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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

## **Working Party No. 2 on Competition and Regulation**

### **COMPETITION ISSUES IN LINER SHIPPING**

-- Spain --

**19 June 2015**

*This document reproduces a written contribution from Spain submitted for Item IV of the 59th meeting of the Working Party No. 2 on Competition and Regulation on 19 June 2015.*

*More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competition-issues-in-liner-shipping.htm>*

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**1. Introduction: Spanish 2007 regulation on cabotage and maritime services of public interest**

1. A new regulation on cabotage and maritime services of public interest was adopted in Spain in 2007<sup>1</sup>. This regulation repeals the former authorization scheme recognized under the previous 1997 regulation and establishes that cabotage is only subject to pre-notification to Spanish authorities.

2. Special requirements are nevertheless imposed on providers of cabotage services between the Spanish mainland and non-peninsular Spanish territories (article 6).

3. However, article 8 of the 2007 regulation imposes a set of public service obligations to providers of services in certain routes between the Spanish mainland and non-peninsular Spanish territories.

- Balearic Islands (8 routes)
- Canary Islands (2 routes)
- Ceuta and Melilla (3 routes)

4. Article 10 of the regulation recognizes Spanish authorities the right to impose further public service obligations in duly justified exceptional circumstances, according to Council Regulation (EEC) No 3577/92 of 7 December 1992.

5. However, should the imposition of public service obligations not be enough to guarantee the required levels of quality and quantity in the services of public interest, the regulation allows Spanish authorities to the procurement of services in the affected routes through a procedure subject to the 2011 Spanish Act on Public Procurement.

**2. Recent cases of enforcement of competition legislation in liner shipping sector**

**2.1 S/0080/08 Navieras Linea Cabotaje Ceuta Algeciras**

6. The case dealt with a written complaint from the Spanish City of Ceuta in relation to an alleged price-fixing cartel that involved *Buquebus España S.A.*, *Acciona Trasmediterránea, S.A.*, *Euromaroc 2000, S.L.* and *Europa Ferrys S.A.* The cartel consisted in price fixing of maritime passenger and vehicle transportation services on the Ceuta-Algeciras-Ceuta line during the Easter Week break (from 14 to 27 March 2008).

7. According to the Spanish Competition Authority (at that time called *Comisión Nacional de la Competencia*, "CNC"), during particular peak times, known in Spain as "Strait of Gibraltar Crossing Operation Periods", passengers could use any of the ferries that were operating, regardless of which operator they had bought their ticket from. The price at which these companies settle these exchanges was referred to as the exchange rate and it depended solely on each company's own commercial policies. However, *Europa Ferrys S.A.* and *Compañía Trasmediterránea, S.A.* (which make up the *Acciona Trasmediterránea Group*), and *Buquebus España S.A.U.* and *Euromaroc 2000, S.L.* (which make up the

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<sup>1</sup> REAL DECRETO 1516/2007, de 16 de noviembre, por el que se determina el régimen jurídico de las líneas regulares de cabotaje marítimo y de las navegaciones de interés público, Official Journal (BOE) 283, 26 November 2007.

*Balearia Group*), agreed that for Easter Week 2008, they would sell their tickets to the public at the same price and apply the same exchange rate, thereby abandoning any competition in relation to prices.

8. This agreement was replicated in summer 2008, during which *FRS Iberia S.L.*, which was starting to operate on the same line, joined it. The companies agreed re-apply the 2008 rates in 2009.

9. The CNC proved that the companies were in contact with one another and exchanged information on the prices charged by each of them, finally agreeing on a common price or rate that was significantly higher than that charged by any one of them prior to the agreement. The result is that selling prices to the public were increased thus harming end users.

10. The CNC therefore resolved to impose fines totalling €3.8 million, on *Trasmediterránea* (€2 million), *Balearia* (€1,3 million), and *FRS Iberia* (€0,5 million).

## **2.2 S/0241/10 Navieras Ceuta -2-**

11. In the context of the former case the CNC had access to information which revealed the possible existence of a price-fixing arrangement for the maritime passenger transport service on the Algeciras-Ceuta line between the *Europa Ferrys, S.A.* and its parent company *Compañía Trasmediterránea SA, Farde Reederei Seetouristik Iberia SL (FRS), Buquebus España SAU* and *Euromaroc 2000 SL*. This led to the opening of an infringement proceeding against said shipping companies, which was expanded on 21 July 2010 to include *Balearia Eurolíneas Marítimas SA*, parent company of the last two cited above.

12. In its decision resolving the case, the CNC ruled that there was proof of the existence of a cartel contrary to article 1.1 of the 2007 Spanish Competition Act (*Ley de Defensa de la Competencia*, “LDC”) in the maritime transportation of passengers and vehicles on the line between Algeciras and Ceuta, carried on through meetings, telephone calls and e-mails between representatives of FRS and the shipping companies in the *Acciona* and *Balearia* groups.

13. The cartel involved adoption of anti-competitive agreements to divide up the market, fix prices and market shares, coordinate timetables, fix commercial conditions for agencies, eliminate and coordinate offers and compensatory schemes in case of deviations from the quotas, and mechanisms to monitor and control compliance with the agreements,

14. The arrangements were aimed at aligning their respective commercial policies with the ultimate goal of achieving a previously agreed allocation of quotas for all of them and increase the prices charged by each of them.

