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Republic of Latvia

Cabinet

Regulation No. 346

Adopted 6 August 2002

Regulations On Exemption of Agreements of Liner Shipping Companies from the Prohibition of Agreements Prescribed by the Competition Law

Issued pursuant to Section 11, Paragraph four, Clause 1 of the Competition Law

I. General Provisions

1. These Regulations determine agreements of individual maritime shipping companies, which shall be exempted from the prohibition of agreements set out in Section 11, Paragraph one of the Competition Law, observing Section 11, Paragraph two of the Law referred to, if such agreements conform to the requirements prescribed by these Regulations. Such agreements are permitted without a notice being submitted to the Competition Council.
2. These Regulations apply to international liner shipping, which are performed from or to ports of Latvia. Services that include regular shipping of goods on a specific route or on routes between ports in accordance with a sailing timetable, and are available to any transport user in return for payment shall be considered as liner shipping.
3. These Regulations do not apply to irregular cargo shipping by maritime transport.

II. Exemption of Technical Agreements from the Prohibition of Agreements

4. The prohibition of agreements shall not be applied if the sole object and consequences of the agreement are technical improvements to transport or the co-operation of maritime shipping companies in the following spheres:
 - 4.1. the introduction and utilisation of common standards and types of maritime transport and equipment, supplies or fixed installations thereof;
 - 4.2. the change or joint utilisation of vessels, areas inside vessels or lay time, other types of transport, staff, equipment or fixed installations, when providing transport services;
 - 4.3. the organisation and performance of additional maritime transport operations closely related to the operation of the main agreements;
 - 4.4. the co-ordination of sailing timetables of related routes; and
 - 4.5. the pooling of separate cargoes.

III. Exemption of Members in Liner Shipping Company Conferences from the Prohibition of Agreements

5. The prohibition of agreements shall not be applied if individual or all members of one or several liner shipping company conferences (liner shipping company conferences are liner shipping company associations that operate on the basis of a reciprocal agreement and offer

international liner shipping for the shipping of cargo on a specific route by applying cargo shipping rates and other conditions specified by the agreement) have entered into an agreement in order to determine shipping rates and other conditions related to liner shipping. The agreements may in addition include the following conditions:

5.1. co-ordination of sailing lists, and co-ordination of dates of departure from a port and arrival at a port;

5.2. determination of the frequency at which a vessel departs from a port and arrives at a port;

5.3. co-ordination or distribution of departures from a port and arrivals at a port between the members of the liner shipping company conference;

5.4. regulation of cargo capacity offered by each member of the liner shipping company conference; and

5.5. distribution of cargo or income between the members of the liner shipping company conference.

6. The exemption from the prohibition of agreements referred to in Paragraph 5 of these Regulations shall be applied if the following conditions have been complied with:

6.1. the liner shipping companies and transport users consult on the cargo shipping prices, conditions and quality. The consultations shall be mandatory as soon as one of the parties requests such. Any person (for example, a maritime shipping company, a consignor, a forwarding agent) who, in order to dispatch a cargo, has entered into or has expressed an intention of entering into contractual relations with a consortium or one of the members thereof, or any maritime shipping company association shall be considered as a transport user;

6.2. transport users freely choose the commercial companies providing domestic transport and berthing services that are not included in the cost for shipping of the cargo by maritime transport or in payments regarding which the transport user and the liner shipping company have agreed upon;

6.3. the tariffs, formation thereof and other conditions are accessible and may be verified pursuant to a request by the transport user. These conditions determine all the requirements that shall be observed in the loading and unloading of cargo, that specify the proportional division of specific services, by separating the costs for maritime shipping and land transport, which costs are included in the costs for the shipping of cargo or in another cost determined by a liner shipping company or which costs are determined in accordance with customary law; and

6.4. arbitration awards, agreements and conciliators' recommendations which have been accepted by both parties and which settle disputes with respect to the operation of a liner shipping company conference shall be sent without delay to the Competition Council.

7. Members of a liner shipping company conference have rights to institute loyalty arrangements in relation to transport users. Forms and terms of the loyalty arrangements shall be discussed jointly by the members of a liner shipping company conference and transport users. A loyalty arrangement shall be an agreement entered into by one or several members of a liner shipping company conference and a transport user, which agreement provides that the transport user undertakes to utilise only the services of the members of the relevant liner shipping company conference for the transport of the whole cargo or a specific part thereof, receiving a rebate of the shipment cost in return. Loyalty arrangements shall conform to the following requirements:

7.1. the rights of transport users and members of a conference shall be clearly defined;

7.2. loyalty arrangements shall be implemented on the basis of an agreement between the members of a liner shipping company conference and transport users;

7.3. the transport users of a liner shipping company conference shall be offered a system of immediate rebates or a possibility to choose such system or a system of deferred rebates, observing the provision that:

7.3.1. when applying a system of immediate rebates, each party has rights to terminate the observation of the loyalty arrangements at any time, without imposing sanctions. The time period for giving a notice of termination of the contract in such case may not exceed six months. In the event of a dispute regarding the shipping rate, this time period shall be reduced to three months;

