State Aid to maritime transport
– Extension of the 2004 Guidelines

Dr. Claus Kastberg Nielsen, Morten Nissen, Martin Hvidt Thelle | Brussels | 2 March 2010
Agenda

- Why we are here?
- The aim of ECSA
- The current story line
- Why DG COMP matters
- The new story line?
Why we are here?

- Responsibility for Community Guidelines for state aid to the maritime sector to be transferred from DG TREN to DG COMP

- The exact form of transfer is still unclear

- But the direction is certain: More power to DG COMP

- What will the transfer mean for the future of the Guidelines for state aid to the maritime sector?
Guidelines on float: The aim of ECSA

- **Improve**
  - The Guidelines could be improved by extending possibilities in specific areas

- **Maintain**
  - The 2004 Community Guidelines for state aid to maritime transport could be extended (i.e. prolonged in time), basically unaltered

- **Worsen**
  - The Guidelines could become worse by adding conditionality or limitations
The current storyline (I)

- A competitive EU shipping industry needs an extension of the 2004 Community Guidelines on state aid to maritime transport

European shipping and the related industries are important sources of revenues and jobs in Europe and the industry is defending and even gaining market shares in the global market place. Moreover, shipping is at the forefront of globalisation and even benefitting from increased global trade. Therefore shipping can also in the future be expected to be a key industry for Europe providing high quality employment and revenues.

A subsidy race has been avoided and so has any distortion of the internal market due to the notification procedure, where the European Commission is carefully analysing the competitive effects of all national measures. The competition for establishment of shipping activity is therefore not between EU member states but between Europe and other global shipping centres like Singapore, Hong Kong, China,
The current storyline (II)

- A competitive EU shipping industry needs an extension of the 2004 Community Guidelines on state aid to maritime transport

- Why?
  > Shipping companies operate in a global free trade environment with few market access restrictions
  > Shipping companies has a structural lack of competitiveness
    > Growing globalization
    > Agressive growth strategies in Asia
    > Direct competition from open registers
    > Uniquely mobile tax base
The current storyline (III)

- Guidelines offered the necessary level playing field
  - Vast majority of member states apply positive measures
  - Positive effects for the EU fleet and EU shipping companies
  - Structural decline of the national fleet stopped
  - Employment of seafarers stabilised
  - Number of cadets in maritime academies increased
  - Positive spill-over effects to the national maritime clusters
  - Younger and more environmentally friendly fleet
  - Negative effects for member states not using guidelines
The current storyline (IV)

- There is a need to extend the state aid guidelines for a longer period
  - EU shipping continue to face a fierce competition from third countries
  - European shipping operating in a global labour market and preserving maritime know how
  - EU shipping contributes to the broader EU economy
  - EU shipping enhances maritime safety
  - Economic independence
Why DG COMP matters (I)

- The overall political game is the same
  > The same collection of arguments matters

- But the weight of different arguments will shift
  > DG COMP is traditionally stronger than DG TREN
  > DG COMP is less inclined to political arguments
  > DG COMP builds on documentation and facts
  > DG COMP has a strong professional ethos
  > DG COMP is inclined to reduce rather than to increase state aid

- ECSA must reconsider the weighting and wording of its arguments
Why DG COMP matters (II)

- **Economic Rationale for state aid control**
  - Member states aim to foster own economic development by attracting investment.
  - They may also affect the competitive position of domestic firms in international markets.
  - Member states do not consider spillover effects on other countries (shift employment, rents, reduce investment abroad).
  - Uncoordinated actions may degenerate in excessive support.
  - But state aid can still contribute to sound public policy objectives and hence should not be banned per se.
Why DG COMP matters (III)

REFINED ECONOMIC APPROACH

Balancing test

- Aid aimed at well-defined objective of common interest?
- Distortions of competition and trade limited so balance positive?
- Aid well designed to deliver the objective of common interest?

