Will carriers control shipping's digitalisation?

The DCSA's electronic bill of lading is a key economic indicator that more likely than not will fundamentally change conditions on the IT standards market and the IT information market

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by August Braakman

The Federal Maritime Commission will examine a joint venture on IT standards for the issuance of an electronic bill of lading. The outcome will be decisive in determining whether it raises antitrust issues or jeopardises the system of an open and competitive market for container shipping stakeholders

THE DCSA PUBLISHED DATA AND PROCESS STANDARDS FOR THE ISSUANCE OF AN ELECTRONIC BILL OF LADING IN DECEMBER. *Source: Sdecoret/Shutterstock.com*

THE Digital Container Shipping Association last month published data and process standards for the issuance of an electronic bill of lading.

The initiative, which is supported by nine of the world's largest container carriers, aims to facilitate acceptance and adoption of this bill by regulators, banks and insurers and to unify communication between these organisations and customers, carriers and all other stakeholders in the shipping industry.

In order to explore this process, the Digital Container Shipping Association has joined forces with its sister company TradeLens.

However, the creation of this joint venture has raised concerns over several antitrust issues that may emerge.

In January 2019, Maersk, Mediterranean Shipping Co, Hapag-Lloyd, CMA CGM and Ocean Network Express entered into the Digital Container Shipping Association Agreement. DCSA is non-profit oriented and was set up for the development and free availability of common IT standards for the benefit of the entire shipping industry.

In December 2019, the same contractual parties entered into the TradeLens Agreement. TradeLens is profit-oriented and was set up for the development and commercial marketing of a cloud service that enables participants in the international ocean transportation supply chain to exchange data by means of a blockchain-enabled digitalised solution for the benefit of global trade.

Standards set for electronic bills of lading

By James Baker

08 Dec 2020

The pandemic has driven shipping closer towards paperless documentation. The latest step in the DCSA's electronic documents programme seeks to set standards for eBLs

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Both the DCSA and TradeLens appear to have yielded very good results. With the exception of Cosco-OOCL, all major carriers have given their support to DCSA and are involved. All in all, more than 170 companies have joined TradeLens. They include the nine major carriers that support DCSA and represent a capacity equivalent to more than a third of the world's capacity.

In order to manage a cloud service that operates by means of a blockchain-enabled platform, all participants must conform to the same IT standards and they must use computer programs that are semantically interoperable with the business intelligence and analytics system deployed by that platform.

When using the TradeLens cloud service, carriers are required to use the DCSA IT standards exclusively. Consequently, all companies that want to do business with these carriers through the TradeLens cloud service are obliged to provide the necessary data, using computers equipped with DCSA IT standards. The advanced state-of-the-art features of the logistics solutions deployed in the computer programs of these companies make it very difficult, if not impossible, to disassociate strategically non-sensitive from strategically sensitive data. Thus, by necessity, the data received and stored by TradeLens in its database also contains strategically sensitive data.

DCSA has exclusive access to the TradeLens database and uses it for further development and improvement of its IT standards. It is particularly this access to strategically sensitive data that, if put to use, will give DCSA a major advantage over its competitors. More likely than not, in the occurring event this advantage will put DCSA in a dominant position, indeed if not a monopoly, on the IT standards market.

The ensuing ever-growing difference in quality between DCSA IT standards and IT standards originating from other suppliers would make it extremely difficult for other companies to offer a cloud service that operate a blockchain-enabled platform not equipped with DCSA IT standards and competitive to the TradeLens cloud service.

As a result, the DCSA IT standards will more likely than not put TradeLens in a dominant position, indeed if not a monopoly, on the IT information market.

The electronic Bill of Lading, which DCSA intends to issue, constitutes the connecting link between the IT standards market and the IT information market. Therefore, the market power generated by DCSA IT standards for DCSA and TradeLens on their respective relevant markets is key to the antitrust issues that the shipping industry will face as a result of the adoption of the DCSA eB/L by regulators, banks and insurers.

The DCSA Agreement and the TradeLens Agreement were filed with the Federal Maritime Commission on March 14, 2019 and on February 6, 2020, respectively, and have since been given approval.

A core function of the FMC is the monitoring of agreements by ocean carriers, filed with the agency after a filed agreement has taken effect. The FMC is obliged to assess key economic indicators and mutations of underlying market conditions in order to detect any joint activity that might raise anti-competitive issues.

Section 710 of the US Shipping Act as amended by the 2017 Federal Maritime Commission Authorization Act provides the legal basis for this obligation.

The DCSA eB/L is a key economic indicator that more likely than not will fundamentally change conditions on the IT standards market and the IT information market. In its review of the DCSA and TradeLens Agreements the FMC has identified these conditions.

However, the FMC has given its consent on the basis of a solitary assessment of the antitrust issues emanating from the impact of each individual agreement on its relevant market, but it has failed to assess the antitrust issues emanating from their conjoint implementation on each of the relevant markets concerned.

Carriers seek digital standards to boost services

By James Baker

16 Apr 2019

The Digital Container Shipping Association will provide a blueprint for developers to create new services and products to a common standard

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This violation of its legal obligations has very serious consequences indeed for a proper assessment of the antitrust issues emanating from the adoption of the DCSA eB/L.

Therefore, the FMC should do what it should have done in the first place, and examine the antitrust issues emanating from the conjoint implementation of the DCSA and the TradeLens Agreement both on the IT standards market and on the IT information market.

The outcome of this examination will be decisive for the question whether this conjoint implementation will give the DCSA eB/L an anti-competitive charge, jeopardising the system of open and competitive markets and the right of all stakeholders in the shipping industry to fair competition and a level playing field, which US antitrust law is supposed to guarantee.

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