UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISCUSSION PAPERS

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No. 224
March 2016

UNITED NATIONS

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Acknowledgements: The author would like to thank José Maria Rubiato, Jan Hoffmann, Pierre Latrille, Martin Roy, Prof. Rosa Greaves, Felix Heitmann, Jörg Mayer and two anonymous referees for their helpful comments and insights on earlier drafts of this paper.

UNCTAD/OSG/DP/2016/1

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JEL classification: K21, L40, L91

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Abstract

With around 80 per cent of global trade by volume and over 70 per cent of global trade by value carried by sea, and with these shares being even higher in the case of most developing countries, maritime transport, including liner shipping, remains highly important for international trade and the global economy. To ensure stability in the sector, in various jurisdictions around the world, liner shipping conferences – arrangements among ocean carriers allowing for freight rate fixing – have been exempted from the application of competition laws over the years. Many of these jurisdictions confer exemptions, under similar conditions also to consortia and strategic alliances – arrangements among ocean carriers that do not involve freight rate fixing. The paper aims to provide an overview of recent and potential developments related to competition and cooperation in liner shipping. A number of reviews and studies conducted over the last decades by organizations and individual countries have suggested that liner shipping may not be unique, as its cost structure does not differ substantially from that of other industries, or at least not sufficiently to justify that it needs to be protected from competition, by being exempted from competition laws. As a result, such exceptions have gradually come under review and have narrowed in scope, giving more space to pro-competition, non-ratemaking agreements. Therefore countries are encouraged to establish appropriate and harmonized regulatory systems to support and monitor such agreements. Carriers may continue to collaborate to achieve operational improvements, while the competition authorities ensure that the competition in the market is sufficient and shippers benefit from eventual cost savings. At the same time, enhancing cooperation between national competition agencies, sharing of information among them, and other relevant measures shall be encouraged.

I. INTRODUCTION

Competition law is also known as "antitrust law" (e.g. the United States), or "anti-monopoly" law (e.g. China and the Russian Federation). In the past it was also known as "restrictive trade practices law" in the United Kingdom and in Australia. Although the content and practice of competition laws, including those applicable to liner shipping, vary in different countries, their purpose is "to control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development" (UNCTAD, 2010: 2).[1]

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[1] Such restrictive agreements include particularly cartels. According to the *OECD Glossary of Statistical Terms* available at: http://stats.oecd.org/glossary/detail.asp?ID=3157, a cartel is a formal agreement among firms in an oligopolistic industry. Cartel members may agree on such matters as prices, total industry output, market shares, allocation of customers, allocation of territories, bid-rigging, establishment of common sales agencies, and the division of profits or combination of these. In this broad sense this definition is synonymous with explicit forms of collusion.

Throughout its history, liner shipping, the business of offering regular time scheduled ocean shipping services in international trade,[2] has enjoyed exemptions from the effect of certain competition rules and, as a result, conferences[3] among oceans carriers, allowing for freight rate fixing, have been permitted. The main reason for this practice has been the belief that it was justified by the specific economic problems faced by liner shipping as compared to other industries. These include unusually high fixed costs, very large initial capital investment, other large non-cargo costs, overcapacity, etc. As a result, it was argued that without collective freight rate fixing, open and unrestrained competition would lead to "destructive" competition, instability of prices and undesirable oligopoly.[4]

Following discussion in many countries and regional organizations as to whether exemptions from competition rules, historically enjoyed by liner conferences, are still justified, there has been a tendency during the last decade towards review and narrowing of the scope of such exemptions. In addition, there appears to have been a shift of emphasis among shipping lines away from the traditional liner conferences, and towards the establishment of alliances and other forms of efficiency-enhancing operational types of agreements.[5] In these circumstances, carriers continue to collaborate to achieve operational improvements, while the competition authorities ensure that there remains sufficient competition in the market so that eventual cost savings are passed on to the shippers.

This paper will briefly examine the rationale behind the exemptions from the effects of competition laws that have been historically granted to liner shipping cooperative arrangements, the legitimacy and continued justification for such exemptions, as well as applicable instruments, negotiations, and relevant legislative developments. It will continue with a brief description of the recent global alliances among major shipping lines, related considerations, potential legal uncertainties and the way forward.[6]

II. LINER SHIPPING COOPERATIVE ARRANGEMENTS

Liner shipping has for a long time been governed by cooperative arrangements, originally in the form of conferences, and later, with the emergence of containerization, also in the form of consortia, vessel sharing agreements, strategic/global alliances, capacity stabilization agreements and discussion/talking agreements.[7]

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[2] Irrespective of the amount of cargo they have on board. Ships involved in this trade include general cargo carriers, specialized cargo carriers (e.g. refrigerated goods carriers or car carriers), and/or partially or fully dedicated container