Maritime transport: application of the European competition rules (Regulation (EEC) No 4056/86). White Paper

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The purpose of this White Paper is to present the way forward in the maritime transport competition area. In particular, the paper analyses whether to maintain, modify or repeal the currently applicable provisions of Regulation 4056/86.

The main issue of the review is the present block exemption for certain restrictive practices by liner conferences, in particular price fixing and supply regulation.

However, the review also covers some other provisions contained in Regulation 4056/86, that is the exclusion of certain maritime services (cabotage (that is national maritime services) and tramp (non-scheduled) services) from the competition implementing rules, a provision for technical agreements and a provision on conflict.

In the 18 years since the adoption of Regulation 4056/86, the liner shipping market has changed. In particular, the role of carriers offering liner shipping services outside a conference (independent operators) on most routes to and from the EU has become more important. Furthermore, operational forms of co-operation between carriers (not involving price fixing), such as consortia and alliances have increased. What is more, there has been a substantial growth of individual confidential contracting between carriers and shippers, such as individual service contracts. These developments raise the question whether a block exemption for price fixing and capacity regulation by liner conferences is still justified under Article 81(3) of the Treaty.

It has been agreed with the Member Statesthat the review is a three step process, consisting of: 1) fact finding, 2) a Commission paper and 3) a proposal for legislation. The review process started in March 2003, with the publication of a consultation paper.

In total, 36 submissions were received, from providers of liner shipping services (carriers), transport users (shippers and freight forwarders), Member States, consumer associations and others.

Following a public hearing that took place in December 2003, the Commission’s Competition DG has set out the outcome of the consultation process and its preliminary analysis in a discussion paper which served as a basis for a discussion with the Member States in May 2004.

In light of the conclusions reached by the Commission, the following proposals emerge in this White Paper:

- To consider repealing the currently applicable substantive provisions of Regulation 4056/86, in particular the block exemption for liner conferences and the exception for technical agreements.

- To examine what type of instrument would be needed to replace Regulation 4056/86 and make an appropriate proposal in that regard, taking into account also the competitive position of the EU liner shipping industry in a global context.

- To carefully examine the ELAA proposal as set out in this paper in light of the comments received from interested third parties, as well as any other proposal that might be made by the industry or other interested parties.

- To propose a change to Regulation 1/2003, as to remove the current exclusion of tramp and cabotage services from its scope.

- To carefully examine whether there are reasons to maintain a conflict of laws provision.

The Member States , all other institutions and interested parties are invited to submit comments on this White Paper within two months from publication (i.e. 13/10/2004).