
Intergovernmental Group of Experts on Competition Law and Policy

17th Session
11-13 July 2017
Room XVII, Palais des Nations, Geneva

Friday, 13 July 2018
Morning Session

**Agenda Item 3a. Challenges faced by developing countries in
competition and regulation in the maritime transport sector**

Contribution by
Federal Antimonopoly Service
Russian Federation

This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

Russian Federation
Challenges Faced by Developing Countries in Competition and Regulation in
the Maritime Transport Sector
13 July 2018

General description of Russian liner shipping market

The annual load volume freighted with containers through ports of the Russian Federation is approximately 4 mln. TEUs. The prevailing routes are the Far East and the South-East Asia – Russia (St. Petersburg, Novorossiysk), North America – Russia (St. Petersburg, Novorossiysk). For the last few years, the Federal Antimonopoly Service of the Russian Federation (the FAS Russia) has analyzed in details the market of container liner shipping on the route the Far East and the South-East Asia – Russia.

Liner shipping market is regulated foremost by international legal acts. The most important of them are the following:

- “Convention on a Code of Conduct for Liner Conferences”, 1974 (Hereinafter – the Code). The Code was ratified by the USSR and the Russian Federation. Meanwhile, the Code has a limited scope of implementation because of a number of reasons: it was ratified not by all the countries and with significant reserves; liner conferences, a subject of the Code, does not exist nowadays in the form they were considered in the Code;
- Ocean Shipping Regulation Act (1998, OCPA), which develops the previous US Acts on shipping (1916, 1984);
- Regulation of European Council № 4055/86 and № 4056/86 dated 22 December 1986 (amended and revised);
- Japanese Law on Shipping 1949/1999;
- Notification of the Ministry of Transportation of PRC No. 2009-20 on Order of providing for information on tariffs and their changes dated 10 June 2009.

The most significant legal act of the Russian Federation in the sphere of liner shipping is Merchant Shipping Code of the Russian Federation No. 81-FZ dated 30 April 1999 (hereinafter – MSC RF). MSC RF has a limited practical implementation

for evaluation liner shipping companies' activity on the territory of the Russian Federation.

Nowadays liner shipping is carried out in accordance with such principles as publicity of service providing to indefinite number of people, providing information before shipping contracting, announcing schedule of liner shipping, keeping conditions in terms of cargo and passenger capacities. All these criteria are included obligations of liner shipping companies.

It should be noted that there are no exceptions or restrictions for liner shipping companies or liner conferences from Russian legislation. Their activity is considered equally to other enforcement spheres. All requirements and provisions of the Federal law dated 26 July 2006 No. 135-FZ "On Protection of Competition" (hereinafter – the Law on protection of competition) are applied to liner shipping.

The Instructions on Publication of Freight Charges by International Shipping Lines

In 2013 the FAS Russia jointly with the Ministry of Internal Affairs of the Russian Federation conducted a number of dawn raids in relation to 14 Russian companies – agents of the largest international liner shipping companies. During the dawn raids it was found that liner shipping companies set the same charges to the rate of freights (GRI) for freightage on the route South-Asia, Far East – North Europe (including St. Petersburg). It could give evidence to existence of agreement on the market of liner shipping that is violation of Clause 1 Part 1 Article 11 of the Law on protection of competition.

In 2015 the FAS Russia investigated a case against the largest world maritime container lines upon signs of concerted actions on the market of container shipping on the Southeast Asia – St Petersburg route.

As a result of investigation a number of liner shipping companies were found violated Clause 1 Part 1 Article 11 of the Law on Protection of Competition (concerned actions)

The FAS Russia suspected that the largest international shipping companies signed anticompetitive agreement on simultaneous and equal setting of GRI for freightage on the routes the South-East Asia, the Far East – St. Petersburg/ St. Petersburg – the South-East Asia, the Far East.

On September 7, 2016 Moscow Arbitration Court confirmed the decision of the FAS Russia in relation to international liner shipping companies.

On February 13, 2017 a settlement agreement was signed between the FAS Russia and a number of violated companies, in accordance with which

1. Shipping lines shall cease any Publication of the planned or possible change to the Price or any elements of the Price (in particular, Publication of General Rate Increase).
2. Shipping lines shall make Publications of information on the maximum current value of freight rates per cargo item to carriage between incurred vessel call ports on the sea line.
3. Publication of Price does not prevent communication to Purchasers individually in course of negotiation lower prices for such services.
4. Communication with regard to the planned or possible change to the Price or any elements of the Price shall be accessible only in non-public form by means of e-mail, telephone calls, personal meetings, by means of access by the Purchaser to the personal area on the carrier's website, etc.

Moreover, in accordance with the settlement currently the Instructions on Publication of Freight Charges by International Shipping Lines were developed and adopted by the Presidium of the FAS Russia (Minutes of the Presidium of the FAS Russia dated June 14, 2017 No. 12)¹.

The Instructions were developed together with market participants and determine the common conduct rules and principles on the market of liner marine transportation.

The Instructions contain a list of good practices of behavior of companies on the market that will be recommended to follow by all the market participants.

Efforts on deregulation of ports' activities

The FAS Russia is committed to the idea of increasing competition in all the spheres of Russian economy and deregulation of the markets on which the market

¹ Available in English in the official web-site of the FAS Russia (URL: <http://en.fas.gov.ru/documents/documentdetails.html?id=15298>)

competition could take place. In this regards the FAS Russia made efforts on setting the fair competition conditions in ports.

The process has started in 2010 with the deregulation of tariffs of stevedores services (loading, discharge and maintenance). From that moment the market attracted significant investment flows into port infrastructure, but in 2016 the FAS Russia played attention to increase of tariffs and setting the prices in foreign currencies.

The FAS Russia conducted the market analysis of stevedores services for the period 2013-2015 and found out that after the deregulation of prices, the tariffs increased 2.5 times (on some services up to 10 times) and the major of tariffs were set in foreign currencies. In this regard, the FAS Russia sent to all the market players the warning on necessity to set the tariffs in Russian national currency (Russian rubles).

The FAS Russia also opened the investigation in relation to a number of stevedores companies on setting and maintenance of monopolistically high prices. As a result, four companies were fined 17 bln Rubles (approximately 270 mln USD) and ruled to eliminate monopolistically high prices and set economically fair tariffs for their services. Moreover, they had to inform all their customers on changing the tariffs and, from that moment, to publish the tariffs on the official web sites.

In December 2017, the Presidium of the FAS Russia issued an Order “On changing state regulation of activity of natural monopolies in maritime ports of the Russian Federation”. The FAS Russia conducted the market analysis of competition in the market of towing which showed the existence of stable competition in major maritime Russian ports. That became the basis for making the decision on deregulation of such activity.

According to the FAS Russia, setting the prices by the natural monopolies will allow them to conduct flexible pricing policy, which will take into account the changeable market situation. At the same time, the towing companies are not eliminated form the Register of natural monopolies in transportation and will be obliged to provide the FAS Russia with the information on tariffs that will allow to achieve the transparency of their activity. In case of unreasonable increase of tariffs, the FAS Russia is able to launch an investigation on violation of Russian competition legislation.