

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	Criminal No. 10-271-RJL
)	
)	Filed: December 9, 2011
v.)	
)	Count I: 15 U.S.C. § 1
SCHENKER AG,)	Count II: 15 U.S.C. § 1
)	Count III: 15 U.S.C. § 1
Defendant.)	
)	
)	
)	

PLEA AGREEMENT

The United States of America and Schenker AG (“defendant”), a corporation organized and existing under the laws of Germany, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”). The terms of the Plea Agreement are as follows:

RIGHTS OF DEFENDANT

- I. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) as a corporation organized and existing under the laws of Germany, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the District of Columbia;
 - (d) to plead not guilty to any criminal charge brought against it;

(e) to have a trial by jury, at which it would be presumed not guilty of the offenses charged and the United States would have to prove every essential element of the charged offenses beyond a reasonable doubt for it to be found guilty;

(f) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(g) to appeal its conviction if it is found guilty; and

(h) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the District of Columbia. The defendant also agrees to waive any objection or defense it may have to the prosecution of the charged offenses in the United States District Court for the District of Columbia based on venue. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the Recommended Sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack

respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a three-count Information to be filed in the United States District Court for the District of Columbia.

3. As used in this Agreement, except as further defined below, the term “international air freight forwarding services” means the following services and activities: (1) receiving, packaging and preparing cargo freight destined for air shipment to or from the United States; (2) delivery, transportation and storage of the cargo incidental to an air shipment to or from the United States, such as ground transportation services to an airport at which the defendant offers international air freight shipment services and warehousing prior to international shipment; (3) contracting for air shipment of the cargo freight to or from the United States; and (4) preparation of documents to accompany a cargo freight air shipment to or from the United States. The term “international air freight forwarding services,” as used herein, does not include either of the following services: (a) ocean or ground freight forwarding services that are not incidental to an international air freight shipment or (b) express delivery services. Count One of the Information will charge the defendant with participating in a conspiracy among freight forwarders to suppress and eliminate competition by agreeing to impose an Air Automated Manifest System charge (“AAMS fee”) on customers that purchased international air freight forwarding services from the defendant related to the shipment of cargo by air into the United States from Germany, beginning in or about July 2004 and continuing until in or about October 2007. Count Two of the Information will charge the defendant with participating in a

conspiracy among freight forwarders to suppress and eliminate competition by agreeing to require customers that purchased international air freight forwarding services from the defendant related to the shipment of cargo by air from China to the United States either to accept and pay charges in the local currency (renminbi) or, alternatively, to accept and pay a currency adjustment factor (“CAF”) at the initial level of 2.1 percent of total charges to account for a change in the exchange rate as a result of the re-valuing of the renminbi, beginning in or about July 2005 and continuing until in or about June 2006. Count Three of the Information will charge the defendant with participating in a conspiracy among freight forwarders to suppress and eliminate competition by agreeing to impose a peak season surcharge (“PSS”) on customers that purchased international air freight forwarding services from the defendant related to the shipment of cargo by air from Hong Kong to the United States, beginning in or about December 2005 and continuing until in or about December 2007. Each count will charge a violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

4. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 3 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 5 below.

FACTUAL BASIS FOR OFFENSES CHARGED

5. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) As to Count One of the Information:

(i) The “relevant period” is that period from in or about July 2004 until in or about October 2007. During the relevant period, the defendant was a

corporation organized and existing under the laws of Germany, with headquarters in Essen, Germany. During the relevant period, the defendant provided international air freight forwarding services in the United States and elsewhere and employed 5000 or more individuals.

(ii) During the relevant period, the defendant, through its employees, including high-level personnel, participated in a conspiracy among major freight forwarders, the primary purpose of which was to initiate and impose a charge for AAMS service on customers that purchased international air freight forwarding services from the defendant related to the shipment of cargo by air to the United States from Germany. In furtherance of the conspiracy, the defendant, through its employees, engaged in discussions and attended meetings with representatives of other freight forwarders. During those discussions and meetings, the freight forwarders, including the defendant, agreed to impose an AAMS fee on shipments of cargo by air to the United States from Germany and agreed on the approximate level of that charge.

