

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 10 paragraph (2) item (6) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 16 June 2011, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO AGREEMENTS IN THE TRANSPORT SECTOR

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

(1) This Regulation stipulates the conditions which agreements between undertakings in the rail, road and inland waterway transport sector as well as the agreements between undertakings providing the liner shipping services (consortia) must contain and the restrictions or conditions which such agreements may not contain, in order to meet the conditions for block exemption from application of the provisions on prohibited agreements set out under Article 8 paragraph (1) of the Competition Act (hereinafter: "the Act").

(2) Agreements between undertakings in the air transport sector may not be granted block exemption within the meaning of this Regulation. However, such agreements may be granted exemption from application of the provisions on prohibited agreements set out under Article 8 paragraph (1) of the Act if they cumulatively, as long as they are in force, satisfy the conditions laid down in Article 8 paragraph (3) of the Act.

Definitions

Article 2

For the purposes of the present Regulation:

- a) "agreement" means contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements);
- b) "products" means goods and/or services involving intermediate goods and/or services and final goods and/or services;

- c) "undertaking" means person within the meaning of Article 3 of the Act;
- d) "controlled undertaking" or "connected undertakings" means undertakings considered a single economic entity within the meaning of Article 4 of the Act;
- e) "relevant market" is defined as a market of certain goods and/or services which are the subject of the business operations performed by the undertaking in a specific geographic territory within the meaning of Article 7 paragraph (1) of the Act and the provisions under the Regulation on the definition of relevant market;
- f) "consortium" means an agreement or a set of interrelated agreements between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo relating to one or more trades, the object of which is to bring about cooperation in the joint operation of a maritime transport service, and which improves the service that would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial arrangements;
- g) "liner shipping" means the transport of goods on a regular basis on a particular route or routes between ports and in accordance with timetables and sailing dates advertised in advance and available, even on an occasional basis, to any transport user against payment;
- h) "transport user" means any undertaking (such as shipper, consignee or forwarder) which has entered into, or intends to enter into, a contractual agreement with a consortium member for the shipment of goods;
- i) "commencement of the service" means the date on which the first vessel sails on the service.

II AGREEMENTS COVERING TRANSPORT BY RAIL, ROAD AND INLAND WATERWAY

Applicability of the block exemption

Article 3

(1) Block exemption under Article 10 paragraph (2) item (6) of the Act shall apply to agreements covering transport by rail, road and inland waterway entered into between two or more independent undertakings the object or effect of which is to apply technical improvements or to achieve technical cooperation by means of:

- (a) the standardisation of equipment, transport supplies, vehicles or fixed installations;
- (b) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;
- (c) the organisation and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations, including special competitive rates;

(d) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;

(e) the coordination of transport timetables for connecting routes;

(f) the grouping of single consignments;

(g) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.

(2) Block exemption under Article 10 paragraph (2) item (6) of the Act shall apply to agreements covering transport by rail, road and inland waterway entered into between two or more independent undertakings where their purpose is:

(a) the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities, or

(b) the joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the aforesaid groupings.

(3) Participating undertakings in agreements covering transport by rail, road and inland waterway as referred to under paragraph (1) hereof means undertakings party to the agreement and their respective connected undertakings.

Conditions that agreements must contain and other conditions for applicability of block exemption

Article 4

(1) Block exemption shall be granted to agreements covering transport by rail, road and inland waterway as laid down under Article 3 paragraph (2) hereof always provided that:

(a) the total carrying capacity of any grouping does not exceed 10000 metric tons in the case of road transport or 500000 metric tons in the case of transport by inland waterway;

(b) the individual capacity of each undertaking belonging to a grouping does not exceed 1000 metric tons in the case of road transport or 50000 metric tons in the case of transport by inland waterway.

Restrictions and conditions which agreements may not contain

Article 5

(1) Block exemption shall not apply to agreements covering transport by rail, road and inland waterway referred to under Article 3 of this Regulation, where these agreements have as their object or effect:

(a) the fixing of transport rates and conditions which limit or control the supply of transport;

(b) the sharing of transport markets,

(c) the application of technical improvements or technical cooperation, or

(d) the joint financing or acquisition of transport equipment or supplies where such operations are directly related to the provision of transport services and are necessary for the joint operation of services by a grouping of road or inland waterway transport undertakings;

(e) abuse of a dominant position on the transport market.