European Commission, DG Competition
Why DG COMP matters (IV)

- “Less and better targeted aid”: enhance effectiveness of state aid by striking a better balance between
  - benefits of state aid
    - efficiency rationales: correcting market failures
    - equity rationales: redistribution/cohesion
  - costs of state aid (distortions)
- Formulated as a “balancing test”
- Locus: Art. 87(3) EC
- Economics is about better targeted aid – no presumption about the level of aid

European Commission, DG Competition
Buzzwords of DG COMP

- **Yes**
  - Less
  - Targeted
  - Efficiency (market failures)
  - Equity
  - Distortions (trade, competition, investments)

- **No**
  - Job creation
  - Revenue
  - Market shares
  - Balance of payment
The new story line? (I)

- **Content**
  > Be mindful of the sceptical approach to state aid
  > Focus on the unattractive counterfactual in the absence of state aid
  > Underline that state aid has provided the right incentives
  > Highlight how state aid can foster efficiencies
  > Stress the absence of distortions on trade and competition

- **Form**
  > Reconsider the role of factual documentation
The new story line? (II)

- ECSA must be mindful of the sceptical approach to state aid
  
  Need to downplay that the 2004 Guidelines resulted in very positive results in the sector to avoid running risk that DG COMP will apply a traditional strict approach

  Section 12 of the 2004 Guidelines "The Commission will continue to monitor regularly and closely the market conditions for shipping. Should the latter change, and should consequently the need for State aid be reduced or overcome, the Commission will take the necessary measures in good time"
The new story line? (III)

- ECSA should focus on the unattractive counterfactual
  - Demonstrate that third countries continue to have advantageous tax and social security systems for their fleet (to be documented)
  - Show that non-EU fleet continue to have to comply with only very few requirements regarding safety, training, and the environment (to be documented)
  - If State aid is cancelled or made more onerous, EU fleet will relocate and the EU will have less influence over global conditions in terms of safety, training and the environment (to be documented)
The new story line? (IV)

- ECSA should underline that state aid has provided the right incentives
  - Demonstrate that state aid was designed to sustain a EU fleet and this has succeeded (to be documented)
  - Downplay that employment and value creation has benefited
The new story line? (V)

- ECSA should humbly highlight how state aid can foster efficiencies

> Having an EU fleet reduces a significant danger on the European environment because non-EU fleet will travel European waters but will to a wide extent be outside European environmental jurisdiction (to be documented)

> Having an EU fleet strengthens European control in times of political or economic crisis and avoids the peril of dependence on foreign – not necessarily benign – states (to be documented)

> A maritime cluster and knowhow is a precondition for developing short sea shipping within the Community such that a larger share of intra-European transport can be taken by sea (to be documented)

> The maritime sector is very capital intensive, and as capital is extremely mobile the maritime sector is very sensitive to even small differences in capital taxation between regions (to be documented)
The new story line? (VI)

- ECSA should forcefully stress the absence of distortions on trade and competition
  
  > State aid is given in most European countries using a very limited set of highly transparent instruments (to be documented)
  
  > State aid has not given rise to a subsidy race (to be documented)
  
  > State aid is implemented in very similar ways in most European countries, implying that intra-EU competition and trade is not distorted (to be documented)
The new story line? (VII)

Considerable impact on market failures

Limited distortion

- High capital intensity
- Environment
- Security
- KnowHow/Cluster

- Few and transparent instruments
- No subsidy race
- Level playing field within EU
The new story line? (VIII)

- ECSA should reconsider the role of factual documentation

  > More emphasis should be given on substantiating and documenting statements where they are given
  > Should consider to treat the appendices as internal documentation and not as public appendices
Summary of conclusions

- **Goal**
  - The 2004 Community Guidelines for state aid to maritime transport should be extended, basically unaltered

- **Content**
  - Be mindful of the sceptical approach to state aid
  - Focus on the unattractive counterfactual in the absence of state aid
  - Underline that state aid has provided the right incentives
  - Highlight how state aid can foster efficiencies
  - Stress the absence of distortions on trade and competition

- **Form**
  - Reconsider the role of factual documentation
Some questions to consider

- Who will be opposing an extension of the Guidelines?
- Who will be supporters of an extension of the Guidelines (apart from yourself)?
- How could the Guidelines be improved?
- How could the Guidelines become worse?
- What is an extended period?