

## EXPLANATORY MEMORANDUM TO

### THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982 (REPEAL) REGULATIONS 2008

2008 No. 163

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

#### 2. Description

2.1 This instrument repeals the provisions of the United Nations Code of Conduct for Liner Conferences as implemented in the United Kingdom by the Merchant Shipping (Liner Conferences) Act 1982 (the “Act”).

#### 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

#### 4. Legislative Background

4.1 The legislation for repeal is as follows:

Sections 2, 3, 4, 11, 12 and 13 of the Merchant Shipping (Liner Conferences) Act 1982;

(The Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 and the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 cease to have effect by virtue of the repeal of sections 2 and 3 of the Act, under which these regulations were enacted.)

The UK has already denounced the United Nations Code of Conduct for Liner Conferences (the “Code”).

4.2 The repeal of the above legislation follows the adoption of Council Regulation (EC) No 1419/2006 of 25 September 2006 which repealed Council Regulation (EEC) No 4056/1986 of 22 December 1986. Council Regulation (EEC) No 4056/1986 provided a block exemption from the application of EC competition law under Articles 81 and 82 of the EC Treaty in respect of liner conferences (arrangements which allow shipping lines meeting in conferences to fix rates, regulate capacity and agree other conditions of carriage). The liner conference system no longer fulfilled the criteria of Article 81(3) of the EC Treaty. As a consequence of Council Regulation EC/1419/2006, Council Regulation (EEC) 954/79, which gave effect to the Code within the European Union, has become inapplicable.

4.3 The proposal which resulted in the repeal of Regulation 4056/86 was the subject of EM 16106/05 on a "Proposal for a Council Regulation repealing Regulation (EEC) no 4056/86 laying down detailed rules for the application of Articles 85 & 86 to maritime transport, and amending Regulation (EC) No. 1/2003 as regards the extension of its scope to include cabotage and

international tramp services and Commission Staff Working document thereto - Impact Assessment" submitted by the Department for Trade and Industry on 18 January 2006. The House of Commons European Scrutiny Committee considered EM 16106/05 on 25 January 2006 and recommended that the document was of political importance and should be debated in Standing Committee (16<sup>th</sup> Report, session 2005-06, 27139). The debate took place on 6 March 2006. The House of Lords Select Committee on the European Union referred EM 16106/05 to Sub-Committee B at the 1239<sup>th</sup> sif of 24 January 2006. It was cleared by a letter to the Minister on 19 July 2006.

4.4 The Department for Transport submitted EM 7234/07 on 2 April 2007 on the "*Proposal for a European Parliament and Council Regulation repealing Council Regulation (EEC) No 954/79 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences*". The Commons European Scrutiny Committee recommended that the document was not of legal or political importance and cleared it on 25 April 2007 (Report 18, Session 2006/07). The Lords Select Committee on the EU cleared the EM without correspondence following the 1283<sup>rd</sup> sif of 17 April 2007.

## **5. Territorial Extent and Application**

5.1 This instrument applies to the whole of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State for Transport made the following statement regarding Human Rights:

*In my view the provisions of the Merchant Shipping (Liner Conferences) Act 1982(Repeal) Regulations 2008 are compatible with the Convention rights.*

## **7. Policy background**

### **Policy**

7.1 Council Regulation (EC) No 1419/2006 has repealed Council Regulation (EEC) No 4056/86 which applied a block exemption to liner conferences from EC competition law, in particular, Articles 81 and 82 of the EC Treaty.

7.2 The exemption provided by Regulation 4056/86 was based on the assumption that price fixing and capacity regulation was essential in order to provide reliable services and stable freight rates. The market has changed considerably since 1986 through the increasing containerisation of freight, increases in vessel sizes and the growth of global networks. There have also been changes in the way shipping lines operate. There is now increasing use of consortia/joint ventures between shipping operators and the emergence of confidential individual service contracts between carriers and shippers, as well as a decline in the amount of freight carried at the fixed conference rate.

