Liner Shipping: the EU competition perspective

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Issues

A. Liner shipping and EU competition law
B. The Commission’s Review of Regulation 4056/86
C. Key parameters under Article 81 EC
D. Scenarios for the future
E. Conclusions and next steps
A. Liner shipping and EU competition law

- **Starting point:** liner shipping is subject to the EU competition rules like any other industry

- **Purpose of EU competition policy**

- **Regulation 4056/86**
  - **Historical context**
  
  - **Content:**
    - substantive provisions: a specific regulation for liner shipping conferences
    - procedural provisions (enforcement tools) – to be replaced by Regulation 1/2003 as from 1 May 2004
B. Review of Regulation 4056/86 (1)

◆ Why a review?

◆ Scope of the review: rules of the game for the maritime sector

◆ Approach:
  1) fact finding
  2) Commission Paper(s)
  3) Legislative proposals(s)
Where are we now?

- First phase (fact finding) launched by consultation paper of March 2003
- 36 written submissions from the industry, governments and third parties
- Public hearing on 4 December 2003
- All relevant documents available at: http://europa.eu.int/comm/competition/antitrust/others/maritime/
- Analysis of this input being finalised now
Liner shipping Regulation (1)

- The existing Regulation allows liner shipping conferences to fix prices and regulate supply under certain conditions and obligations.

- Assumption: liner conferences bring stability assuring shippers of reliable services (recital 8 of Regulation 4056/86).
Liner shipping Regulation (2)

- Common features of Block Exemption Regulations (BERs): limited in time, based on concrete experience in handling individual cases

- The BER for liner shipping conferences is exceptional

  … notably the only one to exempt price fixing
Core question: need for price fixing and supply regulation by liner conferences in the present market circumstances?

Parties have been invited to substantiate their positions with concrete economic data.
C. Key parameters under Article 81 EC

- Article 81(1) EC prohibits agreements between companies that restrict competition

- Price fixing and supply regulation are normally regarded as “hard core” restrictions

- Derogations from Article 81(1) EC must be interpreted narrowly

- An exemption from the prohibition can only be granted if the four cumulative conditions of Article 81(3) EC are fulfilled
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Exemption under Article 81(3) EC

Four cumulative conditions:

1. Efficiency gains
2. Fair share to consumers
3. Indispensability
4. No elimination of competition
First condition: efficiency gains

Usually means: cost savings or improved services

- Liner conferences do not involve operational co-operation
- Price stability *as such* not sufficient. Court has said: “Stability cannot be more important than competition”
- Reliable liner shipping services important (causality ?)
Second condition: fair share to consumers

If there are efficiencies, these must be (substantially …) passed on to the consumers

- Sliding scale: the greater the restriction of competition, the greater must be the efficiencies pass-on to consumers

- Two types of consumers:
  - Transport users (shippers and freight forwarders)
  - Ultimate consumers
Third condition: indispensability

- Are there less restrictive means to achieve the efficiency gains (e.g. reliable liner shipping services)?

- Proponents of change have referred to various alternatives to traditional conferences:
  - Independents (non-conferences)
  - Operational co-operation arrangements such as consortia and alliances
  - Long term contracting, such as individual service contracts
Fourth condition: effective competition

Can’t exempt something that eliminates effective competition

♦ Assumption in Regulation 4056/86: competitive constraints from

  • Tramp (non-scheduled shipping services)
  • Other modes of transport (e.g. air transport)
  • Non-conferences (independents)

♦ Furthermore, possible competitive constraints from long term contracting by individual members of the conference

♦ The importance of these constraints can only be assessed on trade-by-trade basis
In essence three scenarios for the future have come out:

1. **Maintaining** the current Regulation

2. **Repealing** the Regulation

3. **Amending** the Regulation
1) Maintaining current Regulation

- **Supporters: in essence the carriers**

- **Main arguments:**
  - Liner shipping industry is special
  - Market circumstances do not make change necessary
  - There are no alternatives
2) Repealing the Regulation

♦ Supporters: in essence the shippers

♦ Main arguments:
  - Regulation no longer complies with EU competition law
  - Competition can only be better
    - Shippers are willing to take “the risk of unfettered competition”
3) Amending the Regulation

Supporters: a few but vague

- No concrete proposals so far
- Discussion agreements?
E. Conclusions and next steps

- Core question is whether an exemption for price fixing and supply regulation by liner conferences can (still) be said to be valid in present market circumstances

- Any justification has to be assessed within the framework of the four cumulative conditions of Article 81(3) EC

- The consultation gives all interested parties the opportunity to substantiate their positions

- Time to move to the next phase:
  - Discussion with the Member States in May
  - Commission Paper in principle foreseen for Autumn