Lib

RECEIVED
AUG 2 1999
~~1999 JUL 33~~ PM 3:16
FED MARITIME COMM
DIR OF ECON & AGMT ANAL

Original Title Page

RECEIVED
99 AUG 2 AM 11:16
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

9-16-99

WEST COAST NORTH AMERICA/PACIFIC ISLANDS
VESSEL SHARING AGREEMENT

FMC Agreement No. 232-011666

A Space Charter Agreement

Expiration Date: None

This Agreement has not been published previously

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

TABLE OF CONTENTS

Article	Provision	Page
1	Name	1
2	Purpose	1
3	Parties	1
4	Geographic Scope	2
5	Overview of Agreement Authority	2
6	Authorized Representatives	7
7	Membership and Withdrawal	7
8	Voting	9
9	Duration and Termination	9
10	Notices	10
11	Force Majeure	10
12	Applicable Law, Arbitration and Severability	11
13	Assignment	12
	Signature Page	

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

RECEIVED
06 JUN 30 PM 4:43
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

Article 1: Name.

The full name of this Agreement is the West Coast North America/Pacific Islands Vessel Sharing Agreement (the "Agreement").

Article 2: Purpose.

The purpose of this Agreement is to improve the productivity and operating efficiency of the Parties' vessels and equipment and to provide efficient, reliable and stable liner shipping services through space chartering, coordination of sailings and other activities under this Agreement.

Article 3: Parties

The names and addresses of the principal offices of the parties to the Agreement (the "Parties") are the following

(1) Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft KG doing business under its own name and the name Fesco Australia/New Zealand Liner Services (FANZL) ("HSDG")
Willy Brandt Strasse 59-61
20457 Hamburg, Germany

(2) Polynesia Line Ltd. ("Polynesia")
700 Larkspur Landing
Larkspur, CA 94939

EFFECTIVE JUN 30 2006

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

Article 4: Geographic Scope.

The geographic scope of this Agreement shall cover the transportation of cargo, via direct or any combination of direct, transshipment or overland service, whether under a through bill of lading or otherwise, between (a) ports on the Pacific coast of the United States (including Hawaii) and points in the United States via such ports and (b) ports and points in Society Islands, Tonga, Samoa, Kiribati, Vanuatu, Tuvalu, Cook Islands, Fiji, New Caledonia, Solomon Islands, and Papua New Guinea. All of the foregoing is referred to herein as the "Trade".

Article 5: Overview of Agreement Authority.

5.1 Space and Vessels.

(a) HSDG shall provide one (1) vessel and Polynesia shall provide one (1) vessel for service under this Agreement. Each vessel shall have a maximum capacity of approximately 1,000 TEUs.

(b) The Parties may charter or otherwise make available space and slots to and from one another in the Trade on such terms and conditions as they may from time to time agree. Space on vessels provided hereunder shall generally be shared by the Parties in proportion to the slots berthed by each of them ("Basic Space Allocation"), although such Basic Space Allocation will be altered to accommodate the requirements of HSDG or Polynesia to service

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

its customers. Any space chartered by one Party from the other shall be subject to a slot value payment calculated in accordance with Article 5.2 below.

(c) The Parties may agree on the number, size and types of vessels operated by each Party in the Trade. The Parties may also agree on the number of sailings, schedules, ports called and frequency of port calls for their vessels in the Trade. The vessels employed, port average and rotation shall be set forth in an Operating Procedures Manual. The Parties agree that their goal is to provide a minimum of twenty-two (22) evenly spread sailings per annum in the Trade with the fewest vessels possible.

(d) Neither Party may provide space to or purchase space from a non-Party ocean common carrier for use in the Trade, except as agreed to in writing by the other Party. Nothing herein shall prohibit either Party from providing connecting carrier service with a non-Party ocean common carrier for non-Trade origin or destination cargoes.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

5.2 Slot Value.

(a) The cost payable by a Party for chartering any slot shall be based upon the estimated direct costs of operating a vessel in the Trade. Such direct costs shall include a vessel charter reference price, bunker and diesel fuel reference prices and port charges. The resulting sum of such prices and charges shall constitute the "Vessel Slot Value." The Parties agree that their mutual intent is to minimize a Vessel Slot Value.

(b) The initial Vessel Slot Value established shall be applicable and subject to review and revision from time to time and at any time after a significant change in vessel economics using the methodology described in Article 5.2(a).

