

Private and Confidential

Minutes of the Legal Policy Group held on 09/02/2022

Minutes of the Legal Policy Group Meeting held via Teams on the 09/02/2022 Please note these Minutes should be read in conjunction with the accompanying Sliddeck used at the meeting

Agenda Point 1, Competition Statement

The Chair read the BIFA competition statement at the commencement of the meeting.

Agenda Point 2, Agree Minutes of the Meeting of 30th September 2021

The meeting had no comment to make on the Minutes and unanimously agreed them, the Chair requesting the BIFA Secretariat to sign on their behalf.

Agenda point 3, Matters arising from the Minutes of the Meeting of 30th September 2021

There were three action points stemming from the previous meeting.

Action Point 1:- The TT Club, confirmed that they did not have a system to transmit e-Bills of Lading. FIATA did have systems that would facilitate the transmittal of a FIATA e- Bill of lading and associated shipping documents.

Action Point 2:- The Insolvency Act update will be discussed in Agenda Point 4 of the current meeting

Agenda Point 3:- concerning insurers concerns about issues stemming from loading shipping line containers had been discharged.

Agenda item 4: Update on the Insolvency Act

The basic issue was that Members were unhappy that under the Act they had to continue dealing with a company (benefitting from a Moratorium) on the same credit terms , knowing that there was a significant risk that if the client ceased trading that they would have a bigger debt to write off.

BIFA and solicitors had met with one of the people reviewing the operation of the Act, two options were discussed:-

- An exemption under the Act for the freight industry akin to that granted to the Financial Sector

- An amendment to the 2020 Act in line with the 1986 Insolvency Act, which would permit the recovery of historic debts.

During the discussions BIFA had emphasised the importance of a lien in international trade to ensure that monies owed were paid .

Whilst either option would benefit the freight forwarder, BIFA's solicitors believed that the first option from a legal standpoint was preferable. The most likely outcome of the review would be an Amendment to the Act (subject to Parliamentary time)

The subject of credit limits was discussed, along with acceleration clauses and the benefits that might be available through BIFA 2021 STC's (Clauses 21(B) and 21 (C). However, the matter is a complicated one and specific guidance on a case by case basis should be sought"

Agenda item 5. Member concerns regarding anti-competitive conduct by shipping lines

Members have been raising this issue with BIFA since about November 2021. The Association has liaised with the Department for Transport and Competition and Markets Authority. The latter organisation has agreed to meet with BIFA in March.

BIFA has been in contact with CLECAT and FIATA, the former deciding to write to the EU Commission expressing the freight forwarders concerns. The fundamental issue is whether or not the carriers have breached any laws by taking the action that they have? Opinion is divided on this point, with some arguing that all the carriers have done is introduce a new business model and where the customer fits into the model determines their level of access to the market and freight rate.

Others will argue that the shipping lines have breached the concept of carrier neutrality under which there was open and equal access to the market, capacity and rates based on the volumes offered to the shipping line etc. There is some anecdotal evidence that shipping lines are offering lower rates to importers/exporters contracting directly with the carrier, than would be offered to a freight forwarder for the same cargo, and who in many cases has to rely on the "spot" market.

BIFA will be surveying Members in order to obtain additional information on the issue and will be encouraging the CMA to liaise with their opposite numbers in the EU Commission in order to ensure a "joined-up" approach.

There was a discussion regarding the lines high profit levels and carrier surcharges the meeting was reminded that shipping line structures were often complex, with the shipping line working through a series of ships agents with similar names. It was the latter who often imposed additional surcharges covering additional "administrative" functions and the domestic terminal, quay rent charges etc.

Also, there was a discussion regarding when errors were made by the shipping line/ships agent resulting in an additional fee being charged. This is a difficult matter to give definitive advice on and commercially, and as goods are probably on the quay potentially incurring rent the emphasis is upon paying the charges and collecting cargoes. In this scenario Members can:-

- Ask to see evidence that the line/agent has brought to the Members attention that such charges would be due when the contract between the two parties was “engaged”.
- Agree to making the payment but highlight that the “charge” is not accepted

It could be argued that payment is being made under duress and disputed.

Agenda item 6 Insurance issues relative to EU exit

EU exit has made it more difficult for UK companies to arrange insurance for goods moving within the EU. Insurers are still adapting to the new situation but depending on the UK insurers preparedness, a UK freight forwarder can arrange insurance cover for goods exported from or moving within the EU.

Much will depend on the insurers/or brokers arrangement, they will either have had to:-

- establish an office in the EU or
- have an agreement with a EU based insurer/broker and provided them with the authority to write the business

In addition, Members should consider who they are billing the insurance premium, it is easier where a UK company is invoiced. However, it is possible to invoice an EU based party where they are the cargo owner.

The guidance is that the BIFA Member should consult with their insurers regarding the correct procedure.

Agenda item 7 Any other business

Three matters were briefly discussed:-

- Airlines at LHR have now started charging storage from the time the first piece of cargo arrives as opposed to when the last piece has been received. This causes problems as it may not be possible to split the shipment for customs entry purposes. Members who could remove cargo to an ETSF were at an advantage in this scenario
- Insurers noted that they had seen charter space contracts requiring minimum quantity commitments, with penalties if these were not adhered with no terms of carriage included.

- High waiting change rates by hauliers held at Inland Border Facilities. It should be noted that these rates should be brought to the contracting party's attention when the contract was agreed to. Also, they should be reasonable – otherwise they could be regarded as a penalty – and only courts etc can impose penalties.

Agenda item 8 Date and venue of the next meeting

In general, the attendees were willing to keep to a “online” format for LIPG meetings

Signed:-(Chair)

Dated

Action Point 1

Agenda item 5. Member concerns regarding anti-competitive conduct by shipping lines

BIFA to circulate to the LIPG the survey on shipping line behaviour