15. The CNC resolved the case by levying a fine of 2,351,689 euros on *Balearia Eurolíneas Marítimas SA* and its subsidiaries *Buquebus España SAU* and *Euromaroc 2000 SL.*, of 12,102,969 euros on *Compañía Trasmediterránea SA* and *Europa Ferrys, S.A.* and of 1,884,600 euros on *FRS Iberia, SL.*

## **2.3 S/0244/10 Navieras Baleares**

16. On 19 April 2010 the CNC received a letter from the Island Council of Ibiza (Consell Insular de Ibiza) in which it made a complaint against *Trasmediterránea* and *Balearia* in relation to practices consisting in the adoption of market sharing and price fixing arrangements, as well as the imposition of unfair prices and commercial conditions in the market for regular maritime transport of passengers and cargo between the Spanish mainland and the Balearic Isles.

17. According to the CNC, the following conducts were proven:

### 2.3.1 *Maritime transport Mainland-Balearic Isles, Mallorca-Menorca and Ibiza-Mallorca*

18. The CNC held there was evidence of participation from 2001 to 2010 of *Balearia*, *Trasmediterránea* and *Iscomar* in a cartel to fix prices and other trading or service conditions, to limit or control output and share markets in the maritime passenger and cargo transport lines between mainland Spain and the Balearic Isles, including the lines between Menorca and Mallorca, and between Ibiza and Mallorca.

19. The pursued practices included joint operation of lines, exchange of spaces, setting diverse commercial parameters such as schedules, promotional offers, discounts, commission and others, the direct fixing of prices, increasing those prices, arrangements on application of the bunker adjustment factor (BAF) used in international trade to adapt to fluctuations in the price of crude oil, both in the maritime and land segment, hands-off policies for certain customers, interchanging of cargo to balance quotas, or fixing of prices for traction units.

### 2.3.2 *Maritime transport on the Ibiza-Formentera line*

20. The CNC found that from 1995 to 2011 the companies *Balearia*, *Sercomisa* and *Pitiusa* formed a cartel to fix prices and schedules for the maritime passenger transport service between Ibiza and Formentera.

21. *Balearia* and *Sercomisa* acted on a concerted basis through a joint venture organised as a “Comunidad de Bienes” (CB) formed in 1995 by the companies *Sercomisa* and *Fletamientos de Balearic Isles S.A.* (*Flebasa*) for the purpose of joint operation of the Ibiza-Formentera line. The CB, initially called *CB Flebasa-Trasmapi*, changed its name in 1999 to *CB Balearia-Trasmapi*, after *Balearia*'s acquisition of *Flebasa* in 1998, and was eventually wound up effective 1 June 2011.

22. The CNC held that, contrary to the arguments put forth by the parties, the CB is not a full-function joint venture. First, due to its duration. The joint venture was formed for a term of one year, which made it difficult to consider it as having a vocation of permanence, despite the annual extensions. Second, the CB did not own the administrative concessions for the routes, which were instead held by its partners as the parties that participated in the public tenders in which the concessions were awarded. In addition, there is only one vessel owned by the CB. The other ships operating the Ibiza-Formentera line belong to the CB partners. Furthermore, each of the partners has its own delegates in the CB with one of them acting as manager. For all of these reasons, the Council finds that the CB does not have sufficient own assets to be able to carry on its activity independently of its partners, and, moreover, issues of prices and schedules were supervised directly by the chairman of *Balearia*.

23. The CNC therefore concluded that the CB was the result of an agreement between two independent operators that fell under the general prohibition of article 1 of the LDC, since it led to the joint fixing of prices and distribution of the revenues generated by the joint operation of the line and by the supplyside restriction it entailed. And it furthermore held that the arrangement did not qualify for any exemption from application of the LDC, and should therefore be declared an infringement of the LDC due to the joint operating agreement.

24. In this context, the CNC found evidence of the participation of *Pitiusa* in the cartel as from 2004, taking part in meetings with *Balearia* and *Sercomisa* in which prices and schedules were agreed so as to avoid overlap on the Ibiza-Formentera route. This was an arrangement with its only competitors on that line to agree the basic commercial parameters and replace the uncertainty inherent in the pursuit of its commercial activity with the certainty provided by the agreement.

25. The CNC resolved to levy the maximum fine provided for in the LDC, applying a reduction of 15% to *Balearia* in view of the mitigation owing to its collaboration. The fines finally imposed were the following:

- €36,110,800 on COMPAÑÍA TRASMEDITERRÁNEA, S.A.
- €15,214,402 on BALEARIA EUROLÍNEAS MARÍTIMAS, S.A.
- €495,826 on ISLEÑA MARÍTIMA DE CONTENEDORES, S.A.
- €731,081 on BALEARIA EUROLÍNEAS MARÍTIMAS, S.A.
- €1,155,205 on SERVICIOS Y CONCESIONES MARÍTIMAS IBICENCAS, S.A.
- €402,453 on MEDITERRÁNEA PITIUSA, S.L.

26. The CNC resolution was appealed by COMPAÑÍA TRASMEDITERRÁNEA, S.A. before the Spanish Supreme Court. On its sentence of 24th of February 2015, the Supreme Court annulled the part of the CNC resolution based upon the evidence collected during the inspections carried out by the CNC on the premises of the plaintiff, due to the matter and purpose of the inspection were not enough defined in the inspections documents.