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March 23, 2022

Ed Aldridge
President
CMA CGM (America) LLC
5701 Lake Wright Drive
Norfolk, Virginia 23502 USA
Dear Mr. Aldridge:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of CMA CGM and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.
[2] Congress.gov, "Text - H.R. 3684 – 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," November 15, 2021, https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

According to a recent Bloomberg report

> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a carve-out for maritime carriers, allowing "fixing or regulating transportation rates or fares;

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[3] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

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[8] 46 U.S.C. § 40101 et seq., https://uscode.house.gov/view.xhtml?path=/prelim@title46/subtitle4/partA/chapter401&edition=prelim; The U.S. Shipping Act of 1916 has since been amended in 1961, 1984, 1998, and 2018.

[9] U.S. Department of Transportation, "The Maritime Administration's First 100 Years: 1916-2016," https://www.maritime.dot.gov/history/historical-documents-and-resources/maritime-administration%E2%80%99s-first-100-years-1916-%E2%80%93-2016.

[10] Michigan Law Review, "Shipping Act of 1916: The Effect of Section 15 on the Sherman Anti-Trust Law," Claude A. Thompson, December 1923, pp.108, https://www.jstor.org/stable/1277329?seq=1#metadata_info_tab_contents.

giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement," so long as a "complete memorandum" detailing these activities was filed with the U.S. Shipping Board.[11]

Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price arrangements and to share space on one another's ships.[18] These arrangements shield carriers from competition and allow them to protect their price-setting power.[19] While limits on these

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[11] *Id*, pp.107.
[12] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.
[13] American Shipper, "Shipping's Extreme Consolidation Could Prolong Supply Chain Pain," Greg, Miller, November 10, 2021, https://www.freightwaves.com/news/shippings-extreme-consolidation-could-prolong-supply-chain-pain.
[14] *Id.*
[15] American Journal of Transportation, "Ocean Carrier Alliances – The Tripartite," George Lauriat, April 20, 2021, https://ajot.com/premium/ajot-ocean-carrier-alliances-the-tripartite.
[16] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[17] *Id*, pp. 7.
[18]Congressional Research Service, "The Container shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission," John Frittelli, June 5, 2017, https://www.crs.gov/Reports/IF10664?source=search&guid=d5129119bd7145dca8f2c1fcdd5aa8ba&index=1.
[19] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.

agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

There continue to be few impediments to the highest rate hikes in container shipping history, and little to stop container shipping companies from levying exorbitant fees or unreasonably denying shipping opportunities. Since January 2020, spot rates for freight shipping on the U.S.-Asia trade routes have increased by 100%, while container shipping companies have simultaneously increased contract rates by over 1,000%.[22] And companies like yours have been levying exorbitant detention and demurrage fees – fees levied against shippers for missing scheduled container collection times – against businesses and raked in over $2 billion in fee profits between July and September 2021, a 50% increase from the previous three months.[23] Reports indicate that businesses are being charged these "late pickup fees even when [containers] are still stuck on a vessel and can't be accessed because the carriers are starting the clock based on the scheduled delivery date and not on the actual time of discharge from the vessel."[24]

The lack of competition in the container shipping industry has had clear negative impacts on businesses, particularly smaller ones that are less capable of absorbing the higher costs, and consumers. As businesses and consumers feel the pain of higher costs, container shipping companies have had their best year yet. According to the White House

> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.**[25]

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[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.

[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.

[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

[23] *Id.*

[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

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[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.
[27] *Id.*
[28] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[29] Sea Intelligence, "Are container carriers price gouging?" Alan Murphy, January 26, 2021, https://sea-intelligence.com/press-room/43-carriers-price-gouging.

