

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION
POLICY

EUROPEAN COMMISSION

**Communication of the Commission published pursuant to Article 27(4) of Council Regulation (EC)
No 1/2003 in Case AT.39850 — Container Shipping**

(2016/C 60/04)

1. Introduction

- (1) According to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission without concluding whether or not there has been or still is an infringement.
- (2) According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. Summary of the case

- (3) On 21 November 2013 and 13 November 2015, the Commission initiated proceedings against the following container shipping companies (hereinafter 'the parties') who have now offered the Commission commitments in order to meet its competition concerns:
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|---------------------------|--------------------------|-----------------------|
| 1. China Shipping (China) | 6. Hanjin (South Korea) | 11. MSC (Switzerland) |
| 2. CMA CGM (France) | 7. Hapag Lloyd (Germany) | 12. NYK (Japan) |
| 3. COSCO (China) | 8. HMM (South Korea) | 13. OOCL (Hong Kong) |
| 4. Evergreen (Taiwan) | 9. Maersk (Denmark) | 14. UASC (UAE) |
| 5. Hamburg Süd (Germany) | 10. MOL (Japan) | 15. ZIM (Israel) |
- (4) The parties to these proceedings have regularly announced their intended (future) increases of prices for containerized shipping services by sea, at least on routes from Far East Asia to Northern Europe and the Mediterranean (westbound), on their websites, via the press, or in other ways. These announcements indicate the amount of the increase in US-Dollars per transported container unit (twenty-foot equivalent unit, 'TEU'), the affected trade route and the date of implementation. Such announcements are widely known in the industry as 'General Rate Increase Announcements' or 'GRI Announcements'. They generally concern sizable rate increases of several hundred US-Dollars per TEU.
- (5) GRI Announcements are made typically 3 to 5 weeks before their intended implementation date, and during that time some or all parties announce similar intended rate increases for the same or similar routes and the same or similar implementation date. Announced GRIs have sometimes been postponed or modified by some parties, possibly aligning them with the GRIs announced by other parties.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

- (6) In the preliminary assessment, the Commission expressed the concern that GRI Announcements may be of very little value for customers; stating only the amount of an intended increase may not inform customers of the new full price they will be asked to pay in the future. In addition, the Commission has concerns that GRI Announcements may have only limited committal value and thus, customers may not be able to rely on them for their purchasing decisions.
- (7) In the preliminary assessment, the Commission expressed the concern that this practice may allow the parties to explore each other's pricing intentions and to coordinate their behaviour. The Commission is concerned that the practice may enable the parties to 'test', without incurring the risk of losing customers, whether they can reasonably implement a price increase and thereby may reduce strategic uncertainty for the parties and diminish the incentives to compete. The Commission is concerned that this conduct may amount to a concerted practice in violation of Article 101 TFEU and Article 53 of the EEA Agreement.

3. Main content of the offered commitments

- (8) The parties do not agree that they have engaged in the practice described above nor do they agree with the legal analysis in the Commission's preliminary assessment. The parties have nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns in relation to the abovementioned practice. The parties have emphasised that this should not be interpreted as an acknowledgement that they have infringed the EU competition rules, or as an admission of liability.

- (9) The commitments are briefly described below and published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

- (10) The parties offer to stop publishing and communicating GRI announcements, i.e. changes to prices expressed solely as the amount or percentage of the change.
- (11) The parties will not be obliged to publish or communicate (hereinafter referred to as 'announce') their prices, but should they choose to do so, the announcements must enable purchasers to understand and rely on them. For that purpose the parties offer that price announcements will contain at least the following information:
 - (a) the amount of the base rate, bunker charges ('BAF'), security charges, terminal handling charges ('THC') and peak season charges ('PSS', or similar charges);
 - (b) which other charges may apply;
 - (c) the services to which they apply;
 - (d) the period to which they relate (which can be either expressed as a fixed period or open ended, in which case prices are valid until further notice).

Announcements will not be made more than 31 days before implementation day.

- (12) The parties shall be bound by their price announcements during their validity period as maximum prices, but will be free to offer lower prices.
- (13) In order to facilitate the conduct of business, the parties include two exceptions to the commitments in situations that would be unlikely to give rise to the Commission's competition concerns. The commitments will not apply to:
 - (a) communications with purchasers who on that date have a rate agreement in force on the route to which the communication refers;
 - (b) communications during bilateral negotiations or communications tailored to the needs of identified purchasers.

The parties shall however remain bound by the maximum prices set out in relevant price announcements that are applicable to the same services and customers referred to in the communications, under the conditions set out in the commitments.

- (14) The commitments will apply for 3 years to all routes to and from the EEA.
- (15) The commitments will not prevent the parties from complying with requirements based on laws or regulations of other jurisdictions.

4. Invitation to make comments

- (16) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation No 1/2003 declaring binding the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition.
- (17) In accordance with Article 27(4) of Regulation 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.
- (18) Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.
- (19) Observations can be sent to the Commission under reference AT.39850 — Container Shipping, either by email (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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