



**UNION OF GREEK SHIPOWNERS
FOUNDED IN 1916**

Piraeus, 11.3.2016

MEMO 381/2016

EU

Anti-trust: Investigation of container companies for price fixing – Liner trades

On 16/3/16 the European Commission announced in the Official Journal a clearance from antitrust proceedings for price fixing for 15 container companies. The formal antitrust proceedings started in November 2013, and unannounced inspections in May 2011. The 15 concerned companies are: China Shipping (China), CMA CGM, COSCO (China), Evergreen (Taiwan), Hamburg Süd (Germany), Hanjin (South Korea), Hapag Lloyd (Germany), HMM (South Korea), Maersk (Denmark), MOL (Japan), MSC (Switzerland), NYK (Japan), OOCL (Hong Kong), UASC (UAE) and ZIM (Israel).

The European Commission (DG COMP) has announced that it is willing to accept a proposed commitment by the above container companies on the practice of General Rate Increase (GRI) announcements. Before settling the case, the Commission invites interested third parties to submit observations on the commitments proposed by the companies. The observations must reach the Commission not later than one month following the date of this publication (16/3/16).

In the preliminary assessment, the Commission expressed the concern that practices around GRI announcements may allow the parties to explore each other's pricing intentions and to coordinate their behaviour ('price signalling'). The Commission is concerned that the practice may enable the parties to 'test', without incurring the risk of losing customers, whether they can reasonably implement a price increase and thereby may reduce strategic uncertainty for the parties and diminish the incentives to compete. The Commission is concerned that this conduct may amount to a concerted practice in violation of Article 101 TFEU.

If this so-called 'market test' indicates that the commitments are suitable to remedy the concerns, the Commission may adopt a decision making the commitments legally binding on the carriers. Such a decision shall conclude that there are no longer grounds for action by the Commission and it will legally bind the carrier to respect the commitments it has offered.



If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company's worldwide turnover. The commitments would apply for a period of three years.

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2016_060_R_0004&from=EN

Details of the proposed commitments can be consulted here: http://ec.europa.eu/competition/ejojade/isef/case_details.cfm?proc_code=1_39850

The official press release can be found here: http://europa.eu/rapid/press-release_IP-16-317_en.htm

ECSA

1. **BLU Directive (Safe Loading & Unloading of Bulk Carriers)**

The social partners in the Sectoral Social Dialogue Committee for Ports (FEPOR, ESPO, ETF and IDC – International Dockers Council) have started discussions on safety of port and dock workers' work on board of ships. For that purpose, they have asked the European Commission to analyze the EU maritime safety legislation from the perspective of port and dock workers.

The analysis prepared by the European Commission concludes that, with the possible exception of the EU Directive on Safe Loading and Unloading of Bulk Carriers (Directive 2001/96/EC, hereafter BLU Directive), the maritime safety legislation does not establish expressly rights for, nor imposes obligations upon, port and dock workers. Nor are there obligations under EU maritime safety law incumbent upon Member States which could concern expressly port and dock workers.

ECSA was invited to participate in a working group which will draft a standardized EU health and safety checklist that would be integrated in the EU Directive on the Safe Loading and Unloading of Bulk Carriers. Masters would have to complete this checklist prior to port operations commencing. ICS informed that the industry has already established a standard in the form of packs of IMO approved ship/shore safety checklists for use by ship and terminal operators¹. These checklists have been adopted and incorporated in the IMO Code of Practice for the Safe Loading and Unloading of Bulk Carriers (BLU Code) which is included in the Supplement to the International Maritime Solid Bulk Cargoes Code (IMSBC). The BLU Code states that; "terminal operators are required to comply with the relevant IMO Codes and recommendations on ship/port cooperation". A Manual for terminal representatives on loading and unloading of solid bulk cargoes (BLU Manual) is also included in the supplement to the IMSBC Code. This manual is intended to provide; "more detailed guidance to terminal representatives (as defined in the BLU Code) and others involved in the handling of solid bulk cargoes, including those responsible for the training of personnel".

