



Alert

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European Commission opens consultations on revision of antitrust exemption for shipping liner consortia

On 21 October 2008 the European Commission (Commission) launched public consultations on its draft for a revision of Commission Regulation 823/2000, which grants consortia of shipping liners immunity from EU antitrust laws for certain categories of agreements, decisions and concerted practices. The Commission's draft suggests extending the immunity for another 5 years following its expiry on 25 April 2010. Interested parties have until 21 November 2008 to comment on the Commission's draft.

Setting up a liner shipping service requires a high level of investment. It is therefore common for Shipping liners to enter into co-operative agreements, such as "vessel sharing agreements" in which parties agree to provide vessels to set up a joint liner service, "swap agreements" where parties agree to exchange space on the ships they operate, and "slot charter agreements" in which a vessel operating party sells a slot on its vessel to another party.

Such agreements are capable of violating EU antitrust laws, laid down in Article 81(1) of the EC Treaty. It is however recognised that they also improve the quality of available liner shipping services by reason of rationalisation and through economies of scale. Regulation 823/2000¹ therefore grants antitrust immunity under Article 81(3) of the EC Treaty to consortia of shipping lines for certain categories of agreements, decisions and concerted practices concerning cargo shipments. The exemptions are subject to review every five years². In the course of the review process the Commission is obliged to carry out a consultation process and to give interested parties

an opportunity to comment on Regulation 823/2000 and the Commission's suggested changes. This process was launched on 21 October 2008 and interested parties have one month until 21 November 2008 to submit comments³.

It is the Commission's view that the justifications for the block exemption are still valid as it has been found to function well for the benefit of carriers and transport users. The suggested amendments to Regulation 823/2000 reflect current market practices and bring Regulation 823/2000 closer in line with other block exemptions for horizontal co-operation agreements. Additionally, the modifications take into account that the antitrust immunity for shipping liner conference was repealed, with effect on 18 October 2008, and therefore removes any related exemptions.

The proposed changes relate mainly to the types of practices that will continue to be exempt under Regulation 823/2000. The Commission proposes to remove the current exemptions for the participation in cargo, revenue and net revenue pools, for the establishment of joint marketing structures⁴ and for the joint issue of bill of lading. Furthermore the draft to Regulation 823/2000 now clearly sets out that joint fixing of freight rates, and market and customer allocation, are prohibited.

Shipping liner consortia will on the other hand continue to be allowed to jointly operate liner shipping transport services, including the coordination and fixing of sailing timetables and the determination of ports of call, the exchange, sale or cross-chartering of space or slots, the pooling of vessels and port installations, the joint use of operations offices, the provision of containers and other

1. Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ 2000, L100/24.

2. The current version of Regulation 823/2000 is valid until 25 April 2010. In line with the mandatory regulatory requirements the European Commission initiated a consultation process with interested parties on 21 October 2008.

3. Notice pursuant to Article 4 of Council Regulation (EEC) No 479/92 on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (Text with EEA relevance), OJ 2008, C266/1.

4. Joint marketing agreements will continue to be exempted if they are ancillary to a permitted agreement and necessary for its implementation, and provided they do not amount to an activity prohibited under Article 4, i.e. price fixing, customer sharing or limitation of capacity or sales.

equipment and the use of computerised data exchange and joint documentation systems.

Indeed, unlike joint selling and price fixing, which raise serious competition concerns, capacity and/or vessel space sharing can improve the quality and reduce the costs of shipping services, primarily through economies of scale.

The amendments to Regulation 823/2000 also permit the joint operation or use of port terminals and related services, and ancillary activities necessary for their implementation. The current exemption for capacity non-utilisation has been amended and is now limited to capacity adjustment in response to fluctuations in supply and demand. The Commission also proposes to reduce the market share thresholds consortia must not exceed as to fall under the block exemption from 35% to 30%.

The continuation of important exemptions, such as for capacity or vessel sharing, will ensure that, despite the proposed changes, shipping liners and their customers continue to benefit in the future from the economies of scale facilitated by agreements covered by the block exemption.

For more information on the proposed amendments to Regulation 823/2000 or the ongoing consultation process, please contact:

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