

REPUBLIC OF CYPRUS

**THE PROTECTION OF COMPETITION LAW
(LAW 207 OF 1989)**

Order made by virtue of section 5(2)

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**THE PROTECTION OF COMPETITION LAW
(LAW 207 OF 1989)**

Order made by virtue of section 5(2)

The Council of Ministers, in the exercise of its powers conferred upon it by virtue of subsection (2) of section 5 of the Protection of Competition Law of 1989, makes this Order. 207 of 1989.

1. This Order shall be cited as the Block Exemptions Short title.
(Agreements, Decisions and Concerted Practices between Liner Shipping Companies - Consortia) Order of 1997.

2. In this Order, unless the text otherwise requires- Interpretation.

"consortium" means an agreement between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade and the object of which is to bring about cooperation in the joint operation of a maritime transport service, which improves the service which would be offered individually by each of its members in the absence of the consortium, in order to rationalize their operations by means of technical, operational and /or commercial arrangements, with the exception of price fixing;

"independent rate action" means the right of a maritime conference member to offer, on a case-by-case basis and in respect of goods, freight rates which differ from those laid down in the conference tariff, provided notice is given to the other conference members;

"liner shipping" means the transport of goods on a regular basis on a specific route or routes between ports and according to timetables and sailing dated advertised in advance and available, even on an occasional basis, to any transport user against payment;

"Republic" means the Republic of Cyprus;

"service arrangement" means the contractual arrangement concluded between one or more transport users and an individual member of a consortium or a consortium itself under which a user, in return for an undertaking to have the latter transport a certain quantity of goods over a given period of time, receives an individual undertaking from the consortium member or the consortium to provide an individualized service of a given quality and which is specially tailored to its needs;

"transport user" means any undertaking (e.g. shipper, consignee, forwarder, etc.) which has entered into, or demonstrated an intention to enter into, a contractual agreement with a consortium (or one of its members) for the shipment of goods, or any association of shippers.

3. This Order shall apply to consortia only in so far as they provide international liner maritime transport services from or to one or more ports of the Republic. Scope of application.

4.-(1) By virtue of the provisions of subsection (2) of section 5 of the Law and subject to the conditions and obligations laid down in this Order, subsection (1) of section 4 of the Law is hereby declared inapplicable over the activities listed in Exempted agreements.

subparagraph (2) when contained in consortia agreements, as defined in paragraphs 2 and 3 of this Order.

(2) The exemption shall cover only the following activities:

(a) the joint operation of liner shipping transport services which comprise solely the following activities:

(i) the coordination or/and joint fixing of sailing timetables and the determination of ports of call,

(ii) the exchange, sale or cross-chartering of space or slots on vessels,

(iii) the pooling of vessels or/and port installations,

(iv) the use of one or more joint operation offices,

(v) the provision of containers, chassis and other equipment or/and rental or leasing or purchase contracts for such equipment,

(vi) the use of computerized data exchange system or/and joint documentation system;

(b) temporary capacity adjustments;

(c) the joint operation or use of port terminals and related services (e.g. lighterage or stevedoring services);

- (d) the participation in one or more of the following pools:
tonnage, revenue or net revenue;
- (e) the joint exercise of voting rights held by the consortium in the conference within which its members operate, in so far as the vote being jointly exercised concerns the consortium's activities as such;
- (f) a joint marketing structure or/and the issue of a joint bill of lading;
- (g) any other activity ancillary to those referred to in points (a) to (f), which is necessary for their implementation.

5. The exemption provided for in paragraph 4 shall not apply to a consortium which includes arrangements in relation to the non-utilization of existing capacity, whereby shipping line members of the consortium refrain from using a certain percentage of the vessels' capacity operated within the framework of the consortium.

Non-utilization
of capacity.

6. The exemption provided for in paragraph 4 shall apply only if one or more of the conditions set out below are met:

Conditions for
the application
of exemption.

