



MSC faces \$63m penalty in US regulatory dispute

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Port NOLA

Mediterranean Shipping Co (MSC) is looking at a potential \$63m fine in the US for alleged violations of the Shipping Act, encompassing thousands of contested charges directed at various clients.

The US Federal Maritime Commission's (FMC) Bureau of Enforcement, Investigations, and Compliance has accused the world's largest liner of charging excessive late fees

on non-operating reefers and billing companies that were not originally part of the contractual agreement.

In its case brought to the regulator's administrative law judge, Alex Chintella, the Office of Enforcement (OE) alleged MSC knowingly and willfully employed unreasonable and unfair practices that did not promote or "ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States."

More specifically, MSC reportedly developed and employed unlawful practices targeting US logistic chain service providers such as non-vessel operating common carriers, ocean freight forwarders, customs brokers, and truckers.

"For years, MSC used its market power and wielded heavy-handed tactics to define standard bill of lading terms such as 'merchant' to justify billing nonconsenting and non-contracting third parties for detention and demurrage. In this case, MSC invoiced third parties listed as 'notify parties' found on its standard bill of lading, regardless of their contractual or beneficial cargo status," OE said in a filing.

"Instead of working to bill the proper party, MSC had a policy of invoicing the 'notify party', which effectively turned many third parties into its unwilling and nonconsenting billing departments."

Furthermore, the case argues MSC failed to meet other basic Shipping Act requirements, such as clearly publishing non-operating reefer (NOR) detention and demurrage rates in its US tariff for several years, and consistently failed to correct the mistake, calling the resulting overcharges a "billing error."

"Only when confronted by its customers regarding these overcharges did MSC issue refunds. MSC never proactively undertook any action to return millions of dollars in overcharges."

The case follows an investigation [announced last August](#). The probe found 18 violations related to the use of its "merchant clause" to assess and collect charges from third parties and more than 3,000 violations related to non-operating reefers. As a result, the OE is seeking civil penalties in an amount no less than \$63,256,853.

"The fact that MSC failed to conduct an internal audit and proactively reconcile its billing processes, resulting in at least 2,629 reefer overcharges and 1,704 undisputed reefer charges, is a clear display of MSC's reckless disregard and plain indifference to the requirements of the Shipping Act. Thus, these 2,629 reefer overcharges were either a deliberate act in flagrant contravention of the Shipping Act or a grossly negligent accounting error that MSC should have been aware of and more proactive in resolving," FMC attorneys said.