Milestones in maritime transport: EU ends exemptions (1)

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On 25 September 2006, the Competitiveness Council unanimously adopted the Commission’s proposal to repeal the block exemption for liner conferences on routes to and from the EU (2). This is a historic date since the EU is the first jurisdiction worldwide to lift this type of anti-trust immunity for conferences.

The block exemption, established by Council Regulation 4056/86 (3), allowed carriers to fix prices and regulate capacity jointly in liner conferences. The abolition of conferences in trades to and from the EU will enter into effect in October 2008, after a two-year transitional period. In order to smooth the transition to a more competitive regime, the Commission will issue Guidelines on the application of the competition rules to maritime transport services before the end of the transitional period.

The Council has also extended the scope of the procedural rules needed to implement Articles 81 and 82 of the EC Treaty (4) to include cabotage (5) and tramp shipping. The necessary amendment of Regulation 1/2003 entered into force on 18 October 2006. The procedural rules now apply to all sectors of the economy without exception.

Liner conferences

The Council’s decision to put an end to the possibility for shipping lines to organise themselves in cartel-like liner conferences marks a milestone in the application of competition law to the maritime transport sector. It represents a fundamental change in the application of competition law to this transport sector. As such, it is welcome that the change was brought about by broad consensus among the European institutions. The Council decided only 9 months after the Commission presented its proposal, and by unanimity, whereas qualified majority sufficed. The European Parliament adopted a favourable report in July 2006 with an overwhelming majority and also the European Economic and Social Committee issued a favourable opinion.

Liner shipping involves the provision of regular, scheduled transport of cargo, usually by container. Given the regularity of the service, in order to serve a particular route (e.g. from Europe to China) it is necessary to deploy several ships of a similar size. Regular scheduling of services however does not ensure that vessels are sailing at full capacity while on the other hand it entails high investments costs which triggered since the 1870s the organisation of shipping lines in the form of cartels called liner conferences.

The importance of liner conferences generally declined over the last decades. However liner carriers continue to join conferences and these retain very large market shares (6). The longevity of conferences is also impressive. Conferences like the Indian Pakistan Bangladesh Conference successor of the Calcutta conference founded in 1875 survived despite considerable technical progress in maritime transport (e.g. steamships or containerisation) and major changes in management as well as industrial organisation, e.g. hub and spoke systems or the emergence of consortia and alliances.

To date there is no other jurisdiction that has taken the step to outlaw price fixing and capacity regulation by liner shipping carriers. This however does not imply that there is an international

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(1) The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the authors.


(5) Cabotage are maritime transport services that exclusively take place between ports within one and the same Member State.

(6) See Dynaliner 4/2007, p.1. “In mid-September, to the surprise of some, MSC joined the Far Eastern Freight Conference (FEFC). Seeing this carrier’s substantial capacity growth, it signalled a significant increase of the conference share by (nominal) shipboard TEU space in this trade. As of mid-January, the North Europe capacity share of conference members stood at 72% and even 78% in the Mediterranean, translating into a total of 73% for both trade areas.”
conflict of law. This would only be the case if one jurisdiction were to require carriers to participate in conferences, whereas another was to prohibit it. This is not the case, on the contrary a number of the EU’s major international trading partners (e.g. USA, China, Japan or Australia) also embarked on a review of the liner conference system in their respective jurisdictions. The Commission has established close and frequent contacts with these partners to promote further competitive reform of the liner shipping sector.

Liner conferences like many other cartel organisations are also sources of market information. In this context the liner industry organisation has identified a need for a successor regime. The European Liner Affairs Association (“ELAA”) on behalf of 21 global carriers submitted that, if Regulation No 4056/86 was repealed, continued stability of supply of liner services required the setting up of an exchange of information system to replace the conference system.

The Commission accepted this need in principle since it is common practice in many industries that statistics and general market information are gathered, exchanged and published. If on the one hand these exchanges are a good means of increasing market transparency and knowledge, hence of enabling firms to fine tune supply to demand, reduce costs and avoid risky strategy choices. On the other hand in some industries safeguards are needed to make sure they are not used for collusion purposes. The Commission therefore stated that any new system for exchange of information system in liner shipping, must respect competition rules (7) namely the Court’s case law and the Commission practice on exchanges of information between competitors. The forthcoming guidelines will provide further guidance to the industry in this respect.

In September 2006, as an interim step in the preparation of the Guidelines, the Commission published a staff “issues paper” (8). It sets out a preliminary assessment of the issues relating to information exchanges raised by the industry’s proposal for information exchange in the liner market.

The Guidelines are prepared in consultation with stakeholders. The Commission has been discussing with the liner industry how best to issue appropriate guidance on how competition law should apply to the sector, once the abolition of Regulation 4056/86 enters into force. This dialogue has resulted in a number of submissions from the shipping industry, which are all available on the Commission website (9).

**Tramp shipping**

Tramp shipping services concern the non-regular, non-advertised maritime transport of bulk cargo that is not containerised, and include a range of economically important services such as the transport of oil, ores and agricultural products. The Council extended the scope of Regulation 1/2003 which does not involve a change to the applicable law as EU competition rules already apply to cabotage and tramp shipping. It rather improves the possibilities for the Commission to enforce the competition rules in these sectors, in addition to national competition authorities and courts.

The impact on international tramp shipping should not be substantial because EC Treaty competition rules (Articles 81 and 82) always applied to cabotage and tramp shipping. It is rather a question of including these sectors within the generally applicable procedural framework laid down by Council Regulation 1/2003 and so better enable the Commission, in addition to national authorities and courts, to apply these rules to cabotage and tramp shipping.

Given that the Commission is yet to enforce competition rules in tramp shipping there is also a need for the forthcoming Guidelines on the application of competition rules to cover issues specific to tramp shipping services, such as market definition or pool agreements, a common form of co-operation between competitors in the sector. Preparatory work is already underway and the Commission engaged in discussions with tramp operators. It also has contracted an external study on the sector which has been published (10).

**The way forward**

The Commission’s Green Paper on maritime policy stresses the vital importance of a competitive shipping industry for Europe (11). The abolition of

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(7) MEMO/05/480: http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/480&format=HTML &aged=0&language=EN&guiLanguage=fr
(9) http://ec.europa.eu/competition/antitrust/legislation/maritime/
(10) ibid.
(11) "Given Europe’s export-based economy, the increase in trade volumes and its geographical circumstances, the EU has a vital interest in the competitiveness of shipping […]. To assure this competitiveness it is necessary to provide an international level playing field for those industries. This is even more important as maritime activities mostly compete in a global market.” Green Paper: Towards a future Maritime Policy for the Union: A European vision for the oceans and seas”; p. 8; available at: http://ec.europa. eu/maritimeaffairs/pdf/com_2006_0275_en_part2.pdf
liner shipping conferences will certainly render liner markets more competitive. On the other hand shipping operators may maintain co-operation within liner consortia or tramp shipping pools. To this end the forthcoming guidelines will provide maritime operators with the necessary tools to self-assess these agreements and ultimately foster competitiveness in this sector.