(2) Provisions of paragraph (1) hereof shall apply also to operations of providers of services ancillary to transport which have any of those objects or effects.

III AGREEMENTS BETWEEN LINER SHIPPING COMPANIES (CONSORTIA)

Applicability of the block exemption

Article 6

(1) Block exemption under Article 10 paragraph (2) item (6) of the Act shall apply to agreements between liner shipping companies (consortia) entered into between two or more independent undertakings involving the following activities of a consortium:

(a) the joint operation of liner shipping services;

(b) capacity adjustments in response to fluctuations in supply and demand;

(c) the joint operation or use of port terminals and related services (such as lighterage or stevedoring services);

(d) any other activity ancillary to those referred to in points (a), (b) and (c) hereof which is necessary for their implementation.

(2) The joint operation of liner shipping services under paragraph (1) item (a) shall include any of the following activities:

(a) the coordination and/or joint fixing of sailing timetables and the determination of ports of call;

- (b) the exchange, sale or cross-chartering of space or slots on vessels;
 - (c) the pooling of vessels and/or port installations;
 - (d) the use of one or more joint operations offices, and
 - (e) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment.
- (3) Any other ancillary activity as referred to in paragraph (1) item (d) hereof shall mean:
- (a) the use of a computerised data exchange system;
 - (b) an obligation on members of a consortium to use in the relevant market or markets vessels allocated to the consortium and to refrain from chartering space on vessels belonging to third parties;
 - (c) an obligation on members of a consortium not to assign or charter space to other vessel-operating carriers in the relevant market or markets except with the prior consent of the other members of the consortium.

Conditions relating to market share and duration of block exemption

Article 7

- (1) In order for a consortium to qualify for block exemption provided for in Article 6 hereof, the combined market share of the consortium members in the relevant market upon which the consortium operates shall not exceed 30 %.
- (2) The market share under paragraph (1) hereof shall be calculated by reference to the total volume of goods carried in freight tonnes or 20-foot equivalent units.
- (3) For the purpose of establishing the market share of a consortium member the total volumes of goods carried by it in the relevant market shall be taken into account irrespective of whether those volumes are carried:
- (a) within the consortium in question;
 - (b) within another consortium to which the member is a party, or
 - (c) outside a consortium on the member's own or on third party vessels.
- (4) Where the total market share of the consortium members referred to in paragraph (1) hereof is initially not more than 30 % but subsequently rises above that level by not more than one tenth, the block exemption shall continue to apply for a period of two

consecutive calendar years following the year in which the 30 % threshold of the consortium members was first exceeded.

(5) Where the total market share of the consortium members referred to in paragraph (1) hereof rises by more than one tenth, the block exemption referred to under paragraph (4) hereof shall continue to apply for a period of six months following the end of the calendar year during which it was exceeded.

(6) By way of derogation from paragraph (5) hereof, block exemption shall continue to apply for a period of 12 months following the end of the calendar year during which it was exceeded if the excess is due to the withdrawal from the market of a carrier which is not a member of the consortium.

Other conditions for exemption

Article 8

(1) In order to qualify for the exemption provided for in Article 6 hereof, the consortium must give members the right to withdraw without financial or other penalty such as, in particular, an obligation to cease all transport activity in the relevant market or markets in question, whether or not coupled with the condition that such activity may be resumed after a certain period has elapsed. That right shall be subject to a maximum period of notice of six months.

(2) Without prejudice to paragraph (1) hereof, the consortium may, however, stipulate that the notice stipulated under paragraph (1) hereof can only be given after an initial period of a maximum of 24 months starting from the date of entry into force of the agreement or, if later, from the commencement of the service.

(3) In the case of a highly integrated consortium the maximum period of notice referred to under paragraph (1) hereof may be extended to 12 months.

(4) In the case of highly integrated consortium, without prejudice to paragraph (2) hereof, the consortium may stipulate that the notice referred to under paragraph (1) hereof can only be given after an initial period of a maximum of 36 months starting from the date of entry into force of the agreement or, if later, from the commencement of the service.