(c) The space utilized by the Parties will be monitored with reconciliation at the beginning of January and June each calendar year. Payments from a Party for use of space shall be due by the end of February and July respectively.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

5.3 Equipment.

(a) The Parties may discuss and agree on standards for, and may interchange, purchase, pool, lease, sublease, or otherwise cooperate in connection with containers, chassis, and other equipment as between themselves, or individually or jointly to, from or with another person, on such terms as they may from time to time agree. A Party shall not tender to another Party for transport under this Agreement any container that is not: (a) physically compatible with the vessels; (b) constructed to the specifications of any recognized classification society and operated within an approved scheme under the International Convention for Safe Containers; and (c) apparently safe to handle laden cargoes.

(b) Each Party is individually responsible for insuring its containers and related equipment, whether owned, hired or operated by it.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

5.4 Facilities, Services and Supplies.

The Parties are authorized to enter into exclusive, preferential, or cooperative working arrangements with marine terminal, stevedoring or other shoreside services. The Parties shall make strenuous efforts to work towards utilizing a single common terminal and stevedore at each port covered by this Agreement on such terms and conditions as they may agree. Nothing herein, however, shall authorize the Parties jointly to operate a marine terminal.

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

RECEIVED
99 AUG 16 PM 4:28
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

5.5 Conferences and Agreements.

(a) The Parties agree to join and/or maintain full membership in any conference, rate agreement, discussion agreement, stabilization agreement, or similar type of agreement in the Trade; provided, however, that nothing herein shall require any Party to become or remain a member of any such agreement.

(b) The Parties shall solicit and book cargoes subject to this Agreement for their separate accounts and shall issue their own separate bills of lading. This Agreement does not authorize the Parties to establish a common tariff.

5.6 Administration and Implementation.

(a) The Parties may implement this Agreement by meetings, writings and other communications between them, and may act through a Steering Committee or make other arrangements as may be necessary or appropriate to effectuate the purposes and provisions of this Agreement.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

RECEIVED
1999 AUG 19 AM 9:15
FED MARITIME COMM
BUR OF ECON & AGMT ANAL

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

(b) The Parties, in implementing this Agreement, may agree on their respective rights, liabilities, and indemnities arising under this Agreement, including matters such as failure to perform and insurance. The respective liabilities of the Parties may be reflected in a cross charterparty agreement.

5.7 Further Agreements.

Any further agreement reached pursuant to authority contained in this Agreement will not be implemented until it has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, as amended, (if such filing is legally required).

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

Article 6: Authorized Representatives.

The Parties' authorized representatives and counsel are hereby authorized to subscribe and file with the Federal Maritime Commission this Agreement and any modification hereof.

Article 7: Membership and Withdrawal

7.1 Any Party may withdraw from this Agreement by providing not less than six months' prior notice to the other Party; provided, however, that no such notice may be served prior to the first anniversary of the effective date of this Agreement.

7.2 Notwithstanding anything to the contrary in Article 7.1 hereof, any Party may withdraw from this Agreement under any of the following conditions:

(a) If at any time during the term of this Agreement there shall be a change in the ownership or control of any Party, then such other Party may,

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

within four (4) months of becoming aware of such change, withdraw from this Agreement on not less than two (2) months' notice to the other Party;

(b) If war, whether declared or not, or hostilities or the imminence thereof or civil commotion, revolution or widespread terrorist action render the performance of this Agreement wholly or substantially impractical for the foreseeable future or if any Party is prevented by government intervention from continuing in the Trade or a substantial part hereof, such Party may withdraw with immediate effect by giving notice to the other Party;

(c) If at any time during the term of this Agreement, any Party, (a) is dissolved, (b) becomes insolvent or fails to pay its debts as they become due, (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (d) has a winding up order made against it or enters into liquidation whether voluntarily or compulsorily, or (e) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for substantially all of its assets, and the other Party is of the opinion that such event or occurrence is or may be materially detrimental to the Agreement, then the other Party may give notice to the affected Party withdrawing with immediate effect or suspending this Agreement or any part thereof for such period as the other Party, in its sole discretion deems appropriate; and

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

(d) If at any time during the term of this Agreement a Party commits a material breach, and such material breach remains uncured for a period of ten (10) business days after the breaching Party receives written notice of breach thereof from the other Party then, in the event the non-breaching Party upon sixty (60) days written notice may withdraw from this Agreement unless the breaching Party has cured its breach and has provided written assurances of its intention to abide by its future obligations, within the above cure period.

Article 8 Voting.

Except as otherwise specified herein, decisions under this Agreement shall be by unanimous agreement of the Parties. Each Party shall have one vote.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

Article 9: Duration and Termination.

This Agreement shall become effective immediately upon compliance with all applicable statutory and regulatory requirements and shall continue in effect until the Parties unanimously agree to its termination or until all but one of the Parties has withdrawn in accordance with Article 7 hereof. The termination of the Agreement shall not affect any liabilities or obligations arising prior to the effective date of termination. In the event of termination for whatever cause, a final calculation shall be carried out of the amounts due, if any, under this

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

Agreement and such amount shall be paid within thirty (30) days of the date of termination.