7.3 As a consequence of the repeal of Regulation 4056/86, Council Regulation (EEC) No 954/79 has become inapplicable. Regulation 954/79 detailed the requirements to be met by EC Member States in relation to their ratification of, or accession to, the Code. The Code contains the rules regarding the conduct of liner conferences concerning market share access for ship owners in states that are party to it.

7.4 The EU and its Member States agreed that the justification for the block exemption no longer pertains and that liner conferences no longer meet the European Commission's criteria for exemption from EC competition law. The repeal of Regulation 4056/86 means that the block exemption is

abolished and liner conferences will become subject to EC competition law (with transitional arrangements in place until 19 October 2008 for those liner conferences which met the requirements of Regulation 4056/86 on 18 October 2006).

7.5 Accordingly, liner conferences will not be permitted to operate in trades to or from the ports of EU Member States. Those Member States that are already party to the Code will no longer be able to apply its provisions. Those that are not party to the Code will not be permitted to ratify, approve or accede to it.

7.6 The repeal of Regulation 4056/86 also affects maritime tramp and cabotage services in so far as, while EC competition law already applied to this shipping sector, enforcement was carried out by national competition authorities. This was an anomaly as all other sectors of the economy fall within Community competence for competition law.

7.7 To comply with the new arrangements, the UK need not introduce any new legislation, but must repeal relevant provisions of the Merchant Shipping (Liner Conferences) Act 1982 which implemented Regulation 954/79 and the Code into UK law within two years of Council Regulation (EC) No 1419/2006 entering into force.

## **Consultation**

7.8 The European Commission, in consultation with the Member States and the industry, spent three years reviewing and consulting on Regulation 4056/86, following the request of the Lisbon European Council in 2000 for the acceleration of transport liberalisation, and the modernisation of European competition rules in 2004. The European Commission may grant exemptions from EC competition law to certain agreements provided four conditions are met, namely that there is an economic benefit; consumers are allowed a fair share of those benefits; that there must not be less restrictive options available; and lastly, that competition in the market should not be eliminated by the restriction. The consultation found that at least three out of the four conditions were no longer met by Regulation 4056/86 and it was concluded that Regulation 4056/86 should be repealed.

## **Guidance**

7.9 The European Commission released draft guidelines on 14 September 2007 setting out the principles that the Commission will apply when defining markets and assessing cooperation agreements in the maritime transport services sectors directly affected by the changes brought about by Regulation 1419/2006. The industry had the opportunity to comment on the guidelines (the consultation period ended 9 November 2007). The final guidelines will be published this year.

## **8. Impact**

8.1 An Impact Assessment has been prepared for this instrument and is attached.

## **9. Contact**

9.1 Vicky Hutchinson at the Department for Transport Tel: 020 7944 5161 or e-mail: [vicky.hutchinson@dft.gsi.gov.uk](mailto:vicky.hutchinson@dft.gsi.gov.uk) can answer any queries regarding the instrument.



## Summary: Intervention & Options

<b>Department /Agency:</b> Department for Transport	<b>Title:</b> Impact Assessment of The Merchant Shipping (Liner Conferences) Act 1982 (Repeal) Regulations 2008	
<b>Stage:</b> Implementation	<b>Version:</b> Final	<b>Date:</b> 21 January 2008
<b>Related Publications:</b> DTI Partial RIA (Jan 06) on repealing maritime transport regulations and implementing new rules on competition.		

**Available to view or download at:**

<http://www.>

**Contact for enquiries:** Vicky Hutchinson - SP, DfT

**Telephone:** 0207 944 5161

**What is the problem under consideration? Why is government intervention necessary?**

The European Commission have adopted Regulation 1419/2006 which repeals Regulation 4056/1986 (Annex A) which provided a block exemption for liner shipping conferences from Community competition rules. The European Commission have made these changes to bring the shipping industry in line with other global industries and to make industry more competitive - with benefits to both shippers and carriers.