ICS concluded that it appears unnecessary and potentially confusing for the EU to develop parallel guidance/procedures in addition to those already

¹ <http://www.ics-shipping.org/publications/safety-and-operations>



required by IMO. Therefore, it suggested that rather than the development of parallel text, the real need is for compliance with the IMO requirements.

2. EU Biocidal Products Regulation – Application on Ships

On 10/3/2014, the Council of Ministers adopted a revised version for the Biocidal Products Regulation (Regulation 2012/528). The Regulation initially adopted in 2012 had entered into force in September 2013 and concerned the placing on the EU market of biocidal products (such as anti-fouling paints), as well as products treated with such biocidal products ('treated articles').

The main amendment to this Regulation referred to article 94 on transitional measures concerning treated articles. With the previous version of the Regulation, an unintended ban was introduced as from 1/9/2013 on 'treated articles' already placed on the EU market until the approval of the last active substance contained in those treated articles. The scope of the revised Article 94 is now extended to include new treated articles and also provide a phasing out period until 1/9/2016 for treated articles with not yet EU approved biocidal products.

Whilst not explicitly referred to in the EU Regulation, the definition of treated article would also be applied on ships. In 2011, ECSA in conjunction with CEPE² advised the Commission to exempt ships from the Biocidal Regulation arguing that ships are already regulated under the 2001 International Convention on the Control of Harmful Anti-Fouling Systems on Ships (AFS Convention) as transposed into EU law under Regulation 2009/782.

Some preliminary assessment shows that the Biocidal Products Regulation is more restrictive than the AFS Convention and may, thus, prevail.

The Biocidal Products Regulation does not make any reference to any of the above mentioned dedicated regulations on anti-fouling paints – meaning that EU Member States would in practice monitor the use of anti-fouling products according to two different legal frameworks which would not necessarily have similar requirements.

The potential unwelcome situation arising is the following: as a result of strong green lobbying, ineffective anti-fouling paints (in terms of duration of action and organisms covered) will result from the approval process by EU authorities according to the Biocidal Products Regulation. Such a situation will render EU ship/repair-yards unattractive since anti-fouling work often represents an important part of their activities.

In brief, the likely implications for shipping are dual:

- 'Treated articles': the sale of ships treated with anti-fouling paints that contain substances not yet evaluated by EU authorities, to EU entities, will be authorized until 1/9/2016.
- 'Placing on the EU Market': the availability of anti-fouling products will dictate the shipowners' choice to dry dock. Less effective anti-fouling paint means especially for intra-EU shipping more regular visits to dry docks.

The issue is pending and will be followed closely by the UGS and ECSA.

² European paint industry association



3. SOx Emissions from Ships / Environment Commissioner Vella's scrubber visit in Ghent

European Environment Commissioner Vella visited the DFDS vessel "Magnolia Seaways" in the port of Ghent. The purpose of the ECSA-organized visit was to demonstrate how a scrubber functions onboard a modern day vessel and explain the challenges arising from the operation of such equipment. Following the visit, Commissioner Vella said: "The Commission supports innovation in emission abatement technology and 'early-movers' such as DFDS provide valuable data. The European Commission, DFDS and ECSA are committed to ensuring that alternative compliance technology is truly sustainable. We should be extra vigilant to make sure that in complying with air quality/emissions legislation, such as the Sulphur Directive, we also avoid a transfer of pollution from air to water."

As a transposition of IMO MARPOL Annex VI, the EU Sulphur Directive 2012/33 requirements impose since 1/1/2015 that ships sailing in the SECAs (Sulphur Emission Control Areas - the Channel, the North Sea and the Baltic Sea) use bunker fuels with a sulphur content of maximum 0.1% or that the same level of emissions is reached by the use of alternative fuels or compliant abatement technologies. While scrubbers have been identified as one of the few abatement technologies available allowing ships to reduce the sulphur content in their emissions, the EU Water Framework Directive (WFD) is a source of concern for European shipowners. The WFD sets limits for the content of pollutants in ports, estuaries and coastal areas. This means that the discharges of scrubber washwater will in some areas be well under the limits set by the WFD, while in other areas with poorer water quality, washwater discharges might be prohibited by Member State legislation.