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
    a. How many TEUs of capacity does your company plan to acquire this year?
    b. How much of this will be done through new builds or second-hand ship purchases?
5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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March 23, 2022

Feng Bo
President
COSCO Shipping (North America) Inc.
9659 N. Sam Houston Parkway East
Suite 150 #240
Humble, Texas 77396 USA
Dear Mr. Bo:

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The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

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Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

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from competition and allow them to protect their price-setting power.[19] While limits on these agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

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[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.[25]

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also

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[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.
[27] *Id.*
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[29] Sea Intelligence, "Are container carriers price gouging?" Alan Murphy, January 26, 2021, https://sea-intelligence.com/press-room/43-carriers-price-gouging.

believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
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Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
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March 23, 2022

Benjamin Tsai
President and CEO
Evergreen Shipping Agency (America) Corp.
One Entrust Plaza
Jersey City, New Jersey 07302, USA
Dear Mr. Tsai:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Evergreen and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.

[2] Congress.gov, "Text - H.R. 3684 – 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," November 15, 2021, https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

According to a recent Bloomberg report

> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a

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[5] Wall Street Journal, "Shipping Delays and Higher Rates Get Small Businesses Jammed Up," Costas Paris, July 11, 2021, https://www.wsj.com/articles/shipping-delays-and-higher-rates-get-small-businesses-jammed-up-11626015600.

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[9] U.S. Department of Transportation, "The Maritime Administration's First 100 Years: 1916-2016," https://www.maritime.dot.gov/history/historical-documents-and-resources/maritime-administration%E2%80%99s-first-100-years-1916-%E2%80%93-2016.

[10] Michigan Law Review, "Shipping Act of 1916: The Effect of Section 15 on the Sherman Anti-Trust Law," Claude A. Thompson, December 1923, pp.108, https://www.jstor.org/stable/1277329?seq=1#metadata_info_tab_contents.

carve-out for maritime carriers, allowing "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement," so long as a "complete memorandum" detailing these activities was filed with the U.S. Shipping Board.[11]

Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price arrangements and to share space on one another's ships.[18] These arrangements shield carriers

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[11] *Id*, pp.107.
[12] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.
[13] American Shipper, "Shipping's Extreme Consolidation Could Prolong Supply Chain Pain," Greg, Miller, November 10, 2021, https://www.freightwaves.com/news/shippings-extreme-consolidation-could-prolong-supply-chain-pain.
[14] *Id.*
[15] American Journal of Transportation, "Ocean Carrier Alliances – The Tripartite," George Lauriat, April 20, 2021, https://ajot.com/premium/ajot-ocean-carrier-alliances-the-tripartite.
[16] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[17] *Id*, pp. 7.
[18] Congressional Research Service, "The Container shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission," John Frittelli, June 5, 2017, https://www.crs.gov/Reports/IF10664?source=search&guid=d5129119bd7145dca8f2c1fcdd5aa8ba&index=1.

from competition and allow them to protect their price-setting power.[19] While limits on these agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

There continue to be few impediments to the highest rate hikes in container shipping history, and little to stop container shipping companies from levying exorbitant fees or unreasonably denying shipping opportunities. Since January 2020, spot rates for freight shipping on the U.S.-Asia trade routes have increased by 100%, while container shipping companies have simultaneously increased contract rates by over 1,000%.[22] And companies like yours have been levying exorbitant detention and demurrage fees – fees levied against shippers for missing scheduled container collection times – against businesses and raked in over $2 billion in fee profits between July and September 2021, a 50% increase from the previous three months.[23] Reports indicate that businesses are being charged these "late pickup fees even when [containers] are still stuck on a vessel and can't be accessed because the carriers are starting the clock based on the scheduled delivery date and not on the actual time of discharge from the vessel."[24]

The lack of competition in the container shipping industry has had clear negative impacts on businesses, particularly smaller ones that are less capable of absorbing the higher costs, and consumers. As businesses and consumers feel the pain of higher costs, container shipping companies have had their best year yet. According to the White House

> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average**

[19] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.
[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.
[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
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Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

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[27] *Id.*
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Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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March 23, 2022

Uffe Ostergaard
President
Hapag-Lloyd (North America) LLC
399 Hoes Lane
Piscataway, New Jersey 08854, USA
Dear Mr. Ostergaard:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Hapag-Lloyd and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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[8] 46 U.S.C. § 40101 et seq., https://uscode.house.gov/view.xhtml?path=/prelim@title46/subtitle4/partA/chapter401&edition=prelim; The U.S. Shipping Act of 1916 has since been amended in 1961, 1984, 1998, and 2018.

