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**The future regulatory framework for liner shipping**

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Mr Chairman,  
Ladies and gentlemen,

Thank you for the invitation to speak in this conference. I'm very grateful for this timely opportunity to talk about liner shipping.

### **Context**

The main policy driver for all of the Commission's work now is the Lisbon agenda for growth and competitiveness. Maritime transport services are crucial to the development of the EU economy.

Other speakers have already spoken about how the market is evolving. As we know, the regulatory regime put in place in the 1980's is out of synch with market requirements today. So let me tell you how the Commission sees the regulatory side of liner shipping evolving, going forward.

In December 2005 the European Commission adopted a proposal to repeal Regulation 4056/86 that contains the liner conference block exemption and also to amend the antitrust general procedural Regulation. The objective of the procedural change is to bring tramp vessel services and cabotage within the general competition rules.

The proposal is now before the European Parliament for consultation and the EU Council of Ministers for adoption by qualified majority. Discussions in these two institutions are on-going.

The proposal was the result of a three year long review process.

Many of you here today contributed to the review by responding to the consultations and questionnaires the Commission launched. I want to thank you very much for your input.

Early on in our process we saw that on average 18% of imports and 21% of EU25 exports are affected by carriers' ability to jointly fix prices in the liner conference block exemption.

If we consider that liner capacity has tripled in the last 10 years to cope with increased trade flows, and that the trend is not reversible, these figures show how important it is to be sure that the liner sector is working as well as it might. So this sector is a key sector for the EU's Lisbon agenda, and will play an important part in delivering better growth and competitiveness for Europe.

### **Main findings of the review**

Under competition law, as we all know by now, price fixing and capacity regulation are considered hard core restrictions which are usually not permitted. This is because they produce a negative effect – meaning that they lead to higher prices without producing countervailing value to consumers.

Looking at today's market conditions, the Commission found that the liner conference block exemption does not fulfil the four cumulative conditions of Article 81 (3) which are necessary for it to continue.

The first condition requires that concrete benefits resulting from price fixing and capacity regulation are identified. The review process showed that there is no direct causal link between price fixing by conferences, and reliable liner services. Conferences are not able to enforce the conference tariff, nor do they manage the capacity that is available in the market. However, the conference tariff still acts as a

benchmark, and this impacts on the negotiations of individual contracts. There is not really free price negotiation if there's a fixed starting point.

What specially surprised the Commission was to find the extent to which carriers are not competing for the totality of the price of freight. Charges and ancillary charges account for on average, 30% of the price of transport being fixed jointly. This percentage can be much higher on certain trades. There is no price competition between conference members, and also non-conference members, for this part of the price. It is questionable whether this practice is lawful even under the very generous liner conference block exemption today.

And as to the passing on of economic benefits to consumers - the second condition - transport users have opposed the conference system which they do not consider to deliver adequate services.

The third condition is indispensability, so whether price fixing and capacity regulation is indispensable for the provision of reliable services. We note that today reliable scheduled liner services are provided in several ways.

The fourth condition requires liner conferences not to eliminate competition on a substantial part of the market. Given the extent of the relationships between the carriers in conferences, consortia, alliances and vessel sharing agreements, determining the extent to which a conference is subject to outside competition is a complex analysis that must be carried out on a case by case basis. We note however that whether in a conference or not, all carriers operating on the same trade tend to apply the same charges and surcharges.

### **Impact of the repeal**

The Commission has assessed the impact of the repeal of the conference block exemption in particular in relation to the Lisbon objectives.

Summarising its main results – you can see a lot more detail on the Commission's website – the repeal of the conference block exemption is likely to result in lower transport costs. It is likely that ocean transport prices as such will only moderately drop, but the reductions in charges and surcharges are expected to be considerable. This is because carriers will have to establish charges and surcharges on an individual basis based on their own cost structure.

The effects on the EU liner shipping industry itself are also expected to be positive. Experience from other recently liberalised transport sectors shows that service quality and innovation are likely to be improved. If we look at the previous major pro-competitive event in liner shipping – the introduction of individual service contracts in the 90s we see that the industry, in particular EU carriers, adapted well to the change and thrived.

