



PORT-NET Workshop

Green Paper - EU Competition rules

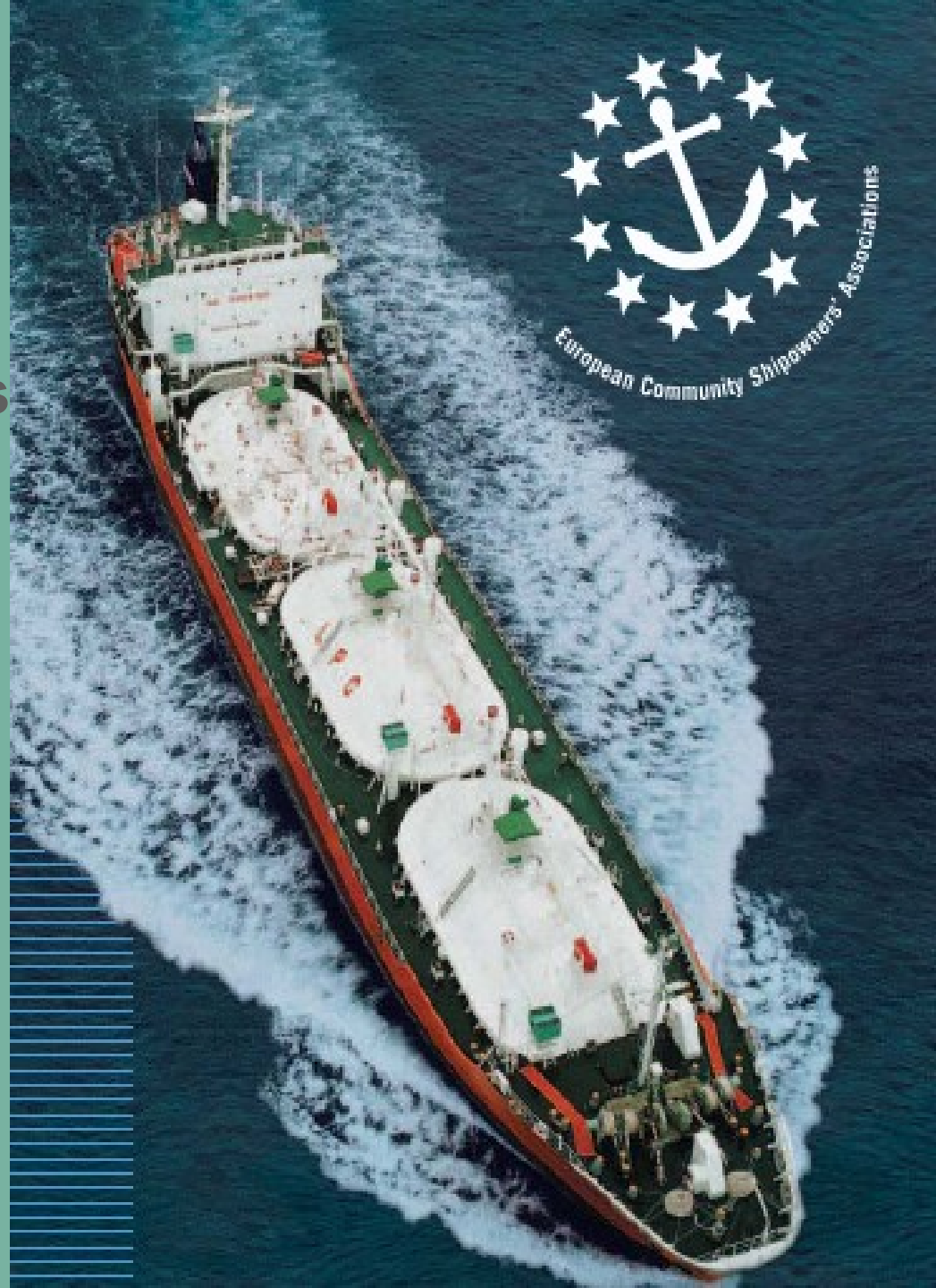
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ECSA

**European Community
Shipowners' Associations**

Formed in 1965 / 1990

**The voice of European
Shipping towards the
European Institutions**



ECSA MEMBERS ASSOCIATIONS



Austria



Belgium



Cyprus



Denmark



Estonia



Finland



France



Germany



Greece



Ireland



Italy



Latvia



Lithuania



Luxembourg



Malta



Netherlands



Norway



Poland



Portugal



Slovenia



Spain



Sweden



UK

EUROPEAN SHIPPING INDUSTRY

Active in all sectors



- ❖ **Dry Bulk Shipping**
- ❖ **Liquid Bulk & Gas – including chemical, oil and gaz tankers**
- ❖ **General Cargo Services**
- ❖ **Container Services**
- ❖ **Maritime Multimodal Services**
- ❖ **Passenger Ferry Services**



- ❖ **Specialised Heavy Lift Services**
- ❖ **Cargo Ferry Services**
- ❖ **Roro Services**
- ❖ **Car carriers**
- ❖ **Short Sea Services**
- ❖ **High Speed Ferry Services**
- ❖ **Cruises**
- ❖ **Supply Services**
- ❖ **Cattle Carriers**
- ❖ **Etc**



