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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**EXECUTIVE SUMMARY OF THE ROUNDTABLE ON COMPETITION ISSUES IN LINER
SHIPPING**

19 June 2015

This Executive Summary by the OECD Secretariat contains the key findings from the discussions held during Item IV of the 59th meeting of Working Party No. 2 on 19 June 2015.

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EXECUTIVE SUMMARY

*By the Secretariat**

Considering the discussion at the roundtable, delegates' written submissions, and the Secretariat's background paper, several key points emerge:

- (1) ***Since its inception, the ocean liner shipping industry has been governed by the so-called “conferences” – agreements among carriers to fix prices and regulate capacity. These cartel-like agreements have benefited from exemptions from antitrust laws in several jurisdictions for a very long time. The claimed rationale for the benefits of the conference system is that they are necessary to avoid the aggressive price wars amongst carriers that would stem from the fixed-cost nature of the industry and the existence of excess capacity. Recently, several competition authorities have called for an abolition of the conference system, arguing that it did not yield the claimed benefits. Furthermore, as result of the proliferation of other forms of cooperation (consortia and strategic alliances) and the regulatory changes that have taken place in many jurisdictions, the relevance of the conference system has eroded. Indeed in some jurisdictions the conference system has been effectively undermined (in the US in 1998) or abolished (in the EU in 2008).***

Liner-shiping services are provided by carriers to shippers, through the operation of container vessels on a regular schedule between ports. In the 1950s, containerisation changed the industry profoundly, so that nowadays the majority of global cargo is transported in container vessels. The industry is characterised by high fixed costs, as many costs are incurred irrespective of the volume of the cargo that is transported. This cost structure has been one of the key drivers of the trend towards the increasing vessel size. While in the 1980s the largest ships were over 4,000 TEU (twenty-foot equivalent unit), in the late 1990s they reached a nominal capacity of 8,000 TEU. Today, the largest ships deployed are around 18,000 TEU.

Until recently, the general perception was that the specific nature of costs that characterises liner shipping services renders competition in the industry unsustainable, entailing poor outcomes for all market participants. As a result, exemptions from antitrust laws were granted to these cartel-like agreements in order to stabilize rates and foster the provision of reliable and efficient services. These claims followed. In the US, for instance, such forms of co-operation have been exempted since 1916.

However, in the past decades, this long-standing regulatory framework has been questioned. The reassessment was triggered by structural trends that took place in the industry, namely the proliferation of consortia and strategic alliances, as a result of carriers' aims to achieve economies of scale and broaden the geographic coverage of their services. In the US, the

* This Executive Summary does not necessarily represent the consensus view of the Competition Committee. It does, however, encapsulate key points from the discussion at the roundtable, the delegates' written submissions, and the Secretariat's background paper.

conference system was weakened in 1998 with the passage of the Ocean Shipping Reform Act (OSRA). Despite a general antitrust exemption for conferences, following the OSRA, individual members of a conference have been able to freely negotiate prices confidentially with shippers. Therefore, while conference agreements still exist in the US, their relevance and price-setting authority has substantially deteriorated following the proliferation of confidential individual service contracts. Since 2000, no new commercial conferences have been applied for in the US.

A 2002 OECD report revisiting the arguments put forward for “*la raison d’être*” of the conference system has also played an important role in prompting the reviews of the conference system undertaken in several jurisdictions. The analysis challenged the alleged uniqueness of the cost structure of the liner shipping industry, and found no evidence of the claimed benefits of these cartel-line agreements. As a result, the report recommended the elimination of exemptions for conferences and discussion agreements. Following the OECD report, the EU undertook a thorough review of the costs and benefits of the conference system, which also found no support for sustaining the block exemption for liner shipping conferences granted by EU Council Regulation 4056/86. As a result, the review culminated with the repeal of Regulation 4056/86, in September 2006. Many jurisdictions, however, still retain antitrust exemptions to liner shipping conferences.

- (2) ***Consortia and strategic alliances are widespread cooperation agreements in liner shipping. Currently, the industry is characterised by an intricate network of cooperation agreements, with four global alliances involving the main carriers worldwide, and accounting for a substantial share of trade in the main routes. These agreements encompass joint-services operation through vessel sharing agreements (VSAs), i.e. they are horizontal co-operation agreements. These arrangements provide scope for cost savings due to optimized capacity utilization and enable carriers to offer more frequencies of service.***

Consortia and strategic alliances have been gaining increased relevance in the industry since the early 1990s and are currently the dominant forms of agreement in global liner shipping. Cooperation agreements are called consortia in the EU while elsewhere they are referred to as “vessel sharing agreements” (“VSAs”). A strategic alliance is a vessel-sharing agreement covering many services/routes. There is a wide spectrum of operational co-operations ranging from highly flexible slot charter agreements and unilateral slot sales to full cooperation on an integrated consortium.

The main economic drivers underlying consortia and strategic alliances relate to the economies of scale achieved through the joint operation of large vessels, which contributes to reducing excess capacity and sharing the risk associated with investment in bigger vessels. These agreements also allow individual carriers to broaden the geographic coverage of their service networks, enter new markets and offer a high frequency of services, in line with shippers’ preferences.

There are currently four large strategic alliances, namely 2M”, “G6”, “Ocean 3” and “CKYH”. These alliances have emerged as a consolidation of much smaller alliances, all of which included the most important liner shipping companies. Measuring the degree of coverage of consortia and alliances can be challenging as virtually all players are involved in some form of consortia or alliance for single or multiple trades. However, for illustrative purposes, alliances can be said to account for about 75 % of the transpacific trade. The Asia-North Europe trades are now only operated by global alliance players. In these trades, 2M holds 32 % of the total capacity, CKYHE accounts for 26 %, G6 for 23 % and Ocean Three represents 19 % of the total capacity allocated to these trades.