The success of small carriers in a non-conference world will depend – much as it does now - on their ability to adapt to a competitive environment.

The repeal is also likely to have a positive impact on developing countries since they typically export low-value commodities with a relatively high transport cost share.

We found that services will continue to be reliable. This applies to all trades - thin and thick, North-South and East-West, deep sea and short sea.

### **Stakeholders' requests**

Industry is still divided on the need for a substantive alternative to Regulation 4056/86.

Carriers, as Chris Bourne will tell you shortly, are asking to set up a detailed information exchange system to enable them improve capacity planning both for the short and long term. This is the ELAA proposal.

Transport users do not consider this to be necessary. Shippers, in particular represented by the ESC, consider that the consortia block exemption already allows for the co-operation necessary for the provision of reliable services by carriers. We understand shippers to want more customer focused relationships.

Short sea operators are also reflecting about whether or not they may need to enter into an information exchange system. The Commission is waiting for input from them and needs it as soon as possible.

Against this background, our challenge as an antitrust authority is to ensure that lines' future behaviour in the market is either not restrictive of competition, or if it is, that it is indispensable for the provision of reliable services and inherently beneficial to shippers.

The Commission is committed to avoiding a situation in which vital market information resulting from the conference system is lost to the industry.

### **What is allowed now?**

Let me summarise what carriers are already allowed to do under EU law, conferences apart.

The consortia block exemption regulation allows for extensive co-operation arrangements between liner shipping lines to provide regular joint services that result in benefits for shippers. The extent of the possible co-operation ranges from the pooling of vessels to the joint use of port terminals and the setting up of cargo or revenue pools. Temporary capacity adjustments are also allowed. The consortia regulation has been reviewed every 5 years since 1995 and found to be working well to the satisfaction of both carriers and shippers.

As for information exchanges, these require a case by case analysis. In general they are not restrictive of competition. Today's networked economy shows a greater need and indeed a greater ease for information to be exchanged. A number of safeguards however are necessary. The Commission focuses its analysis on (i) the characteristics of the information exchange itself and (ii) the structural characteristics of the market on which the exchange takes place.

In addition, carriers, just like any other industry, are allowed to set up trade associations. The collection, examination and dissemination of non-commercially sensitive data are not the only roles of trade associations. Usually trade associations are also usefully involved in market promotion and they lobby authorities on behalf of their members. All these activities are lawful.

### **The ELAA proposal**

We are very grateful to the ELAA for their engagement with the Commission to identify what it is the industry needs in order to function effectively in the absence of conferences. Their response as you know is to propose an information exchange system. Potentially, the new system will cover the whole liner shipping market and thus be broader in scope than the exchange of information within the present conference system.

Considering the potential market coverage, we have to ensure that the information exchange system does not have a negative impact on competition, that would come about for example from facilitating collusive arrangements between one or more members of the exchange.

So far, we have identified a number of features in the ELAA proposal that we consider are not harmful for competition, provided some specific safeguards are introduced. I am thinking in particular of the exchanges of historic volume data and historic capacity utilisation data.

Exchange of price data is always looked on with suspicion by competition authorities. We are however aware that price data is available in other sectors. The balance to be struck is that between the benefits of market transparency and the risks of collusion. Much depends of course on how old the data is and the frequency of publication.

Our discussions with the ELAA are ongoing.

### **Safeguards against collusion**

We have to be sure that any new form of collaboration in liner shipping creates a competitive environment.



The safeguards against collusion that we are discussing relate to the nature of the data and how and when it is made public. Exchanges of historical data do not restrict competition. Historic data is not likely to reveal actual or future commercial strategies of individual carriers. Conversely, the more recent the data is, the more problematic its exchange becomes.

An adequate level of aggregation of data is also important in particular to ensure that it is not possible to disaggregate the data and identify individual ports or shippers or carriers or indeed groups of carriers (i.e. consortia). The particularities of thin trades may need special attention because the low volumes exchanged make it easier to identify individual operators. Price data also needs particular safeguards so as to ensure that it does not reveal the confidential service contract information.