(iii) During the relevant period, the international air freight forwarding services were provided by the conspirator firms, including the defendant, in a continuous and uninterrupted flow of interstate and foreign commerce into the United States. In addition, the cargo and payments, including the AAMS fee, for which the conspirator firms, including the defendant, provided international air freight forwarding services moved in interstate and foreign commerce. The business activities of the defendant and its co-conspirators in connection with

their international air freight forwarding services that were the subject of this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(iv) Acts in furtherance of this conspiracy were carried out within the five years preceding the filing of this Plea Agreement.

(b) As to Count Two of the Information:

(i) The “relevant period” is that period from in or about July 2005 until in or about June 2006. During the relevant period, the defendant was a corporation organized and existing under the laws of Germany, with headquarters in Essen, Germany. During the relevant period, the defendant provided international air freight forwarding services in the United States and elsewhere, and employed 5000 or more individuals.

(ii) During the relevant period, the defendant, through its employees, including high-level personnel, participated in a conspiracy among major freight forwarders, the primary purpose of which was to impose a charge on international air freight forwarding services related to the shipment of cargo by air from China to the United States to compensate for a change in the value ratio of the U.S. dollar to the Chinese renminbi. In furtherance of the conspiracy, the defendant, through its employees, engaged in discussions and attended meetings with representatives of other freight forwarders. During those discussions and meetings, the freight forwarders, including the defendant, agreed to demand that customers for international air freight forwarding services originating in China

and destined for the United States whose contracts were denominated in U.S. dollars either pay an amount in excess of the agreed-upon charge, initially 2.1 percent, as a CAF, or, alternatively, that they pay for such services in the local Chinese currency.

(iii) During the relevant period, the international air freight forwarding services were provided by the conspirator firms, including the defendant, in a continuous and uninterrupted flow of foreign and interstate commerce into the United States. In addition, the cargo and payments, including the CAF, for which the conspirator firms, including the defendant, provided international air freight forwarding services moved in interstate and foreign commerce. The business activities of the defendant and its co-conspirators in connection with their international air freight forwarding services that were the subject of this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(iv) Acts in furtherance of this conspiracy were carried out within the five years preceding the filing of this Plea Agreement.

(c) As to Count Three of the Information:

(i) The “relevant period” is that period from in or about December 2005 until in or about December 2007. During the relevant period, the defendant was a corporation organized and existing under the laws of Germany, with headquarters in Essen, Germany. During the relevant period, the defendant

provided international air freight forwarding services in the United States and elsewhere, and employed 5000 or more individuals.

(ii) During the relevant period, the defendant, through its employees, including high-level personnel, participated in a conspiracy among major freight forwarders, the primary purpose of which was to impose a PSS on international air freight forwarding services related to the shipment of cargo by air from Hong Kong to the United States during “peak season,” a period broadly defined as the busy period for air cargo shipments precipitated by the Christmas holiday shopping season in the United States. In furtherance of the conspiracy, the defendant, through its employees, engaged in discussions and attended meetings with representatives of other freight forwarders. During those discussions and meetings, the freight forwarders, including the defendant, agreed on the initiation and termination dates of the PSS and the approximate level of the charge.

(iii) During the relevant period, the international air freight forwarding services were provided by the conspirator firms, including the defendant, in a continuous and uninterrupted flow of foreign and interstate commerce into the United States. In addition, the cargo and payments, including the PSS, for which the conspirator firms, including the defendant, provided international air freight forwarding services moved in interstate and foreign commerce. The business activities of the defendant and its co-conspirators in connection with their international air freight forwarding services that were the subjects of this

conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(iv) Acts in furtherance of this conspiracy were carried out within the five years preceding the filing of this Plea Agreement.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for each violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

7. In addition, the defendant understands that for each count:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;
- (b) pursuant to §8B1.1 of the United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offenses; and
- (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance-of-the-evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of **\$795,566** for Count One, **\$1,660,546** for Count Two and **\$1,079,402** for Count Three, for a total of **\$3,535,514**, payable in full before the fifteenth (15th) day after the date of judgment ("the Recommended Sentence"). The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant

to U.S.S.G. §5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the Recommended Sentence set forth in this Plea Agreement is reasonable.