To comply with Regulation 1419/2006 and to tidy up the legislative landscape, it is necessary to repeal the primary legislation (Annex B) which implemented past liner conference practices.

**What are the policy objectives and the intended effects?**

Regulation 1419/2006 will have an impact on business in that it compels the EU shipping industry to abandon its longstanding system of liner conferences, by which rival shipping companies set freight rates collectively and share trade information, and comply with EC competition law.

Experience from deregulation of other markets and evidence gathered by the European Commission suggests these measures will lead to price and service quality improvements for customers.

**What policy options have been considered? Please justify any preferred option.**

No other policy options.

The European Commission have already adopted (with support of the UK) the Regulations repealing block exemptions on Liner Conferences. Policy implications for the UK were considered as part of the parliamentary scrutiny of the repeal of Regulation 4056/1986.

The removal of the block exemption is now a fait accompli and the shipping industry will have to comply with the new competitive regime by October 2008. The UK is therefore amending its legislation accordingly to bring it in line with the new EC rules and regulations.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

This is an EU area of responsibility. The UK will continue to work with the European Commission to evaluate the impact of the repeal.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Jim Fitzpatrick

23 rd January 2008

.....Date:

## Summary: Analysis & Evidence

**Policy Option:**

**Description:** To amend UK Merchant Shipping (liner conference) legislation to ensure compliance with EC competition legislation.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' We anticipate any costs would fall to the overseas corporate headquarters of the International shipping companies that dominate the market. UK subsidiaries might incur a small one off transition cost.	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	<b>£ 400,000</b>	1		
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 0</b>		<b>Total Cost (PV)</b>	<b>£ 400,000</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None of significance.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Benefits cannot be accurately measured, however, even a small range of price declines would lead to annual savings of many millions of pounds. Smaller customers with weaker buyer power are likely to benefit most.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 17m - £85m</b>		<b>Total Benefit (PV)</b>	<b>£ 17m - £85m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Quality of service is expected to improve for shipping line customers.				

**Key Assumptions/Sensitivities/Risks** The assessment of the impact of liner shipping services, in terms of economic, social and environmental consequences, in a situation without the present block exemption is necessarily largely theoretical.

Price Base Year 2007	Time Period Years 1	<b>Net Benefit Range (NPV)</b> <b>£ 16.6m - £84.6m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 16.6m</b>
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What is the geographic coverage of the policy/option?	Global			
On what date will the policy be implemented?	October 2008			
Which organisation(s) will enforce the policy?	European Commission			
What is the total annual cost of enforcement for these organisations?	£ unknown			
Does enforcement comply with Hampton principles?	No			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ none			
What is the value of changes in greenhouse gas emissions?	£ unknown			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro <b>0</b>	Small <b>0</b>	Medium <b>0</b>	Large <b>0</b>
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Introduction

The 2008 Regulations repeal legislation which exempts various aspects of the container liner shipping industry from EU competition law. Experience from deregulation of other markets and evidence gathered by the European Commission suggests these measures will lead to price and service quality improvements for customers.

### Background

The EC Regulations that have given rise to the need to repeal applicable UK Liner Conference legislation have already been subjected to Parliamentary scrutiny procedures appropriate for the consideration of Community legislation. Policy implications have already been considered (see Explanatory Memorandum).

A Partial Regulatory Impact Assessment (RIA) carried out by the Department of Trade and Industry in January 2006 on this subject was considered by both Houses and cleared by their respective Committees.

The summary and recommendation of the RIA reads: "The preferred option of the UK is that there is no justification for retention of the block exemption on competition grounds and therefore the regulation should be repealed in its entirety. The UK believes that repeal of the block exemption offers clear benefits to the consumer in terms of lowering transport costs, maintaining reliability of services and enhancing the industry's competitiveness in a global market."

