

A SUBMISSION FROM THE  
**GLOBAL SHIPPERS' FORUM**

TO THE INFORMATION NOTE  
Issued by the Directorate General for Competition  
**29<sup>th</sup> September, 2006**

INTRODUCTION

Formerly known as the Tripartite Shippers' Group, the now renamed Global Shippers' Forum (GSF) is recognized in the international world of freight transportation and trade as the voice for shipper groups whose respective members are responsible for making and purchasing transportation services on behalf of their respective companies. Originally comprised of organizations from three major trade regions of the world, the GSF today represents numerous shipper groups whose central focus centers on policies and industry practices that impact the movement of international commerce.<sup>1</sup>

Trade and transportation are inextricably linked: it is therefore appropriate that shippers, regardless of geographic origin, must have a forum – the GSF – through which common views may be shared, discussed, debated, and then advocated to national policy makers. These positions are designed with the purpose of enacting local, national, and international laws and regulations which will lead to greater competition and business principles which will permit harmonization of international transport critical for efficiently run supply chains.

GSF met recently in Antwerp, Belgium (27-29 September, 2006). At its meeting the members agreed a joint declaration on the issue of maritime regulatory reform and, in particular, on the removal of anti-trust exemptions for liner shipping conferences operating to and from the European Union (EU) that was announced by the EU's Competitiveness Council shortly before our meeting (25 September, 2006). An extract from the declaration is provided below:

'GSF seeks to ensure that shippers and receivers of freight have effective controls over their maritime container logistics services in order to optimize the management of their supply chains. This group has emphasized the need for co-operation, partnership, and transparency in the commercial and operational relations they have with their service providers.

This campaign is as vital this year as it has ever been. The European Union (EU) has removed anti-trust/anti-competitive exemptions for the liner shipping industry in trades to and from the EU. In this regard, the GSF applauds this [week's] decision by EU's Competitiveness Council. GSF believes this decision will usher in a new environment that will create new economic relationships amongst all transport stakeholders. This new environment will not only provide benefit to transport stakeholders, but more importantly to consumers everywhere.

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<sup>1</sup> The GSF comprises: the European Shippers' Council, the Japan Shippers' Council, the Asian Shippers' Council, the Canadian Industrial Transportation Association and the US National Industrial Transportation League.

**This repeal in Europe will become a force and model for change elsewhere. Competition policies for the liner shipping sector around the world can be expected to align themselves with those followed in most other industrial and service sectors. It is the GSF's objective that these policies embrace competition, free market principles and end collusion among suppliers.**

GSF firmly believes that all industry sectors must recognize the new competitive environment that now presents itself. Shippers, carriers and other stakeholders should embrace the new challenges and opportunities or else risk being left behind.

**GSF concluded at its 2006 meeting, that the revised proposals by the European Liner Affairs Association (ELAA) represent a real risk of collusive activity.'**

What follows in this submission represents the basis of GSF's position adopted at its Antwerp 2006 meeting regarding the Revised Proposals of the European Liner Affairs Association (ELAA). GSF's position is therefore encapsulated in the answers given to the specific questions contained in the assessment carried out by the Directorate General for Competition within its Information Note of 29<sup>th</sup> September, 2006.

GSF strongly supports the direction and sentiment of the Directorate General for Competition in its assessment of the ELAA proposals for a system of information exchange.

#### RESPONSE TO SPECIFIC QUESTIONS OF DG COMPETITION:

##### **Supply forecasts**

GSF is gravely concerned by the proposal of the ELAA for the production, discussion and publication of liner shipping capacity forecasts. The joint analysis of capacity forecasts is currently undertaken within liner shipping conferences and discussion agreements on trades around the world; it enables the members of those conferences to tacitly agree on and influence the vessel deployment on the various trades with a view to collectively maintaining an upward pressure on the liner shipping rates.

It is precisely because of such blatant coordination today within liner conferences and Discussion Agreements that GSF supports the repeal of the block exemption that would remove such practice from the liner shipping sector. Any acceptance of the ELAA proposal for supply forecasting would therefore be considered by GSF to be a retrograde step in the removal of anti-competitive practices in the liner shipping market.

##### **Currency Adjustment Factors (CAFs), and Ancillary charges and other sucharges (BAFs and THCs)**

GSF considers the response to the questions raised in relation to CAFs, BAFs and THCs to be similar in many respects. It seems appropriate, therefore, to answer these together.

GSF agreed a common position at its Antwerp meeting (September 2006) in relation to such matters:

'GSF strongly supports cost-based transparency for surcharges/ancillaries. It also believes that surcharges/ancillaries should be determined and announced by individual carriers and not guided by conference or discussion agreements or any other forum that seeks to facilitate a collective response to such charges.

Instead, all such decisions should reflect actual costs and the needs of customers. Surcharges should also be temporary in nature.

GSF supports those shippers' who desire to have all costs included in an "all-inclusive" freight cost. Many shippers, particularly Asian shippers, believe that the Terminal Handling Charge should be an integral part of the freight and hence shouldered by the party who pays the freight in accordance with normal commercial transport practices. GSF supports the desires of many shippers to have a simplified system with the ultimate objective of having "all-inclusive freight costs."

Equally, GSF supports those shippers who prefer to view line item costs that are calculated in the establishment of the final cost. Nevertheless, such an approach should not lead to the establishment of a "fixed base" for surcharges.'

