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FEDERAL MARITIME COMMISSION

Original Title Page

HSDG/FOML AGREEMENT

FMC Agreement No. 011950

An Agreement Between Ocean Common Carriers

Date of Last Publication: This Agreement has not  
previously been published

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ARTICLE 1: NAME OF AGREEMENT

The name of this agreement is the HSDG/FOML Agreement (hereinafter "Agreement").

ARTICLE 2: PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth and authorize certain understandings of the parties relating to the acquisition of certain assets of FOML and its affiliates by HSDG.

ARTICLE 3: PARTIES TO THE AGREEMENT

1. Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG  
("HSDG")  
Willy-Brandt Strasse 59-61  
20457 Hamburg  
Germany
2. FESCO Ocean Management, Limited ("FOML")  
1 Costakis Pantelides Avenue  
Kolokasides Building, 3<sup>rd</sup> Floor  
1010 Nicosia, Cyprus

HSDG and FOML are sometimes referred to jointly as the "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the trades between: (i) Asia (excluding Russia) and Australia/New Zealand; (ii) Australia/New Zealand/Pacific Islands and the U.S. West Coast; (iii) Australia and New Zealand (Trans-Tasman) and (iv) Australia/New Zealand and the Pacific Islands. All of the foregoing is

hereinafter referred to as the "Trade."<sup>1</sup> For avoidance of doubt, the Trade does not include trades between Asian countries or between Asian countries and Russia.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Non-Compete

(a) The Parties hereby agree that for a period of three (3) years after the date on which HSDG acquires the assets of the ocean liner transportation services (the "Closing Date") in the Trade known as Fesco Australia North America Line, Fesco New Zealand Express Line and Fesco Australia Line (collectively the "Liner Services"), FOML, the persons listed in Appendix A hereto (FOML and the listed persons are hereinafter referred to collectively as the "Sellers"), Far Eastern Shipping Company PLC and any other person directly or indirectly controlling, controlled by, or under common control with any of Sellers or Far Eastern Shipping Company PLC (excluding shareholders of Far Eastern Shipping Company PLC) ("Affiliates") will not, directly or indirectly, carry on or engage in any ocean containerized liner transportation service which competes with the Liner Services being acquired by HSDG; provided that Sellers and their Affiliates may conduct operations as a non-vessel operating common carrier ("NVOCC") which involve the trades between Australia and

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<sup>1</sup> Trades not involving the United States are not within the scope of the U.S. Shipping Act or the jurisdiction of the FMC and it is understood that the Parties receive no immunity from U.S. antitrust laws with respect to such trades. They are identified in this Agreement solely for purposes of disclosing the full scope of the agreement of the Parties.

Russia and between New Zealand and Russia, so long as such operations do not involve the use of the word "Fesco" in connection with such NVOCC operations from the Closing Date to the second anniversary thereof; provided, further that nothing in this Article 5.1(a) shall be construed as preventing Sellers or any of them from providing ocean liner transportation service in the Trade pursuant to Article 5.2 hereof to the extent the provision of such service is necessary to fulfill Seller's obligations under one or more service contracts which could not be assigned to Buyer due to the non-consent of the other party or parties to such service contract(s).

(b) In case of any violation of Article 5.1(a) above, HSDG shall notify Sellers of such violation. If Sellers (or the appropriate Affiliate(s)) cease the activities that constitute such violation within five (5) business days of delivery by HSDG to Sellers of notice thereof, then HSDG shall be entitled to the damages that it has incurred as a result of such violation. If Sellers (or the appropriate Affiliate(s)) do not cease the activities that constitute such violation within five (5) business days of delivery by HSDG to Sellers of notice thereof, then in addition to any other remedies available to HSDG, HSDG shall be entitled to: (i) seek and obtain injunctive or other equitable relief with respect to such violation in order to prevent further injury; (ii) seek and obtain treble damages with respect to such violation; and (iii) receive reimbursement from Sellers for all legal fees and costs incurred in pursuing such injunctive relief and damages.

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5.2 Space Chartering

In the event that any service contracts of Sellers in effect as of the Closing Date cannot be assigned to HSDG due to a lack of consent on the part of the shipper signatory to such service contract(s) Sellers, after consultation with HSDG, may charter space from HSDG in the Trade on an "as needed/as available" basis and on such other terms and conditions as the Parties may agree in order to enable Sellers to fulfill their obligations under such service contracts. Sellers shall not charter space from any other carrier in the Trade to fulfill their obligations under such service contracts.