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And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price arrangements and to share space on one another's ships.[18] These arrangements shield carriers from competition and allow them to protect their price-setting power.[19] While limits on these

[11] *Id*, pp.107.
[12] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.
[13] American Shipper, "Shipping's Extreme Consolidation Could Prolong Supply Chain Pain," Greg, Miller, November 10, 2021, https://www.freightwaves.com/news/shippings-extreme-consolidation-could-prolong-supply-chain-pain.
[14] *Id.*
[15] American Journal of Transportation, "Ocean Carrier Alliances – The Tripartite," George Lauriat, April 20, 2021, https://ajot.com/premium/ajot-ocean-carrier-alliances-the-tripartite.
[16] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[17] *Id*, pp. 7.
[18]Congressional Research Service, "The Container shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission," John Frittelli, June 5, 2017, https://www.crs.gov/Reports/IF10664?source=search&guid=d5129119bd7145dca8f2c1fcdd5aa8ba&index=1.
[19] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.

agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

There continue to be few impediments to the highest rate hikes in container shipping history, and little to stop container shipping companies from levying exorbitant fees or unreasonably denying shipping opportunities. Since January 2020, spot rates for freight shipping on the U.S.-Asia trade routes have increased by 100%, while container shipping companies have simultaneously increased contract rates by over 1,000%.[22] And companies like yours have been levying exorbitant detention and demurrage fees – fees levied against shippers for missing scheduled container collection times – against businesses and raked in over $2 billion in fee profits between July and September 2021, a 50% increase from the previous three months.[23] Reports indicate that businesses are being charged these "late pickup fees even when [containers] are still stuck on a vessel and can't be accessed because the carriers are starting the clock based on the scheduled delivery date and not on the actual time of discharge from the vessel."[24]

The lack of competition in the container shipping industry has had clear negative impacts on businesses, particularly smaller ones that are less capable of absorbing the higher costs, and consumers. As businesses and consumers feel the pain of higher costs, container shipping companies have had their best year yet. According to the White House

> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.**[25]

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[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.

[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.

[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

[23] *Id.*

[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

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[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.
[27] *Id.*
[28] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
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1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
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4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
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5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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March 23, 2022

Jung-Yub Lee
CEO
Hyundai Merchant Marine (America), Inc.
222 Las Colinas Blvd West
Suite 700
Irving, Texas 75039 USA
Dear Mr. Lee:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Hyundai Merchant Marine and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.
[2] Congress.gov, "Text - H.R. 3684 – 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," November 15, 2021, https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

According to a recent Bloomberg report

> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or

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[3] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

[4] Marketplace, "Increased costs for small businesses have many mulling 2022 price hikes," Justin Ho, February 3, 2022, https://www.marketplace.org/2022/02/03/increased-costs-for-small-businesses-have-many-mulling-2022-price-hikes/.

[5] Wall Street Journal, "Shipping Delays and Higher Rates Get Small Businesses Jammed Up," Costas Paris, July 11, 2021, https://www.wsj.com/articles/shipping-delays-and-higher-rates-get-small-businesses-jammed-up-11626015600.

[6] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

[7] Wall Street Journal, "Shipping and Logistics Costs Are Expected to Keep Rising in 2022," Jennifer Smith, Paul Berger, and Lydia O'Neal, December 19, 2021, https://www.wsj.com/articles/shipping-and-logistics-costs-are-expected-to-keep-rising-in-2022-11639918804.

