

## **International Chamber of Shipping**

### **DRAFT GUIDELINES ON THE APPLICATION OF ARTICLE 81 EC TO MARITIME TRANSPORT SERVICES**

#### **Comments by the International Chamber of Shipping (ICS)**

The International Chamber of Shipping (ICS) is the principal international trade association for shipowners, with a membership comprising national shipowners' associations from 36 countries, embracing all sectors and trades and 75% of world merchant tonnage.

ICS is grateful for the opportunity to comment on the Commission's draft Guidelines on the application of Article 81 EC to maritime transport services.

With regard to the section of the draft Guidelines that deal with liner shipping, ICS wishes to be associated with the comments being submitted by the European Liner Affairs Association (ELAA).

With regard to the section that deals with tramp shipping, ICS wishes to advise that it fully endorses the extensive comments being submitted to the Commission by the European Community Shipowners' Associations (ECSA), whose national association members are also members of ICS.

First, it is important to acknowledge that shipping pools do not constitute the vast majority of tramp shipping markets. ICS therefore suggests that this point should be specifically clarified in the final Guidelines for the sake of legal certainty amongst tramp operators not involved in shipping pools.

ICS notes that the draft Guidelines consider that shipping pools are *per se* not in conflict with EU competition rules, whilst acknowledging that individual pool agreements will require a case by case assessment to test their compliance. However, as ECSA explains in detail, the proposed criteria by which shipping companies may need to conduct self assessments of compliance might be further fine-tuned.

In particular, the final Guidelines should acknowledge that pools provide a jointly produced service that is the result of a significant degree of integration of the parties' activities, and that pool agreements should be assessed on a par with other forms of joint production or specialisation agreements.

Shipping pools have long been subject to EU competition law, and ICS reiterates that tramp owners are price takers and not price makers, as demonstrated by the absence (to the best of our knowledge) of complaints being filed by customers.

For the reasons explained by ECSA, we believe that shipping pools comply with Article 81(1) or meet the four conditions contained in Article 81(3).

ICS hopes that ECSA's comments, which are fully supported by the global shipping industry, will be carefully taken into account when preparing the final Commission Guidelines which the industry awaits with considerable interest.

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