

Brussels, 14<sup>th</sup> December 2005

## **Proposal to repeal block exemption for liner shipping conferences – Frequently Asked Questions**

(see also [IP/05/1586](#))

The process of reviewing the block exemption from EC Treaty competition rules for liner shipping conferences, as laid down in Council Regulation 4056/86, was launched in March 2003 with the publication of a Consultation Paper (see [IP/03/445](#)). A White Paper was published in October 2004 (see [IP/04/1213](#)). All relevant documents are available at:

<http://europa.eu.int/comm/competition/antitrust/legislation/maritime/>

### **What happens next?**

The European Commission's proposal for a new Council Regulation repealing Council Regulation 4056/86, the block exemption of liner shipping conferences from the EC Treaty competition rules' ban on restrictive business practices, will be submitted to the EU Council of Ministers for adoption by qualified majority and to the European Parliament for consultation.

After adoption of the proposal, the Commission will publish guidelines on the application of the competition rules to the sector. The envisaged guidelines would explain how the competition rules apply to information exchange in the liner shipping sector and explain how these rules apply to the liner sector in general, including to all forms of co-operation between liner shipping lines, for example in consortia and alliances. They would also deal with tramp shipping services.

As an interim step in the preparation of the guidelines, DG Competition will publish an "issues paper" in September 2006 taking stock of progress made in the discussion with the liner shipping industry in relation to each of the elements of the proposal for an information exchange system made by the European Liner Affairs Association (ELAA - representing roughly 80% of the world-wide liner shipping industry).

### **What is a block exemption Regulation?**

Article 81(1) of the EC Treaty prohibits agreements which affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market. Under Article 81(3) a restrictive agreement may be exempted from the prohibition of Article 81(1) if the positive effects brought about by the agreement outweigh its negative effects and a fair share of these benefits are passed on to consumers.

Provided that the Council has empowered it to do so, the Commission can “block exempt” categories of agreements by means of adopting Regulations and thus provide the agreements with a safe harbour clarifying that they are compatible with the competition rules on condition that they respect the rules laid down in the Regulations. In order to grant a block exemption, the Commission needs to be absolutely certain that the agreements covered are compatible with the competition rules. Moreover, Commission block exemption Regulations are always limited in time so that the Commission can check regularly on market developments.

It is exceptional for a block exemption Regulation to be incorporated in a Council Regulation as is the case of the liner conference block exemption. It is also exceptional for such an exemption to be open-ended in terms of duration.

### **What are liner conferences?**

Shipping companies have organised themselves since the nineteenth century in the form of liner conferences which fix prices and regulate capacity. Liner conferences are most prevalent on routes between Europe, on the one hand, and North America and the Far East, on the other hand. They are associations of ship-owners operating on the same route served by a secretariat. The block exemption contained in Council Regulation 4056/86 allows them to set common freight rates, to take joint decisions on the limitation of supply and to coordinate timetables. The exemption was granted on the assumption that it was necessary to ensure the provision of reliable services.

It should be noted that liner conferences do not engage in operational co-operation and do not provide joint liner shipping services. It is up to the individual lines, consortia or alliances to offer such services.

### **Liner conferences are tolerated in other jurisdictions. What if the EU changes its regime and others do not?**

The Commission is particularly aware of the international dimension of this dossier and of the fact that up to now conferences have been tolerated worldwide. That is why it has taken the initiative to establish close and frequent contacts with our major international partners (US, Canada, Australia, Japan). The outcome of those contacts is positive. We intend to keep up these bilateral contacts throughout discussions in Council.

If the EU were to repeal the present EU liner conference block exemption regulation this would mean that carriers (EU and non-EU) that are presently part of conferences operating on trades to and from the EU would have to stop their conference activities on those trades (namely price fixing and capacity regulation). Nothing would stop them from continuing being part of price fixing conferences on non-EU trade routes. To give a concrete example, an EU carrier like Maersk, member of the Trans-Atlantic conference Agreement (TACA), could no longer be involved in price fixing and capacity regulation on the North Atlantic-EU and EU-North Atlantic trades, but could still do so on the US-Pacific trades. The same applies to non-EU carriers.

This is a logical consequence of the fact that there is not an identical competition regime in force world-wide. In fact, already today there are differences in what liner shipping companies are allowed to do in different jurisdictions. For example, today US law allows carriers to fix prices jointly on inland transport, while EU law does not.

A conflict of law does not arise. This would only be the case if one jurisdiction were to require carriers to participate in conferences, whereas another were to prohibit it. This is not the case today.

## **The liner shipping industry is asking for a new regime to replace the conference block exemption. What will the Commission do about that?**

Industry is divided on the need for a substantive alternative to Regulation 4056/86. The European Liner Affairs Association (ELAA), a carrier association representing roughly 80% of world capacity has proposed that the conference block exemption should be replaced with an exchange of information system. Details of the proposal and of the Commission's assessment of it under the EU competition rules are available at:

<http://europa.eu.int/comm/competition/antitrust/legislation/maritime/>

The European Shippers Association (ESC) representing over 100,000 exporting companies, and generating around 90% of the EU's international maritime traffic, considers that a replacement regime is not necessary because carriers are already allowed to co-operate extensively under the consortia block exemption Regulation (prolonged and amended in April 2005 – see [IP/05/477](#)). This co-operation results in the provision of reliable liner services by groups of shipping lines in consortia and alliances. The European business organisation UNICE and consumer associations back this position.