[8] 46 U.S.C. § 40101 et seq., https://uscode.house.gov/view.xhtml?path=/prelim@title46/subtitle4/partA/chapter401&edition=prelim; The U.S. Shipping Act of 1916 has since been amended in 1961, 1984, 1998, and 2018.

[9] U.S. Department of Transportation, "The Maritime Administration's First 100 Years: 1916-2016," https://www.maritime.dot.gov/history/historical-documents-and-resources/maritime-administration%E2%80%99s-first-100-years-1916-%E2%80%93-2016.

commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a carve-out for maritime carriers, allowing "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement," so long as a "complete memorandum" detailing these activities was filed with the U.S. Shipping Board.[11]

Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price

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[10] Michigan Law Review, "Shipping Act of 1916: The Effect of Section 15 on the Sherman Anti-Trust Law," Claude A. Thompson, December 1923, pp.108, https://www.jstor.org/stable/1277329?seq=1#metadata_info_tab_contents.

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arrangements and to share space on one another's ships.[18] These arrangements shield carriers from competition and allow them to protect their price-setting power.[19] While limits on these agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

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> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average**

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believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
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6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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March 23, 2022

William Woodhour
President and CEO
Maersk Line, Limited
2510 Walmer Avenue, Suite C,
Norfolk, Virginia 23513-2601, USA
Dear Mr. Woodhour:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Maersk and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.

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> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a

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[3] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

[4] Marketplace, "Increased costs for small businesses have many mulling 2022 price hikes," Justin Ho, February 3, 2022, https://www.marketplace.org/2022/02/03/increased-costs-for-small-businesses-have-many-mulling-2022-price-hikes/.

[5] Wall Street Journal, "Shipping Delays and Higher Rates Get Small Businesses Jammed Up," Costas Paris, July 11, 2021, https://www.wsj.com/articles/shipping-delays-and-higher-rates-get-small-businesses-jammed-up-11626015600.

[6] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

[7] Wall Street Journal, "Shipping and Logistics Costs Are Expected to Keep Rising in 2022," Jennifer Smith, Paul Berger, and Lydia O'Neal, December 19, 2021, https://www.wsj.com/articles/shipping-and-logistics-costs-are-expected-to-keep-rising-in-2022-11639918804.

[8] 46 U.S.C. § 40101 et seq., https://uscode.house.gov/view.xhtml?path=/prelim@title46/subtitle4/partA/chapter401&edition=prelim; The U.S. Shipping Act of 1916 has since been amended in 1961, 1984, 1998, and 2018.

[9] U.S. Department of Transportation, "The Maritime Administration's First 100 Years: 1916-2016," https://www.maritime.dot.gov/history/historical-documents-and-resources/maritime-administration%E2%80%99s-first-100-years-1916-%E2%80%93-2016.

[10] Michigan Law Review, "Shipping Act of 1916: The Effect of Section 15 on the Sherman Anti-Trust Law," Claude A. Thompson, December 1923, pp.108, https://www.jstor.org/stable/1277329?seq=1#metadata_info_tab_contents.

carve-out for maritime carriers, allowing "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement," so long as a "complete memorandum" detailing these activities was filed with the U.S. Shipping Board.[11]

Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price arrangements and to share space on one another's ships.[18] These arrangements shield carriers

[11] *Id*, pp.107.
[12] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.
[13] American Shipper, "Shipping's Extreme Consolidation Could Prolong Supply Chain Pain," Greg, Miller, November 10, 2021, https://www.freightwaves.com/news/shippings-extreme-consolidation-could-prolong-supply-chain-pain.
[14] *Id.*
[15] American Journal of Transportation, "Ocean Carrier Alliances – The Tripartite," George Lauriat, April 20, 2021, https://ajot.com/premium/ajot-ocean-carrier-alliances-the-tripartite.
[16] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[17] *Id*, pp. 7.
[18]Congressional Research Service, "The Container shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission," John Frittelli, June 5, 2017, https://www.crs.gov/Reports/IF10664?source=search&guid=d5129119bd7145dca8f2c1fcdd5aa8ba&index=1.

