



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL IV - COMPETITION

Services  
Transport & Transport Infrastructure

# Community Competition Law in the Transport Sector

## Recent Landmarks 1991-1997

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<b>Chronology</b>	<b>Sector</b>	<b>Event</b>
<b>December 1991</b>	Ports	The Court of Justice holds that the monopoly of port handling operations in Porto di Genova, Italy is incompatible with Article 90(1) of the Treaty, read in conjunction with Articles 30, 48 and 86.
<b>February 1992</b>	Air Transport	The Commission fines Aer Lingus under Article 86 for terminating its interline agreement with British Midlands. (IP/92/132) <sup>1</sup>
	Maritime Transport	The Council adopts Regulation (EEC) No 479/92, authorizing the Commission to adopt a block exemption for consortia. (OJ L 55, 29.2.1992) <sup>2</sup>
<b>April 1992</b>	Maritime Transport	The Commission imposes fines on the “shipowners’ committees” operating on the trades between France and several West and Central African countries. (OJ L 134, 18.5.1992 - IP/92/242)
<b>May 1992</b>	Maritime Transport	The Commission applies Regulation 4056/86 for the first time to ferry services by exempting the joint operation of a ferry service between the Danish port of Elsinore and the Swedish port of Helsingborg. (IP/92/396)
<b>June 1992</b>	Ports	The Commission adopts interim measures under Article 86 ordering Sealink to alter its sailing times in the port of Holyhead. (IP/92/478)
<b>August 1992</b>	Air Transport	The “third package” of measures to liberalize air transport is adopted by the Council, with a view to creating a single market by 1 January 1993. (OJ L 240, 24.8.1992)
<b>December 1992</b>	Maritime Transport	The Commission adopts a negative decision under Articles 85 and 86 against the CEWAL Liner Conference. (OJ L 34, 10.2.1993, p.20 - IP/92/1110)
	Maritime Transport	The Commission initiates infringement proceeding under Article 90(3) against the Spanish Government for discrimination against a non-Spanish ferry company by the 95% state-owned

<sup>1</sup> IP = Commission Press Release

<sup>2</sup> OJ = Official Journal of the European Communities



<b>December 1992</b>	Maritime Transport	The Commission initiates proceedings against the Far Eastern Freight Conference (FEFC) regarding price fixing on inland transport. (IP/93/7)
<b>February 1993</b>	Railway Transport	The Commission grants an exemption in the field of combined transport of goods for a period of five years. (IP/93/143)
<b>July 1993</b>	Air Transport	The Commission adopts block exemptions for the joint planning of schedules, the joint operation of air services on new or less busy routes, slot allocation at airports and tariff consultations on fares with a view to the granting of interline facilities. (Commission Regulation. (EEC) No 1617/93, OJ L 155, 26.6.1993 and OJ L 177, 29.6.1993 - IP/93/521)
	Airports	The Commission opens up the market for storage and movement of jet fuel at Milan's Malpensa airport. (IP/93/684)
<b>August 1993</b>	Airports	The Commission initiates consultations regarding competition arising from ground handling monopolies in most European airports. (IP/93/1135, IP/93/714)
<b>September 1993</b>	Maritime Transport	The Commission closes the Irish Club Rules case. (OJ C 263, 29.9.1993, p.6)
	Maritime Transport	The Commission terminates proceedings against the East African Conference, following agreement by the parties to amend the Conference agreement particularly as regards notice periods for leaving the conference. (IP/93/739)
<b>December 1993</b>	Maritime Transport	The Commission adopts a formal decision regarding the port of Holyhead after a complaint from Sea Containers that Stena Sealink was refusing them access to the port. (OJ L 15, 18.1.1994)
	Ports	The Commission requires Denmark to give access to the port of Rødby, or to build new port facilities next to the port under Article 90(3). (OJ L 55, 26.2.1994)
	Air Transport	After discussions between IATA and the Commission regarding restrictions on the freedom of passengers to purchase tickets outside the country of travel origin, IATA excludes the application of the rule from the EC, Norway and Sweden. IATA also withdraws its rules on surcharge on air freight movements.
	Maritime Transport	The Spanish Government informs the Commission that it has terminated the discrimination carried out by Transmediterranea by granting discounts only to certain categories of Spanish nationals.