- (a) there is effective price competition between the members of the conference within which the consortium operates due to the fact that the members are expressly authorized by the conference agreement, whether by virtue of a statutory obligation or otherwise, to apply independent rate action to any freight rate provided for in the conference tariff;

- (b) there exists within the conference within which the consortium operates a sufficient degree of effective competition between the conference members in terms of the services provided, due to the fact that the conference agreement expressly allows the consortium to offer its own service arrangements, irrespective of form, concerning the frequency and quality of transport services provided as well as freedom at all times to adopt the services it offers in response to specific requests from transport users,
- (c) whether or not a conference operates in the trade in question, the consortium members are subject to effective competition, actual or potential, from shipping lines which are not members of that consortium.

7.-(1) In order to benefit from the exemption provided for in paragraph 4, a consortium must possess, in respect of the range of ports it serves, a share of the direct trade of under 30% calculated by reference to the volume of goods carried (freight tonnes or 20-foot equivalent units - TEU), when it operates within a conference and under 35% when it operates outside a conference.

Additional conditions attaching to exemption.

(2) The exemption provided for in paragraph 4 shall continue to apply if the share of the trade referred to in subparagraph (1) is exceeded during any period of two consecutive calendar years by not more than 10%.

(3) Where one of the limits specified in subparagraphs (1) and (2) is exceeded, the exemption provided for in paragraph 4 shall continue to apply for a six-month period following the end of the calendar year during which it was exceeded. This period

shall be extended to twelve months, if the excess is due to the withdrawal from the trade of a carrier non-member of the consortium.

8.-(1) The exemption provided for in paragraph 7 shall also apply to consortia whose share of the trade exceeds the limit laid down in Article 6 but does not, however, exceed 50% of the direct trade, on condition that the agreements in question are notified to the Commission in accordance with the provisions of section 18 of the Law, and that the Commission does not oppose such exemption within a period of six months. Opposition procedure.

(2) The period of six months shall run from the date on which notification is received by the Commission. Nevertheless, when the notification is made by registered post, the period shall run from the date shown on the postmark of the place of posting.

(3) Subparagraph (1) shall apply only if-

- (a) express reference is made to this paragraph in the notification or in a communication accompanying it, and
- (b) the information furnished with the notification is complete and in accordance with the facts.

(4) The benefit of subparagraph (1) may also be claimed for agreements notified before the entry into force of this Regulation by submitting a communication to the Commission referring expressly to this paragraph and to the notification. The provisions of subparagraphs (2) and (3)(b) shall apply *mutatis mutandis*.

(5) The Commission may oppose the exemption.

(6) The Commission may withdraw its opposition to the exemption at any time.

(7) If the opposition is withdrawn because the undertakings concerned have shown that the conditions of section 5 of the Law are fulfilled, the exemption applies from the date of notification.

(8) If the opposition is withdrawn because the undertakings concerned have amended the agreement, so that the conditions of section 5 of the Law are fulfilled, the exemption shall apply from the date on which the amendments take effect.

9. Eligibility for the exemption provided for in paragraphs 4 and 11 shall be subject to the following additional conditions: Additional conditions attaching to exemption.

- (a) The consortium must allow each of its members to offer, on the basis of an individual contract, its own service arrangements;
- (b) the consortium agreement must give member companies the right to withdraw from the consortium without financial or other penalty such as, in particular, an obligation to cease all transport activity in the trade, whether or not coupled with the condition that such activity may be resumed only after a certain period has elapsed. This right shall be subject to a maximum notice period of six months which may be given after an initial period of eighteen months starting from the entry into force of the

agreement.

Provided that for a highly intergrated consortium which has a net revenue pool and/or high level of investment due to the purchase or charter by its members of vessels specifically for the purpose of setting up the consortium, the maximum notice period shall be six months, which may be given after an initial period of thirty months starting from the entry into force of the agreement;

- (c) where a consortium operates with a joint marketing structure, each member of the consortium must be free to engage in independent marketing without penalty subject to a maximum period of notice of six months;
- (d) neither the consortium nor consortia members shall, within the market of the Republic, cause detriment to certain ports, users or carriers by applying to the carriage of the same goods and in the area covered by the agreement, rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified.