The novelty of these cooperation agreements vis-à-vis the conference system is that they do not entail hard-core restrictions to competition, thus they are regarded as a less restrictive solution to the specificity of the cost structure in the industry. However, while these agreements can bring important efficiencies, they contribute to increased cooperation and consolidation in the industry.

- (3) ***The four large strategic alliances 2M, CKYHE, G6 and Ocean 3, involve all the biggest players in the market and account for a large share of in the main routes. An important issue is whether, against the backdrop of the current market structures, these alternative forms of cooperation could raise competition concerns. For example they may be used by rival carriers as a platform to exchange information and align strategies. In addition, further cooperation and consolidation in the industry should be monitored with a vigilant eye as the industry is becoming more concentrated.***

Given the current market situation, consortia and strategic could raise competition concerns. This is so because very large players are involved in the main alliances and these alliances cover very high shares of trade in the main routes.

One key concern is that while consortia and alliances are, in essence, operational agreements, they could lead to an alignment in costs and strategies and could entail capacity discussions. It is important to take into account the share of trade of these alliances, as well as the fact that they can promote their members' access to key strategic information regarding competing carriers which are members of the same agreement. The potential increased transparency and scope for information exchange within cooperation agreements may raise competition concerns as to tacit collusion, and requires a vigilant eye from competition authorities.

Another concern is the trend towards increasing concentration, driven by carriers' expectations to achieve additional efficiencies through mergers. While the share of the top players in the industry has been increasing, the sector still shows some fragmentation. Market structures depend on the particular trade in question: for example, on the Asia-Europe trade, the five top carriers (Maersk, MSC, the CMA-CGM group, Hapag-Lloyd and Evergreen Line) control half of the market capacity, even though the total number of carriers is still large.

Concentration in the industry is however higher if one takes into account the links between firms through alliances and consortia agreements. To this respect, an important aspect that may be raised is on whether concentration measures should take into account the effect of consortia and alliances. On the one hand, members of these agreements maintain independent marketing and pricing strategies, but on the other hand, the competitive interaction between members of the same consortia or alliance may be softened to some extent. As such, the impact of these cooperative arrangements should be taken account, for example, when analysing a merger's impact on the competitive conditions in the relevant trade lanes, avoiding a move towards excessive concentration and interdependency.

For example, two recent EC merger decisions, namely those concerning the Maersk-P&O Nedlloyd merger in 2005 and the Hapag Lloyd-CSAV merger in 2014, explicitly took into account, in the competitive assessment, the consortia and strategic alliances in which the merging parties were involved. These mergers were cleared subject to commitments designed to eliminate concerns stemming from the creation of new structural links between the merging parties and existing cooperation agreements.

Nevertheless, there was agreement that, so far, consortia and strategic alliances have mainly been pro-competitive and that competition authorities could intervene if needed. Such a view is embedded in the current regulatory approach. For example, in the EU, consortia are covered by a block exemption regulation for market shares up to 30 %. In the US, all agreements are allowed as long as they were filed with the Federal Maritime Commission (FMC), and they are subsequently assessed and monitored. But similarly, sometimes alliances are not allowed, as it was the case of the planned P3 alliance between Maersk Line, MSC and CMA CGM, which was blocked by MOFCOM (the Ministry of Commerce of China). Subsequently, two of P3 parties, Maersk and MSC, formed the “2M” alliance.

- (4) ***Vertical integration has become a new feature of the industry, as ocean carriers have begun to acquire container terminal facilities in Europe. This process of vertical integration offers carrier alliances greater bargaining power with respect to seaports. There is however a risk that this could lead to easier access to port facilities by vertically integrated unit carriers, disadvantaging non-integrated competitors. Therefore, competition authorities should closely monitor these developments.***

Another trend that the liner shipping sector is experiencing is towards increased vertical integration. The deployment of mega-vessels has given added relevance to port operations because they can potentially constitute an operational bottleneck undermining total transit times and service reliability and limiting the efficient use of vessels. As a result, ocean carriers have begun to acquire container terminal facilities to reduce physical bottlenecks (e.g., nautical accessibility, undersized infra- and supra-structures) and thereby safeguard their maritime investments by boosting operational performance. Vertical integration also allows carriers to acquire control of stevedoring costs and provides shipping lines with the opportunity to invest in a business that is highly correlated and synergic with their core activity.

While efficiencies may arise from vertical integration, it is also important to highlight the risk that vertically integrated port authorities could withhold access to important upstream infrastructure to their rivals, e.g., by awarding container terminals to their vertically integrated unit carriers. From a competition policy perspective, it is important to monitor these developments.

- (5) ***Current enforcement possibilities are so far deemed sufficient to deal with potential competition problems. However, increased cooperation between competition authorities to monitor the effect of these developments is key, given the global nature of cooperation agreements.***

The discussion led to the conclusion that currently no new regulatory measures are necessary. Competition authorities, however, should monitor the developments in global liner shipping and carefully consider the impact of alliances and consortia on the competitive conditions in the industry.

Given the increasingly global scale of market players in services that are already international in nature, this task poses important challenges. Cooperation among competition agencies, as well as among sectoral regulators, is very important. The recent case of the P3 alliance is illustrative of the relevance of establishing close cooperation to ensure a global approach to competition in liner shipping services.