Article 10: Notices.

For communication of all written notices required pursuant to this Agreement, other than notice of termination which shall be sent by registered mail to the Parties, such other notices and communications shall be sent by first class air mail (confirmed by telefax), or by courier service, by email or by facsimile machine to the following:

Polynesia Line Ltd.
Attn: Jens Jensen
700 Larkspur Landing
Larkspur, CA 94939
Fax (415) 398-6823
Email: jjensen@polynesialine.com

Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft KG
Attn: Warren Eversfield
465 South Street
Morristown, NJ 07960
Fax (973) 775-5316
Email warren.eversfield@us.hamburgsud.com

Article 11: Force Majeure.

No Party shall be deemed responsible with respect to its failure to perform any term (except the payment of amounts due) or condition of this Agreement if such failure, wholly or partly, is due to an event of force majeure, such as, but not limited, to war (whether declared or not), civil commotion,

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

invasion, rebellion, sabotage, hostilities, strikes, labor disputes, other work stoppages, governmental (national, state, prefectural, municipal or other), regulations or controls taken or issued in sovereign capacity, or actions of God. Any Party claiming an event of force majeure shall exercise all reasonable endeavors to remedy the consequences of such event. Upon termination of such force majeure event causing a Party's failure to perform its obligations under this Agreement, such Party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

Article 12: Applicable Law, Arbitration and Severability

12.1 The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt reasonable measures to ensure the realization of the objectives thereof.

12.2 Any dispute or difference as to a Party's rights or obligations under this Agreement shall be submitted to arbitration in accordance with and subject to this Article. The language of the arbitration shall be English and the arbitration decision on the dispute or difference shall be final, and is not subject to appeal.

(a) The arbitration shall be held in San Francisco before a panel of three arbitrators (with each side promptly

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

appointing one arbitrator and the third promptly appointed by the other two);

(b) The arbitration shall be conducted (to the extent that this Article makes no provision) in accordance with the Rules of the Society of Maritime Arbitrators, Inc.; and

(c) In determining the dispute or difference, the arbitrators shall apply the laws of the State of California.

12.3 The costs of the arbitration shall be borne equally by the Parties to the dispute, and each Party shall be liable to pay its own expenses of the arbitration, unless the arbitration panel otherwise determines.

12.4 This Article does not affect the jurisdiction of the Federal Maritime Commission under the Shipping Act of 1984, as amended.

EFFECTIVE
SEP 16 1999
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

12.5 Notwithstanding the foregoing, if any term of provision of this Agreement shall be held to be illegal or enforceable, in whole or in part, under any applicable enactment or rule or law, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the enforceability of the remainder of this Agreement shall not be affected.

Article 13: Assignment.

No Party shall be entitled to assign its rights or obligations under this Agreement without the written agreement of the other Party.

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

WEST COAST NORTH AMERICA/PACIFIC
ISLANDS VESSEL SHARING AGREEMENT
FMC Agreement No. 232-011666-003

SIGNATURE PAGE

IN WITNESS WHEREOF the undersigned have agreed this 17th day of July ~~June~~, 2006, to amend this Agreement as per the attached page and to file same with the U.S. Federal Maritime Commission.

Hamburg-Sudamerikanische Dampfschifffarhrts-Gesellschaft KG

By: _____

Name: THOMAS PIRIE

Title: VICE PRESIDENT

Polynesia Line Ltd.

By: _____

Name: _____

Title: _____

EFFECTIVE AUG 31 2006

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

Appendix A

1. In addition to the Parties listed in Article 3 hereof and the arrangements described in Article 5 hereof, it is hereby agreed that Fesco Ocean Management Limited shall be entitled to purchase 20 slots on each southbound sailing to Tahiti from Columbus and Polynesia, with the exact number of slots to be provided by Columbus and Polynesia to be agreed as between the two of them. All three lines shall agree on the rates, terms and conditions pursuant to which FOML will purchase such space.

2. Other than the purchase of space described above, FOML shall have no rights or obligations under this Agreement. FOML may terminate its participation in this Agreement, or Columbus and Polynesia may terminate FOML's participation, by giving six moths' written notice of such termination. Any notices to be provided to FOML hereunder shall be sent to the following:

Fesco Ocean Management Ltd.
Attn: Aspi Rostami
801 2nd Avenue
Seattle, WA 98104
Fax:
Email aspir@fesco.com

FMC Agreement No.: 011666-003 Effective Date: Thursday, August 31, 2006 JUL - 2 2001
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017