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**MTC CONCLUSIONS ON WORK ON PROMOTION OF COMPATIBILITY OF
COMPETITION POLICY APPLIED TO INTERNATIONAL LINER SHIPPING
INCLUDING MULTIMODAL TRANSPORT WITH A MARITIME LEG**

*This paper contains the conclusions adopted by the MTC at its meeting on
6 November 1997 in the framework of its activities related to competition policy.*

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**MTC CONCLUSIONS ON WORK ON PROMOTION OF COMPATIBILITY OF
COMPETITION POLICY APPLIED TO INTERNATIONAL LINER SHIPPING INCLUDING
MULTIMODAL TRANSPORT WITH A MARITIME LEG**

The Maritime Transport Committee discussed in depth the promotion of compatibility of competition rules applied to international liner shipping, including multimodal transport with a maritime leg¹. The Maritime Transport Committee considered that effective implementation of competition rules to international liner shipping, including multimodal transport with a maritime leg, should contribute to the establishment and maintenance of efficient, unrestricted and competitive shipping services which facilitate international trade and benefit economic interests of shipowners, shippers and ultimately the consumers; and noted that, in such a context, promotion of compatibility² of competition policy in international liner shipping, including multimodal transport with a maritime leg³, is a desirable goal.

Members of the MTC reached the following conclusions:

1. Concerning the implementation of competition policy to international liner shipping including multimodal transport, members of the Maritime Transport Committee agreed that, as seen from the perspective of formulating shipping policy, there is a need to promote compatibility of competition policies to the maximum practical extent and that competent authorities in Member countries should:

1.1. seek practical solutions in cases of incompatibility of competition regimes which may hamper both international trade and efficient international liner shipping operations; and

1.2. pursue, when implementing competition policy as applied to the international liner shipping industry, key objectives such as, *inter alia*, free and fair competition; maintenance of open trades as well as market access; economic efficiency; transparency of laws, regulations and rulemaking processes; predictability of outcome; legal certainty; adaptiveness and responsiveness of laws and regulations to industry changes, to the extent that they do not impinge on economic efficiency; international compatibility.

2. While considering that any exemption for international liner shipping, including multimodal transport, from general competition policy, should be based on clearly defined conditions, Members of the MTC agree that competent authorities should:

2.1. assess and review periodically their policies, laws and regulations to ensure that they contain the required flexibility and comprehensiveness to adjust to future changes in international liner shipping and are compatible with policies and laws of their major trading partners; and

2.2. assess the commercial and economic impact of proposed changes in legislation on relevant parties of the industry.

1. All references to multimodal transport concern, and are limited to, multimodal transport that includes a maritime leg.

2. See Agreed Observation 1.

3. See Agreed Observation 2.

3. Agreeing that consultations between Member countries is a means to avoid incompatibility of competition policies applied to international liner shipping, including multimodal transport, Members of the MTC agree that competent authorities should consider initiating consultations with each other:

3.1. when reviewing laws and regulations, with an aim of promoting their compatibility and with a view to enhancing economic efficiency, they should aim: i) to meet the interests of international trade, the efficient organisation of international liner shipping operations and the consumers; and ii) to eliminate barriers to multimodal transport; and

3.2. when evaluating a particular commercial/non-technical agreement (such as co-operative agreements between shipowners, agreements between groups of shipowners and shippers or terminal operators) on multinational trades to or from their territory, where that agreement has the potential to affect significantly the interests of another Member(s).

4. Noting the principles of the Revised Recommendation of the Council Concerning Co-operation between Member Countries on Anti-competitive Practices Affecting International Trade [originally issued as document C(95)130/Final], Members of the MTC considered that the following is desirable:

4.1. to notify the Maritime Transport Committee of forthcoming public reviews of laws and regulations in order to permit adequate and timely consultations that another Member country might request;

4.2. to give full and sympathetic consideration to consultations requested or proposed by another Member country in the context of public review of law or in the context of the evaluation of a particular commercial/non-technical agreement; and

4.3. to consider seeking the views of relevant parties of the Industry when consulting among themselves on issues as mentioned in 4.2. above.

5. Members of the MTC believe that consideration should be given to whether public interest requires that they individually retain/establish an administrative body dealing with the international maritime industry, and, if so, the form it would take, with the aim of: i) facilitating the pursuance of compatibility of competition laws and regulations applied to liner shipping, including multimodal transport; ii) maintaining a comprehensive public expertise; and iii) promoting public interest as expressed in the General Principles.

6. Members of the MTC recognised that the desirability of such an administrative body, and the form it could take, depend on local circumstances (including participation in an Agreement establishing Economic Integration).

7. Members of the MTC agreed to review the implementation of the above enumerated principles not later than every four years. In order to contribute to a better comprehension of the problems arising from the implementation of competition laws to international liner shipping, including multimodal transport, such reviews should preferably take place in full consultation with relevant parties of the Industry.

Agreed Observation N°1: INCOMPATIBILITY

1. Members of the MTC recognised that differences in competition policy applied to international liner shipping, including multimodal transport with a maritime leg, reflect the diversity of local conditions. Therefore, they agreed that promoting compatibility is not to be considered as requiring standardisation of competition rules world-wide.
2. Furthermore Members of the MTC agreed that the concept of "incompatibility" covers not only a situation of conflict of law but also situations where existing differences in laws and regulations are of such an extent that they can be detrimental both to international trade and/or efficient international liner shipping operations. By so agreeing, Members of the MTC did not criticise any particular regime, but expressed their will to promote further compatibility of competition rules applied to international transport, including multimodal transport with a maritime leg.
3. Members of the MTC considered that a conflict of law occurs when a particular agreement or particular conduct is required by one competition regime and is at the same time prohibited by another competition regime. They noted, however, that their existing legislation is unlikely to lead to outright conflicts of law.

Agreed Observation N°2: MULTIMODAL TRANSPORT

Members of the MTC noted that containerisation along with the development of modern cargo handling in liner shipping has led to an ever increasing volume of multimodal transport and has provided significant economies of scale for carriers, shippers and, ultimately, the consumers. However, they recognised that the development of efficient multimodal transport may be hampered by incompatibility of competition rules and also by regulations or technical conditions which constitute barriers to multimodal transport or are conflicting or overlapping.

They reaffirmed, in particular, that shippers should have the freedom of choice to enter into contractual arrangements between different carriers and modes of transport to the extent possible given existing competition statutes, including the freedom to make their own inland arrangements.

They noted that, in some countries, laws and regulations implementing competition rules to maritime transport address the issue of multimodal transport.

Members of the MTC considered that the following is desirable:

1. That competent authorities in Member countries should address the need to promote compatibility of competition rules applied to international liner shipping and also to multimodal transport in case they include a maritime leg. By so doing, Members of the MTC did not intend to prejudge the way and means individual countries either grant exemptions to collective activities in multimodal transport from their competition law or consider that such exemption can not be granted, but recognised that further compatibility in this area is a desirable goal.
2. Technical regulations or practices should not impair the development of efficient and competitive multimodal transport and that such barriers to multimodal transport as well as restrictions not necessary to protect basic regulatory objectives should be eliminated. By so doing, Members of the MTC did not intend to prejudge the ways and means these issues are dealt with by individual governments.