



REPUBLIC OF CYPRUS

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

Order made by virtue of section 5(2)

(Published in Supplement No.III(I)
to the Official Gazette of the Republic No. 3168
of the 18th July, 1997)

(English translations prepared
by the Law Commissioner's Office)

ΓΕΝ (Α) – Π. Ι. 24

Nicosia

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 (Liner Conferences in the Maritime Transport) Order of 1997. Short title.

2. In this Order unless the text otherwise requires— Interpretation.

“liner conference” means a group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services;

“Republic” means the Republic of Cyprus;

“tramp vessel services” means the transport of goods in bulk or in breakbulk in a vessel chartered wholly or partly to one or more shippers, on the basis of a voyage or time charter or any other form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand;

“transport user” means every undertaking (e.g. shippers, consignees, forwarders e.t.c.) provided it has entered into or demonstrates an intention to enter into a contractual or other arrangement with a conference of shipping line for the shipment of goods, or any association of shippers.

3. This Order shall apply exclusively in the international maritime transport from or to one or more ports of the Republic, excluding the services by independent tramp vessels. Scope of application.

4.— (1) The prohibition of section 4 of the Law shall not apply to agreements, decisions and concerted practices whose sole object and effect is to achieve technical improvements or co-operation by means of— Technical agreements.

(a) The introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies and fixed installations;

(b) the exchange or pooling for the purpose of operating transport services, of vessels, space on vessels or slots and other means of transport, staff, equipment or fixed installations;

(c) the organization and the execution of successive or supplementary maritime transport operations and the establishment or application of inclusive rates and conditions for such operations;

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

- (e) the consolidation of individual consignments;
- (f) the establishment or application of uniform rules concerning the structure and conditions governing the application of transport tariffs.

(2) The Commission shall, if necessary, submit to the Council of Ministers proposals for the amendment of subparagraph(1).

5. Agreements, decisions and concerted practices of all or part of the members of one or more liner conferences are hereby exempted from the prohibition in section 4 of the Law subject to the conditions provided under paragraph 6 when they have as their objective the fixing of rates and conditions of carriage, and, as the case may be, one or more of the following objectives–

Exemption for agreements between carriers concerning the operation of scheduled maritime transport services.

- (a) The coordination of shipping timetables or sailing dates or dates of calls;
- (b) the determination of the frequency of sailings or calls;
- (c) the coordination or allocation of sailings and calls among members of the conference;
- (d) the regulation of the carrying capacity offered by each member;
- (e) the allocation of cargo or revenue among members.

6.– (1) The exemption provided for in paragraphs 5 and 8 shall be granted subject to the condition that the agreement, decision or concerted practice shall not within the market of the Republic cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and in the area covered by the agreement, decision or concerted practice, 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.

Condition attaching to exemption.

(2) Any agreement or decision or, if it is severable, any part of such agreement or decision, not complying with subparagraph (1) shall automatically be void pursuant to the provisions of section 4 of the Law.

7. The following obligations shall be attached to the exemption provided for in paragraph 5:

Obligations attaching to exemption.

(1) There shall be consultations for the purpose of seeking solutions on general issues of principle between transport users on the one hand and conferences on the other concerning the rates, conditions and quality of scheduled maritime transport services. These consultations shall take place whenever requested by any of the above mentioned parties.

(2) The shipping lines' members of a conference shall be entitled to institute and maintain loyalty arrangements with transport users, the form and terms of which shall be matters for consultation between the conference and transport users' organizations. These loyalty arrangements shall provide safeguards making explicit the rights of transport users and conference members. These arrangements shall be based either on the Contract Law (Cap.149) or any respective law of a third country. The loyalty arrangements must comply with the following conditions:

