



European Commission

Liner Shipping: the EU competition perspective

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- 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)**



Review of Regulation 4056/86 (2)

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



Liner shipping Regulation (3)

- ◆ **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**



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**



D. Scenarios from the Consultation

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**