7.3.2. under a system of deferred rebates neither the loyalty period on the basis of which the rebate has been calculated nor the subsequent loyalty period that is determined before the payment of the rebate may exceed six months. In the event of a dispute regarding the shipping rate, this time period shall be reduced to three months. Loyalty period within the meaning of this Clause shall be the time period, during which a transport user has not utilised or will not utilise services of independent cargo shipping companies on the route of the members of the liner shipping company conference;

7.4. the liner shipment company conference, after discussions with transport users, shall determine:

7.4.1. a list of cargo or parts of cargo, for the shipment of which loyalty arrangements shall not be applied. Application of 100% loyalty arrangements may be offered with respect to the whole cargo, but such arrangements may not be unilaterally imposed on transport users; and

7.4.2. the circumstances in which transport users are released from the observance of loyalty arrangements. Refusal of the observation of loyalty arrangements shall be substantiated also in cases, where in the area covered by the conference the cargo is dispatched from or to a port, of which no notice has been given before, and in cases, where the waiting time at a port exceeds a period, which, after discussions with transport users, the ports have determined for the specific port, commodity or class of commodities. Transport users have an obligation to inform in advance the liner shipping company conference regarding a refusal of the loyalty arrangement.

8. The prohibition of agreements shall not be applied if the agreement on the liner shipping prices, conditions and quality has been entered into by transport users and a liner shipping company conference or by transport users on a reciprocal basis, and if the agreement has been entered into in accordance with Sub-paragraph 6.1 and Paragraph 7 of these Regulations.

IV. Exemption of Consortium Agreements from the Prohibition of Agreements

9. The prohibition of agreements shall not be applied if maritime shipping companies have entered into a consortium agreement. Consortium agreements are agreements on the basis of which a consortium is established - an association of two or more ship operators, which offer international liner shipping services for the shipping of cargo on a specific route (the objective of such association is co-operation in the joint provision of maritime transport services (except for price fixing), thereby optimising the activities of maritime shipping companies and improving the quality of the services, which are provided by each maritime shipping company separately).

10. The exemption from the prohibition of agreements referred to in Paragraph 9 of these Regulations shall be applied only in respect of the agreements regarding:

- 10.1. joint liner shipping, which agreements have been entered into only in order to:
 - 10.1.1. co-ordinate and/or jointly determine a sailing list and the list of the ports to be called at;
 - 10.1.2. change or sell cargo space or perform mutual charters;
 - 10.1.3. jointly utilise equipment of vessels and/or ports;
 - 10.1.4. utilise one or more offices of joint activities;
 - 10.1.5. ensure a vessel with containers, chassis and other equipment and/or enter into a leasing or purchase contract on the relevant equipment; or
 - 10.1.6. utilise an electronic data exchange system and/or a common documentation system;
- 10.2. temporary co-ordination of capacities;
- 10.3. the joint utilisation or administration of port terminals and joint provision or utilisation of the relevant services (for example, lighter or stevedore services);
- 10.4. the participation in one or more activities in which maritime shipping companies, when providing services, pool cargoes, income or net income;
- 10.5. the exercise of joint voting rights granted to a consortium in a liner shipping company conference at which its members operate, in cases where the joint vote concerns the activities of the consortium itself;
- 10.6. a common marketing structure and/or issue of a common bill of lading; and
- 10.7. any other ancillary activity required for the implementation of the activities referred to in Sub-paragraphs 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 of these Regulations.

11. The exemption from the prohibition of agreements referred to in Paragraph 9 of these Regulations does not apply to consortium agreements, which provide for the non-utilisation of the existing capacity and in accordance with which the members of the consortium do not utilise the cargo capacity of a specific number of vessels.

12. The exemption from the prohibition of agreements referred to in Paragraph 9 of these Regulations shall be applied if the following conditions have been complied with:

12.1. prior to the implementation of the specific activities mutual consultations take place between transport users or representative organisations thereof, on one part, and the consortium, on the other. The consultations shall be mandatory as soon as one of the parties request such consultations;

12.2. information regarding the transport services provided by the consortium and members thereof and conditions related to such services (including information regarding the conditions pertaining to the quality and most important modifications of such services) is provided to users of these services at their request and for a price that is reasonable for users. If the information is necessary for the purpose of verification, such information shall be available to the consortium or members and agents thereof, free of charge;

12.3. the consortium owns not more than 30% of any specific market in which it operates (the relevant market share shall be calculated taking into account the amount of goods shipped) if the consortium operates within the limits of a liner shipping company conference, and not more than 35% if the consortium operates outside a liner shipping company conference;

12.4. the market share referred to in Sub-paragraph 12.3 of these Regulations within two consecutive calendar years increases by not more than one-tenth;

12.5. the consortium allows each of its members, on the basis of individual contracts, to offer their types of services;