The European Commission also consulted publicly on these issues in 2003, by issuing a consultation document<sup>1</sup>, holding a public hearing in December for interested parties and circulating a White Paper in 2004. An Impact Assessment study was also carried by the Commission in which the conclusion was that a repeal of the block exemption will bring about substantial benefits to EU industry and consumers, in particular as regards transport prices, reliability of liner shipping services, competitiveness of the EU liner shipping industry and small EU liner carriers. The repeal of the block exemption will also contribute to the Lisbon objectives of liberalised transport markets.

The Commission's main findings of the potential economic impact of repealing the conference block exemption were:

- transport prices for liner shipping services will decline
- service reliability on deep sea and short sea trades is expected to improve
- service quality will either be unaffected or will improve
- there will be either a positive impact or no impact on the competitiveness of EU liner shipping firms
- small liner shipping carriers will not experience particular problems and
- no negative impact or even a positive impact on EU ports, employment, trade and / or developing countries.

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<sup>1</sup> Consultation Paper on the Review of Council Regulation 4056/86 (the main EC competition regulation governing maritime transport)

The Impact Assessment study and all other documents can be found on the Commission's Europa website: <http://ec.europa.eu/competition/antitrust/legislation/maritime/>

## **Assumptions**

The assessment of the impact on liner shipping services, in terms of economic, social and environmental consequences, in a situation without the present block exemption is necessarily largely theoretical. Traditionally, all jurisdictions have granted liner conferences some form of immunity or exemption from the competition rules. However, the Australian productivity commission recommended in 2005 that its maritime block exemptions should be removed. Japan has made their block exemption criteria stricter. And in August 2007 China passed an anti-trust law to outlaw liner conferences in the country. In 1998 the US also introduced the Ocean Shipping Reform Act (OSRA), which diminished conference power and encouraged competition.

The above reforms can assist with estimating the impact of repealing the EU block exemption. However, some of these reforms have been initiated very recently so in addition to the above the analysis will rely upon past experience from other liberalised markets.

It is very difficult to obtain actual price information (freight rates are published by carriers but may not represent the actual rates charged). Prices are governed by confidential contracts and carriers were reluctant to submit this information to Global Insight (the consultant who carried out the European Commission's impact assessment study).

Some evidence comes from the Europe to East Coast South America conference (EECSAC), which from 2004 onwards no longer set rates for this route. There seems to have been no significant negative impact to date, although it is still early to judge whether supply is being better or worse managed without a conference. A relatively small European carrier (Hamburg-Sud) still operates on this route without conference membership.

The evidence base that will inform this analysis will include the Commission's impact assessment and previous studies that have assessed the removal of the block exemption. Global Insight has created a new model of the liner industry using the theory of industrial organisation. Although the model is theoretical, the results corroborate the evidence available from other liberalised markets.

## **Unintended consequences**

Conference carriers argue that if they are not allowed to limit capacity and fix rates this will result in destructive competition. The carriers argue this because in the late 19<sup>th</sup> century the industry experienced fierce competition as a result of innovative fast steamships entering the market. This triggered the incumbents and fast steamships to use pricing strategies that would not reasonably allow for the recovery of high fixed costs. The liner shipping market is now more mature than it was over 100 years ago and it seems very unlikely that the removal of the block exemption will result in destructive competition. Competition is therefore not considered to have a destructive element and investment in fixed costs will not be negatively affected by the proposed legislation.

Carriers also argue that the block exemption reduces price volatility and that shippers will face more volatile prices if the block exemption is removed. Price evidence from other transport sectors (with high fixed costs) suggests that price volatility will decrease if the market is liberalised. Container shipping could make greater use of price hedging techniques that have evolved into other unregulated markets.



Conferences have been used in the past to regulate capacity and supply. Carriers believe that the stability of supply will be jeopardised if the block exemption is removed. The existence of independent carriers and recent reforms such as the removal of the EECSEA conference suggest that there will be sufficient supply in a liberalised market.

Removal of the block exemption may lead to further mergers between carriers and higher market concentration. This may lead to a more oligopoly / monopoly market structure. However, the liner shipping market is already characterised by high market concentration and a trend towards greater concentration. Removal of the block exemption would have little impact on this existing trend which is in any case regulated by existing competition law.

