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Competition: repeal of block exemption for liner shipping conferences - frequently asked questions

(see also [IP/06/1249](#))

The Competitiveness Council has agreed on 25th September 2006 to repeal Regulation 4056/86 putting an end to the possibility for liner carriers to meet in conferences, fix prices and regulate capacities as of October 2008.

The process of reviewing the 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](#)). The Commission adopted a legislative proposal on 14 December 2005 (see IP/05/1586 and MEMO/05/480). The European Parliament issued a report in July 2006. All relevant documents are available at:

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

The Competitiveness Council has also amended Regulation 1/2003 – the general regulation setting out the procedural rules needed to implement Articles 81 and 82 of the EC Treaty – extending its scope to include cabotage and tramp shipping.

What happens next?

Existing liner conferences will be able to continue operating on routes to and from Europe until October 2008. After that date, conference activities and in particular price fixing and capacity regulation will no longer be permitted.

Before the end of the two-year transitional period, the Commission will publish Guidelines on the application of the competition rules to maritime transport services. Their purpose is to explain how competition rules apply to maritime transport services in general and in particular to the liner and tramp sectors.

As an interim step in the preparation of the Guidelines, the Commission will shortly publish a staff “issues paper”. It will set out, with a view to collecting stakeholders’ comments, a preliminary assessment of the issues relating to information exchanges raised by the industry’s revised proposal concerning the impact of information exchange in the liner market.

What process will be followed for the adoption of the Commission Guidelines?

Guidelines are prepared in consultation with stakeholders. The Commission has been discussing with the liner and tramp shipping industries how best to issue appropriate guidance on how competition law should apply to the sector, once Regulation 4056/86 would be abolished. This dialogue has resulted in a number of submissions from the shipping industry, which are all available on the Commission website.

The Guidelines will be drafted and adopted by the Commission. Preparatory work towards the finalisation of the draft will be carried out in the European Competition Network (ECN)¹ working party for maritime transport. The working party is made up of representatives of Member States' competition authorities, of transport ministries and other relevant government authorities.

The Commission will adopt draft Guidelines, which will be published to allow all interested parties to make submissions. The consultation period will last one month from the date of publication.

Member States' views will then be sought in the Advisory Committee². In response to the consultation process, the Commission may revisit its text. The Commission will then adopt the final text of the Guidelines and publish it in the Official Journal.

Further to the repeal of the Regulation 4056/86 will other legislation be changed?

Yes. It may be necessary to repeal Council Regulation (EEC) No 954/79³ concerning the conditions under which Member States may accede to the UN Convention on a Code of Conduct for Liner Conferences.

As conferences will be abolished on trade to/from ports of the European Union in 2008, Regulation No. 954/79 will have to be revisited. The European Parliament has also requested the Commission to examine this question. A proposal from the Commission will be forthcoming shortly.

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 is passed on to consumers.

For certain sectors, the Council has empowered the Commission to exempt whole categories of agreements by means of adopting Regulations, the so called "block exemption" Regulations. This creates a safe harbour for the agreements covered by the regulation, which are all deemed compatible with the competition rules on condition that they respect the rules laid down in the Regulations. Before granting 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 regularly check if market developments have not altered the compatibility conditions.

¹ The European Competition Network (ECN) was set up by Regulation 1/2003 amongst other things to ensure consistency of application of competition rules following modernisation. The subgroup on maritime transport will be made up of members of national competition authorities and transport representatives. The ECN is chaired by DG COMP and has solely a consultative role. In the case of the repeal of Regulation 4056/86 it serves to assure Member States that their concerns are heard in the process leading to the drafting of the Guidelines

² In accordance to paragraph 64 of the European Competition Network Notice .

³ Official Journal, L 121, 175.1979, p. 1 -4.

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 as was Regulation 4056/86.

What are liner conferences?

Shipping companies have organised themselves since the nineteenth century in the form of liner conferences to 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.

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. Do other jurisdictions have to change their regime ?

The decision to end the exemption from the competition rules means that as of October 2008 all EU and non EU carriers which currently take part in conferences operating on trades to and from the EU will have to end their conference activities, that is price fixing and capacity regulation, on those trades). Nothing would prevent them from taking part in price fixing conferences on non-EU trade routes. To give a concrete example, an EU carrier like Maersk Line, member of the Trans-Atlantic Conference Agreement (TACA), can no longer be involved in price fixing and capacity regulation on the North Atlantic-EU and EU-North Atlantic trades as of October 2008, 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 different competition regimes are 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.

As liner conferences will continue to be tolerated in other jurisdictions, the Commission will take all appropriate initiatives to advance the removal of price fixing liner conferences that exist elsewhere in the world and thus promote further competitive reform of the liner shipping sector. That is why it has taken the initiative to establish close and frequent contacts with our major international partners (e.g. US, Canada, Australia, Japan, China, Singapore

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 90% of world capacity has proposed that the conference block exemption should be replaced by an information exchange system. Details of their proposal of June 2006 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, the European freight forwarders' association CLECAT 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 their effects would be alike to those of the current conferences. Accepting the revised ELAA proposal in its current form would annihilate the pro-competitive effects of the abolition of the conference system. As explained above, DG COMP is about to launch a consultative "issues paper" on the impact of the proposal on the liner shipping market.

What is the impact of the repeal 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 within the scope of the Commission Recommendation concerning the definition of small and medium sized enterprises.⁴

After extensive 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 enter quickly. These market niches usually allow for rapid growth. Hence, small innovative companies are able to grow much quicker in a competitive environment. 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 as regards 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 will therefore also contribute to the Lisbon objectives.

⁴ 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.

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 repeal have an impact on the maritime consortia block exemption Regulation?

No. Liner carriers will continue to be allowed to offer joint services. Block Exemption Regulation 823/2000 on maritime consortia allows shipping lines to engage in operational co-operation (vessel-sharing, co-ordination of routes and schedules) but not to fix prices. In 2005, this Regulation was reviewed and extended until 2010 after it was found to be working well by both shipping lines and transport users (see [IP/05/477](#)). This exemption is of particular significance in terms of volume of trade. For example, the majority of cargo between the EU and the US is transported by shipping lines in consortia and alliances using individual service contracts instead of conference tariff prices.

Will the Commission be issuing guidance to the tramp sector?

Yes. The forthcoming Guidelines on the application of competition rules to maritime transport services will cover tramp shipping. Tramp services concern 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. Preparatory work is already underway and the Commission engaged in discussions with tramp operators so as to better understand the issues at stake. It also has contracted an external study on the sector, to be finalised by the end of the year.

What is the impact of the repeal on international tramp vessel services?

The impact on international tramp vessel services should not be substantial because EC Treaty competition rules (Articles 81 and 82) already apply to cabotage and tramp shipping. It is rather a question of including these sectors within the generally applicable procedural framework laid down by Council Regulation 1/2003 and so enable the Commission, in addition to national authorities and courts, to apply these rules to cabotage and tramp shipping.

This 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 4056/86⁵ before determining what action could be taken and by which authority.

⁵ 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