

## 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"), Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG ("Hamburg Süd") 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 Hamburg Süd ("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 Hamburg Süd in Case AT/39.850 and will close the Commission proceedings opened on 13 November 2015. 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. Hamburg Süd 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:

"Hamburg Süd" means Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG, Willy-Brandt-Straße 59-61, 20457 Hamburg, Deutschland .

"Communication" means any non-public form of communication outside of Hamburg Süd.

"Price" means the monetary sum or sums charged by Hamburg Süd 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 Hamburg Süd'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 Hamburg Süd 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 Hamburg Süd'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 Hamburg Süd's financial situation and financial perspectives, and general market and pricing trends, provided by Hamburg Süd 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, Hamburg Süd 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) Hamburg Süd 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 Hamburg Süd'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) Hamburg Süd 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) Hamburg Süd shall define in its Price Announcements the services to which the announced Price applies.
- f) Hamburg Süd 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) Hamburg Süd 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 Hamburg Süd, 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 Hamburg Süd from complying with laws or regulations of any jurisdiction that are, in the reasonable and good faith belief of Hamburg Süd, in contradiction with these Commitments provided that Hamburg Süd informs the Commission in advance or, if such advance notice is unworkable, promptly of any such laws or regulations.

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### **Article 8 – Obligations in relation to agents**

Nothing in these Commitments shall prevent Hamburg Süd from giving pricing and related instructions to its duly authorised agents. However, Hamburg Süd shall include in its instructions to agents an obligation to comply with the terms of these Commitments when acting for and on behalf of Hamburg Süd, 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 Hamburg Süd.

### **Article 10 – Duration of the Commitments**

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

### **Article 11 – Reporting**

Hamburg Süd 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 Hamburg Süd 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.



Executive Board

(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, Hamburg Süd 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**

Hamburg Süd shall publish these Commitments in a prominent way on its website throughout their duration.

Hamburg, 22 June 2016



Dr. Arnt Vespermann  
Member of the Executive Board



Peter Frederiksen  
Member of the Executive Board