(a) The defendant understands that the Court will order it to pay a \$400 special assessment per count, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(b) Both parties will recommend that no term of probation be imposed, but the defendant understands that the Court's denial of this request will not void this Plea Agreement.

(c) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 11 below, will provide sufficient information concerning the defendant, the crime charged in this case and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the defendant agree to request jointly that the Court accept the defendant's guilty pleas and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. §6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

10. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the Recommended Sentence set out in Paragraph 9 above. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 14 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. §8C4.1, for a downward departure from the Guidelines fine range and will request that the Court impose the Recommended Sentence set out in Paragraph 9 of this Plea Agreement because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the freight forwarding industry.

11. Subject to the ongoing, full and truthful cooperation of the defendant described in Paragraph 14 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner and extent of the defendant's cooperation, its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offenses and all other relevant conduct.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the Recommended Sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be rendered void.

(b) If the Court does not accept the Recommended Sentence, the defendant will be free to withdraw its guilty pleas (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its pleas of guilty, this Plea Agreement, the guilty pleas, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty pleas or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Federal Rule of Evidence 410. In addition, the defendant agrees that, if it withdraws its guilty pleas pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 16 of this Plea Agreement shall be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty pleas or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

13. In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

DEFENDANT'S COOPERATION

14. The defendant, Deutsche Bahn AG and their subsidiaries, with the exception of BAX Global Inc. (the "Covered Entities"), will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving (a) the sale of international air freight forwarding services, (b) to the limited extent specified herein, the sale of international

ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of the U.S. Bureau of Customs and Border Protection that, beginning in or about December 2002, it be notified electronically of the contents and certain other information regarding cargo destined for the United States prior to the ship's departure from a foreign port and (c) to the limited extent specified herein, the sale of international ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of Her Majesty's Revenue & Customs (U.K.) ("HMR&C") that, beginning in or about October 2002, HMR&C be notified electronically of the contents and certain other information regarding cargo destined for the United States and other non-European Community countries prior to the ship's departure from the United Kingdom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (together "Federal Proceeding"). The ongoing, full and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing to the United States all non-privileged documents, information and other materials wherever located, in the possession, custody or control of the Covered Entities requested by the United States in connection with any Federal Proceeding;

(b) using their best efforts to secure the ongoing, full and truthful cooperation, as defined in Paragraph 15 of this Plea Agreement, of the current directors, officers and employees of the Covered Entities as may be requested by the United States, but excluding Stephen Dearnley, including making these persons available in the United States and at other mutually agreed-upon locations, at the defendant's expense, for

interviews and the provision of testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding.

15. The ongoing, full and truthful cooperation of each person described in Paragraph 14(b) above, with the exceptions noted, will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents, including claimed personal documents and other materials, wherever located, requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial and other judicial proceedings in the United States fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making of false statements or declarations in grand jury or court

proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402) and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 17(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 17(a) shall be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

16. Upon acceptance of the guilty pleas called for by this Plea Agreement and the imposition of the Recommended Sentence, and subject to the cooperation requirements of Paragraph 14 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the Covered Entities for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving (a) the sale of international air freight forwarding services, (b) to the limited extent specified herein, the sale of international ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of the U.S. Bureau of Customs and Border Protection that, beginning in or about December 2002, it be notified electronically of the contents and certain other information regarding cargo destined for the United States prior to the ship's departure from a foreign port and (c) to the limited extent specified herein, the sale of international ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of HMR&C that, beginning in or about October

2002, HMR&C be notified electronically of the contents and certain other information regarding cargo destined for the United States and other non-European Community countries prior to the ship's departure from the United Kingdom. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws or to any crime of violence.

17. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty pleas called for by this Plea Agreement and the imposition of the Recommended Sentence and subject to the exceptions noted in Paragraph 17(c), the United States will not bring criminal charges against any current director, officer or employee of the Covered Entities for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer or employee of the Covered Entities that was undertaken in furtherance of an antitrust conspiracy involving (a) the sale of international air freight forwarding services, (b) to the limited extent specified herein, the sale of international ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of the U.S. Bureau of Customs and Border Protection that, beginning in or about December 2002, it be notified electronically of the contents and certain other information regarding cargo destined for the United States prior to the ship's departure from a foreign port and (c) to the limited extent specified herein, the sale of international ocean freight forwarding services insofar as the object of any antitrust conspiracy was to impose a charge related to a mandate of HMR&C that, beginning in or about October 2002, HMR&C be notified electronically of the contents

and certain other information regarding cargo destined for the United States and other non-European Community countries prior to the ship's departure from the United Kingdom (together "Relevant Offense"), with the exception that the protections granted in this paragraph shall not apply to Stephen Dearnley;

(b) Should the United States determine that any current director, officer or employee of the Covered Entities may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation under Paragraph 17(b) fails to comply with his or her obligations under Paragraph 15, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 17(e), information provided by a person described in Paragraph 17(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623) or obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 15 of

this Plea Agreement, the agreement in Paragraph 17(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws or to any crime of violence; and

(g) Documents provided under Paragraphs 14(a) and 15(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

18. The United States agrees that when any person travels to the United States for interviews, grand jury appearances or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest, detention or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making false statements or declarations (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*) or contempt (18 U.S.C. §§ 401-402) in connection with any testimony or information provided or requested in any Federal Proceeding.

19. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency

considering such administrative action of the fact, manner and extent of the cooperation of the Covered Entities as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

20. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges and the nature and range of possible sentences.

VOLUNTARY PLEA

21. The defendant's decision to enter into this Plea Agreement and to tender pleas of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement and in the Notice of Additional Cooperation, filed separately with the Court under seal. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

22. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that any of the Covered Entities has failed to provide full and truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the

Covered Entities shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The Covered Entities agree that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against any of the Covered Entities for any offense referred to in Paragraph 16 of this Plea Agreement, the statute of limitations period for such offenses shall be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. The Covered Entities understand and agree that in any further prosecution of them resulting from the release of the United States from its obligations under this Plea Agreement, because of the Covered Entities' violation of the Plea Agreement, any documents, statements, information, testimony or evidence provided by the Covered Entities or by any current directors, officers or employees of them to attorneys or agents of the United States, federal grand juries or courts, and any leads derived therefrom, may be used against the Covered Entities in any such further prosecution. In addition, the defendant, Deutsche Bahn AG and their subsidiaries unconditionally waive their right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

ENTIRETY OF AGREEMENT

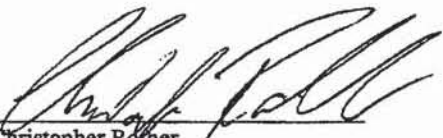
24. This Plea Agreement and the Notice of Additional Cooperation constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.


25. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

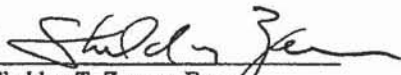
26. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

27. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: September 29, 2010

BY: 
Christopher Rother
Head of Regulatory, Competition
and Antitrust Law
Deutsche Bahn AG and
Duly Authorized Representative of
Schenker AG

BY: 
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Counsel for Schenker AG

Power of Attorney

Schenker AG, Essen, registered in the commercial register of the local court of Essen under HRB 17 474, (hereinafter the "**Company**")

hereby grants power of attorney to

Mr. Christopher Rother, Head of Competition, Regulatory and Antitrust Law, with place of business at Deutsche Bahn AG, Potsdamer Platz 2, 10785 Berlin,

(hereinafter the "**Representative**")

to act solely. The power of attorney grants the authority:

to enter, on behalf of the Company, into a plea agreement with the United States of America in relation to alleged violations by the company of U.S. Antitrust Law through anti-competitive agreements with other providers of international air freight forwarding services during the time period from 2004 to 2007;

and to take all actions necessary therefore and to make and accept all declarations.

This power of attorney authorizes the Representative to act solely and to delegate this power of attorney and to revoke such delegated powers of attorney.

This power of attorney includes the authority to determine the individual terms of the before mentioned agreements and measures as well as further parties.

This power of attorney shall be interpreted broadly to realize the purpose of its granting.

Essen, 28 September 2010

Schenker AG



Dr. Thomas Lieb



Dr. Lutz Freytag