10. The following obligations shall be attached to the exemption provided for in paragraph 4: Obligations attaching to exemption.

- (a) There shall be real and effective consultations between users or their representative organizations on the one hand, and the consortium on the other, for the purpose of seeking solutions on all important matters, other than

purely operational matters of minor importance, concerning the conditions and quality of scheduled maritime transport services offered by the consortium or its members; these consultations shall take place whenever requested by any of the above-mentioned parties; the consultations must take place, except in cases of force majeure, prior to the implementation of the measure forming the subject of the consultation; if for reasons of force majeure, the members of the consortium are obliged to put a decision into effect before consultations have taken place, any consultations requested shall take place within 10 working days of the date of relevant request. Save in the case of force majeure to which reference shall be made in the notice announcing the measure, no public announcement of the measure shall be made before the consultations in question; these consultations shall take place in accordance with the following procedural stages:

- (i) prior to the consultation, details of the subject-matter of the consultation shall be notified in writing by the consortium to the other party;
- (ii) an exchange of views shall take place between the parties either in writing or at meetings or both in the course of which the representatives of the consortium members and of the shippers taking part will have authority to reach a common point of view and the parties shall use their best efforts to achieve that end;
- (iii) where no common point of view can be reached despite the efforts of both parties, the

disagreement shall be acknowledged and publicly announced. It may be brought to the Commission's attention by either party;

- (iv) a reasonable period for the completion of consultations may be fixed, if possible, by common agreement between the two parties; the period in question shall not be less than one month, save in exceptional cases or by agreement between the parties;
- (b) the conditions concerning the maritime transport services provided by the consortium and its members, including those relating to the quality of such services, and all relevant modifications shall be made available on request to transport users at reasonable cost and shall be available for examination without cost at the offices of the consortium members or the consortium itself, and their agents;
- (c) arbitration awards and conciliators' recommendations that have been accepted by the parties and settle disputes in relation to the practices of consortia covered by this Order shall be notified forthwith to the Commission by the consortium.
- (d) any consortium claiming the benefit of this Regulation must be able, on being given a period of notice which the Commission shall determine on a case-by-case basis and which shall not be less than one month, to demonstrate at the Commission's request that the conditions and obligations imposed by paragraphs 6 to 9 and subparagraphs (a) and (b) of this paragraph are met

and must submit to it the consortium agreement in question within this period.

11. Agreements, decisions and concerted practices between transport users or their representative organizations on the one hand, and a consortium exempted under paragraph 4 on the other hand, concerning the conditions and quality of liner shipping services provided by the consortium and all general questions connected with such services, in so far as they arise out of the consultations provided for in paragraph 10(a), are hereby exempted from the prohibition laid down in section 4 of the Law.

Exemption for agreements between transport users and consortia concerning the use of scheduled maritime transport services.

12.-(1) The information acquired as a result of the application of paragraphs 8 and 10(d) shall be used only for the purposes of this Order.

Information.

(2) The Commission and the Competition and Consumer Protection Division of the Ministry of Commerce, Industry and Tourism as well as their officials and other servants shall not disclose information acquired by them as a result of the application of this Order which is of the kind covered by the obligation of professional secrecy.

(3) The provisions of subparagraphs (1) and (2) shall not prevent publication of general information or studies that do not contain information relating to particular undertakings or associations of undertakings.

13. The Commission may withdraw the benefit of this Order where it finds in a particular case that an agreement, decision or concerted practice exempted under the provisions of this Order

Withdrawal of block exemption.

has nevertheless certain effects that are incompatible with the conditions laid down by section 5 of the Law or are prohibited by section 6 of the Law in particular where:

- (a) in a given trade, competition from outside the conference within which the consortium operates or from outside a particular consortium is not effective;
- (b) a consortium fails repeatedly to comply with the obligations provided for in paragraph 10 of this Order;
- (c) the behaviour of a consortium produces effects that are incompatible with section 6 of the Law;
- (d) such effects result from an arbitration award.