SUPPLY RESTRICTIONS (LINERS): THE EATA CASE

Subject: Supply restrictions
Trade associations

Industry: Liners, shipping

Parties: Members of the European Asia Trades Agreement (now defunct)

Source: Commission Statement IP/99/313, dated May 10, 1999

(Note. Although the European Asia Trades Agreement has been terminated, the Commission felt it necessary to state its position on the practice of increasing prices by restricting the supply of shipping space.)

The Commission has adopted a decision prohibiting the Europe Asia Trades Agreement (EATA). The purpose of the EATA was to increase prices by establishing a capacity management programme concerning scheduled maritime transport services for the carriage of containerised cargo from North Europe to the Far East The Commission has never permitted capacity management agreements on the export trades to the European Union (EU) from Asia or the USA respectively. The EATA was terminated in September 1997. The Commission has nonetheless adopted a formal decision to increase legal certainty in the interest both of liner conferences and of third parties who seek redress before a national court

A capacity management programme is an agreement under which the parties agree not to use a proportion of the space on their vessels for the carriage of goods in a particular trade. The proportion set aside is part of the forecast excess of supply over demand. In 1994 the Commission prohibited a similar arrangement on the transatlantic trades: the Trans-Atlantic Agreement (TAA).

In the case of the EATA up to 17% of the capacity of certain vessels was withdrawn from supply. On all occasions, only the supply of eastbound capacity was restricted with the result that Community exporters bore the brunt of the anti-competitive effects of the EATA. Whereas the EATA only operated eastbound, the TAA only operated westbound. Thus, Community exporters were doubly penalised by capacity management agreements which have never been permitted on the export trades from the US to the EU or on the export trades from Asia to the EU.

Background

Although, the EATA was terminated in September 1997, the Commission considers that it is nonetheless in the Community interest to adopt the decision for the following reasons:

first, the parties to the EATA are likely to benefit from the increased legal certainty arising from a formal Commission decision concerning the practices

in question;

secondly, the EU regulation on the application of Articles 85 and 86 of the EC Treaty to maritime transport£ provides that companies do not need to notify an agreement or arrangement for the Commission to exempt it, so a formal Commission decision concerning the practices in question also increases legal certainty to the benefit of other liner shipping companies;

thirdly, national courts and competition authorities in the Member States may benefit from a clear statement of the Commission's position in the event that any third party seeks to obtain redress under national law for any harm they have suffered as a result of the practices in question; and

finally, in view of the practice of the Commission to increase the penalties imposed in the case of recidivist infringement of Community competition law, it is important that a formal decision be adopted in this case for the purposes of future enforcement action. □

The Air France (Amadeus) Case

The Commission has decided to open a formal procedure against Air France for possible abuse of a dominant position. On the basis of its initial inquiry, the Commission considers that the French airline has discriminated against SABRE, a computerised reservation system (CRS) owned by American Airlines, to favour a CRS which it partly owns, Amadeus.

The Commission objects to Air France's having provided Amadeus with more accurate information and on a more timely basis than it did to other CRSs, thereby putting the latter at a competitive disadvantage. This practice concerned a limited number of Air France's domestic and international tariffs between 1992 and 1997. CRSs have a very significant role in the travel industry. They are the most widely used tool for travel agents to obtain information on travel services and to make reservations for their customers.

Under the EC competition rules, such an opening of the procedure should not be interpreted as a final condemnation. It is rather a step in the procedure allowing Air France to express its views on the matter. The Commission will take a final view on this matter only after Air France has had an opportunity to respond to the objections raised.

This case was referred to the Commission by the US Department of Justice under the Positive Comity provisions of the 1991 EU/US cooperation Agreement in the field of competition. Pursuant to this agreement the Commission kept the DoJ closely informed of its analysis and on the progress of the procedure. (Source: Commission Statement IP/991171, dated 15 March 1999.)