İSTANBUL VE MARMARA, EGE, AKDENİZ, KARADENİZ BÖLGELERİ
DENİZ TİCARET ODASI
ISTANBUL & MARMARA, AEGEAN, MEDITERRANEAN, BLACKSEA REGIONS
CHAMBER OF SHIPPING

İstanbul :
Sayı
Our Reference : 1674
Konu
Subject :

24.04.2012

AB'nin Liner Konferansları Yasağının Etkisi Konusundaki FMC İncelemesi

Sirküler No: 216 / 2012

İlgi: Uluslararası Deniz Ticaret Odası'ndan (ICS) alınan 21.02.2012 tarih ve SPC(12)03 sayılı yazı.

Sayın Üyemiz,

İlgi yazıda, Avrupa Birliği'nin (AB), özellikle ABD/Uzak Doğu taşımalarında liner (düzenli hat) konferanslarını yasaklamasının etkisine ve Federal Denizcilik Komisyonu'nun (Federal Maritime Commission - FMC) ana kararlarının, ICS'in, AB dışı taşımalarda mevcut tekelciliğe karşı muafiyet (anti-trust) konusunda statükonun korunmasından yana olan duruşunu destekler gibi göründüğüne dikkat çekilmektedir.

Amerika Birleşik Devletleri'nin Federal Denizcilik Komisyonu (FMC), uzun zamandır beklenen 'Liner Konferansı Muafiyetinin 2008 Yılında Avrupa Birliği Rekabet Yasasından Çıkarılması İncelemesi'ni yayınlamıştır.

İdari özet İlgi yazı Ekinde sunulmuştur ve incelenen dönemle (2006-2010) ilgili aşağıdaki ilginç sonuçları içermektedir:

- **(Ekim 2008'de yürürlüğe giren) AB Blok Muafiyetinin kaldırılmasının, AB navlun oranlarında bağıntılı (nispi) bir düşüşe neden olmadığı görülmektedir.** Başka bir deyişle, AB'nin kararından dolayı, AB'ye taşıma yapan nakliyeciler, AB'nin yasağının geçerli olmadığı örneğin Uzak Doğu ve ABD gibi ülkelere taşıma yapan nakliyecilere kıyasla avantajlı olmamışlardır.
- **Uzak Doğu/ABD taşımalarına kıyasla, AB taşımalarındaki ücret oranı dalgalanmasında bir artış olduğu görülmektedir.** FMC, Uzak Doğu/ABD'de halen izin verilen müzakere anlaşmaları (discussion agreements) faaliyetlerinin, navlun ücreti dalgalanması üzerinde 'azaltıcı etkisinin' olmuş olabileceğini belirtmektedir.

İlgi yazı ve Eki ilişikte sunulmuştur.

Bilgilerinizi arz ve rica ederiz.

Saygılarımızla,

Murat TUNCER
Genel Sekreter

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İstanbul :

Sayı
Our Reference :

Konu
Subject :

EKLER:
Ek 1: İlgi yazı ve Eki.

DAĞITIM:

Gereği:
-Tüm üyelere (Web sayfasında)
-Türk Armatörler Birliği
-S/S Gemi Armatörleri Motorlu Taş. Koop.
-Vapur Donatanları ve Acenteleri Derneği
-23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 39, 44, 51, 53 No'lu İMEAK DTO Meslek Komite Başkanları
-İMEAK DTO Şubeleri
-Türk Uzakyol Gemi Kaptanları Derneği

Bilgi:
-Sn. Sefer KALKAVAN
TOBB DTO'ları Konsey Başkanı
-Meclis Başkanlık Divanı
-Yönetim Kurulu Başkanı ve Üyeleri
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21 February 2012 **SPC(12)03**

TO: SHIPPING POLICY COMMITTEE
Copy: All Full and Associate Members (for information)

FMC STUDY ON IMPACT OF EU PROHIBITION OF LINER CONFERENCES

Action required: ***To note the publication of the FMC study on the impact of the EU prohibition of liner conferences, particularly on US/Far East trades, and that some of the FMC's main conclusions appear to support the ICS position in favour of the maintenance of the status quo with respect to current anti-trust immunity in non-EU trades.***

The United States' Federal Maritime Commission (FMC) has published its long awaited 'Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law'.