GSF wishes to make it perfectly clear that it does not condone any form of collective setting of rates, surcharges or ancillary charges between carriers, whether these are for THCs, BAFs, CAFs or any other. It is helpful that the Revised Proposals of the ELAA no longer contain references to any such collective setting or calculation of BAFs and THCs.

However, any benchmark of any surcharge rates or movements would present a clear signal to the carriers as to the level of surcharge each should be implementing if they wished to coordinate such charges, much as they are able to do today within liner conferences and liner shipping Discussion Agreements. Therefore, GSF cannot accept the proposals of the ELAA in respect of its currency-fluctuation benchmark that will greatly influence the level of CAF charged to shippers.

Nevertheless, in view of the fact that some shippers wish to identify 'line item costs', particularly in relation to THCs, GSF raises no objection to the publication of the different elements (but not the actual costs) that can make up the THCs, and which will assist said shippers, and that, it is believed, will not unduly influence the actual costs of terminal handling operations.

### **Volume Data**

GSF can accept the publication of volume data that represents an historic overview of the trends on specific trade directions. The proposal of the ELAA stretches the interpretation of historic data too far for GSF members who fear that the current proposal, for publication monthly of eight and possibly four week-old data, might enable it to be used to influence or guide contract negotiations with shippers at any given time. GSF would propose a longer period of time to elapse between collation of volume data and publication.

The attempt to hide the identities of carriers' and their customers' volumes by establishing minimum container throughput thresholds on ports and port pairs is welcomed; nevertheless, since it is simply the trend that is of interest to shippers (albeit marginally) and carriers as an

indicator of regional trade growth, GSF sees no reason to collect data on port-pairs. Since the issue does also still raise concerns as to whether individual carrier and shipper identities can be deduced, especially if coupled with other data and analyses being proposed (such as recent capacity data and forecasts of capacity), it would seem prudent to collect volume data on a trade direction basis only.

### **Historic capacity data**

As with the proposal from the ELAA relating to 'Volume data' (see above), GSF finds that the period of delay between collection and publication is too short. GSF would not wish to replicate that which can occur today within liner conferences and discussion agreements around the world whereby contract negotiations can be influenced by utilisation statistics produced jointly by the conference secretariats with a view to putting upward pressure on rates (often in association with a recently agreed General Rates Increase (GRI) among the member lines).

### **Price Indices**

GSF recognise that a price index enabling a benchmark to be established for price movements of comparable services could be useful to shippers wishing to assess the fairness of the rates they are being charged in relation to their competitors. The proposal presented by the ELAA, however, represents such high degree of aggregation as to prevent any realistic judgement to be made. The number of different service parameters and commodity types possible on any given trade lane makes it impossible to gain an accurate assessment of the fairness of a carriers' price by reference to the price index being proposed.

GSF believes, those shippers that wish to assess the fairness of the price they are charged, would do better monitoring the price fluctuations they have previously experienced against published movements in identifiable cost elements of a liner shipping service, and the standard or quality of service they have received.

It is, however, a distinct possibility that some, perhaps less experienced, shippers might not realise that the index aggregates so many different service and commodity types, and used their resultant analysis of price movements gained from the index in their current contract negotiations. To safeguard their interests, it would be appropriate to publish a historic price index (using data that is one year old) – clearly marked, in order to make it clear the index merely described a general price trend up to the previous year, and therefore could not be relied upon for comparison with current price negotiations.

### **CONCLUSIONS**

GSF strongly supports the direction and sentiment of the Directorate General for Competition in its assessment of the ELAA proposals for a system of information exchange.

GSF has not commented on one aspect of the ELAA proposals that the Commission has already determined would breach anti-trust laws of the EU once the conferences to and from the EU had been disbanded: for the record, however, GSF agrees with the Directorate General that liner-only discussion forums proposed by the ELAA represents a major threat to the pro-competitive

advantages that will otherwise be gained from the repeal of the liner shipping conference block exemption announced on 25 September 2006 by the EU's Competitiveness Council.

Those proposals that GSF is willing to accept, albeit with conditions attached, are, in reality, considered to be of only limited benefit to shippers; neither is the benefit to carriers so clearly apparent.

The proposals that GSF objects to and on which the Information Note made a specific request for views, namely, capacity forecasts and benchmarking currency fluctuations, could be used to perpetuate the existing collusive behaviour and practices embodied in the liner shipping conference and Discussion Agreement systems of today.

GSF would, however, also like to recommend that a closer assessment be made into the proposed Independent Data Service (IDS). Our concerns are that the carriers could agree in the meaning of the data and establish benchmarks on which prices are set. This is precisely the experience of shippers in trades where 'Discussion Agreements' are permitted to operate.

GSF has particular reservations in respect of the price that may be charged for such data which could be out of reach of or stretch the financial resources of GSF members and shippers more generally. The proposed role of the Liner Shipping Association requires closer examination for the possible hidden effects on competition and the ability of the group to assess veiled charges on its customers. In the final analysis the costs associated with this operation are not necessary and clearly are meant to perpetuate additional revenue without resulting benefits for consumers.

GSF wishes to thank the European Commission's Directorate General for Competition for producing such a clear exposition of the ELAA revised proposals and the issues relating to them. It is hoped that this submission in response to the questions raised and comments invited by the DG for Competition assist it with its work towards establishing appropriate competition guidelines for the liner shipping sector.

Submitted for and on behalf of the GLOBAL SHIPPERS FORUM.  
31th October, 2006