA CGM" means CMA CGM S.A. or any other undertaking directly or indirectly controlled by CMA CGM S.A. and forming the Group CMA CGM.

"Communication" means any non-public form of communication outside of CMA CGM.

"Price" means the monetary sum or sums charged by CMA CGM for the provision of carriage of containerised cargo by sea.

"Price Announcement" means Publication or Communication regarding Prices or Price changes.

"Publication" means the dissemination of information, including in the form of newsletters and customer advisories, on CMA CGM's website, in the media or in any other publicly accessible medium.

"Purchaser" means a purchaser of container shipping transport services.

"Rate Agreement" means a bilaterally negotiated agreement between CMA CGM and a Purchaser for the carriage of containerised cargo by sea concluded for a duration of more than 31 days.

Article 2 – Scope of Commitments

- a) These Commitments apply to container liner shipping services to and from the European Economic Area.
- b) Except as specifically set forth herein in relation to Price and Price Announcements, these Commitments do not affect any of CMA CGM's rules, acceptance policies, procedures and terms and conditions, and do not give rise to an obligation to contract.
- c) These Commitments do not apply to financial information, such as general information about CMA CGM's financial situation and financial perspectives, and general market and pricing trends, provided by CMA CGM to actual or potential investors, financial analysts and financial journalists.

Article 3 – Publication and Communication of Price changes

Subject to the terms of these Commitments, CMA CGM shall cease the Publication and Communication of changes to the Price or any element thereof expressed solely as the amount or percentage of the change (sometimes referred to as General Rate Increases).

Article 4 – Price Announcements

Subject to Article 6 of these Commitments:

- a) CMA CGM may make Price Announcements for all or some of the port pairs it serves. Price Announcements shall include at least all the following elements of the Price:

- i. The basic charge for the carriage of container by sea (the Base Rate).
 - ii. Bunker related charges and surcharges.
 - iii. Security related charges and surcharges.
 - iv. Charges to recover costs levied by terminal operators for the handling of containers (Terminal Handling Charges).
 - v. Additional charges and surcharges reflecting foreseeable high demand (such as Peak Season Surcharges).
- b) The elements of the announced Price may be presented separately (either in the Price Announcement itself or by way of a link to CMA CGM's website) and/or in aggregation, in a form easily understandable to Purchasers.
 - c) The elements of the announced Price may be presented either as a numerical amount or as a formula, in a form easily understandable to Purchasers.
 - d) CMA CGM shall state in its Price Announcements which elements of the Price in addition to those specifically identified in the Price Announcement, if any, may apply.
 - e) CMA CGM shall define in its Price Announcements the services to which the announced Price applies.
 - f) CMA CGM shall state in its Price Announcements either (i) the sailing period or (ii) the date of the first scheduled sailing to which they apply.
 - g) CMA CGM shall not make Price Announcements more than 31 calendar days before (i) the beginning of the sailing period or (ii) the date of the first scheduled sailing to which they apply.

Article 5 – Binding Price Announcements

- a) Price Announcements shall be binding on CMA CGM, for the period stated in the Announcement (if any) or, in case the period is defined from a certain date and "until further notice", until superseded by a subsequent Price Announcement, as to the maximum Price chargeable in respect of the relevant services to which the Price Announcement applies. Price Announcements shall not prevent the Communication or Publication of lower Prices for such services.
- b) Communications shall only have the binding effect provided for in paragraph a) with respect to the addressees of the relevant Communication.

Article 6 - Communications to Purchasers

- a) These Commitments do not apply to Communications to Purchasers that have a Rate Agreement in force on the date of the Communication and where the geographical scope and

direction referred to in the Rate Agreement is within the geographical scope and direction to which the Communication refers;

- b) These Commitments do not apply to Communications during bilateral negotiations or Communications tailored to the needs of identified Purchasers, on condition that they do not lead to a higher price than that set out in any relevant Price Announcement (made in accordance with Article 4) that is applicable to those particular services. This condition does not apply to Rate Agreements where a relevant Price Announcement is stated to be valid “until further notice” or to contracts, including Rate Agreements, for services which differ from those set out in a relevant Price Announcement (for example, without limitation, because of additional Price or volume certainty).

Article 7 – Conflict of Laws

These Commitments do not prevent CMA CGM from complying with laws or regulations of any jurisdiction that are, in the reasonable and good faith belief of CMA CGM, in contradiction with these Commitments provided that CMA CGM informs the Commission in advance or, if such advance notice is unworkable, promptly of any such laws or regulations.

Article 8 – Obligations in relation to agents

Nothing in these Commitments shall prevent CMA CGM from giving pricing and related instructions to its duly authorised agents. However, CMA CGM shall include in its instructions to agents an obligation to comply with the terms of these Commitments when acting for and on behalf of CMA CGM, shall take reasonable steps to ensure that its agents comply with such an obligation and shall impose deterrent sanctions in the event of non-compliance.

Article 9 – Entry into force of the Commitments

These Commitments shall enter into force 5 months after the date on which the Commission has adopted the Commitment Decision in respect of CMA CGM.

Article 10 – Duration of the Commitments

These Commitments shall be in force for a period of 3 years.

Article 11 – Reporting

CMA CGM shall provide the Commission with 4 reports on the steps taken by it to implement these commitments. The reports shall be provided 3, 12, 24 and 36 months after the entry into force of these commitments.

In its reports CMA CGM shall include in particular the following explanations:

- (i) When it ceased making Publications and Communications according to Article 3 above.
- (ii) Whether it made Price Announcements and how it ensured their compatibility with these Commitments.

(iii) Whether, in conformity with Article 6 a), it made Communications in respect of changes to the Price, or any element thereof, expressed solely as the amount or percentage of the change, and what steps were taken in order to ensure that they were made only to the Purchasers mentioned in Article 6 a) above.

(iv) The steps that were taken in order to train its employees and agents in the application of these commitments.

(v) The steps that were taken in order to monitor compliance of its employees and agents with these commitments.

(vi) Whether any problems were detected in the implementation of these commitments and what steps were taken in order to solve them.

Article 12 – Review Clause

In accordance with Article 9(2)(a) of Regulation 1/2003, CMA CGM may request the Commission to reopen the proceedings where there has been a material change in any of the facts on which the Decision was based.

Article 13 – Publication of the Commitments

CMA CGM shall publish these Commitments in a prominent way on its website throughout their duration.