

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

**COMPLAINANT SAMSUNG ELECTRONICS AMERICA, INC.’S
MOTION FOR CONFIDENTIAL TREATMENT**

Complainant Samsung Electronics America, Inc. (“SEA”), by and through its attorneys Holland & Knight LLP, hereby move pursuant to paragraph 19 of Chief Administrative Law Judge Wirth’s October 27, 2022 Initial Order and 5(b) of the Federal Maritime Commission’s Rules of Practice and Procedure (the “Rules”), 46 C.F.R. 502.5(b), for confidential treatment of SEA’s Motion to Compel the Deposition of Mr. Xavier Destriau, Zim Integrated Shipping Services Ltd.’s (“Zim”) Chief Financial Officer, and exhibits submitted therewith, (“Motion to Compel”).

On or about February 20, 2023, the parties entered into a Stipulation and Order of Confidentiality (“Confidentiality Order”). The Confidentiality Order provides for the confidential treatment of certain materials produced in discovery in this proceeding (“Confidential

Information”) between the parties. The Confidentiality Order also provides that all “Confidential Material which is to be filed with the ALJ or Commission, or materials containing, reproducing, incorporating or otherwise disclosing Confidential Material shall be filed and labeled in accordance with 46 CFR §502.5.” Thus, under the parties Confidentiality Order, documents produced in discovery marked either as “CONFIDENTIAL” and/or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and filed in this proceeding must be designated as Confidential Information. Further, deposition transcripts and information disclosed therein are deemed Confidential Material for a period of thirty (30) days after the transcript of said deposition is made available, regardless of whether any party has so designated the transcript. The parties also have thirty (30) days, from the date the transcript is made available, to designate information disclosed in deposition as Confidential Material. As of the date of this filing, the thirty (30) day time period has not yet lapsed for any of the depositions transcripts.

SEA’s Motion to Compel includes and/or discusses testimony from the depositions and information designated by Zim in its production as Confidential Material. In accordance with the Confidentiality Order and Zim’s designations, SEA is marking the exhibits as confidential and seeking confidential treatment.¹ Pursuant to Rule 5(b), SEA will file a confidential and public version of its Motion to Compel.

¹ A significant number of documents produced by Zim were marked as “CONFIDENTIAL” and/or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Because Zim had designated the majority of its documents as confidential, SEA was required to even seek permission for SEA’s in-house counsel to review documents. During those discussions, Zim challenged SEA’s allegation that Zim has significantly over-designated its documents in an effort to keep them from public scrutiny. The issue remains unresolved. SEA notes that it has not identified any documents or information as “Confidential” during the production of 155,000 pages of documents and the defense of SEA witnesses.

For the foregoing reasons, SEA respectfully requests that the materials and exhibits designated as confidential in its Motion to Compel, be kept confidential and not disclosed to the public.

Dated: May 31, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the execution date which appears below, the undersigned served the attached document on counsel at the following email addresses:

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Executed: May 31, 2023

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