



Please contact any of the attorneys listed below if you have any questions regarding this alert.

Ashley W. Craig
awcraig@Venable.com
202.344.4351

Lisa Jose Fales
ljfales@Venable.com
202.344.4349

Lindsay B. Meyer
lbmeyer@Venable.com
202.344.4829

Jennifer T. Mallon
jtmallon@Venable.com
202.344.4353

Robert L. Hart
rhart@Venable.com
202.344.4073

US Set to Examine Competition Issues in Ocean Transportation Industry

Shippers and carriers alike, take notice. On March 17, 2010, Federal Maritime Commission Chairman Richard A. Lidinsky Jr. announced that the FMC will initiate a Non-adjudicatory Fact-Finding Investigation to examine recent capacity and shipping availability issues affecting U.S. imports and exports during testimony before the House Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Maritime Transportation. The conclusions of the Investigation likely will have broad implications for carriers and shippers alike, although the full extent of the potential impact has yet to be determined. We anticipate that the FMC will be contacting carriers and shippers within the next few weeks as part of the Fact-Finding process.

This Investigation is a response to shippers' concerns about the lack of available vessel capacity. As a result of the deepening of the recession in late 2008, many carriers removed vessels from service due to a dramatic drop in demand for their services. While recent economic improvement has spurred growth in demand for container transportation, Chairman Lidinsky noted that needed vessels have not been redeployed to service at an equivalent pace. As a result, many shippers have incurred significant delays in completing shipments or have been unable to obtain containers, particularly on transpacific shipments. At the same time, shippers have complained that they often are charged higher rates to ensure transportation of their cargo.

Noting President Obama's goal to increase U.S. exports over the next five years, Chairman Lidinsky expressed serious concern with the difficulties faced by U.S. shippers and announced a broad agenda for the Fact-Finding Investigation. **The goal is to explore how the FMC can help resolve the current situation either by policy or regulatory actions.**

Commissioner Rebecca F. Dye will lead the Fact-Finding Investigation. Specifically, she will seek to develop a record regarding:

- Recent conditions in the U.S. export and import liner trades;
- Current and forecasted practices by vessel operating common carriers ("VOCCs") regarding the management and allocation of VOCC-, shipper-, and leasing company-owned equipment for the U.S. import and export trades;
- Current practices and plans of VOCCs regarding the deployment of vessel capacity in the U.S. trades;
- Current and planned practices relating to service contracting in the U.S. liner trades, specifically:
 - The practices of VOCCs with respect to the booking of cargo before and after minimum quantity commitment of a service contract has been met but before the term of that contract has expired;
 - The practices of VOCCs with respect to the cancellation of cargo bookings;
 - The practices of carriers and shippers with respect to the overbooking of cargo; and
 - The impact of those practices on the availability of liner service to meet the demands of U.S. exporters and importers; and
- Any related conditions or practices that affect the U.S. liner trades.

Has your company been impacted by shipping delays or container shortages? If so, FMC will likely be interested. Your participation in this Fact-Finding Investigation is important as it may help shape any resulting FMC regulations or policies. To be part of this Fact-Finding Investigation or if you anticipate an inquiry from the FMC, our Venable team is prepared to advise and assist you in this process. Check with your logistics personnel to see if you might be affected and feel free to contact us for more information or

assistance regarding this Investigation.

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