

# Directive of the EU Commission on market access to port services (Port Package 2)

COMMENTS FROM THE HAVEN GATEWAY PARTNERSHIP



THIS BASIS OF THIS PAPER WAS PREPARED BY THE  
BRITISH CHAMBERS OF COMMERCE.

## Introductory remarks

The British Chambers of Commerce, which represents more than 100,000 businesses who employ over five million people, has consulted with its members on the EU Commission directive on market access to port services.

The points raised below represent the views of maritime industry businesses around the UK. Overall, there is felt to be a need to ensure the position paper accurately reflects the particular character of the UK ports industry which is the largest in Europe but with a different structure to the ports industry in many EU states.

The directive is modelled on the continental European 'landlord' structure, where the port authority provides the infrastructure and then awards concessions for services. In contrast, UK ports do not operate in this manner and instead have an integrated system without authorisations. For the UK the major issue is aiding fair competition between all EU ports, rather than within ports where, certainly in the UK, there is already a high degree of competition. These differences need to be reflected in the position paper

## Detailed comments

### 1. Basic remarks

The BCC agrees with the statement that the concrete measures proposed by the Commission regarding competition are little suited to achieving the intended goals and are liable to introduce great administrative expense.

The BCC would also raise the issue of whether a new directive is required to achieve the objective of increased competition within and between ports: the UK experience shows that competition between port service providers can exist without an EU Commission directive in place. British ports have become increasingly competitive over the last 15 years. Any directive introduced should not stifle existing competition

in its drive to harmonize port services provision across the EU and should be carefully weighed against the regulatory burden it may impose on the ports industry and companies who rely on this industry's effectiveness.

A much clearer business case for the directive is needed so that the ports industry see a clear outline of what the existing problems are that make a directive necessary, the location of the problems, inadequate nature of existing EU and national legislation and how the directive would solve the problem, with practical, workable and cost-effective measures.

## 2. Competition in the area of cargo-related services

The UK ports industry is highly competitive, not least in the area of cargo-related port services.

## 3. Period of the validity of the authorisations

Reduced concession periods could be a disincentive to invest in infrastructure. Long-term investment in ports would be a problem were there too much competition and reduced franchise periods. In the UK durations are currently agreed by consent between ports and port service providers. It would be a retrograde step to move to limiting durations by regulation. Durations should be for longer periods, particularly those involving investments, in order to minimize the adverse effects.

## 4. Compensation payments for existing service providers

The current proposals for compensation are inadequate. The paper would benefit from strengthening the point that aside from the compensation payments made to a company when an authorisation is ended prematurely, there need to be far more comprehensive compensation rules. The companies concerned would stand to lose their entire business and in such a case, they should be compensated accordingly. It should not be on the basis of assets only, but rather on the value of the business as a going concern. If this does not happen it could be a massive deterrent to future port investment.

## 5. Transitional periods

Our understanding of the directive is that, as outlined in Article 7 (1), within 18 months of the directive coming into force all providers of port services will have to be authorised by the port authority after a tendering process.

We would want to see the following statement significantly strengthened: "The Directive must not encroach on the rights of private owners of port areas." It must be made clear that the directive should absolutely not encroach on any property rights whatsoever. This should be made clear both in the directive itself and in the preamble to the directive, particularly point 46, the latter of which currently suggests there are circumstances in which deprivation of or interference with property could be justified. A caveat is not acceptable.

## 6. Financial transparency

The directive would suggest that even where there is no public funding involved, port service providers in privately-owned UK ports would be required to keep separate accounts for each port service. Where public funding is not present, these requirements are not necessarily appropriate nor would they aid efficiency.

The Market Access Directive should not be introduced unless and until the proposed Directive on Community guidelines on state aid for port undertakings are prepared, to ensure that the entire scope of the two directives is transparent from the start. The guidelines on state aid are an essential part of the process which will be put in place by the Market Access Directive and the clarification that these guidelines will provide on what is, and is not, 'public infrastructure', are needed immediately. At the moment the confusion between what constitutes state aid and what contributes to the availability of public infrastructure risks jeopardizing competition between ports in different EU states where state aid to ports differs.

## 7. Self-handling

In the UK a number of the companies using port services can be regarded as already 'self-handling'. They use their own land-based personnel on land leased from the port. The final sentence of this section of the position paper should therefore be slightly revised to reflect this type of situation.

## 8. Pilot services

To ensure safety there should only be one pilotage authority at a port. It is questionable whether competition in pilot services is either desirable or practical. A specific illustration is the Humber, where several major ports including Immingham, one of the UK's largest ports, are located. One company, ABP, operates pilot services. ABP is in effect an 'in house' service provider, provided in turn by the port authority. Experience in the Humber has shown that the port and its operators have benefited from the increased coordination in pilot services, rather than competition between pilot services providers.

## Final remarks

There were some further points in the directive which it is felt the position paper should raise. These can be summarized as follows;

- i. There needs to be clarification on how, in practice, one port service provider would replace another following a tender. This fits with the general need for the directive to be more firmly rooted in the realities of the port services market and how it would take effect in practical terms.
- ii. By what means would assets be transferred if agreement cannot be reached on valuations and what would happen if the existing port service provider opted to remove its assets? The directive needs to address these issues.