## **Benefits**

### Lower prices

Evidence available from other liberalised markets suggests that prices will decline. The introduction of competition for both international telephone calls and European economy airfares caused average prices to fall by more than half within the decade as national monopolies or dominant firms became subject to greater competition. Within the new car and replica football kits markets, where competition from close substitutes was more prevalent, price reductions of more than 10% have been observed<sup>2</sup>. The removal of the block exemption could increase the efficiency of carriers and this will result in lower prices for shippers. This is a view backed by the European Shipping Council (ESC), which represents European shippers.

Global Insight<sup>3</sup> predicts that there will be moderate price declines on ocean rates. In addition, we believe that the buyer power of large shipping line customers, such as multiple retailers, mean that shipping companies will already compete on price in large sections of the market. This suggests smaller customers may enjoy a greater share of the benefits of this deregulation.

In the longer term, increased competition puts further pressure on carriers to innovate and improve performance. Global Insight state this is the basis for stronger rate reductions in the future.

Research by Global Insight and others has not been able to quantify explicitly the likely impact on prices. Given the large and growing container market in the UK even a very moderate price decline could lead to cost savings for customers of many millions of pounds per year. Based on the experience of other sectors this impact assessment assumes price reductions of between 0.5% and 2.5% may be possible in the long term across the whole deep sea market as a result of deregulation of liner conferences.

Conferences have some power to set rates by making annual rate guidance announcements. These rates are non-binding but may influence rate negotiations between carriers and shippers. For this reason rates are expected to moderately decline, especially for small shippers. Ancillary charges and surcharges are expected to decline. At present the European Commission estimates that surcharges represent around 30 per cent of total transport price. These surcharges lack transparency. Shippers do not like the application of a fixed surcharge, which does not take into account the route, direction travelled or port. The future trend could be a move towards 'all in one' rates especially for larger shippers.

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<sup>2</sup> DTI Economics Paper 9, The Benefits from competition: some illustrative UK cases, by Stephen Davies, Heather Coles, Matthew Olczak, Christopher Pike, and Christopher Wilson, Centre for competition policy, University of East Anglia, July 2004.

<sup>3</sup> The application of competition rules to liner shipping, final report 2005, Global Insight.

The OECD<sup>4</sup> examined the liner industry in 2002 and found that freight rates have generally declined over the past 15 years. Trade routes that experienced the largest price falls were on routes that had increased competition from independent carriers.

Global Insight's industrial organisation models conclude that prices will fall in the short run but may be higher or lower in the long run. The net benefits for shippers and carriers aggregated together will however be unambiguously higher if conferences are removed.

Global Insight found that (in 2005) 30 liner conferences operated on routes from and to European Union. These conferences accounted for about 50% of capacity on high volume Far East and transatlantic routes and up to 70% on the lower volume West African and Indian routes.

The UK handled 5.7 million TEU in 2005 with deep sea (i.e. non-European) origins and destinations<sup>5</sup>. The average freight rate between Europe and Asia is \$1200 per TEU<sup>6</sup>. Assuming deregulation would lead to a long-term price reduction of between 0.5 and 2.5% per TEU across the whole deep sea UK market, then annual savings of between £17 million and £85 million may result, based on 2005 traffic volumes.

### Lower price volatility

In 2005 ICF consulting<sup>7</sup> were asked to look at the liner industry by the European Commission. ICF examined the effect on price volatility in other liberalised markets and concluded that in the long term prices will be less volatile than at present. There may, however, be some increase in price volatility in the short term as a new market equilibrium is reached. There is little evidence to support an argument that conferences have mitigated the volatility of freight rates. Removal of the block exemption may increase price stability. However, there is a risk of exacerbating price volatility on the smaller trade routes, particularly in the short term.