Moreover, the WFD foresees a progressive reduction of some substances and a complete phasing out of others. Due to a lack of information on the actual composition of washwater discharges, it is impossible to ascertain whether scrubber discharges fall within the two aforementioned categories. Hence, more scientific research on the actual ecological effects of scrubber discharge is necessary. Certain EU Member States have already moved to ban the use of open loop scrubbers in their ports, estuaries and coastal areas. Any restrictions introduced on the use of open loop scrubbers should not be applied to existing installations. Shipowners that have made irrevocable investments in good faith to be compliant in time with the Sulphur Directive and international rules, but are facing uncertainties, should not be penalized. The current uncertainty and lack of harmonisation not only jeopardizes investments already made by operators, but also hampers the uptake of scrubber technology which might be further encouraged with the introduction of the 0.5% sulphur requirement introduced in 2020 in the territorial seas, exclusive economic zones and pollution control zones of Member States as prescribed by the Sulphur Directive.



ILO

ILO Seafarers' Identity Documents Convention

The International Chamber of Shipping (ICS), as the Secretariat for the Shipowner Group at the International Labour Organization (ILO), coordinated employers' representatives at the Ad Hoc Tripartite Maritime Committee on the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) (Geneva, 10-12/2/2016). ILO Convention 185 requires ratifying nations to issue resident seafarers with Seafarers' Identity Documents (SIDs), and to facilitate the entry of foreign seafarers holding such documents into their territory for the purposes of shore leave, transfer and transit. However, since its adoption in 2003, the Convention has failed to achieve widespread implementation, in large part because the technical standards adopted have been superseded by the technologies and infrastructure now used for the issuance and verification of ePassports. With a view to addressing this impasse, the above meeting adopted amendments to Annexes I, II and III of the Convention, establishing that SIDs are to conform to the mandatory requirements for other electronic machine-readable travel documents in use, such as ePassports. A resolution on transitional measures and entry into force of the amendments was also adopted by the Committee, together with a resolution calling upon countries to do their utmost to implement measures to facilitate access to shore leave and the transit of seafarers to and from ships.

Various Issues

Libya situation: a warning

The unstable political situation that has existed in Libya since the fall of Gaddafi in 2011 is well known. The east/west division of the country and the growing incursion of Islamic State fighters only add to the volatility of the situation. According to media reports, ISIL currently appears to hold power in the port of Sirte and beyond. It is targeting and destroying areas eastwards towards the Libyan oil fields, hence the oil infrastructure. This has prompted an upsurge in international attention on Libya, once the largest oil producer in Africa. The impact of any kind of international intervention in an attempt to promote political and economic stability in Libya, however, has yet to be seen. This includes the recently adopted UN Security Council Resolution 2259 to support a sole legitimate Libyan government based in Tripoli, as well as talk of military support to fight ISIL on the ground. Lack of a unified government and ongoing armed conflict between rival political factions makes trade, even in the reduced volumes of oil Libya now pumps, extremely challenging. In January 2015, for example, the product tanker, *Araevo*, was bombed on its final approach to Derna by an unidentified aircraft. Two crew members were killed. It is understood that she had been chartered by the National Oil Corporation of Libya to carry oil to Marsa el Brega and may have been targeted for not obtaining the correct permissions and following appropriate procedures when approaching port. Other attacks have reportedly taken place



around Misurata/Misrata. From a practical point of view, it is advised that anyone who chooses to trade in this very volatile environment to exercise extreme caution and to be extra vigilant when navigating in the region. Shipowners should act in very close liaison with their insurers, including P & I, hull and war risk underwriters and should also contact local agents who are best placed to advise on what is happening day to day. There exists a risk of air attack and of interaction with armed militia around key ports and in Libyan waters.