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HT3274 - Consultation on the Future of the Maritime Antitrust Guidelines

The International Chamber of Shipping (ICS) is pleased to respond to the Consultation on the Future of the Maritime Antitrust Guidelines as addressed in the Staff Working Document issued on 4 May.

ICS is the principal international trade association for shipowners, representing all sectors and trades and 80% of world merchant tonnage, including containership operators in liner trades, and tanker and dry bulk ship operators in 'tramp' trades, some of which utilise pooling arrangements. The membership of ICS comprises national shipowners' associations from 36 countries, including national shipowners' associations in the Americas and Asia, as well as members of the European Community Shipowners' Associations (ECSA).

ICS fully supports the responses to the consultation submitted by ECSA and the World Shipping Council. ICS has no objection to the expiry of the sector-specific Maritime Competition Guidelines on information exchanges between competitors in liner shipping as from September 2013.

However, the statement above should not be regarded as an indication of ICS's future position with respect to the continuation of the Consortia Block Exemption Regulation after 2015, the current position of ICS being that this particular block exemption should be renewed. Although a far looser form of co-operation than conferences, consortia provide stability to markets, helping guarantee the maintenance of scheduled services to more remote destinations and permitting efficiencies such as slot sharing on containerships.

If, moreover, the European Commission decides not to extend the sector-specific Maritime Competition Guidelines after September 2013, ICS also believes that it would be beneficial if the Commission could maintain the Maritime Competition Guidelines concerning pool agreements in tramp shipping, since these provide very useful guidance for ship operators on conducting self-assessment of pool agreements under the general EU competition rules.

Should the European Commission decide not to extend these tramp shipping Guidelines after September 2013, it is respectfully suggested that paragraphs 62 and 63 of these Guidelines should be maintained in the context of the General Antitrust Guidelines, perhaps via an annex or a footnote, as suggested by ECSA.

ICS recalls that the Guidelines on tramp shipping were not adopted to address the transition from a sector-specific regime to the full application of the general EU competition rules, as was the case with liner shipping in 2008 when conferences were prohibited. Rather they were adopted to offer guidance to tramp shipping operators to carry out a self-assessment of pool agreements due to the absence of any case law or other guidance for the tramp sector.

As a general point, ICS reiterates that it did not support the unilateral EU prohibition of liner conferences which came into effect in 2008. ICS continues to encourage the EU's third country trading partners to maintain the status quo with respect to antitrust exemptions which they may continue to allow with respect *inter alia* to liner conferences and discussion agreements. ICS also supports the APEC Guidelines Related to Liner Shipping, adopted in June 2011, concerning the application of competition rules to non-rate fixing agreements.

ICS also notes the conclusions of the recent US Federal Maritime Commission (FMC) study, published in January 2012, which suggested that the repeal of the EU Block Exemption has apparently not resulted in any relative decline in EU freight rates compared with Far East/US trades. In other words, shippers in EU trades do not seem to have been advantaged as a result of the new EU regime compared to shippers in Far East/US trades where the EU prohibition does not apply. The US FMC also suggests that there appears to have been an increase in rate volatility in EU trades, compared to Far East/US trades, and that the activities of discussion agreements that are still permitted in non-EU trades may have had a 'dampening effect' on rate volatility.

We hope that these brief comments are helpful.

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