The airline industry has similar characteristics to liner shipping with high fixed costs, trade imbalances and seasonal fluctuations in demand. The ICF study examined the price fluctuation in Trans-Atlantic passenger air travel and found that rates had been relatively stable over the past decade. The study also examined US rail freight rates as this industry is characterised by high fixed costs and found that prices had been stable over the past decade. Past experience from these industries suggests that price volatility in the liner industry could be reduced if the market was more competitive.

### Increased efficiency

At present conference rates are influenced by the members' operating costs, these carriers may, however, not be the most efficient carriers in the market. Inefficient carriers stay in the market at the detriment of shippers. If rates are set competitively this will ensure that the most cost efficient carriers stay in operation and inefficient carriers either improve their efficiency or leave the market. There is also scope for independent carriers to improve their efficiency because conference carriers currently influence their rates.

Innovation and increased efficiency associated with fuel savings would also bring benefits for the environment as a result of reduced emissions per tonne-kilometre. However, the expected

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<sup>4</sup> Competition Policy in Liner Shipping, Directorate for Science, Technology and Industry, Division of Transport, OECD, April 2002

<sup>5</sup> table 4.2, update of UK port demand forecasts to 2030 & economic value of transshipment study, MDS transmodal, July 2007

<sup>6</sup> westbound \$1600, eastbound \$800

<sup>7</sup> Economic Assistance Study on Liner Shipping, ICF Consulting, May 2005

price decreases may lead to higher demand and therefore more ships on the seas, so the overall effect on shipping emissions is ambiguous.

### Better quality of service

Increased competition will encourage firms to compete on price and also quality of service. The ICF report interviewed shippers who thought that quality of service would increase if Regulation 4056/86 were repealed because firms would compete on quality of service to gain customer loyalty.

### Increased service reliability

There is little evidence to support a claim that carriers have stabilised supply. Conferences have not been able to make optimal capacity decisions. Global Insight has examined the West African trade in detail and has concluded that conferences on this route have had a destabilising effect. If the block exemption were removed it is unlikely that service reliability would be negatively affected.

### Innovation

Competitive markets encourage firms to innovate to compete for customers on quality of product and price. Other evidence from liberalised markets, such as the airline industry, suggests that innovation would increase if the liner industry were made more competitive.

### World trade / EU competitiveness

If transportation costs are reduced EU goods can become more competitive. This argument can be extended to developing countries, especially countries with commodities that have a high transport cost share. Increased service reliability will also benefit developing countries.

### Better capacity decisions

The OECD has found that liner shipping has a record of over-investing in new capacity. Containerisation International reports that over the period 2005-07, the world container fleet will increase by 13.3%, 15.2% and 9.3% (before scrapping) while few experts expect demand to rise by as much. Therefore, it is not evident that capacity co-ordination under the conference system is capable of delivering a better market outcome than an entirely competitive market organisation.

### Broader impacts

There will be little impact on employment in ports or on vessels. There is a current trend for carriers to join alliances or consortia so that efficiency can be improved. If the block exemption is removed more carriers may join a consortia or alliance. Consortia represent agreements to pool some or all activities on a trade route to enhance carriers' operational efficiency. When carriers make agreements on space and capacity on a trade route this represents an alliance.

There will be little impact on regional ports. At present hub and spoke systems ensure that goods are transported to the regions. Past experience from the liberalised airline industry suggests that regional trade routes will stay in operation. Removal of the block exemption is unlikely to impact on market concentration. The informational role that conferences play will be taken on by other organisations.

## Costs

Since the recent takeovers of P&O Nedlloyd, a UK Dutch joint-venture, by Mearsk Sealand of Denmark and CP Ships, a UK Canadian joint-venture, by Hapag-Lloyd of Germany, there are no UK companies among the top 20<sup>8</sup> container service operators accounting for 73% of the global fleet in 2006. UK subsidiaries of these international companies have container vessels registered to the UK flag. However, we conclude that if there are any significant costs associated with the abolition of the block exemption, they are likely to be borne by the overseas parent company because these international companies will comply with European law in a uniform manner across all member states.