The Executive Summary is **attached** and includes the following interesting conclusions about the period studied (2006-2010):

- The repeal of the EU Block Exemption (with effect from October 2008) has apparently not resulted with any *relative* decline in EU freight rates (after allowing for the effects of the economic downturn) compared with US trades. In other words, shippers in EU trades have not been advantaged as a result of the EU decision compared to shippers in e.g. Far East/US trades where the EU prohibition does not apply.

- There appears to have been an increase in rate volatility in EU trades, compared to Far East/US trades, and the FMC suggests that the activities of discussion agreements that are still permitted in Far East/US trades may have had a 'dampening effect' on rate volatility.

No firm conclusions are reached as to whether any changes are warranted with respect to current US competition regulations such as the Ocean Shipping Reform Act. However, the FMC study does seem to provide evidence in support of maintaining the status quo with respect to the anti-trust immunity that continues to apply in non-EU trades, as regulated by the United States and many other jurisdictions.

The full FMC report (365 pages) can be found at www.fmc.gov/assets/1/Documents/FMC_EU_Study.pdf

Simon Bennett
Director External Relations

Executive Summary

The Core Issue

1. In 2006, the European Union ("EU") decided to repeal its block exemption from European competition law for liner shipping conferences. After a two-year transition period, the repeal went into effect in October 2008. Shortly after the repeal was announced, the Federal Maritime Commission ("FMC" or "Commission") decided to study its impact.

2. The primary issue addressed in this Study is: *What impact has the repeal of the liner conference block exemption in Europe had on US liner trades?* US shippers raised the possibility of such impacts in comments to the Antitrust Modernization Commission in 2006. A 2008 Congressional Research Service report raised similar concerns. Those concerns were premised on an expectation that the EU repeal of the liner conference block exemption would produce freight rate reductions in EU liner trades relative to US liner trades.

3. The possibility of unanticipated impacts on US liner trades resulting from differences in international liner shipping regulations is a topic of considerable interest to the Commission. As the expert, independent agency charged with regulating liner shipping in US trades, the FMC has a responsibility to keep abreast of changes in foreign laws and regulations that might affect liner activities in US trades.

4. To meet that responsibility, the Commission initiated this research, *Study of the 2008 Repeal of the Liner Conference Exemption from EU Competition Law* ("the Study"). By assessing whether the repeal of the conference block exemption has had any negative impact on US liner trades, the Commission hopes to determine whether any changes to its current regulations or oversight activities would be warranted.

5. To answer the Study's core question it was necessary to address several related, preliminary questions:

   - What were the anticipated impacts of the repeal of the block exemption in EU trades?
   - Did those anticipated impacts occur?
   - Given observable impacts of the repeal on EU trades (if any), what follow-on consequences might one anticipate in US trades?
   - Did any such follow-on consequences occur?

6. The analysis of the effects of the repeal is complicated by two factors that, taken together, produce a substantial challenge to reaching clear and persuasive findings:

   (1) The occurrence, nearly simultaneously with the repeal's implementation, of a massive exogenous shock – a global recession that produced the largest decline in trade volumes in liner history; and

   (2) The fact that any impacts from the repeal were likely to be relatively modest (that is, have a minimal intervention impact) because the market power of the carrier agreements being terminated had already been severely limited by earlier regulatory reforms and legal interventions.

In short, any effects of the repeal of the block exemption on liner shipping were likely to be not only small but also masked by the deeply felt effects of the global recession. Only now are markets recovering enough to allow a proper assessment of the impact of the repeal in isolation from the recession.

7. Based on an analysis of available information from 2006 through 2010, the Study's primary finding is that no significant changes in rate levels occurred between EU and US liner trades due to the repeal. During the period examined, the repeal of the block exemption appears not to have put US shippers at a disadvantage to EU shippers in Far East trades.

