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**HOW TO ENFORCE & PROMOTE COMPETITION IN THE GLOBAL
TRANSPORT MARKET**

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* The views expressed in this speech are personal and do not necessarily represent the views of the European Commission.

Chairman, Ladies and Gentlemen,

It is with great pleasure that I accepted the invitation to speak at this Annual Conference of the European Shippers Council. Speaking today allows to link up with what I referred to and spoke about three years ago in Barcelona. At that time I mainly focused on maritime transport in the light of the TACA case and the post-TACA perspectives.

Today, you ask me to speak about *The Enforcement and Promotion of Competition in the Global Transport Market*. This allows me, after some general comments, to include three sub-sectors of the transport market, namely maritime, air and rail, in my reflections but don't worry, in the country of Maersk Sealand and the little mermaid, the sea and thereby maritime transport will still be on the primer.

1. GLOBALISATION OF THE TRANSPORT MARKETS AND COMPETITION LAW ENFORCEMENT

Globalisation of the world economy is not an option we can either embrace or reject, it is already a fact of life. We have witnessed a progressive reduction in trade barriers, and a very dramatic increase in the volume of goods and services being traded across borders. This development, in combination with remarkable technological advances, has resulted in a marked inter-dependence between economies world-wide.

In this newly liberalised world, there is an increasing recognition of the indispensability of pursuing a robust competition policy, so as to ensure that the competitive level playing field is not distorted by anti-competitive behaviour. Competition policy enjoys more prominence today than it has ever done; this has, to a large extent, been a product of the economic changes we have witnessed in recent times.

In recent years antitrust enforcers came to realise that the trans-national character of today's competition cases clashes with the traditionally territorial scope of domestic antitrust rules. In practical terms this means that competition authorities world-wide have to find ways to overcome the jurisdictional barriers inherent in the territorial nature of antitrust enforcement jurisdiction. A constant and constructive review of the legislative framework is necessary on a global scale and co-operation among competition authorities is a must. This is the reason why the European Union has proposed to put competition on the agenda of the next WTO round and why, together with other heads of competition authorities around the world, Commissioner Monti proposed the creation of a Global Competition Network.

We should however not forget that the catch word "globalisation" has different meanings in relation to the different sub-sectors of transport I'm going to mention, and that some barriers to entry into national markets have remained, notably due to legislation or regulatory activity.

2. MARITIME TRANSPORT

The maritime transport community and the Commission go way back, way back in what one could call a long saga but today I'm in a position to say that this long saga seems to come to an end. A new episode of our relationship is about to begin.

2.1. Revised TACA

Three years ago I spent some time speaking about TACA and our orientations for the development thereafter, which I described as more competitive and innovative. Since then a new economic landscape effectively developed, especially in the Atlantic. Individual service contracts (ISC) are more and more replacing the traditional conference system or at least taking a prominent place therein and we welcome that at the Commission. For instance, only 10% of TACA cargoes are today carried under the conference system. I want also to underline our convergence of views with the U.S. Federal Maritime Commission on these developments.

Referring to the new episode of the saga since Barcelona, let me be a bit more concrete:

Our assessment as regards the *Revised TACA* focuses among others at the preservation of the confidentiality of individualised contracts. The free availability, also in practical terms, of ISCs is absolutely crucial in order to assure that the positive trends I just mentioned on the Transatlantic trade will continue. I can inform you today that the long story I mentioned really seems to come to an end. We are finalising our assessment and after discussion with the lines there seems to be a possible solution which would see to our concerns. I can further inform you today that the Commission will very soon make its views regarding *Revised TACA* public.

2.2. New challenges for the shipping community and competition authorities

Maritime transport is about to embrace new challenges and so do we. The recent major improvements of the situation in the Atlantic should not lead the shipping industry to think that we will be less vigilant.

First, the global structure of the market could lead to concentrations, especially in the light of an economic slowdown, which will have to be controlled according to our Merger Regulation. Concentrations are however not limited to the liner shipping business: As shown by the recent example in the Port of Rotterdam, they also encompass terminals and ports. As the Commission has shown as regards the take-over of control over ECT by the Hutchison Whampoa group, it applies and will continue to apply the same vigilance to any action, which it deems in part, or in total as running counter to a healthy competitive environment. Only in the light of several remedies guaranteeing together that a healthy competitive environment can be brought about and maintained in Rotterdam, did the Commission clear the operation.

Second, we will of course continue to closely watch any activity of the liner shipping conferences and in particular those actions which are in our view outside the scope of the block exemption. Shipping lines – via their conferences – enjoy a very generous block exemption for price-fixing. The Commission - basing its enforcement on one of the most prominent principles in relation to exemptions - will for sure follow its approach of narrowly interpreting Regulation 4056/86. That is why we have concerns about what happens as regards so-called capacity management, i.e. the control of supply. In general,

we oppose any collective management of capacity except to address short-term seasonal fluctuations.

