

# A Retrospective on 2021 and a review of the landscape for the EU Commission in 2022

**EMLO**

*Matthew Levitt - 27 January 2022*

# Overview

1. Competition authority responses to the global supply chain crisis
2. Carrier / logistics integration
  - DFDS / HSF (M.10216)
3. Shipbuilding mergers
  - Fincantieri / Chantiers de l'Atlantique (M.9162): abandoned
  - Hyundai/Daewoo (M.9343): prohibited
4. DFDS – P&O freight space charter arrangement on Dover-Calais route
  - Investigated by UK CMA and French Competition Authority
5. EC review of the Consortia block exemption
6. RoRo carriers damages litigation
  - McLaren proposed class action
  - JLR
  - VW

# Supply chain crisis

## Commission responses to MEPs

- EN E-004569/2021 Answer given by Executive Vice-President Vestager on behalf of the European Commission (14.1.2022)

*"The monitoring of the container shipping sector carried out by the Commission, in cooperation with other regulatory and competition authorities since the start of the pandemic, has not led to identifying anti-competitive behaviour from alliances aimed at increasing freight rates. As a consequence, the Commission does not currently consider that the applicable EU regulatory framework, including the Consortia Block Exemption Regulation, would fail to prevent unfair practices or distortions of competition in the sector. Considering the multiplicity of the causes for the price hikes and service disruptions linked to the pandemic, the Commission is still exchanging information and analyses with all relevant stakeholders to identify whether specific measures may be needed to increase the system's resilience. The Commission is preparing for the process of review of the Consortia Block Exemption Regulation, which will expire in 2024."*

## Commission responses to MEPs

Margrethe Vestager 24.11.21 [E-004399/2021](#)

*"The Commission is aware of the material price increases for container shipping, the level of service quality in the maritime supply chain, and the related difficulties for European producers and consumers.*

*Within the realm of its powers and competences, the Commission is willing to address the concerns about the functioning of the supply chain, ensuring Europe's competitiveness. It has at this stage not received evidence or identified anti-competitive behaviour in relation to these price increases. A similar conclusion has been reached by other key agencies, e.g. the Federal Maritime Commission of the United States.*

*The Commission entertains regular dialogues with stakeholders and maritime authorities from many jurisdictions, both inside and outside the EU, to exchange views on actions to increase the resilience of the sector. Dialogue partners have generally agreed that the pandemic has presented operators across the supply chain with exceptional challenges, that the causes of the price hikes and of the current level of service quality are multi-faceted, not necessarily entirely similar across the world, and hardly attributable to only one determining factor or one category of operators. The Commission will continue exchanging information and promoting joint analysis of the markets with stakeholders and maritime agencies."*

## UK CMA

CMA letter to Make UK and British Chamber of Commerce, 30.11.21

*"Based on the information we have, and subject to our ongoing assessment of available intelligence, our current view is that the price rises in shipping are the product of multiple factors, often international in nature and not able to be addressed unilaterally by the CMA and we are following international developments with interest and we have met with our counterparts in several countries to discuss our respective approaches. We are however, treating this issue as a matter of great importance, and are actively exploring options open to us to make a tangible and timely impact. Clearly, these are complex interconnected issues affecting companies and industries across the globe. There are no quick-fixes but the CMA remains vigilant and ready to act where it can within its powers."*

# DFDS-HSF merger

- Unconditional phase 1 clearance - 40 page decision
- No overlap in sort-sea shipping, limited overlap in logistics
- Main focus on vertical foreclosure theories of harm, especially *input foreclosure*
  - Whether DFDS would have the ability and incentive to foreclose downstream rivals' (i.e. HSF competitors) access to DFDS's short-sea shipping services on routes where DFDS had high market shares
- No ability or incentive
  - Alternative routes available to customers
  - DFDS would lose profits on short-sea shipping by foreclosing other customers

# Shipbuilding mergers

- Fincantieri / Chantiers de l'Atlantique (M.9162): abandoned

"The Commission has identified high barriers to entry in this market, related to the very complex nature of cruise shipbuilding. Cruise shipbuilding requires, in particular, specific infrastructure, established engineering and design capabilities as well as important project management skills to coordinate hundreds of suppliers and sub-contractors all along the construction process. The Commission has preliminarily concluded that it is unlikely that a timely and credible entry from other shipbuilders would counteract the possible negative effects of the transaction. "

- Hyundai/Daewoo (M.9343): prohibited

*"Large LNG vessels are an essential element in the supply chain of liquefied natural gas (LNG) and enable the transport of this source of energy around the globe. LNG contributes to the diversification of Europe's source of energy and therefore improves energy security. The merger between HHIH and DSME would have led to a dominant position in the global market for the construction of large LNG vessels, for which there is significant demand from European carriers. Given that no remedies were submitted, the merger would have led to fewer suppliers and higher prices for large vessels transporting LNG. This is why we prohibited the merger."* (Margrethe Vestager)

## DFDS – P&O freight space charter arrangement on Dover-Calais route

- CMA – 12 November 2021

“The CMA is investigating whether a capacity sharing agreement between two ferry operators, P&O Ferries Holdings Limited and DFDS A/S, on the Dover-Calais route has potential to prevent, restrict or distort competition within the UK.”

- French competition authority – 25 November 2021

“On 25 May 2021, in two separate notices, P&O and DFDS announced that they had entered into a mutual space chartering agreement for their vessels operating on the Calais-Dover route, in respect of road haulage customers.

When this agreement was announced, the Investigation Services initiated investigations and conducted an in-depth analysis of the content and scope of the planned cooperation. They have notified objections to P&O and DFDS. The companies are accused of having colluded to divide up customers according to their chartering capacity.”



# EC review of the Consortia block exemption

# RoRo carriers damages litigation

- McLaren proposed class action
- JLR
- VW

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