8. On a pre- and post-repeal comparative basis, differences in the changes in average revenue per twenty-foot equivalent unit (TEU) (as a proxy for all-in freight rates) between the eastbound Far East/US trade and the westbound Far East/Europe trade appear to have been trivial. Average revenue per TEU declined by $150 in the Far East/US trade, and by $141 in the Far East/EU trade, suggesting that the repeal of the block exemption had little or no effect on average revenue or freight rate levels in the largest US and EU import trades. A comparison between the westbound US/Far East trade and the eastbound Europe/Far East trade shows a similar minor difference in the US and EU export trades. On a pre- and post-repeal comparative basis, average revenue per TEU increased by $149 in the US/Far East trade, and by $125 in the Europe/Far East trade.

9. The Study's primary finding (item 7) is supplemented by tentative secondary findings derived from a comparative analysis of Far East-based US and EU trades. Those secondary findings are presented below (item 17)

Research Context

10. The two legislative measures that provide the context for this study are the Ocean Shipping Reform Act of 1998 ("OSRA") that took effect on May 1, 1999, and European Commission (EC) Regulation No. 1419/2006 that repealed the EU liner conference block exemption. The former achieved its pro-competitive reforms while allowing continued antitrust immunity for liner agreements with rate authority. The latter eliminated such immunity in EU liner trades by repealing the conference block exemption, but allowing immunity to continue for "consortia," which are roughly equivalent to vessel sharing agreements under FMC regulations, below a given market share threshold.

11. In practical terms, the main difference between the two regulatory approaches is that US regulations, based on OSRA reforms to the Shipping Act of 1984, allow *carrier rate discussion agreements* to operate in US trades. Carrier rate discussion agreements are prohibited in EU trades.

12. In March 2003, the EC initiated a review of the liner conference block exemption. The review's main objective was to ascertain whether the policy assumptions supporting the original exemption in 1986 were still valid. The block exemption had been justified on the assumption that liner conferences brought stability, ensuring shippers reliable services that could not be achieved by less restrictive means. Following a number of European court cases challenging how the block exemption was to be interpreted, the Directorate-General for Competition ("DG Comp") came to the view that the liner shipping industry had changed considerably since 1986 and the block exemption was overdue for review.

13. With respect to application of the exemption, DG Comp determined that it applied only to *conferences* and not carrier rate discussion agreements. As a result, the EC review

was conducted in terms of whether existing liner organizations with pricing authority (nominally *conferences*) were (a) doing what conferences traditionally (at least in theory) were supposed to do – collectively set rates and manage trade-wide capacity, and (b) thereby providing the presumed benefits of traditional conferences – reliable service and stable rates.

14. In practice, however, EU-based carrier agreements like the Trans-Atlantic Conference Agreement and the Far Eastern Freight Conference already had – because of the prevailing practice of pricing via confidential, individual contracts (rather than conference tariffs) – even less authority than discussion agreements.[1] Thus, DG Comp's review was essentially an evaluation of the performance of carrier organizations that were less than carrier discussion agreements in terms of the effectiveness (or lack thereof) of conference tariffs.

Methods and Results

15. In developing a comparative assessment that would allow the Commission to compare US and EU trades in a way that would identify any effects of the repeal of the block exemption, it was important to apply multiple approaches in the analysis. These approaches included:

- Descriptive studies of the three major East/West trade lanes with respect to market structure, carrier conduct, and economic performance. That data also provided the basis for a subsequent comparative analysis of those trades.
- A difference-in-differences analysis of elements contained within a traditional structure-conduct-performance framework for analyzing markets, for example, average revenue per container (as a proxy for all-in rates), vessel utilization levels, and the like, to help identify any "intervention effects" attributable to the repeal of the block exemption.[2]
- A general assessment, taking account of the above research, of significant changes in the major East/West trades, in particular, the likelihood of any impact on shippers in US-based trades.