THE EEA REGISTERED AND WORLD FLEET DEVELOPMENT

YEAR	EEA			WORLD			EEA AS % OF WORLD TONNAGE
	N°	Mn. tonnes		N°	Mn. Tonnes		
1990	7,659	72,326	GRT	38,221	383,955	GRT	18,8
2000	6,783	84,351	GT	45,023	518,221	GT	16,3
2001	6,912	92,003	GT	45,322	534,683	GT	17,2
2002	6,975	95,134	GT	45,476	549,315	GT	17,3
2003	7,033	100,737	GT	46,308	564,852	GT	17,8
2004	9,291	152,709	GT	46,551	584,303	GT	26,1
2005	9,047	154,332	GT	46,801	618,109	GT	25,0

EUROPEAN SHIPPING (EEA)



- ❖ **EEA flags: 25 % of world fleet**
- ❖ **Controlled fleet: 41% of world fleet**
- ❖ **Also key player in cross trades between different continents**

EUROPE



- External trade: 90 % transported by sea
- Intra European trade: up to 41 % transported by sea

GLOBAL

- 80% to 90% of world trade transported by sea

KEY ISSUES ON THE ECSA AGENDA



- GREEN PAPER ON A FUTURE MARITIME POLICY
- COMPETITION RULES
- SAFETY AND ENVIRONMENT (3th Safety Package)
- EU ROLE IN IMO/ILO
- TRANSPORT POLICY (promotion of SSS)
- EUROPEAN PORT POLICY
- APPLICATION AND MONITORING OF STATE AID GUIDELINES FOR MARITIME TRANSPORT
- EXTERNAL RELATIONS: India/China



GREEN PAPER ON FUTURE MARITIME POLICY

GREEN PAPER ON FUTURE MARITIME POLICY



ECSA COMMENTS

General

- Efforts towards an integrated EU maritime policy are fully supported.
- The essential role of shipping for European and global trade to be fully taken into account on all fronts.



IN CONCRETE

- **SHIPPING IS DE FACTO GLOBAL.**
 - A level playing field for EU shipping securing its competitive position worldwide is key (i.e. maintain the 2004 State Aid Guidelines for a longer period)
 - Maritime regulation to be kept global, through IMO/ILO. Regional legislation only if an added value.
 - An efficient and effective EU maritime external relations policy to be safeguarded.



IN CONCRETE

- **NO COUNTER-PRODUCTIVE MEASURES.
CONCENTRATE ON ADDED VALUE**
 - European Register
 - *Maintain 2004 State Aid Guidelines*
 - European Coast Guard
 - *close cooperation between MS (e.g. on immigration, drug traffic, etc.)*
 - Common European Maritime Space
 - *Simplify administrative and customs procedures for short sea shipping*



IN CONCRETE

■ DEVELOP MARITIME KNOW HOW AND EMPLOYMENT OPPORTUNITIES

- Main jobs for Europeans are onshore and not at sea (maritime cluster)
- Labour protectionist measures to be avoided
- High education and qualifications required
- Career planning for EU seafarers essential
- ILO – MLC to be ratified soonest



IN CONCRETE

- Shipping is the most energy efficient and environment friendly transport mode
- The shipping industry is fully committed to further improve its environmental performance, particularly in the field of air emissions (reducing NOx and SOx)
- Different options aiming at air emission reductions are sought
- International solutions are the way forward



IN CONCRETE

- ❖ **Infrastructure investments are essential:**
 - **Congestion in ports and other bottlenecks hindering efficient services to be addressed urgently**
 - **Investments in ports and hinterland connections to be a priority to provide efficient logistic solutions through Europe**
 - **The growth of short sea shipping to be further enhanced in an integrated European transport system**



EC COMPETITION RULES FOR SHIPPING





BASICS: TREATY OF ROME

- **Art 81 (1) Prohibits cartel activities: i.e. activities preventing, restricting or distorting competition within the common market, notably: price fixing, capacity regulation, supply control, etc. -> automatically void**
- **Art. 81 (3) – exemption for certain cartel activities**
- **Art. 82 – No abuse of dominant position**



Art. 81 (3)

- **The prohibition in Art. 81 (1) is inapplicable if four cumulative conditions are fulfilled:**
 - 1. Improving production/distribution goods**
 - 2. Fair share of benefits is passed on to consumers**
 - 3. Restrictions must be indispensable**
 - 4. No elimination of substantial competition**



LINER SHIPPING

- **Regulation 4056/86 – A Block/Group Exemption liner conferences from the prohibition of Art. 81 (1)**
- **Agreements between carriers on the operation of scheduled international maritime transport services to or from one or more Community ports**
- **Objective: rate-fixing, conditions of carriage, other elements (e.g. frequency of sails, coordination of timetables, etc).**

