

Maritime transport: cabotage and international tramp services

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The Commission sets out the guidelines on the application of Article 81 of the EC Treaty to maritime transport services. These Guidelines set out the principles that the Commission will follow when defining markets and assessing cooperation agreements in those maritime transport services directly affected by the changes brought about by Council Regulation (EC) No 1419/2006, i.e. liner shipping services, cabotage and international tramp services. The Guidelines are intended to help undertakings and associations of undertakings operating those services, mainly if operated to and/or from a port or ports in the EU, to assess whether their agreements are compatible with Article 81 of the Treaty.

Maritime transport services: liner shipping services, cabotage and tramp services are the maritime transport sectors directly affected by the changes brought about by Regulation (EC) No 1419/2006. The paper discusses the **effect of trade** between Member States, pointing out that Article 81 of the Treaty applies to all agreements which may appreciably affect trade between Member States. The effect on trade between Member States is of particular relevance to maritime cabotage services since it determines the scope of application of Article 81 of the

Treaty and its interaction with national competition law under Article 3 of Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. The extent to which such services may affect trade between Member States must be evaluated on a case by case basis.

The paper goes on to discuss the notion of the **relevant market**. In order to assess the effects on competition of an agreement for the purposes of Article 81 of the Treaty, it is necessary to define the relevant product and geographic market(s). The main purpose of market definition is to identify in a systematic way the competitive constraints faced by an undertaking. Guidance on this issue can be found in the Commission Notice on the definition of the relevant market for the purposes of Community competition law. This guidance is also relevant to market definition as regards maritime transport services.

The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. A carrier (or carriers) cannot have a significant impact on the prevailing conditions of the market if customers are in a position to switch easily to other service providers. The Commission examines the notion with regard to liner shipping and tramp services. It discusses at length the following:

- elements to take into account when determining the relevant product market from the demand side (demand substitution);
- elements to take into account when determining the relevant product market from the supply-side (supply substitution);
- additional considerations to take into account when determining the relevant product market, such as the existence of chains of substitution between vessel sizes in tramp shipping;

- geographic dimension.

The paper notes that market shares provide useful first indications of the market structure and of the competitive importance of the parties and their competitors. The Commission interprets market shares in the light of the market conditions on a case-by-case basis, and it gives some guidelines based on Commission decisions and Court judgments.

Horizontal agreements in the maritime transport sector: cooperation agreements are a common feature of maritime transport markets. Considering that these agreements may be entered into by actual or potential competitors and may adversely affect the parameters of competition, undertakings must take special care to ensure that they comply with the competition rules. In service markets, such as maritime transport, the following elements are particularly relevant for the assessment of the effect an agreement may have in the relevant market: prices, costs, quality, frequency and differentiation of the service provided, innovation, marketing and commercialisation of the service.

Lastly, three issues are of particular relevance to the services covered by these guidelines: **technical agreements, information exchanges between competitors in liner shipping, and pools**. The paper discusses these in detail.