from competition and allow them to protect their price-setting power.[19] While limits on these agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

There continue to be few impediments to the highest rate hikes in container shipping history, and little to stop container shipping companies from levying exorbitant fees or unreasonably denying shipping opportunities. Since January 2020, spot rates for freight shipping on the U.S.-Asia trade routes have increased by 100%, while container shipping companies have simultaneously increased contract rates by over 1,000%.[22] And companies like yours have been levying exorbitant detention and demurrage fees – fees levied against shippers for missing scheduled container collection times – against businesses and raked in over $2 billion in fee profits between July and September 2021, a 50% increase from the previous three months.[23] Reports indicate that businesses are being charged these "late pickup fees even when [containers] are still stuck on a vessel and can't be accessed because the carriers are starting the clock based on the scheduled delivery date and not on the actual time of discharge from the vessel."[24]

The lack of competition in the container shipping industry has had clear negative impacts on businesses, particularly smaller ones that are less capable of absorbing the higher costs, and consumers. As businesses and consumers feel the pain of higher costs, container shipping companies have had their best year yet. According to the White House

> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average**

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[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.
[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.
[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[23] *Id.*
[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.[25]

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also

[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.
[27] *Id.*
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[29] Sea Intelligence, "Are container carriers price gouging?" Alan Murphy, January 26, 2021, https://sea-intelligence.com/press-room/43-carriers-price-gouging.

believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
    a. How many TEUs of capacity does your company plan to acquire this year?
    b. How much of this will be done through new builds or second-hand ship purchases?
5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ARMED SERVICES
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March 23, 2022

Fabio Santucci
President
Mediterranean Shipping Company (USA)
420, 5th Avenue
(At 37th Street) – 4th Floor
New York, New York 10018-2702, USA
Dear Mr. Santucci:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Mediterranean Shipping Company (MSC) and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

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[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.
[2] Congress.gov, "Text - H.R. 3684 – 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," November 15, 2021, https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

According to a recent Bloomberg report

> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or

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[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

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[29] Sea Intelligence, "Are container carriers price gouging?" Alan Murphy, January 26, 2021, https://sea-intelligence.com/press-room/43-carriers-price-gouging.

believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
    a. How many TEUs of capacity does your company plan to acquire this year?
    b. How much of this will be done through new builds or second-hand ship purchases?
5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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ARMED SERVICES
FINANCE
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March 23, 2022

Nobuo Ishida
President
Ocean Network Express (North America) Inc.
8730 Stony Point Parkway
Richmond, Virginia 23235, USA
Dear Mr. Ishida:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Ocean Network Express and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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[1] Wall Street Journal, "Biden Administration Outlines New Moves to Alleviate Supply-Chain Logjams at Ports," Alex Leary and Paul Berger, November 9, 2021, https://www.wsj.com/articles/biden-administration-outlines-new-moves-to-alleviate-port-logjams-11636477200;New York Times, "How the Supply Chain Crisis Unfolded," Lazaro Gamio and Peter S. Goodman, December 5, 2021, https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html;Washington Post, "Supply Chain Snarls May Be Here to Stay, Too," David Fickling and Anjani Trivedi, January 14, 2022, https://www.washingtonpost.com/business/supply-chain-snarls-may-be-here-to-stay-too/2022/01/13/95737ce0-74b4-11ec-a26d-1c21c16b1c93_story.html.
[2] Congress.gov, "Text - H.R. 3684 – 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," November 15, 2021, https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

According to a recent Bloomberg report

> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a

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[3] Bloomberg, "Shipping Companies Had a $150 Billion Year. Economists Warn They're Also Stoking Inflation," Lauren Etter and Brendan Murray, January 18, 2022, https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021.