To be acceptable, any new system for information exchange must respect the competition rules. Some elements of the current ELAA proposal appear to be in line with these requirements. However, others are problematic notably because they do not differ in effect from what conferences do today. Accepting the ELAA proposal as it is today would remove all the pro-competitive effects of the abolition of the conference system.

The Commission remains committed to continuing the dialogue with the ELAA with a view to assisting it in developing an alternative system compliant with EU competition rules. It has acknowledged that exchanges of information leading to greater market transparency may contribute to the improvement in the way liner services are provided, in the interest of carriers, transport users and the public in general.

Discussions will be focusing on the details of the various elements of the ELAA proposal. Thereafter, the Commission intends to issue guidelines on the application of the competition rules apply to liner and tramp shipping. The guidelines would treat issues such as an independent data warehouse, the creation of a trade association and of trade fora, the publication of a price index and common formulae for charges and surcharges. The guidelines would explain how the competition rules apply to the liner sector in general, including exchange and publication of capacity utilisation information. As an interim step, the Commission will publish an issues paper on liner shipping in September 2006.

## **What is the impact of the proposal on small liner shipping carriers and on small short sea trades?**

The European Community Shipowners' Associations (ECSA) and the European Parliament have drawn the Commission's attention to the needs of specific services, particularly short sea services and services to smaller trades. Since such trades generally do not require a large number of vessels to be serviced, relatively small carriers might be able to operate side by side with large carriers on these trades. ECSA and the European Parliament, therefore, questioned whether these relatively small carriers would be more affected by a repeal than large ones.

The Commission is not aware of any liner shipping carrier that would fall with the scope of the Commission Recommendation concerning the definition of small and medium sized enterprises.<sup>1</sup>

After significant research, the Commission did not find that relatively small EU carriers would be adversely affected by a repeal of the conference block exemption. To the contrary, liberalisation creates a market environment that allows for quicker growth than a regulated environment, in particular for small companies. It creates more new services and new niche markets which especially small companies are able to quickly enter. These market niches usually allow for rapid growth. Hence, small innovative companies are able to grow much quicker in a competitive environment – see for example the rapid growth of Ryanair that started as a small company with a new innovative business model in the recently deregulated aviation market. The success of small carriers depends on their ability to adapt to a competitive environment and not on their actual size.

### **What are the economic effects of the repeal of the block exemption?**

The Commission has concluded that a repeal of the block exemption will bring about substantial benefits to EU industry and consumers, in particular in the areas of transport prices, reliability of liner shipping services, competitiveness of the EU liner shipping industry and small EU liner carriers. The repeal of the block exemption would therefore also positively contribute to the Lisbon objectives.

The Commission's main findings of the potential economic impact of repealing the conference block exemption are:

- transport prices for liner shipping services will decline
- service reliability on deep sea and short sea trades is expected to improve
- service quality will either be unaffected or will improve
- there will be either a positive impact or no impact on the competitiveness of EU liner shipping firms
- small liner shipping carriers will not experience particular problems and
- no negative impact or even a positive impact on EU ports, employment, trade and /or developing countries.

The Commission's conclusions take account of three independent studies undertaken to establish the impact of the repeal of the block exemption. The latest study (see [IP/05/1408](#)) is the combined work of Global Insight, an international consultancy with significant experience in liner shipping, the Berlin University of Technology and the Institute of Shipping Economics and Logistics in Bremen.

### **Does the proposal have an impact on the maritime consortia block exemption Regulation?**

The Commission's proposal does not concern the maritime consortia Block Exemption Regulation 823/2000. This Regulation allows shipping lines to engage in operational co-operation (vessel-sharing, co-ordination of routes and schedules) but not to fix prices. This Regulation has recently been reviewed and extended until 2010 after it was found to be working well by both shipping lines and transport users (IP/05/477). This exemption is of particular significance in terms of volume of trade. For example, the majority of cargo transported between the EU and US is transported by shipping lines in consortia and alliances using individual service contracts instead of conference tariff prices.

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<sup>1</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20 May 2003.

### **Will the Commission be issuing guidance to the tramp sector?**

Tramp services are the non-regular, maritime transport of bulk cargo that is not containerised, and include a range of economically important services such as the transport of oil, agricultural and chemical products. In the consultation process various submissions emphasised the need to provide guidance to the tramp sector on the application of the EC competition rules. For that purpose the Commission is engaged in discussions with tramp operators so as better to understand the issues at stake. It is also in the process of tendering for a study on the sector in early 2006.

Although any guidance can be formally issued only after the Commission has been empowered by Regulation 1/2003, the Commission is currently exploring with industry whether it is necessary and appropriate to provide informal guidance before the changes to Regulation 1/2003 are made. Ultimately, the Commission intends to issue guidelines on the application of the competition rules to the maritime sector, including tramp services.

### **What is the impact of the proposal on international tramp vessel services?**

The competition rules of the EC Treaty already apply to these sectors. The impact of the proposal should therefore not be substantive. It is rather a question of including these sectors within the generally applicable procedural framework laid down by Council Regulation 1/2003.

Doing so will have advantages for industry in terms of clarity. At present, both industry and competition authorities, have to devote considerable resources to assessing whether a service fulfils all of the criteria set out in Regulation 4056/86<sup>2</sup> before determining what action could be taken and by which authority.

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<sup>2</sup> The transport of goods in bulk or in break-bulk in a vessel chartered (wholly or partly) to one or more shippers on the basis of a voyage or a time charter on any other form of contract for non-regularly scheduled or non-advertised sailings where freight rates are freely negotiated case by case in accordance with the conditions of supply and demand