Making the data publicly available to all – shippers included - at the same point in time would promote a level playing field, in particular if this is done on a non-discriminatory basis. We also have to assess the best frequency of release for the various data items.

Needless to say – but I say it anyway - no exchange of commercially sensitive data can take place or be discussed amongst market participants. Carriers must determine independently the policy which they intend to adopt on the market.

There are some elements of the present ELAA proposal as we understand it today that are problematic, notably the proposal for common formulae for charges and surcharges. Surcharges and ancillary charges are on average 30% of the price - on some trade directions, this figure can be as high as 70%. The common fixing of

these charges is therefore collective price fixing. Allowing carriers to fix them jointly would remove most of the benefit in terms of lower prices that would follow from the changes brought about by the repeal of the conference system.

We would also be concerned by detailed capacity forecasts or discussions on future market conduct. We see this as highly likely to facilitate collusion and do not see how these negative effects can be outweighed any by potential efficiency gains.

We look forward to discussing the ELAA proposal in its entirety and in its full detail. When the overall picture is clear we will be able to make a complete assessment.

### **Guidelines**

In December 2005, the Commission said that if the liner conference block exemption was repealed it was ready to issue guidelines on the application of competition rules to the maritime transport sector.

The guidelines are a direct response to industry's concerns and should help smooth the transition for liner shipping carriers to a more competitive environment. The guidelines will explain how the competition rules apply to exchanges of information in the industry.

The guidelines should be brought forward by the end of 2007, well before the likely entry into force of the repeal of Regulation 4056/86. DG Competition will publish an issues paper on liner shipping by September 2006 which will reflect our assessment of the information exchange proposed.

The guidelines will also reflect how the rules apply to tramp vessel services. As you know the Commission has no experience in this

sector and is working closely with industry and the Member States to establish whether there are any issues of particular relevance that need specific attention.

In order to improve our knowledge of the market we have also commissioned an external study analysing the legal and economic issues of the tramp vessel services sector. The study should be ready and made available at the end of 2006.

Preparatory work towards the finalisation of the draft guidelines will be carried out in the European Competition Network (ECN) working party for maritime transport. This group will be made up of members of national competition authorities and also Member States' transport representatives.

After adoption of a draft by the Commission, the guidelines will be published in their draft form for a period of at least one month to allow interested parties to make submissions. Other institutions may also provide comments during this time.

Member States' views are then sought in the Advisory Committee. In response to the consultation process, the Commission may revisit its text and then adopt the final text of the Guidelines.

### **International dimension**

We are aware that if the EU decides to repeal the block exemption, it will be the first jurisdiction to move in this way.

That is why we are now making a lot of effort to ensure that our main trading partners are aware of our initiative, and that they understand the underlying economic assessment and our very positive reasoning for proposing change.

We're having bilateral contacts with our main partners, and also contacts in multilateral fora. In March, we had a series of meetings with US authorities in Washington. We will be returning to Washington in May to address the Consultative Shipping Group where Japanese, Canadian and American transport authorities participate. On that occasion we will also have bilateral talks with Canadian authorities. Japan is also very much in our focus and several exchanges have taken place with the Ministry of Transport and the Fair Trade Commission. Other jurisdictions, including Singapore and India, have also been contacted in an effort to understand their concerns and the needs of their specific markets. In May we go to China. A discussion in the OECD is foreseen for early next year.

Throughout these discussions our goal is, on the one hand to explain how we carried out the review process and, on the other to identify any potential problems. As of now, no jurisdiction has indicated that the repeal of the liner conference block exemption would create an insurmountable obstacle, or any conflict of law.

### **Concluding remarks**

The review of the liner conference block exemption has been a long process. And it is not over yet.

The Commission is particularly happy with the way the industry has reacted and is engaging in our Lisbon oriented agenda. I refer of course to both carriers and shippers associations. Your collaboration is essential and will continue to be paramount in determining the future framework.

We hope that we are contributing to your reflection on what it is that you need to be able to work effectively – not looking at past practices but embracing a dynamic change.

Dynamic change is a notion that this sector – this European success story – readily understands.