16. Once the relevant structure, conduct, and performance data were collected and reviewed, the main analytical method applied in the Study was a difference-in-differences comparison of the Far East/US trade, which was not directly affected by the repeal, and the Far East/North Europe trade, which was.[3] Those two trades were selected because they were similar in such respects as magnitude of container volumes, commodity mixes and values, trade imbalances, shipper characteristics, and market

1 During the period of the EC review, "conferences" in EU trades operated under legal constraints with respect to sharing member lines' rate and revenue information, and to producing guidelines applicable to confidential rate agreements that did not apply to discussion agreements in US trades. So, arguably, members of EU trade "conferences" had fewer tools for cooperative action than did members of US trade discussion agreements.

2 Difference-in-differences estimation is commonly used to measure the effect or impact of a new policy, law, medical treatment, or other type of program intervention. The difference in outcomes before and after the change in policy, law, or treatment for the (treatment) group affected by that intervention is compared to the difference in outcomes for a (control) group for whom there is no such intervention. In the context of our study, one can compare changes in outcomes among carriers operating in a liner trade that has had antitrust immunity repealed (the treatment group) to outcomes among carriers operating in a trade where that immunity still remains (the control group).

3 Generally, the Asia-based trades reviewed in this Study are referred to as the Far East/US and Far East/North Europe trades rather than Asia/US and Asia/North Europe. However, sometimes, the latter terms are used, and sometimes the Far East/US trade is referred to as the transpacific trade. The terms Far East and Asia are synonymous for the purpose of this study. They exclude the India Subcontinent (South Asia), Russian ports (Vladivostok), and Central Asia, but do include Southeast Asia.

participants. In addition, they are the largest and most important liner trades globally and were similarly affected by the global recession.

17. The analysis of the two Far East-based trades showed:

- *The impact of the repeal on average revenue per TEU appears to have been trivial* – A result that suggests that the repeal likely did not, independent of the global recession's impact, produce a relative decline in average rate levels in EU trades as compared with US trades from October 2008 through 2010.
- *There appears to have been an increase in rate volatility in the EU trades* – A result that suggests the possibility that the activities of the discussion agreement in the Far East/US trade may have had a dampening effect on rate volatility. However, other factors, such as the prevalence of annual contracts in the Far East/US trade and the difficulty in redeploying very large vessels from the Far East/North Europe trade, may also have contributed to the differences in rate volatility.
- *Following the repeal, there appears to have been a small increase in market concentration* – A result that suggests that, in the absence of a forum for carrier discussions and information sharing, market concentration may increase slightly more rapidly
- *There was a relative decline in market share stability that may be related to rate volatility and market concentration* – Market share stability noticeably declined in the Far East/North Europe trade in the post-repeal period. That was also the trade in which relative rate volatility and market concentration appeared to have increased. In contrast, there was increased market share stability in the Far East/US trade.

18. In summary, the Study's findings are:

- The repeal of the block exemption does not appear to have resulted in any negative impact on US liner trades. Average revenue per TEU (a proxy for all-in rates) declined to the same degree in both US and EU import trades being compared. Average revenue per TEU increased to a similar degree in both US and EU export trades being compared.
- While the activities of carrier rate discussion agreements in US trades do not appear to have increased average rates relative to rates in EU trades (nor to have improved carriers' revenues), they may have contributed to modestly reduced rate volatility.
- The repeal of the block exemption may have resulted in a modest increase in market concentration. However, given the lack of concentration in the liner trades studied, such an increase is unlikely to present problems.

19. The results of the difference-in-differences analysis raise the following questions: Given the results for average revenue per container in the two trades, what difference, if any, does it make to carriers or shippers if a block exemption or antitrust immunity is granted or withheld for conferences or rate discussion agreements? Given the results of the rate volatility comparison, does discussion and information sharing among rate discussion agreement member lines have a separate and distinct utility apart from the success or failure of the lines' common pricing proposals (general rate increases and other pricing guidelines)?

20. Finally, trends in rates, volatility, and concentration in the Far East/Europe and Far East/US trades beyond the period studied, merit further review.