<b>March 1994</b>	Railway Transport	Deutsche Bahn terminates an agreement with other transport operators and railway undertakings regarding a joint marketing entity based on a joint tariff grid in maritime container transport created in 1988, after the Commission sends out a statement of objections.
	Maritime Transport	The draft group exemption regulation on consortia is published and the Commission invites third party comments. (OJ C 63, 1.3.1994 -IP/94/508)
	Railway Transport	The Commission fines Deutsche Bahn under Article 86 for discriminatory pricing on its provision of traction and access to rail network. (OJ L 104, 23.4.1994, p.35 - IP/94/259)
<b>May 1994</b>	Ports	The Court of Justice rules in Corsica Ferries v Corpo dei Piloti del Porto di Genova, a case concerning discriminatory tariffs in piloting services in a port through statutory monopolies; it reaffirms that the Port of Genoa is a substantial part of the common market. (OJ C 174, 25.6.1994, p.4)
<b>June 1994</b>	Maritime Transport	Commissioner van Miert gives the opening speech at the Maritime Forum on Rotterdam on 20 June 1994, on the subject "Maritime Transport and Competition". (IP/94/559)
<b>July-September-December 1994</b>	Railway Transport	Four co-operation arrangements in the field of rail transport are exempted or given negative clearance: Eurotunnel (OJ L 354, 31.12.1995, p.66), ACI (OJ L 224, 30.8.1994, p.28), Night Services (OJ L 259, 7.10.1994, p.20), and CIA. The first three concern cooperation for the Channel Tunnel. (IP/94/762, IP/94/826, IP/94/870, IP/94/1202)
<b>October 1994</b>	Maritime Transport	The Commission adopts a negative decision regarding the Trans-Atlantic Agreement, and prohibits inland price-fixing and capacity non-utilisation arrangements. (OJ L 376, 31.12.1994 - IP/94/956)
<b>November 1994</b>	Airports	The Commission decides to challenge the discount system at Brussels airport, under Article 90 in conjunction with Article 86. It is also reviewing the situations at the airports of Madrid, Frankfurt and Milan.
<b>December 1994</b>	Maritime Transport	The Commission adopts a negative decision regarding the Far Eastern Freight Conference and prohibits inland price fixing-agreement. (OJ L 378, 31.12.1994 - IP/94/1260)
	Airports	The Commission initiates proceedings against Greece under Articles 90 and 86 regarding Olympic Airways.
	Airports	The Commission adopts a proposal for a Council Directive regarding access to the ground-handling services markets of



<b>March-July 1995</b>	Maritime Transport	The TAA decision is suspended by the Court of First Instance. The Court of Justice confirms the suspension.
<b>April 1995</b>	Maritime Transport	Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) enters into force. (OJ L 89, 21.4.1995 - IP/95/409)
<b>May 1995</b>	Ports	The Commission grants interim measures against the Morlaix Chamber of Commerce regarding access to the port of Roscoff in Brittany by Irish ferries. (IP/95/492)
<b>June 1995</b>	Maritime Transport	The Commission adopts a report on competition and liner shipping, focusing on inland price fixing by liner conferences. (SEC (94) 933)
	Airports	The Commission adopts a decision requesting the Belgian authorities to end the system of discounts on landing fees at the Zaventem airport under Article 90(3). (OJ L 216, 12.9.1995, p. 8)
<b>July 1995</b>	Maritime Transport	The Multimodal Group is set up, chaired by Sir Bryan Carsberg, to consider the Commission's policy relating to inland price fixing by liner conferences.
	Ports	The Commission adopts an interim decision regarding access to stevedoring services in the Porto di Genova under Article 90(3). (IP/95/802)
<b>November 1995</b>	Maritime Transport	The Court of First Instance dismisses an application by the TACA Parties to suspend the anticipated lifting of immunity from fines in respect of inland price fixing.
<b>January 1996</b>	Air Transport	The Commission exempts a co-operation agreement between Lufthansa and SAS for ten years, making the approval conditional on the companies giving up slots at certain airports. (IP/96/49)
<b>February 1996</b>	Maritime Transport	The Multimodal Group in February submits its interim report to Commissioner van Miert, who transmits it to the Council. (ISBN 92-827-6964X)
<b>March 1996</b>	Ports	The Commission accepts proposals from the Danish Government to resolve competition problems in the port of Elsinore. (IP/96/205)
<b>March-April 1996</b>	Maritime Transport	In March and April 1996, the Commission exempts four consortium agreements under Regulation 870/95: the St Lawrence Co-ordinated Service, the East African Container Service, the Joint Mediterranean Canada Service and the Joint

