15 April 2010: Harbour handling

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The *Autorité de la concurrence* sanctions two anticompetitive practices involving container handling companies in the harbour of Le Havre

> Version française

After a referral by the company AP Moller-Maersk (APMM) and a self-referral, the *Autorité de la concurrence* issues a decision[1] in which it applies sanctions in the amount of €625,000 on four port handling companies :

• for having coordinated, between three of them, in order to share dockside stations that were being built as part of the current extension of the capacity of the harbour of Le Havre;
• for having divvied up, between two of the companies, the port handling clientele.

Development of the harbour capacities of the harbour of Le Havre

Faced with the saturation of its harbour capacities, the port of Le Havre launched an extension project in the 1990s. The "Port 2000" project is intended to develop its infrastructures by building 12 new dockside stations where handling companies involved in the loading and unloading of merchandise from ships would be able to operate.

By 2006, four dockside stations had been constructed and were being operated by the handling companies Terminal Porte Océane and Générale Manutention Portuaire. The remaining area of the Port 2000 project was still to be allocated.

Under the aegis of the harbour of Le Havre, the handling companies met in order to agree on the allocation of the available quayside stations between them

During the meetings organised by the port establishment of Le Havre, the handling companies already operating terminals in the harbour of Le Havre (Terminal Porte Océane, Terminal Normandie MSC and Générale Manutention Portuaire), met on three occasions in 2006 in order to agree on how the available stations should be distributed between them. As such, the objectives of these meetings, referred to as "Yalta" by some of the participants, were to distribute the facilities.

However, the *Autorité* only applied symbolic sanctions in order to take into account two mitigating factors: firstly, the real effects of the collusion were modest insofar as open competition for the allocation of port capacities has not yet been carried out and, pursuant to the regulatory provisions adopted in 2008, it will be undertaken by means of an open and transparent allocation procedure and, secondly, because the meetings between competing operators have been organised by the port of Le Havre[2] itself.

The Autorité also sanctioned two companies for having limited competition between handling companies, to the detriment of shipowners

The companies Perrigault and Terminal Porte Océane (TPO) have also been sanctioned for having agreed to prohibit TPO from competing with the other terminals of Le Havre, notably by means of the anticompetitive application of a non-competition clause contained in the founding agreement for the joint venture Terminal Porte Océane.

In 2004, Perrigault and the shipowner APMM decided to create a joint company, TPO, for the purpose of the operation of a handling station as part of "Port 2000". APMM had undertaken to TPO that it would provide the terminal with a guaranteed minimum contribution in terms of business volume. A non-competition clause indicated that TPO and Perrigault would refrain from soliciting their respective customers.

While it had been anticipated that the joint venture would act autonomously and independently, and that it could notably "*offer its services to third party maritime companies*", Perrigault and TPO then decided to extensively apply the non-competition clause by prohibiting TPO from entering into contract with any customer other than APMM. As such, TPO refrained from competing against the other existing terminals of the harbour of Le Havre, thereby depriving shipowners of an alternative solution to the offer of the existing handling companies.

In view of these elements, the Autorité pronounced the following fines :

• against the company Terminal Porte Océane, a fine of 135,000 euros;
• against the company Perrigault SA, a fine of 370,000 euros;
• against the company Terminal Normandie MSC, a fine of 40,000 euros;
• against the company Générale de Manutention Portuaire, a fine of 80,000 euros.

The Autorité also ordered Perrigault and TPO to discontinue the extensive application of the non-competition clause signed by the companies.

[1] In 2008, the *Conseil de la concurrence* had rejected the request for interim measures submitted by AP Moller-Maersk, given the lack of urgency, but had continued its investigation on the merits. See decision 08-D-19.

[2] The *Autorité de la concurrence* did not sanction the port of Le Havre that provided the setting for the anticompetitive behaviour of the sanctioned companies. Indeed, it considered that allocating authorisations for the occupation of the docks is an activity that cannot be dissociated from its task of operating the port's public domain, as well as an action that cannot be separated from its prerogatives as the public authority. Consequently, the *Autorité de la concurrence* considered that it was not competent to review the actions of the harbour of Le Havre.

> For more details consult the full text of decision 10-D-13 of 15 April 2010, regarding the practices implemented in the handling sector for the transport of containers in the harbour of Le Havre



> See decision of the Paris court of appeal (20th January 2011)

> The ruling was appealed to the Cour de cassation (Supreme court of appeals)