

Wednesday 5 October 2016, FIATA World Congress (Dublin)

Competition compliance as guiding principle

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OVERVIEW

- Why Comply with Competition Laws?
- Most Important Conduct to Avoid
- Defending Against Carriers' Conduct



Why Comply with Competition Laws?



FREIGHT FORWARDERS UNDER SCRUTINY

- Forwarder cartels investigated worldwide
 - EU, U.S., Japan, Switzerland, Singapore, New Zealand...
- More than \$400 million in fines
- Hundreds of millions in damages / settlements
- Compliance becoming increasingly important globally

CONSEQUENCES FOR BUSINESSES

- Fines - up to 10% of group worldwide turnover
 - Highly disruptive investigations
 - Unenforceability of clauses / entire agreements
 - Damages - claims now commonplace
 - Damage to reputation and share value
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CONSEQUENCES FOR INDIVIDUALS

- Criminal sanctions in some countries
 - Fines and prison
- Director disqualification
- Extradition to U.S.
- Disciplinary action by employer



Most Important Conduct to Avoid



HIGH RISK AGREEMENTS BETWEEN COMPETITORS

- Price fixing – e.g. prices, credit, discounts, surcharges, fees
- Market / customer sharing
- Bid-rigging
- Group boycott
- + Sharing competitively sensitive information

WHAT CAN FREIGHT FORWARDERS DO TOGETHER?

- Trade associations e.g. FIATA
- IATA-FIATA Air Cargo Program (IFACP)
- Joint ventures
- Joint lobbying e.g. regulation

Provided competition law guidelines observed



Defending Against Carriers' Conduct



CARRIER CONDUCT THAT COULD BE SUBJECT TO CHALLENGE

Conduct where carriers act together

- Jointly setting commercial terms
 - E.g. prices, credit terms etc.
 - Surcharges and arbitraries – shipping carrier consortia
- Exchanging competitively sensitive information

CARRIER CONDUCT THAT COULD BE SUBJECT TO CHALLENGE

Conduct where terms imposed by dominant carrier or carrier group

- Potential abuse of dominance
 - Imposing onerous / unjustifiable conditions
 - Applying terms subjectively or in a discriminatory way
 - Tying / bundling distinct services

OPTIONS FOR RESPONDING

- Joint threats of complaint
- Joint complaint to competition authorities
- Joint court action
- Exercising right to deal bilaterally with carriers

REMEMBER:

*Cannot jointly agree not to deal with carriers
(boycott)*

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