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[7] Wall Street Journal, "Shipping and Logistics Costs Are Expected to Keep Rising in 2022," Jennifer Smith, Paul Berger, and Lydia O'Neal, December 19, 2021, https://www.wsj.com/articles/shipping-and-logistics-costs-are-expected-to-keep-rising-in-2022-11639918804.

[8] 46 U.S.C. § 40101 et seq., https://uscode.house.gov/view.xhtml?path=/prelim@title46/subtitle4/partA/chapter401&edition=prelim; The U.S. Shipping Act of 1916 has since been amended in 1961, 1984, 1998, and 2018.

[9] U.S. Department of Transportation, "The Maritime Administration's First 100 Years: 1916-2016," https://www.maritime.dot.gov/history/historical-documents-and-resources/maritime-administration%E2%80%99s-first-100-years-1916-%E2%80%93-2016.

[10] Michigan Law Review, "Shipping Act of 1916: The Effect of Section 15 on the Sherman Anti-Trust Law," Claude A. Thompson, December 1923, pp.108, https://www.jstor.org/stable/1277329?seq=1#metadata_info_tab_contents.

carve-out for maritime carriers, allowing "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement," so long as a "complete memorandum" detailing these activities was filed with the U.S. Shipping Board.[11]

Without the guardrails of strong antitrust protections, there have been essentially no barriers to market consolidation and price increases – and that is exactly what we have witnessed over the past several decades. According to Bloomberg reporting, "Just 10 container lines based in Asia and Europe, led by Maersk, MSC, France's CMA CGM SA, and China's COSCO Shipping Holdings Co., control nearly 85% of the capacity for shipping goods by sea. Twenty-five years ago, the top 20 companies controlled about half of the global capacity."[12]

And this consolidation may become even worse: the largest companies have a track record of buying up smaller competitors and have been adding tonnage capacity by placing orders for newbuilds and second-hand ships.[13] Once these ships arrive to market, and as smaller competitors fail or get bought out, the top container shipping companies will be even more capable of strangling the market.[14]

The nine major carriers have faced few obstacles as they formed three major alliances,[15] allowing them to coordinate pricing and space sharing agreements to keep out competitors.[16] These alliances, 2M, Ocean, and The Alliance, control 80% of the world's shipping capacity,[17] providing them the power to raise prices with little constraint. Through rate discussion agreements (RDA) and vessel sharing agreements (VSA), ocean carriers agree to specific price arrangements and to share space on one another's ships.[18] These arrangements shield carriers

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[11] *Id*, pp.107.
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[14] *Id.*
[15] American Journal of Transportation, "Ocean Carrier Alliances – The Tripartite," George Lauriat, April 20, 2021, https://ajot.com/premium/ajot-ocean-carrier-alliances-the-tripartite.
[16] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.
[17] *Id*, pp. 7.
[18]Congressional Research Service, "The Container shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission," John Frittelli, June 5, 2017, https://www.crs.gov/Reports/IF10664?source=search&guid=d5129119bd7145dca8f2c1fcdd5aa8ba&index=1.

from competition and allow them to protect their price-setting power.[19] While limits on these agreements were introduced by the Federal Maritime Commission Authorization Act of 2017, including the prohibition of the use of both RDAs and VSAs in the same trade route,[20] and by the EU, which prohibited the use of RDAs for trade between Europe and America,[21] skyrocketing prices have made clear that these limits did not extend far enough to introduce more competition in this space.

