

21 November 2008

JSA Comments on the Preliminary Draft Regulation on Consortia

The Japanese Shipowners' Association (JSA), which is a nationwide shipowners' association consisting of 109 Japanese shipping companies, appreciates this opportunity to submit to the European Commission the following comments on the Preliminary Draft Regulation "on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)" (hereafter referred to as "Draft Regulation") published in the Official Journal of the European Union of 21 October 2008.

The JSA recognises that the consortia system is purely operational arrangement and it is not involved with any commercial discussion of such as rates or charges. The concept of consortia is universally accepted in major trading countries and regions as effective means to significantly improve the productivity and quality of maritime transport services through the joint operation. We firmly believe that the block exemption for consortia is essential to support the sustainable world trade and to flexibly meet changing customers' requirements. It is therefore important to retain legal certainty to assure the current consortia system for the foreseeable future.

1. Market share

According to the Recital (4) of the Draft Regulation, agreements between different consortia operating in the same trade do not seem to be covered by the Consortia Regulation, regardless of their market shares. It means that the said agreements are directly subject to the EC Treaty. Given that the aim of such agreements is not to reduce competition among consortia, which should be prevented by the Regulation, but to rationalise services in trades in response to fluctuations in supply and demand and to provide stable services to meet customers' demand, the JSA is of the opinion that agreements between different consortia should not fall under the category of "restrictive agreements". We would like to request that this type of agreements also be covered by the Regulation.

Furthermore, we also have a grave concern about the aggregation of the market shares of carriers and consortia in Article 5 of the Draft Regulation. It

states that “the market shares of carriers that provide services both individually and within a consortium on the same relevant market have to be aggregated” and that “market shares of consortia operating in the same relevant market and interlinked by common membership have to be aggregated”. The liner shipping companies have established many links between consortia, or between individual members of consortia and other carriers in order to cope with changing requirements of the trades and business. If the market shares were calculated in the proposed manner, it might easily exceed the proposed threshold of 30% in many cases and it could consequently impose implicit restrictions on the ability of carriers and consortia to consider exchanging small slots flexibly with other carriers and consortia for the purpose of the efficient use of vessel capacity. It could also create a serious obstacle to providing a variety of choices of services for customers.

2. Consultations with shippers

In case of major changes in conditions and quality of scheduled maritime transport services offered by a consortium or its members, consultations between individual members of a consortium and their shippers take place under the current practice. With regard to Article 7 of the Draft Regulation (and also in Regulation 823/2000), which imposes an obligation to hold consultations between a consortium and shippers or their representatives, we understand that Article 7 will not affect the present consultation practice between individual carriers and their customers, as the current regulation allows.

We would like to reiterate the fact that agreements being entered into by a consortium are not involving any commercial discussion. If Article 7 implies that a consortium is allowed to gather to discuss in preparation for consultations with its customers, it could contradict with the basic principle of Article 3 (Exempted agreements) in the Draft Regulation.

3. Conclusion

The JSA are pleased to note that the Commission recognises that Regulation 823/2000 is found to work well for the benefit of carriers and transport users and proposes to extend the exemption for consortia agreements for another period of five years.

The JSA firmly believes that, as mentioned above, the block exemption for

consortia is essential to provide high quality scheduled maritime services and to meet the needs of a large variety of shippers. The JSA strongly requests that the EU block exemption regulation for consortia should be maintained for a much longer term.