Hardcore restrictions which agreements may not contain

Article 9

Block exemption provided for in Article 6 hereof shall not apply to a liner shipping consortia which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, contain restrictions which have as their object:

(a) the fixing of prices when selling liner shipping services to third parties;

(b) the limitation of capacity or sales except for the capacity adjustments referred to in Article 6 paragraph (1) item (b) hereof;

(c) the allocation of markets or customers.

IV WITHDRAWAL OF BLOCK EXEMPTION AND BURDEN OF PROOF

Conditions for withdrawal

Article 10

(1) Pursuant to Article 10 paragraph (4) of the Act the Croatian Competition Agency (hereinafter: the Agency) may within the meaning of Article 10 paragraph (4) of the Act, initiate *ex officio* proceedings to assess the compatibility of a particular agreement covering transport by rail, road and inland waterway, or of a particular agreement between liner shipping companies (consortium), notwithstanding the fact that the agreement concerned satisfies the conditions for block exemption provided under this Regulation, if such an agreement individually or due to the cumulative effect with other similar agreements in the relevant market, as long as they are in effect, do not cumulatively fulfil the conditions for block exemption under Article 8 paragraph (3) of the Act.

(2) If the Agency finds, in compliance with the results of the assessment of the particular agreement referred to in paragraph (1) hereof, that the agreement concerned produces effects which do not comply with the conditions set under Article 8 paragraph (3) of the Act and this Regulation, it shall by means of a decision withdraw the benefit granted by block exemption to the agreement concerned.

Burden of proof

Article 11

(1) Without prejudice from Article 10 hereof, the agreements covering transport by rail, road and inland waterway, and agreements between liner shipping companies (consortia), which satisfy the conditions for block exemption under this Regulation are, as a rule, assumed to be in compliance with the conditions laid down in Article 8 paragraph (3) of the Act.

(2) By way of derogation, in the case of agreements referred to in paragraph (1) hereof which do not satisfy the conditions for block exemption provided under this Regulation, the participants to such agreements claiming the benefit of block exemption bear the burden of proving that the agreements they conclude nevertheless satisfy the conditions for block exemption from the general ban of restrictive agreements under Article 8 paragraph (3) of the Act.

(3) In the case where the Agency has initiated the formal assessment proceedings of the restrictive agreement under paragraph (2) hereof, the participating undertakings claiming the benefit of block exemption as laid down under Article 8 paragraph (3) of the Act must substantiate the efficiency claims of the agreement concerned.

V AGREEMENTS NOT COVERED BY THE APPLICATION OF THIS REGULATION

Agreements not covered by the block exemption

Article 12

According to the provisions of this Regulation block exemption under Article 8 paragraph (1) of the Act shall not apply to:

- a) agreements covering transport by rail, road or inland waterway and agreements between liner shipping companies (consortia), which have not been brought into compliance with this Regulation;
- b) agreements covering transport by rail, road or inland waterway and agreements between liner shipping companies (consortia), the subject matter of which falls within the scope of any other block exemption regulation pursuant to Article 10 paragraph (2) of the Act.
- c) agreements between undertakings in the air transport sector.

VI TRANSITIONAL AND FINAL PROVISIONS

Compliance of agreements concluded before this Regulation enters into force

Article 13

(1) For the agreements covering transport by rail, road or inland waterway and agreements between liner shipping companies (consortia) which have been concluded before this Regulation enters into force must be brought in compliance with this Regulation until 30 June 2012.

(2) In the case of agreements covering transport by rail, road or inland waterway which have been concluded before this Regulation enters into force, provided that they have been brought in compliance with this Regulation within the time period set under paragraph (1) hereof, the capacities laid down in Article 4 hereof shall be calculated on the basis of the data relevant in the calendar year preceding the year in which this Regulation enters into force.

(3) In the case of agreements between liner shipping companies (consortia) which have been concluded before this Regulation enters into force, provided that they have been

brought in compliance with this Regulation within the time period set under paragraph (1) hereof, the market share shall be calculated on the basis of the data relevant in the calendar year preceding the year in which this Regulation enters into force.

Entry into force

Article 14

This Regulation shall enter into force on the eighth day following the day of its publication in the Official Gazette.

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Zagreb, 16 June 2011

Prime Minister
Jadranka Kosor