There continue to be few impediments to the highest rate hikes in container shipping history, and little to stop container shipping companies from levying exorbitant fees or unreasonably denying shipping opportunities. Since January 2020, spot rates for freight shipping on the U.S.-Asia trade routes have increased by 100%, while container shipping companies have simultaneously increased contract rates by over 1,000%.[22] And companies like yours have been levying exorbitant detention and demurrage fees – fees levied against shippers for missing scheduled container collection times – against businesses and raked in over $2 billion in fee profits between July and September 2021, a 50% increase from the previous three months.[23] Reports indicate that businesses are being charged these "late pickup fees even when [containers] are still stuck on a vessel and can't be accessed because the carriers are starting the clock based on the scheduled delivery date and not on the actual time of discharge from the vessel."[24]

The lack of competition in the container shipping industry has had clear negative impacts on businesses, particularly smaller ones that are less capable of absorbing the higher costs, and consumers. As businesses and consumers feel the pain of higher costs, container shipping companies have had their best year yet. According to the White House

> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average**

[19] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.

[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.

[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.

[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

[23] *Id.*

[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.[25]

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also

[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.

[27] *Id.*

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believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
    a. How many TEUs of capacity does your company plan to acquire this year?
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5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator

ELIZABETH WARREN
MASSACHUSETTS

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March 23, 2022

Greg Krueger
Vice President
Yang Ming (North America), Corp.
1085 Raymond Blvd.
Newark, NJ 07102 USA
Dear Mr. Krueger:

I write regarding my concerns that your company is exploiting antitrust exemptions to drive up container-shipping prices during this COVID-19 pandemic. It appears that the opportunistic business practices of Yang Ming and other major ocean carriers have exacerbated shipping cost increases, hurting consumers and small businesses and driving inflation throughout the entire American economy.

The supply chain issues that arose months into the COVID-19 pandemic continue to hurt consumers.[1] Businesses have struggled to keep their shelves stocked, and as a result, families have faced difficulty getting the goods they need. One cause of these difficulties is the logjams occurring at our nation's ports. Importers and exporters have been working diligently to keep up with consumer demand, but have faced setbacks moving goods through the ports. One cause of this problem is the nation's aging infrastructure, and this is why I was proud to support the bipartisan infrastructure bill that was signed into law by President Biden last year and contained $17 billion in funding for port and waterway improvements.[2]

But high shipping costs imposed by container shipping companies like yours are an even bigger part of the inflation problem.

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> The spot rate for a 40-foot container to the U.S. from Asia topped $20,000 last year, including surcharges and premiums, up from less than $2,000 a few years ago, and was recently hovering near $14,000. What's more, tight container capacity and port congestion mean that longer-term rates set in contracts between carriers and shippers are running an estimated 200% higher than a year ago, signaling elevated prices for the foreseeable future.[3]

These price surges cause companies to pass higher costs on to customers[4] and push out smaller businesses, which cannot compete with larger companies for dwindling ship space.[5] This has affected all corners of the economy, inflating prices for the cost of food, durable goods, and other essential needs. According to research conducted by economist Nicholas Sly, for every 15% increase in shipping prices, core inflation increased by 0.10%.[6] This research – in the context of a 137% increase in shipping costs from October 2019 to October 2021 - helps explain the inflation spikes that have hit consumers this year.[7]

The root cause of these shipping cost increases is the anti-competitive nature of the shipping market. The U.S. Shipping Act, which was passed by Congress in 1916[8] in part to protect the country's shipping lines, has provided container shipping companies an exemption from antitrust rules that apply to most industries.[9] The Sherman Anti-Trust Act of 1890 made illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or foreign nations,"[10] but the U.S. Shipping Act created a

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> Estimates suggest that the container shipping industry made a record $190 billion in profits in 2021, a seven-fold increase from the previous year and five times what it made over the entire period from 2010-2020. Profit margins have increased by even larger amounts. **In the third quarter of 2021, the average**

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[19] International Transport Forum, "The Impact of Alliances in Container Shipping," November 2, 2018, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf.

[20] Holland and Knight, "Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority," J. Michael Cavanaugh and Christopher DeLacy, December 5, 2018, https://www.hklaw.com/en/insights/publications/2018/12/congress-amends-the-us-shipping-act-broadening-fmc.

