COMPETITION IN LINER AND TRAMP MARITIME TRANSPORT SERVICES: UNIFORM REGULATION, DIVERGENT APPLICATION?

Lia I. Athanassiou*

I. Introduction
1. The Ambiguous Exclusion of Tramp Services from the Scope of Reg. 4056/86
   A. The Definition of the Tramp Service
   B. The “Competitiveness” Assumption
2. The Impact of Regulation 1/2003
3. Benefits and Challenges to the Tramp Sector from the Maritime Reform

II. Definition of the Relevant Market
1. General Features
   A. The Features of the Tramp Sector
      a) Prevailing Conditions of Supply and Demand
      b) High Degree of Dependency on the Trade Patterns
         (i) Vulnerability to Trade Alterations
         (ii) Adaptability to the Client’s Needs
   B. The Division in Sub-Sectors
2. The Relevant Market under Competition Law
   A. The Starting Point
      a) The Service of Reference
      b) The Providers and Recipients of the Service
   B. Criteria Applicable to the Definition of the Product Market
      a) Demand-Substitution
      b) Supply-Substitution
   C. The Problem of the Geographic Market

III. Assessment of Prima Facie Anti-Competitive Practices of Tramp Operators
1. Impediments to be Overcome
   A. The Industry-Related Obstacles
      a) Which are the Anti-Competitive Practices?
      b) The Bad Precedent of the Liner Conferences
   B. The Wide Scope of the Prohibition under Art. 81 EC
2. Main Parameters of Assessment
   A. Market Power
   B. Benefits
   C. Indispensability

IV. Concluding Remarks

* Ass. Professor of Commercial Law, Faculty of Law, University of Athens.
I. Introduction

The repeal of Regulation 4056/86\(^1\) by Regulation 1419/2006\(^2\) had two main consequences: on one hand, it terminated the unusually generous block exemption granted to the liner conferences; on the other hand it brought the tramp services effectively into the scope of the competition rules. Neither was really a surprise: Regarding the liner sector, the European Commission, supported by the European courts, has constantly underlined its disapproval against the wide and unlimited immunity granted to the price-fixing maritime cartels and used every opportunity to restrict the boundaries of the block exemption.\(^3\) On the other side, the exclusion of the tramp sector from the procedural rules provided for in Reg. 4056/86 has so far been considered by the sector as a political victory partly attributed to Greek pressure. However, with hindsight, it seems that this regime was not only ambiguous but also not easily justifiable from a competition policy perspective, especially following the adoption of Reg. 1/2003. The uniformity of the legal regime, undoubtedly preferable, now creates new challenges of interpretation and implementation.

1. The Ambiguous Exclusion of Tramp Services from the Scope of Reg. 4056/86

The Regulation 141\(^4\) had very early deprived the European Commission of the power\(^5\) to enforce competition rules in the transport sector. Reg. 4056/86 filled this gap for all kinds of maritime transport including passenger services, with the exception of tramp vessel services, as defined in Article 1(3)(a) of that regulation. In other words, a transport service qualifying as tramping could not effectively be caught by the European Commission\(^6\) but only by the national authorities, through the application of national competition laws, according to Art. 84 EC. Inversely, a service not able to enter into the definition

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\(^5\) Granted by Regulation 17 (first Regulation implementing arts 85 & 86 of the Treaty), O.J. 13, 21.2.1962, p. 204.
\(^6\) The Commission could use only the insufficient means of control provided by Art. 85 EC.