December 6, 2022

The Honorable Maria Cantwell
Chairman
The United States Senate Committee on
Commerce, Science and Transportation
254 Russell Senate Building
Washington, DC 20510

The Honorable Roger F. Wicker
Ranking Member
The United States Senate Committee on
Commerce, Science and Transportation
512 Dirksen Senate Building
Washington, DC 20510

The Honorable Gary Peters
Chairman
The United States Senate Subcommittee on
Surface Transportation, Maritime,
Freight, and Ports
254 Russell Senate Building
Washington, DC 20510

The Honorable Deb Fischer
Ranking Member
The United States Senate Subcommittee on
Surface Transportation, Maritime,
Freight, and Ports
512 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Maria Cantwell, Chairman Gary Peters, Ranking Member Roger F. Wicker and Ranking Member Deb Fischer,

We write in support of an effort to significantly enhance the Federal Maritime Commission's (FMC or Commission) oversight of predominantly foreign-based ocean common carriers and marine terminal operators and the process of evaluating cooperative working agreements under the Shipping Act of 1984. The views expressed herein are the individual views of the undersigned and may not represent those of the Commission.

While the Ocean Shipping Reform Act of 2022 provided the Commission with important additional authorities, there is more that can be done to assist U.S. shippers. We strongly believe that modifying the process by which the Commission reviews agreements under 46 U.S.C. § 41307(b) would substantially strengthen the Commission's oversight of potentially anti-competitive agreements. Such modifications would be consistent with recent amendments to bolster Commission authority and would complement the extensive monitoring process applicable to the major shipping alliance agreements.

Currently, the Commission cannot *sua sponte* enjoin an agreement that the Commission, as the expert independent regulatory agency, determines to be unreasonably anti-competitive. The Commission must file an action in the U.S. District Court for the District of Colombia and persuade the court to do so. *Fed. Mar. Comm'n v. City of Los Angeles*, 607 F. Supp. 2d 192, 197-98 (D.D.C. 2009). If the Court does not determine that the agreement is unreasonably anti-competitive, then the agreement automatically becomes effective. Experience has shown that this process is

cumbersome and time-consuming; and some would even argue designed to impede the Commission's oversight of agreements.

We believe the Commission should have the authority to disapprove agreements between or among ocean common carriers and marine terminal operators. Specifically, we urge legislation to amend the existing statutory review process to allow the Commission to determine that an agreement violates 46 U.S.C. § 41307(b) and to prohibit the parties from operating pursuant to the agreement. The FMC's determination could then be subject to appeal to the United States Court of Appeals for the District of Columbia Circuit. The parties who are seeking to operate pursuant to the agreement would have the opportunity of demonstrating that the agreement is not unreasonably anti-competitive.

Such key statutory changes to the agreement review process would greatly enhance the Commission's oversight of the competitive aspects of the maritime industry and ensure that we are able to implement the intended purposes of OSRA 2022.

We stand ready to provide any assistance needed to strengthen the Commission's agreement review process.

Sincerely,

/S/ /S/

Max M. Vekich
Commissioner
Federal Maritime Commission
800 North Capital Street, NW
Washington, DC 20573
mvekich@fmc.gov

Carl W. Bentzel
Commissioner
Federal Maritime Commission
800 North Capital Street, NW
Washington, DC 20573
cbentzel@fmc.gov

cc: The Honorable Amy Klobuchar
The Honorable John Thune
Members of the United States Senate Subcommittee on
Surface Transportation, Maritime, Freight and Ports
Chairman Maffei, Commissioner Dye and Commissioner Sola, Federal Maritime Commission