Third, mentioning the block exemption contained in Regulation 4056/86 leads automatically to the discussion process started by the OECD. Let me only state that the Commission will contribute and follow this process with great interest. We are convinced that in the context of globalisation, the OECD is a good forum to discuss the future of the relationship between competition law and specific regulations for the liner shipping world.

3. AIR TRANSPORT

The situation is difficult today for air transport where companies face troubles partly due to the economic slow-down, partly to the attacks of 11 September but partly also due to an artificial market segmentation and management failure which persisted in Europe despite the progresses of the liberalisation process.

3.1. Liberalisation process: benefits and limits

The liberalisation packages have had positive consequences: new entrants, new services, reduction of prices, increase of supply etc. without abandoning the concept of public services where needed. But the restructuration of the sector has been too limited as we see it today. We have to ask ourselves whether the existing regulatory framework in this sector is adequate to support a trend to more globalisation in a responsible way. The answer, of course, is no: Even in Europe the air transport market remains fragmented. As has been reiterated in the Commission's recently published White Paper on the European Transport Policy, the Single European Sky remains one of the priorities. The bilateral treaty structure governing aviation is outdated and does not answer to the justifiable needs and concerns of either the industry or the public.

Still today many of these bilateral agreements contain restrictive designation clauses, which limit the number of carriers that can be designated; with limitations on the nationality of the owners and on the routes and airports that can be served; and with tariff approval regimes that prohibit or at least hamper price competition. This means that cross border mergers cannot take place and that airlines cannot establish easily in other markets. In an effort to overcome these restrictions alliances have developed which offer airlines bigger networks but they are certainly not more than an intermediary and sometimes unstable solution.

3.2. The project of a Transatlantic Common Aviation Area

The Commission has proposed by way of the TCAA its vision of a regulatory structure that will allow airlines to benefit from liberalisation, while regulators keep the necessary tools to ensure the good functioning of the market. The key elements of these proposals are:

- no geographical limitation in principle, but initially the EU and the US, as the largest aviation markets in the world, should lead the development of what could become a new multilateral world-wide regime;

- no artificial barriers on market access and entry; airlines of the contracting Parties would have full freedom to provide services anywhere between and within the territory covered by the agreement;
- no barriers on cross border investment; airlines would be free to invest in airlines established in the territory of the other party, or to establish such airlines themselves;
- strict enforcement of the respective competition laws, but also close co-operation between the competition authorities of the Parties in the exercise with the aim to avoid conflict and to gradually develop common approaches to the key competition questions.

The TCAA would put an end to the unfair bilateral restrictions on flights across the Atlantic and bring a significant increase in competition to the benefit of consumers in both the EU and the US. A fully liberalised transatlantic aviation market would also mean much less danger of major airline alliances or mergers restricting competition.

3.3. IATA cargo tariffs

The International Air Transport Association (IATA) has agreed to rescind all resolutions involving the joint setting of cargo rates within the EEA. This decision follows the sending of a Statement of Objections by the Commission in May 2001. Let me therefore briefly explain the history of this case.

The IATA cargo tariff conferences are a forum where air carriers meet to agree tariffs for the transport of freight. Until June 1997, the activities of the IATA cargo tariff conferences within the EEA were block-exempted under Commission Regulation No 1617/93. Following the withdrawal of the block exemption in 1999, IATA applied for an individual exemption for the cargo tariff conferences.

IATA's main argument in favour of the tariff conferences was that they facilitate cargo interlining. The cargo tariffs fixed by the tariff conferences are indeed used to calculate each carrier's compensation for their participation in an inter-lined move.

In a statement of objections issued in May 2001, the Commission accepted that cargo tariff conferences facilitate the provision of a comprehensive system of interlining within the EEA. However, the Commission took the view that IATA had failed to demonstrate that this 55 year-old restrictive system was still necessary to provide customers with efficient interlining services within the EEA.

Following the statement of objections, IATA has agreed to end the joint setting of cargo rates within the EEA. Concretely, by the beginning of next year, cargo rates fixed individually by each carrier will replace those jointly set by the tariff conferences. As a consequence, the Commission has decided to close this case.

This procedure only dealt with the price-fixing activities of the cargo tariff conferences within the EEA. The Commission has not opposed the continued application of other IATA administrative and technical resolutions in the cargo sector, which facilitate interlining and are distinct from the setting of cargo rates.

3.4. SAS/Maersk

Another proceeding – less technical than the IATA file – certainly merits to be mentioned, in particular when one addresses an audience in Copenhagen.

On 18 July this year the Commission decided to fine Scandinavian airlines SAS and Maersk Air € 39.375 million and € 13.125 million respectively for operating a secret agreement that led to the monopolisation by SAS of the Copenhagen-Stockholm route to the detriment of over one million passengers that use that major route every year, as well as to the sharing out of other routes to and from Denmark.

