



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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Karen V. Gregory, Secretary
Federal Maritime Commission
Washington, DC 20573-0001

Re: Consolidated Chassis Management Pool Agreement, FMC Agreement
No. 011962-007

Dear Secretary Gregory:

The Antitrust Division of the United States Department of Justice respectfully submits these comments in response to the filing of amendments to the Consolidated Chassis Management Pool Agreement, No. 011962-007 ("the CCM Pool Agreement"). *See* 76 Fed. Reg. 51033 (Aug. 17, 2011).¹ The parties to the proposed amendments are seeking antitrust immunity for activities that may be inconsistent with the Shipping Act of 1984, as amended. The Department of Justice, accordingly, urges the Federal Maritime Commission ("FMC") to carefully consider the proposed amendments and order appropriate limiting conditions.

"Chassis" are metal trailer frames with tires, brakes, and lights that are designed for over-the-road transportation of shipping containers. When an ocean container comes into port, the container is placed onto a chassis, and the chassis is hooked onto a truck, which transports it to its destination. Ocean carriers want to ensure that there are sufficient chassis available at a port to handle arriving containers. Chassis, however, take up substantial space when not in use, which can be a significant problem at space-constrained ports. As a result, many ports utilize chassis pools. A carrier that contributes chassis to a pool can draw any chassis from that pool regardless of the ownership of the particular chassis, thereby reducing the overall number of chassis that need to be maintained at the port and increasing efficiencies. (Without a pool, each carrier would need to ensure an extra supply of its own chassis to cover periods of peak demand and

¹ We respectfully request the FMC allow the submission of these comments past the deadline.

circumstances when chassis are unavailable due to repositioning.) The pools typically do not own the chassis; rather, ownership remains with the entity that contributes them.

Consolidated Chassis Management LLC (“CCM LLC”) is an affiliate of the Ocean Carrier Equipment Management Association (“OCEMA”), an association of 20 ocean common carriers. CCM LLC and its affiliates own and govern six regional chassis pools in the United States under the CCM Pool Agreement.² CCM LLC was formed in 2005 and now has roughly 125,000 chassis under management. The pools are cooperative arrangements, under which CCM or a third-party hired by CCM manages the chassis and allocates maintenance and operating costs among the pool’s contributors and users. The filing of the original CCM Pool Agreement at the FMC conferred antitrust immunity on the agreement.

CCM now seeks to amend the terms of the CCM Pool Agreement. The proposed changes relate to the general structure, governance, and management of the pool as well as the types of business arrangements which it may pursue. For example, the proposed amendments have expanded the parties to the agreement to include OCEMA affiliates CCM Holdings LLC, CCM Pool LLC, and “other Affiliates.” In addition, the amendments allow for increased participation and interaction in the pools by non-ocean carrier entities, including “non-regulated entities” such as trucking firms and chassis leasing companies that are not subject to the regulatory jurisdiction of the FMC.³ The amendments explicitly provide that these entities will be able to contribute chassis to the pool, provide advice on pool management issues and use pool resources. While the proposal allows for increased participation by these non-ocean carrier entities, it is clear that ultimate governance of the organization will continue to reside with the OCEMA membership; *i.e.*, the ocean carriers.⁴ As such, the amendments make explicit that OCEMA carriers will have broad executive powers, including the ability to take collective “actions and measures” against individual participants through such means as “prioritizing, restricting or denying access” to chassis for a variety of reasons, including overusage.⁵

In short, the proposed changes appear to expand the original purpose of the CCM Pool Agreement from an equipment interchange pool that provided a service for the benefit and use of the ocean carrier participants to a more land-based transportation

² The parties to the proposed CCM Pool Agreement include the Ocean Carrier Equipment Management Association, Inc. (“OCEMA”) and its individual ocean common carrier members; CCM Holdings LLC; CCM Pools LLC and its subsidiaries Chicago Ohio Valley Consolidated Chassis Pool LLC, Denver Consolidated Chassis Pool LLC, Gulf Consolidated Chassis Pool LLC, Mid-South Consolidated Chassis Pool LLC, Midwest Consolidated Chassis Pool LLC, and South Atlantic Chassis Pool LLC; Matson Navigation Company; and Westwood Shipping Lines.

³ Proposed CCM Pool Agreement Article 5.

⁴ In particular, Article 6.1 establishes a Governing Board, a majority of which shall be OCEMA members picked by a CCM holding company. Article 6.1 makes clear that OCEMA will “without limitation” have the right to “discuss and agree” on policies relating to the establishment and operation of the pools.

⁵ Proposed CCM Pool Agreement Article 5.2S.

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business in which the ocean carriers – acting collectively through OCEMA and the affiliated parties to the CCM Pool Agreement – can engage in business activities that are further removed and possibly independent from actual ocean transportation.

The Department of Justice has long taken the position that the general antitrust exemption for international ocean shipping carrier agreements is no longer justified.⁶ Here, any rationale for the exemption is further attenuated to the extent the ocean carriers seek to operate a land-based chassis business in which they collectively participate, manage, and interact with non-regulated entities. Antitrust immunities are discouraged as application of the antitrust laws serves the procompetitive purpose of encouraging firms to structure their operations and conduct their activities in ways that avoid any potential anti-competitive effects.⁷

The Department of Justice understands that the FMC is examining the proposed amendments to the CCM Pool Agreement, including any changes that the parties have made or may make to their filing.⁸ If the FMC ultimately finds that the ocean carrier members of OCEMA are attempting improperly to extend immunity to non-ocean common carrier entities⁹ or to business operations outside the contours of the Shipping Act, such as a general domestic chassis leasing business, we respectfully request that the FMC take appropriate action.¹⁰

Sincerely,



Sharis A. Pozen

⁶ See Statement of Deputy Assistant Attorney General John M. Nannes before the House Committee of the Judiciary, March 22, 2000, at 9-14, available at <http://www.justice.gov/atr/public/testimony/4377.htm>

⁷ For example, anticompetitive harms from pools may include collective action to: restrict overall output (*i.e.*, limiting the availability of chassis) in order to raise prices; limit a particular competitor from renting chassis in order to restrict competition or deter growth from that competitor; or enter into exclusive arrangements that deter entry from other firms. As the antitrust laws encourage procompetitive collaborations, an agreement will not be condemned unless it can be shown that the harms outweigh the benefits (such as improved operating efficiencies). See *Antitrust Guidelines for Collaborations Among Competitors, Issued by the Federal Trade Commission and the U.S. Department of Justice* (2000).

⁸ See, *e.g.*, December 6, 2011 letter from Jeffrey Lawrence to Ms. Karen Gregory (parties striking proposal that would have provided authority for the pools to directly interchange chassis with entities that are not contributors to the pool).

⁹ For example, Article 3(a) and 8.4 of the Agreement appear to imply that immunity covers not only the ocean carriers, but also the various business entities that are parties to the pool agreement.

¹⁰ Although antitrust immunity does not extend to the non-regulated entities because they are not parties to the proposed agreement, we urge the FMC, at the least, to consider explicitly providing that any immunity from the antitrust laws for the CCM Pool Agreement shall not extend to agreements with non-regulated entities or to conduct that is not exempt under the Shipping Act. See 46 U.S.C. § 40307(b) (limitations on the ocean shipping exemption to the antitrust laws).