- (a) Each conference shall offer transport users a system of immediate rebates or the choice between such a system and a system of deferred rebates:
 - (i) under the system of immediate rebates each of the parties shall be entitled to terminate the loyalty arrangement at any time without penalty and subject to a period of notice of not more than six months; this period shall be reduced to three months when the conference rate is the subject of a dispute;
 - (ii) under the system of deferred rebates, neither the loyalty period on the basis of which the rebate is calculated nor the subsequent loyalty period required before payment of the rebate may exceed six months; this period shall be reduced to three months where the conference rate is the subject of a dispute.
- (b) the conference shall, after consulting the transport users concerned, set out—
 - (i) a list of cargo and any portion of cargo agreed with transport users which is specifically excluded from the scope of the loyalty arrangement; 100% loyalty arrangements may be offered but may not be unilaterally imposed;
 - (ii) a list of circumstances in which transport users are released from their obligation of loyalty; these shall include—
 - (aa) circumstances in which consignments are dispatched from or to a port in the area covered by the conference but not advertised and where the request for a waiver can be justified,
 - (bb) those in which waiting time at a port exceeds a period to be determined for each port and for each commodity or class of commodities following consultation of the transport users directly concerned with the proper servicing of the port:

Provided that the conference must, in any case, be informed in advance and within a specified period by the transport user, of his intention either to dispatch the consignment from a port not advertised by the conference or to make use of a non-conference vessel at a port served by the conference as soon as he has been able to establish from the published schedule of sailings that the maximum waiting period will be exceeding.

(3) Transport users shall be entitled to approach the undertakings of their choice in respect of inland operations and quayside services not covered by the freight charges or charges on which the shipping line and the transport user have agreed.

(4) Tariffs, related conditions, regulations and any amendments thereto shall be made available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents. They shall set out all the conditions concerning loading and discharge, the exact extent of the services covered by the freight charge in proportion to the sea transport and the land transport or by any other charge levied by the shipping line and customary practice in such matters.

(5) Awards given at arbitration and recommendations made by conciliators, that are accepted by the parties, shall be notified forthwith to the Commission when they resolve disputes relating to the practices of conferences referred to in paragraph 6 and in the above subparagraphs (2) and (3).

8. Agreements, decisions and concerted practices between transport users, on the one hand, and conferences, on the other hand, and agreements between transport users which may be necessary to that end, concerning the rates, conditions and quality of liner services, as long as they are provided for in paragraph 7(1) and (2) are hereby exempted from the prohibition laid down in section 4 of the Law.

9.- (1) Where the persons concerned are in breach of an obligation which, pursuant to paragraph 7, attaches to the exemption provided for in paragraph 5, the Commission may, in order to put an end to such breach to—

- (a) address recommendations to the persons concerned,
- (b) in the event of failure by such persons to observe those recommendations and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption or withdraws the benefit of the block exemption which they enjoyed.

(2) (a) Where, owing to special circumstances as described below, agreements, decisions and concerted practices which qualify for the exemption provided for in paragraphs 5 and 8, have nevertheless effects which are incompatible with the conditions laid down in section 5 of the Law, the Commission, on receipt of a complaint or on its own initiative, takes the measures described in subparagraph (c). The severity of these measures shall be in proportion to the gravity of the situation.

- (b) The above mentioned special circumstances are, inter alia, created by—
 - (i) acts of conferences or a change of market conditions in a given trade resulting in the absence or elimination of actual or potential competition such as restrictive practices whereby the trade is not available to competition; or
 - (ii) acts of conferences which may prevent technical or economic progress or users participation in the benefits which this progress brings along, or
 - (iii) acts of third countries which—
 - (aa) prevent the operation of outsiders in a trade, or
 - (bb) impose unfair tariffs on conference members, or
 - (cc) impose arrangements which otherwise impede technical or economic progress (cargo-sharing, limitations on type of vessels).
- (c) (i) If actual or potential competition is absent or may be eliminated as a result of action by a third country, the Commission shall enter into consultations

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

Monitoring of exempted agreements.

with the competent authorities of the third country concerned in order to remedy the situation.

- (ii) If the special circumstances result in the absence or elimination of actual or potential competition contrary to section 5 of the Law, the Commission shall withdraw the benefit of the block exemption. At the same time it may rule on whether and, if so, under what additional conditions and obligations an individual exemption may be granted to the relevant conference agreement, with a view, inter alia, to obtaining access to the market for non-conference lines.
- (iii) If, as a result of special circumstances as set out in subparagraph (2)(b), there are effects other than those referred to in subparagraph (2)(c)(ii) hereof, the Commission shall take one or more of the measures described in subparagraph (1).