



Beware of information exchange

EU Competition Law: Liner shipping companies risk high fines when “exchanging” information

The European Community (“EC”) has been investigating against a number of container shipping lines and whether their regular public announcements of general rate increases through the companies’ websites and in specialised trade press could amount to an infringement of EU Competition Law.

Facts of the Case

15 container liner shipping companies regularly published General Rate Increases (GRI) announcements indicating the increase in U.S. Dollars per transported container unit, the affected trade route and the planned date of implementation. The GRI announcements were generally made 3 to 5 weeks before their implementation, and during that period other container liner shipping companies would announce similar increase.

Concerns

The EC’s concern was that the GRI announcements may not provide full information on the new prices to customers, but merely allowed them to explore each other’s pricing intentions and subsequently coordinate their behaviour.

Binding Commitments

Although the container liner shipping companies have not admitted to any anti-competitive behaviour, they agreed to offer binding commitments to settle the EC’s investigation.

To address the concerns, the companies under investigation offered to stop publishing the GRI announcements in their current form. Furthermore any future announcement shall be binding on the carriers as a maximum price and will not be made more than 31 days before their entry into force.

This establishes a sort of “precedent”.

Why care about EU Competition Law?

EU competition law is applicable whenever the conduct in question has an appreciable effect upon interstate trade. As such, it has been applied where non-EU undertakings had participated in anticompetitive practices through subsidiary companies located in the EU. Furthermore, the EC became active when several non-EU undertakings implemented an agreement within the EU.

A final decision of the EU courts and competition authorities will often be served on a subsidiary within the EU, or directly to the non-EU undertaking by using diplomatic channels. Any assets owned by the undertaking and located in the EU could be seized.

Lessons learned

- do not remain at a meeting at which competitors discuss prices, quantities and strategic decisions;
- avoid communicating information regarding future prices or strategic plans;
- don’t make public announcements about prices or strategies just to “test the market”; instead, finalise your decisions before announcing;
- if a competitor mentions your company in a public statement regarding future pricing or strategy plans, contact us to consider the appropriate response.

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