

Target of DoJ investigation unclear

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Friedmann: No reason to believe investigation is into Box Club itself.

Carrier collaboration outside of antitrust immunity could be reason for investigations, says AgTC's Friedmann

THERE is no reason to believe the subpoenas issued to leading container line executives last week were directed at the Box Club itself, according to a leading shipper representative.

“It may be that Department of Justice has other concerns about the carriers, and used the occasion of the carrier leaders being gathered at the Box Club meeting in San Francisco as the means to reach many carriers at one time in one place,” Agriculture Transportation Coalition executive director Peter Friedmann told Lloyd's List.

“It is unclear why the DoJ took this action, or what is the specific concern,” Mr Friedmann said. “Whether this relates to the alliances, or other collaborative actions by the carriers is not known. Just because this occurred a couple weeks ahead of the April 1 alliance implementation, does not mean the two are connected.”

He added that the action could be related to other collective carrier activities, such as discussions relating to congestion surcharges during the last West Coast labour dispute, or “the ill-conceived Solas VGM fiasco”.

AgTC was a strong opponent of the implementation of the new rules on the verification of gross mass for containers, and fought a pitched battle against carrier organisation the World Shipping Council that helped push through concessions for US shippers last year.

Mr Friedmann said the DoJ might believe that carriers had acted outside the bounds of the authorities which the carriers included in their agreements filed at the Federal Maritime Commission.

“If true, this would mean the carriers are not protected by the antitrust immunity those agreements provide, or from DoJ enforcement initiatives,” he said.

Historically, cases brought by the DoJ have shown it to be more aggressive than the FMC in investigating and imposing penalties on ocean carriers for collective activities deemed to be illegal.

“The fact that the FMC did not challenge the alliance agreements or other agreements is probably not perceived by the DoJ as determinative of whether the DoJ should investigate and enforce independently of the FMC,” Mr Friedmann said.

US exporters are very concerned with reports of reductions in direct port pairs and sailing frequencies. Also of concern is the inability of US marine terminal infrastructure to efficiently handle much larger ships calling less frequently at fewer terminals. However, this does not in itself mean that the carriers have acted illegally by agreeing to form the alliances.

“On the other hand, should the implementation of the alliances result in serious disruption of shipping processes, terminal operation and congestion, questions will be asked regarding the efficacy of FMC oversight, even if the carriers act within the legal bounds of the agreements filed at the commission,” Mr Friedmann said.

Under Section 6 of the Ocean Shipping Act, the commission has the authority to “seek appropriate injunctive relief” if it “determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation services or an unreasonable increase in transportation cost”.

While this is a subjective standard, the commission has not sought an injunction against a carrier agreement in the 32 years since it was given this authority in the Shipping Act of 1984.

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