The two companies concluded a co-operation agreement in October 1998, which they notified to the European Commission. They however omitted carefully what amounted to a broad market-sharing agreement, the most visible part of which led to the withdrawal by Maersk Air from the Copenhagen-Stockholm and SAS's exit from the Copenhagen-Venice and Frankfurt-Billund routes.

Suspicious that the co-operation agreement was of a greater and restrictive scope, the Commission carried out inspections at the companies' headquarters in June 2000. As a result of the inspections, the Commission gathered evidence that the two companies had concluded an overall non-compete clause: Maersk Air would not launch new routes from Copenhagen without the agreement of SAS and SAS undertook in turn not to compete with Maersk Air on the routes to and from Billund.

This agreement was a very serious violation of European Union competition law and very damaging for Scandinavian passengers who were left with reduced choice or no choice at all. Following the decision, the parties regained their freedom to compete with each other. They will also actually compete on certain routes they had previously agreed not to compete.

4. RAIL TRANSPORT

4.1. The need for more liberalisation of rail transport in Europe

There, Europe is still fragmented into national markets and competition is in infancy. Meanwhile, market share is continuing its decline, though everybody – including the political leadership - wants them to take on more freight but their situation simply does not allow for that. The forming of international groupings laid down by Directive 91/440 as a prerequisite for cross-border rail services has rather fostered international co-operation of national monopolies and continues to serve as an argument for incumbents to rather continue to co-operate on friendly terms than to compete with each other. This proved in particular not fruitful to the cargo business and shippers still face difficulties to move their cargo from one national market to another.

The railway package of three Directives adopted last February will provide the necessary framework for the *conditions* of access, such as rules on infrastructure charging and capacity allocation. The package also includes important new provisions aimed at providing a greater degree of separation of essential functions. The concern to ensure that there is sufficient separation between the management of the infrastructure and the services provided over it is, of course, not unique to the railways. The same questions of conflict of interest arise in other utility sectors, too.

The concern in the railways market, I think, must be that the compromise reached in the railway package will not be enough to resolve the conflict of interest, with the result that vertically integrated incumbents will continue to find it difficult to resist the temptation to restrict competition. This will become increasingly apparent, because of the market opening provisions, which are also a feature of the package. International freight services are to be liberalised in a two stage process so that, by 2008, the entire EU rail network will be open to international freight services. Also in this context the Transport Policy White Paper shows the way to more competition in the rail transport sector.

There is, of course, no reason why Member States should not open their domestic markets as well. Those that have already done so, like Sweden or Germany, appear to have prospered while preserving their obligations in relation to public services for passenger transport.

A more dynamic and appealing railway sector can only be achieved if there is more competition in the sector. New operators – crossing frontiers more easily - will provide new services and a different price/quality mix, key ingredients for winning back freight for rail and for reducing European road gluts. This - in turn - will stimulate incumbents as we have seen in other liberalised sectors.

4.2. Competition policy and rail: recent examples

Today, competition policy in relation to railway transport can only play a limited role in Europe. But we intend to play this role as much as possible and in particular to avoid that new entrants are discriminated against by the incumbents. Because of regrettably justified fears over even more anti-competitive behaviour there are however very few complaints but there are also several ex-officio procedures going on.

Two of the complaints led the Commission to send Statements of objection. Both concern the passenger market but they are a clear example for what incumbents feel inclined to do in order to hinder market entry of potential competitors.

First, in June 2001 we warned FS, the Italian incumbent railway undertaking, that it seems to have violated European competition rules by refusing to grant access to the Italian railway market to a small private German railway operator. The company in question wanted to offer a passenger rail service from Germany to Milan which would have been quicker than the incumbents. FS' abuse of its dominance on the Italian market deprives rail customers from the benefits of competition in terms of choice of service providers and prices.

Second, a few days ago we sent Deutsche Bahn AG (DB), the German State-owned railway company, a statement of objections, alleging that DB has violated European competition rules when refusing to provide traction to the same small German operator, who – together with its partner Statens Järnvägar (SJ), the Swedish State Railway company, wants to offer a regular passenger rail service from Berlin to Malmö. As this is a crucial railway link between Germany and Sweden, customers would suffer if the service has to be terminated.

It is interesting to note that in the latter case, DB stopped to operate the same service quite some time ago. It seems however that the company is that much attached to its position as a market leader that it even tries to hinder other railway undertakings to offer services where itself stopped doing so.

5. CONCLUDING REMARKS

Transport in Europe and to or from Europe has undergone tremendous changes in the last years, in line with the globalisation of our economy. The liberalisation process in Europe and European competition policy have contributed to more dynamism and innovation which benefited the consumers and the whole European economy. Building on these achievements, we can be optimistic that the current and future difficulties and challenges facing the transport sector can be overcome.

A lesson of the past is also that the dialogue between the shippers and the Commission has been very useful to promote competition in transport. This will become even more so in the light of the difficulties and challenges transport will have to face and this dialogue therefore needs to be continued.