There are no administration costs for industry associated with complying with normal competition rules, as there will be no informational requirements from competition bodies.

It is unlikely that removing the block exemption will add significantly to carriers' on-going policy costs. Carriers might incur one-off transition costs, such as through seeking legal advice in order to ensure that their activities are permitted under the block exemption. It is likely that some carriers might continue to seek legal advice to ensure that their activities comply with competition rules. This will not result in significant additional legal costs.

This impact assessment assumes UK subsidiaries of 20 international container shipping companies each incur a one off transition costs of £20,000, suggesting total costs of £400,000.

## Small firms impact test

The liner shipping industry requires firms to invest in considerable fixed costs as a result none of the firms operating in the UK are classified as small firms<sup>9</sup>. The Global Insight report concludes that liberalisation may be beneficial for small carriers if they follow an innovative business model<sup>10</sup>. The impact on firms will not be directly related to size; instead a firm's ability to operate in a competitive environment will be a more important factor. Small carriers can reduce their operating costs and increase operational efficiency by joining alliances. Small carriers may find a niche market after liberalisation.

A report produced by ICF Consulting for DG TREN<sup>11</sup> concluded that there is no common view amongst stakeholders that removal of the block exemption will disproportionately affect small shippers. Although, theoretical arguments can be made that larger shippers could use predatory pricing strategies to drive small firms out of the market.

Small firms may find it harder to adjust rapidly to the block exemption removal and may be at a disadvantage compared to larger firms. It should be noted that a small European carrier has managed to carry on trading on the Europe East Coast South America route despite the removal of conferences on this route in 2004.

## Competition assessment

This proposal does not raise any competition concerns. Rather it is expected to have positive effects on competition.

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<sup>8</sup> There are also no UK companies among the top 30 container service operators.

<sup>9</sup> A small firm is defined as a firm employing less than 50 employees.

<sup>10</sup> For example if carriers followed a model similar to Ryanair in the airline industry.

<sup>11</sup> ICF Consulting Economic Assistance Study on Liner Shipping, Revised Final Report May, 2005 prepared for Directorate General for Energy and Transport European Commission

A change in the number of suppliers and their market share is possible. And mergers may take place with inefficient operators that were previously protected by alliances from the rigours of free-market competition.

However, competition and the realisation of economies of scale will benefit consumers. It will increase the ability of suppliers to compete and it will encourage firms that previously operated in cartels to compete, to innovate and to operate more efficiently since firms with high costs will be driven out of the market.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Annex A

The adoption of Council Regulation (EC) No 1419/2006 of 25 September 2006 extended the scope 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 EC Treaty and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty to include cabotage and tramp vessel services. As of 18 October 2006, all maritime transport services sectors are subject to the generally applicable procedural framework.

Regulation (EC) No 1419/2006 also repealed Council Regulation (EEC) No 4056/1986 of 22 December 1986 on the application of Articles 85 and 86 (now 81 and 82) of the EC Treaty to maritime transport containing the liner conference block exemption which allowed shipping lines meeting in liner conferences to fix rates and other conditions of carriage, as the conference system no longer fulfilled the criteria of Article 81 (3) of the Treaty. The repeal of the block exemption takes effect as of 18 October 2008. Thereafter, liner carriers operating services to and/or from a port (s) in the European Union must cease all liner conference activity contrary to Article 81 of the Treaty. This is the case regardless of whether other jurisdictions allow, explicitly or tacitly, rate fixing by liner conferences or discussion agreements.

## Annex B

The legislation for repeal is as follows:

Sections 2, 3, 4, 11, 12 and 13 of the Merchant Shipping (Liner Conferences) Act 1982;

(The Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 and the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 cease to have effect by virtue of the repeal of sections 2 and 3 of the Act, under which these regulations were enacted.)

The UK has already denounced the UN Convention on a Code of Conduct for Liner Conferences (the "Code").