[21] Federal Maritime Commission, "Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law," January 2012, https://www.fmc.gov/wp-content/uploads/2019/04/FMC_EU_Study_508compliant.pdf.

[22] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," Press Release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.

[23] *Id.*

[24] American Shipper, "'Collusion' drumbeat leads to multilateral probe of shipping lines," Eric Kulisch, February 23, 2022, https://www.freightwaves.com/news/collusion-drumbeat-leads-to-multilateral-probe-of-shipping-lines.

operating margin of the major carriers was about 56%, compared to an average operating margin of 3.7% two years earlier.[25]

Numerous large and small businesses have filed complaints with the FMC regarding unfair contract negotiations with carrier companies. One representative example was filed by MCS Industries, a Pennsylvania-based home furnishing company, against COSCO Shipping, MSC Mediterranean, and their competitors for failing to meet space requirements made in their contracts. In their complaint, MCS Industries described that "[i]n a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including Respondents [COSCO and MSC], refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the Respondents overall have continued to operate at or near pre-pandemic capacity."[26] The companies "then proceeded to engage in a common practice of refusing to perform even under those limited service contracts, instead forcing MCS to buy space on the inflated spot market."[27] By denying contract agreements and rates, it appears shipping companies are pushing businesses to the pricier spot market in an attempt to boost profits.

I am deeply concerned that container shipping companies have been taking advantage of their exemption from antitrust rules to rake in record profits while imposing grievous financial harm on consumers and the economy. Shipping companies have experienced their best year on record, raking in a combined $190 billion in profits.[28] These massive profits – and the increased shipping costs – were the result of a conscious choice in the wake of a larger market failure: according to Sea Intelligence CEO Alan Murphy, "The carriers had a clear choice: Capitalize on a sub-group of shippers with high willingness to pay, and hence drastically improve short-term profitability, or maintain somewhat more stable prices, benefitting low-value shippers as well, but in the process forego the largest price boom in recent history."[29]

In his State of the Union address, President Biden announced a new administration-wide effort to crack down on profiteering by shipping companies, including the formation of a new Federal Maritime Commission-Department of Justice task force to investigate ocean shipping lines for potential violations to the Shipping Act and other U.S. laws. I strongly support these efforts, and also

[25] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[26] American Shipper, "US company sues 'collusive' ocean carriers, alleging price manipulation," John Gallagher, August 1, 2021, https://www.freightwaves.com/news/us-company-sues-collusive-ocean-carriers-alleging-price-manipulation.
[27] *Id.*
[28] White House, "Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean shipping," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/.
[29] Sea Intelligence, "Are container carriers price gouging?" Alan Murphy, January 26, 2021, https://sea-intelligence.com/press-room/43-carriers-price-gouging.

believe that Congress should act to address high shipping costs if the administration lacks the full authority to do so.

Given the skyrocketing shipping prices, your record profits, and reported plans of container carriers to further consolidate the market, I request your answers to the following questions by April 6, 2022:

1. Please provide your average contract shipping rate for each North American shipping route, as of the first of the month, for each month over the last three years.
2. What was your average spot market shipping rate, as of the first of the month for each month over the last three years?
3. In 2021, how many bookings with shippers did your company cancel or change? What was the total number of cancellations for each of the last three years?
4. What was your company's total TEUs of capacity as of January 1, for each of the last five years.
    a. How many TEUs of capacity does your company plan to acquire this year?
    b. How much of this will be done through new builds or second-hand ship purchases?
5. How does your company's revenues, profits, and profit margins for 2021 compare to the preceding 5 years? Do you project similar revenues, profits, and profit margins for 2022?
6. On which shipping routes does your company currently have RDAs? What is the nature of these RDAs, and what specific pricing arrangements are in place within these RDAs?
7. On which shipping routes does your company currently have VSAs? What is the nature of these VSAs, and what specific pricing arrangements are in place within these VSAs?

Sincerely,

Elizabeth Warren
United States Senator