5.3 Employees

Sellers agree that for a period of two (2) years after the Closing Date, none of the Sellers or their Affiliates will, directly or indirectly, either for its own account or on behalf of any other person, solicit, interfere with or endeavor to entice away from HSDG or HSDG's designated entity, any former employee of Sellers that has accepted HSDG's (or its designated entity's) offer of employment and who is then employed by HSDG or HSDG's designated entity. In case of any violation of this Article 5.3, in addition to any other remedies, legal, equitable or contractual, available to HSDG, Sellers shall also pay to HSDG liquidated damages in an amount equal to fifty percent (50%) of the then-current annual salary of the applicable employee or employees.

5.4 Transition

In addition to the authority contained elsewhere in this Agreement, the Parties shall be authorized to discuss, exchange information and reach agreement on all matters deemed necessary or desirable in connection with the prompt and efficient transfer of the assets, including service contracts, of the Liner Services from Sellers to HSDG and to the resolution of any questions, problems or potential disputes arising therefrom.

ARTICLE 6 -- DELEGATION OF AUTHORITY

The following individuals shall each have the authority to execute and file this Agreement and modifications to this Agreement with the Federal Maritime Commission, as well as authority to delegate same:

- a) Any officer of each Party to the Agreement; and
- b) Legal counsel for each Party to the Agreement.

ARTICLE 7 -- DURATION

The effective date of this Agreement shall be the date it becomes effective under the Shipping Act of 1984, as amended and shall expire three (3) years after the Closing Date.

ARTICLE 8 – GOVERNING LAW AND ARBITRATION

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA. Any and all differences and disputes of any nature arising out of this Agreement which cannot be resolved amicably shall be put to arbitration in New York, USA pursuant to the Rules of the Society of Maritime Arbitrators, Inc., New York ("SMA") before a panel of three arbitrators. Far Eastern Shipping Company PLC shall be joined in any arbitration between the Parties hereto. The decision of any two of the three arbitrators on any point or points shall be final and binding. The arbitrators shall be appointed as follows:

(a) Each Party shall appoint one arbitrator and the two arbitrators so chosen shall appoint a third arbitrator. If the two arbitrators fail to agree on the appointment of a third arbitrator after twenty (20) days, either Party may apply to a court of competent jurisdiction or the SMA to appoint the third arbitrator.

(b) Judgment may be entered upon any arbitration award made hereunder in any court having jurisdiction in the premises.

(c) Notwithstanding anything to the contrary in this Agreement or in law, any Party shall have the right to apply to any court of competent jurisdiction to obtain any pre-judgment remedy to which it may be entitled.

(d) The arbitrators shall not have the authority to award punitive damages.

ARTICLE 9 - CONFIDENTIALITY

The Parties agree that all information relating to this Agreement and the implementation hereof shall be treated by the parties as confidential and shall not be disclosed to unrelated third parties without the prior written consent of the other Party. This Article 9 shall not apply to any information (i) which is or becomes available other than through a breach of this Agreement by the disclosing Party, (ii) which is lawfully obtained from third parties, (iii) which was known prior to its disclosure, (iv) which is independently developed without the use of the confidential information, (v) which is independently acquired from a third party who is not under confidentiality obligations to the non-disclosing Party to this Agreement, or (vi) which is disclosed by compulsory legal process.

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SIGNATURE PAGE

IN WITNESS WHEREOF the parties hereto have agreed this 10<sup>TH</sup> day of  
March, 2006, to enter into the foregoing Agreement and to file the same with  
the U.S. Federal Maritime Commission.

HAMBURG SUDAMERIKANISCHE  
DAMPFSCHIFFFAHRTS-GESELLSCHAFT  
KG

By: Wayne R. Rohde  
Name: WAYNE R. ROHDE  
Title: ATTORNEY-IN-FACT

FESCO OCEAN MANAGEMENT LIMITED

By: Neal M. Mayer  
Name: NEAL M. MAYER  
Title: ATTORNEY-IN-FACT

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Appendix A

FESCO Lines Australia Pty Limited

FESCO Lines New Zealand Limited

FESCO Lines Hong Kong Limited

FESCO Agencies N.A., Inc.

Pacific Conlease Company Limited

Premier Cliff Shipping Company

Such individuals as may be agreed by the Parties