REVIEW OF REGULATION 4056/86



Started in March 2003

- A very beneficial regulation: hard-core restrictions of competition which are not likely to be exempted in other circumstances
- Open-ended: no review clauses were included in the regulation (>< exemptions are normally reviewed at regular time to ensure that the four cumulative conditions are still fulfilled)
- Many court cases undermined the position of liner conferences
- Other, less restrictive cooperation agreements were put in place (e.g. consortia)



Ship owners

- Agreed to review/modernise 4056/86 but to maintain an exemption status for liner shipping anyhow
- Realised that 4056/86 had changed considerably through Court decisions
- Called upon to consider the review in a global context (i.e. UNCTAD, EU agreements with main trading partners, exemption regimes in US/Japan/Singapore)

ELAA PROPOSAL

POST-CONFERENCE REGIME



- **Abolish rate fixing**
- **Exchange and discussion between lines of aggregated capacity utilization and market size data by trade and on a region/zone to region/zone basis (data with a month delay)**
- **Exchange, discussion and evaluation of commodity developments by trade (based on data aggregated with a month delay)**
- **Discussion and evaluation of aggregate supply and demand data by trade/commodity**
- **Forecasts of demand by trade and commodity would be published**
- **Lines will obtain their own market share by trade, by region and by port (data aggregated with a month delay)**
- **Price index differentiated by type of equipment (e.g. Reefer, dry) and/or trade (data aggregated with a quarterly delay). This information would be made publicly available**
- **Surcharges and ancillary charges based on publicly available and transparent formulae; the details of which would be discussed with shippers.**



SHIPPERS

- FULL ABOLITION OF 4056/86
- NO REPLACEMENT REGIME

FORWARDERS

- STABILITY
- SPECIAL REGIME COULD BE HELPFUL BUT IMPACT SHOULD BE ASSESSED FIRST
- PROPER CONSULTATION ESSENTIAL

GOVERNMENTS

- MIXED
- SOME SUPPORT ABOLITION 4056/86
- OTHERS INSIST ON REPLACEMENT REGIME



REGULATION 1419/2006

- Repeals Regulation 4056/86
- Liner conferences prohibited on trades to/from EU as of 18/10/2008
- Transitional regime for existing liner conferences until 17/10/2008
- Guidelines for liner shipping
- UNCTAD Liner Code to be repealed
- Regulation 954/79 to be repealed

TRAMP SHIPPING



■ REGULATION 4056/86 NOT APPLICABLE

■ DEFINITION (REG 4056/86)

ART. 1. 3.a: ‘tramp vessel services’ means the transport of goods in bulk or in break-bulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand



TRAMP SHIPPING REGULATION 1419/2006

- **Always been subject to EC competition rules**
- **Until 17/10/2006: only Member States were competent to monitor application of EC competition rules to tramp shipping**
- **As of 18/10/2006: Shared competence Member States / Commission to monitor tramp shipping**
- **Tramp shipping subject to self-assessment exercise but no case law / no guidelines and terra incognita for many**

TRAMP SHIPPING



- **GLOBALLY COMPETITIVE MARKETS**
- **CLOSE TO PERFECT COMPETITION MODEL**
- **DIFFERENT SUB-MARKET SEGMENTS IN RESPONSE TO CUSTOMER NEEDS**
- **COMPETITION BETWEEN SUB-MARKETS FOR CARGO**
- **VOLATILE AND UNPREDICTABLE DEMAND**
- **MANY SMALL ENTREPRENEURIAL COMPANIES**
- **GLOBAL TRADE PATTERNS INCLUDING “CROSS TRADES”**
- **EASE OF ENTRY AND EXIT**
- **VERY COST EFFECTIVE**
- **RESPONSIVE TO DEVELOPMENT OF MARKETS AND SHIPPERS NEEDS**



POOLS

■ Definition

“A fleet of similar vessels (type and size), under different ownership, operating under a single administration – the pool manager. Typically, pools also specialise in a given type or range of cargoes”



- **ESTABLISHED IN RESPONSE TO SPECIFIC NEEDS AND REQUIREMENTS OF SHIPPERS AND CHARTERERS**
- **WORK TO SATISFACTION OF SHIPPERS AND CHARTERERS**
- **COMPETITION BETWEEN DIFFERENT POOLS AND AS WELL AS WITH INDIVIDUAL OPERATORS WHEN OFFERS FOR BIG CONTRACTS ARE CALLED FOR**



- **SELF-ASSESSMENT OF COMPLIANCE WITH EC COMPETITION RULES IN A LEGAL VACUUM**
- **GUIDANCE AND/OR POSSIBLE SPECIFIC REGIME NECESSARY IN ORDER TO HAVE LEGAL CERTAINTY FOR AGREEMENTS THAT MIGHT CAUSE PROBLEMS WITH COMPETITION RULES**
- **ECSA THEREFORE STARTED A CO-OPERATION WITH COMMISSION SERVICES TOWARDS LEGAL CERTAINTY**
- **POSITIVE RESPONSE FROM COMMISSION**
 - Workshops with ECSA
 - Questionnaires to tramp operators and pool managers
 - Consultancy study on tramp shipping
 - Guidelines



THANK YOU...