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On the basis of proposals from Mr Van Miert, the Commission has recently authorised a series of consortium agreements in the maritime transport sector. These are the first cases involving the application of the regulation which the Commission adopted on 20 April 1995 (see IP/95/409 and Annex) and which grant a block exemption to liner shipping consortia offering international maritime liner services from one or more Community ports. Liner shipping consortia are agreements between shipping companies, the object of which is to bring about cooperation for the joint operation of a maritime liner transport service by means of various arrangements. Four of these consortium agreements, all of which existed before the entry into force of the regulation, have been authorised and may operate until 21 April 2000, the date on which the regulation expires.

So far as the fifth agreement, it is not a consortium falling within the scope of the exemption regulation and has been granted individual exemption.

The Commission has been able to establish that each of these consortia has not only allowed the participating shipping lines to rationalise their activities but has also contributed to significant improvements in the quality and frequency of liner shipping services offered to shippers as well as, in some cases, the number of ports served. The Commission has checked that the consortia remain subject to effective competition on the routes where they operate thereby guaranteeing that shippers obtain a fair share of the benefits which result from these agreements.

The following five consortia will benefit from exemption.

(1) St Lawrence Coordinated Service

On 13 October 1995, Canada Maritime Limited and Orient Overseas Container Line (UK) notified to the Commission the St Lawrence Coordinated Service (SLCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in North-West Europe.

On 27 March 1996, the Commission decided not to oppose this agreement and to allow it to benefit from the group exemption. In order to be able to benefit from exemption, the parties agreed to delete, at the request of the Commission, a clause in the agreement which required all goods of Quebec or Ontario origin or destination to be shipped via the port of Montreal, which restricted the possibility of the parties to use, even within the scope of a different agreement, the competing Canadian port of Halifax. This clause was not considered to be indispensable for the objectives of the consortium. The deletion of this clause clearly shows the wish of the Commission not to allow parties to a consortium agreement to impose restrictions of competition relating to routes other than the routes on which the consortium operates.

(2) East African Container Service

On 17 October 1995, six shipping companies notified to the Commission the East African Container Service (EACS), a consortium agreement under which they operate a joint liner service between ports in Europe (including in the UK and Mediterranean) and ports in East Africa and the Red Sea. The six companies are The Charente Steam-Ship Co Ltd, DSR-Senator Lines, Ellerman Lines Ltd, P&O Containers Ltd, WEC Lines, Mediterranean Shipping Company. On 27 March 1996, the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(3) Joint Mediterranean Canada Service

On 19 October 1995, Canada Maritime Limited and DSR-Senator Lines notified to the Commission the Joint Mediterranean Canada Service (JMCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in the eastern Mediterranean. On 2 April 1996 the Commission decided not to

oppose the agreement and to allow it to benefit from the group exemption.

(4) Joint Pool Agreement

On 20 October 1995, Andrew Weir Shipping Ltd and Euro Africa Shipping Line Co Ltd notified to the Commission the Joint Pool Agreement (JPA), a consortium agreement under which these shipping companies operate a joint liner service for the transport of goods between the British ports of Hull and Felixstowe and the Polish port of Gdynia. On 1 April 1996 the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(5) Agreement benefitting from Individual Exemption - Exemption Decision of 9 April 1996

On 11 August 1995, Finn carriers Oy Ab and Poseidon Schifffahrt AG applied to the Commission for an exemption under Article 85(3) of the EEC Treaty in respect of the Baltic Liner Conference Agreement. Under the agreement the parties operate a joint service on a jointly agreed schedule at jointly agreed tariff and service arrangement rates. The joint service consists in the provision of regular ferry services for ro-ro, container and rail/ferry traffic between ports and points in Finland and (i) ports and points in Germany (and other Continental points via German ports) and (ii) ports and points in Scandinavia (Sweden, Denmark and Norway), with a small volume of traffic to and from Russia via Finland to those countries.

The parties take joint investment decisions, in particular for the acquisition of vessels and equipment that are specifically designed for the climatic conditions where they operate and which are also specially designed to meet the specific needs of Finnish shippers. The joint service is managed by Finn carriers.

Such an agreement which brings about a highly integrated joint service does not amount to a consortium agreement falling within the scope of the regulation adopted in April 1995 since it does not concern exclusively the transport of goods principally by containers. A large part of the goods are not containerised and the consortium is therefore unable to benefit from the group exemption and must benefit from an individual exemption if it is to be authorised.

In order to obtain the comments of third parties, in accordance with normal procedures, the Commission published a notice in the Official Journal on 16 February 1996 setting out a summary of the application. No observations were received and within a period of ninety days following publication the Commission considered that the conditions of Article 85(3) were fulfilled and decided on 9 April 1996 not to oppose the exemption of this agreement; Accordingly, in accordance with the applicable regulations, the maritime activities are exempted for a period of six years and the inland activities (which in this case are minor) are exempted for a period of three years.

ANNEX

Principal Features of Commission Regulation No 870/95

This favourable treatment on the part of the Commission is explained by the advantages brought about by consortia. In general, they help to improve not only productivity but also the quality and the frequency of the liner transport services offered to transport users by rationalising the activities of the member companies and by the economies of scale which they bring about.

The conditions and obligations that a consortium must respect in order to benefit from the block exemption are set out in article 5 to 9 of Regulation No 870/95. These conditions and obligations are attached to the block exemption in order to guarantee that the requirements of Article 85(3) of the Treaty are fulfilled. Above all, they seek to ensure that consortia are operating in trades where they remain subject to effective competition in order to guarantee that shippers obtain a fair share of the benefits resulting from these agreements.

To that effect, a consortium which wishes to benefit automatically from the block exemption must have a trade share below 30% or 35% depending on whether or not it is a consortium operating within a liner Conference.

The benefit of the group exemption is still available through a simplified opposition procedure to a consortium whose trade share exceeds the limits of 30% or 35% but is not above 50% of the direct trade provided it fulfils the other conditions contained in Regulation No 870/95 and provided the Commission does not oppose exemption within a period of six months counting from the date of notification.

Where a consortium enjoys a trade share above 50% or where it does not fulfil the other conditions which the regulation attaches to the benefit of the block exemption, such an agreement must be notified to the Commission so as to apply for individual exemption pursuant to Article 85(3) of the Treaty.

Finally, the regulation provides a favourable procedural regime for consortia existing at the date of entry into effect of the Regulation. As a result, consortia existing on that date which have a trade share higher to 50% but which fulfil the other conditions of the block exemption may, for a period of six months following the entry into force of the Regulation, also benefit from the simplified opposition procedure.