12.6. the consortium agreement provides for the rights of its members to withdraw from the consortium without imposing sanctions. This requirement shall be a condition for the

non-application of the prohibition of agreements if a member of a consortium gives not less than six months notice of the intention to withdraw from the consortium and at least 18 months have elapsed since the day of entry into force of the agreement;

12.7. if the consortium operates within a common marketing structure, each member of the consortium is afforded an opportunity, without imposing sanctions to become involved in independent marketing arrangements, if the maximum time limit for giving a notice of such intention – not less than six months – has been observed;

12.8. Arbitration awards, agreements and conciliators' recommendations, which have been accepted by both parties and which settle disputes with respect to the operational practice of consortiums specified by these Regulations are without delay sent to the Competition Council; and

12.9. if a consortium considers that the consortium agreement is to be exempted from the prohibition of agreements specified in Section 11, Paragraph one of the Competition Law, then pursuant to a request by the Competition Council within the time period specified by it (the time period shall depend on the particular case but may not be shorter than one month) the consortium shall prove that the conditions referred to in these Regulations exist and the requirements are complied with. The relevant agreement shall be submitted to the Competition Council.

13. If one of the limits referred to in Sub-paragraphs 12.3 and 12.4 of these Regulations has increased, the exemption from the prohibition of agreements referred to in Paragraph 9 of these Regulations shall be applied for six more months after the end of the calendar year in which the relevant limit has increased. If the referred to limit has increased due to the fact that a shipping company, which is not a member of the consortium has refused to operate in the respective sector, the Competition Council has the right to extend the time period for the exemption up to 12 months.

14. The exemption from the prohibition of agreements with respect to the agreement referred to in Paragraph 9 of these Regulations may also be applied to a consortium agreement if the market share of the consortium exceeds the limit specified in Sub-paragraph 12.3 of these Regulations but is not more than 50% of the specific market. The exemption from the prohibition of agreements shall be applied if a notice with respect to such agreement has been given to the Competition Council, and a decision regarding the exemption of such agreement from the prohibition of agreements has been received in accordance with the procedures prescribed by regulatory enactments.

15. The exemption from the prohibition of agreements referred to in Paragraph 9 of these Regulations shall be applied if, in addition to the conditions referred to in Paragraph 12 of these Regulations, at least one of the conditions specified in this Paragraph is observed:

15.1. effective price competition exists between the members of the liner shipping company conference within the limits of which a consortium operates;

15.2. effective competition between the members of the liner shipping company conference at a specific level has been ensured at the liner shipping company conference, within which a consortium operates, in respect of the services offered, since the consortium is allowed by a liner shipping company conference agreement to offer the terms developed by such consortium for the provision of services, which terms apply to the frequency and quality of the maritime transport services provided, and provide for the possibility to adapt the services provided to the specific requirements of transport users; or

15.3. the members of the consortium are subject to effective actual or potential competition of those liner shipping companies, which are not members of the consortium,

irrespective of whether or not the liner shipping company conference operates in the relevant sector.

16. The prohibition of agreements shall not be applied if transport users or their representative organisations, on the one part, and a consortium to which exemption has been granted in accordance with Paragraph 9 of these Regulations, on the other part, have entered into an agreement regarding conditions, quality of liner shipping provided by the consortium and regarding other general matters pertaining to such services, and if such agreement has been entered into in accordance with Sub-paragraph 12.1 of these Regulations.

V. Closing Provisions

17. The exemption from the prohibition of agreements provided for by Paragraphs 5, 7, 8, 9, 14 and 16 of these Regulations shall only apply if the agreement is not prejudicial to the operation of individual ports, transport users or maritime shipping companies, by determining different shipping rates and conditions for the transport of one and the same goods depending on the country of origin, or on the country to which the cargo has been dispatched or the goods transported, or depending on the port of loading or unloading of goods, except in cases where it is economically substantiated.

18. If a contract or a part thereof does not comply with the conditions referred to in Paragraph 17 of these Regulations, it shall be void from the moment of entering into such contract.

19. Members to an agreement shall, not later than 10 days prior to the consultations referred to in Sub-paragraphs 6.1 and 12.1 of these Regulations, notify the Ministry of Transport thereof, indicating the subject and the place of consultations. Authorised representatives from the Ministry of Transport may participate in the consultations.

20. Within a time period of one month after the consultations referred to in Sub-paragraphs 6.1 and 12.1 of these Regulations the members to an agreement shall submit to the Ministry of Transport and the Competition Council a report regarding such consultations.

21. The Competition Council is entitled to revoke the exemption from the prohibition of agreements if non-compliance of the maritime shipping companies agreement with the conditions of Section 11, Paragraph two of the Competition Law is determined, particularly in the following cases:

21.1. there is no effective competition outside the liner shipping company conference in which a consortium operates, or outside the particular consortium in the relevant sector; or

21.2. the consortium is repeatedly incapable of carrying out the conditions specified in Sub-paragraph 12.2 of these Regulations.

Prime Minister

A. Bērziņš

Acting for the Minister for Economics,
Minister for Culture

K. Pētersone