

July 2013

CLECAT comments in the response of the Consultation on the Future of the Commission Guidelines on the Application of Article 101 TFEU to Maritime Transport Services

CLECAT represents the interests of more than 19.000 companies employing in excess of 1.000.000 staff in logistics, freight forwarding and customs services. Multinational, medium and small freight forwarders and Customs agents are all within its membership, making the organisation the most representative of its kind.

European freight forwarders and Customs agents clear around 95% of all goods in Europe and handle 65% of the cargo transported by road, 95% of the cargo transported by air and 65% of cargo transport by ship. Freight forwarders also use rail freight, inland waterways and intermodal transport.

Freight forwarders around Europe welcomed the unanimous adoption, at the 25th September 2006 Competitiveness Council, of the Commission's proposal to repeal Council Regulation 4056/86.

The purpose of the Guidelines was to facilitate the operators' transition to a new era of competition and self-assessment in the liner shipping sector. In this respect the Guidelines focused notably on information exchanges between competitors in liner shipping. They provided for the first time an indication of the analytical framework how to assess such information exchanges.

When regulation 4056/86 was repealed CLECAT appreciated that the liner shipping sector required some guidance on the application of competition rules to the liner shipping sector since the sector was unfamiliar with the practices of other sectors that operate completely within a free market. CLECAT was of the opinion that the purpose of the 'Guidelines' was also to align the treatment of the liner shipping sector closer to that of most other industrial and service sectors in regard to their compliance with Community competition law. On this we continue to believe that the sector specific guidelines should avoid indicating any sanction for specific activities beyond those already defined under EU competition law in the decisions of the European courts and Commission.

DG Competition proposes to let the Guidelines lapse when they expire on 26th of September 2013 rather than extending or overhauling them. CLECAT supports the reasoned arguments provided by the Commission:

More generally, all liner shipping carriers should, like in any other industry, ensure that their agreements comply with Article 101 TFEU, in particular their cooperation agreements that are a common feature of maritime transport markets.

The Commission then considered that a period of 5 years was of sufficient duration to ensure such a transition. CLECAT agrees with the Commission in that it does not consider there to be a reason to depart from the original time-limitation. A five year period, which followed a two-year transition



period for the full effect of the repeal of the exemption for conferences, appear to be a sufficiently long period to self-assess the compatibility of market conduct with Article 101 TFEU.

The Horizontal Guidelines¹⁷ were revised in December 2010. Revising the Maritime Antitrust Guidelines to reflect the recent developments in the general guidelines would therefore cause unnecessary duplication.

The liner shipping industry has since long claimed that their industry is unique in requiring such specific arrangements. The role of the Guidelines should be to assist this process and not to provide a 'safe harbour' for shipping lines by means of extending specific sector guidance.

In conclusion, CLECAT supports the intention of the Commission to let the guidelines lapse when they expire in 2013.