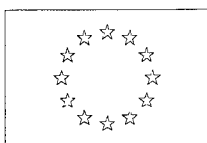




<b>April-July- October 1996</b>	Maritime Transport	The Commission grants individual exemptions to the Baltic Liner Conference, to Hansa Ferry, and to Stena Tor Line under Regulation 4056/86.
<b>June 1996</b>	Maritime Transport	The Commission adopts a decision that recommended tariffs for shipping services in seaports and at land frontiers produced by Fenex were in breach of Article 85.
<b>July 1996</b>	Air Transport	The Commission adopts Regulation (EC) No 1523/96 excluding consultations on tariffs for the carriage of freight from the scope of the group exemption, thus making these consultations subject to control under Article 85, taking effect from 1 July 1997.
<b>August 1996</b>	Air Transport	The Commission opens procedures under Article 89 in the four transatlantic airline alliance cases: BA/AA, Lufthansa/SAS/United, Sabena/Swissair/Austrian/Delta, KLM/Northwest.
<b>October 1996</b>	Airports	The Council adopts Directive 96/67/EC of 15 October 1996 on access to the ground-handling market at Community airports. (OJ L 272, 25.10.1996)
	Maritime Transport	The Commission fines P&O, Stena-Sealink, Brittany Ferries, Sea France and North Sea Ferries a total amount of ECU 645,000 for the operation of a price cartel in 1992 on the English Channel. (OJ L 26, 29.1.1997 - IP/96/971)
	Maritime Transport	The Court of First Instance rejects an appeal against the Decision of the Commission in the CEWAL case.
	Air Transport	A Commission study finds that Europe's free market in air travel has delivered cheaper fares, new airlines and a wider choice of routes, but that there is still room for improvement. (IP/96/950)
<b>November 1996</b>	Maritime Transport	The Commission decides to lift the immunity of fines for the inland price fixing arrangements of the TACA Parties. (IP/96/1096)
	Airports	The Commission institutes Article 169 proceedings against Belgium regarding the discount system at Brussels-National Airport.
<b>January 1997</b>	Maritime Transport	The North Sea Liner Conference is exempted under Regulation 4056/86. (IP/97/12)
<b>March- September- October 1997</b>	Maritime Transport	The following consortia are granted exemption under Regulation 870/95: the Joint Operational Service and the West Coast/Mediterranean Agreement, the VSA agreements between Sea Land, P&ONedlloyd, Maersk and OOCL, and the NCS and the Eurosal III.

<b>October 1997</b>	Airports	Following undertakings received from the Greek Authorities and Olympic Airways, the Commission ends a procedure, based on Articles 86 and 90. (IP/97/876)
	Ports	The Commission adopts an Article 90(3) decision against the Porto de Genoa concerning the port companies' monopoly on supplying workers. (IP/97/907)
	Ports	The Commission adopts an Article 90(3) decision against the Porto de Genoa concerning a discriminatory rebate system on pilotage tariffs. (IP/97/907)

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#### A AIR TRANSPORT

##### **Commission Exempts the Acquisition by Lufthansa, Japan Airlines and Nissho Iwai of Interests in DHL International after Obtaining Assurances of Non Discrimination**

Date: 1991-01-11

IP/91/23

The European Commission has granted an exemption under the EEC competition rules for the acquisition of interests in DHL International (DHLI) by Lufthansa, Japan Airlines and Nissho Iwai.

This exemption was granted under Article 85(3) after Japan Airlines and Lufthansa gave assurances to the Commission that they would not discriminate against those of DHL's competitors which are likely to be especially dependent<sup>1)</sup> on the services and facilities provided by these carriers, in particular as regards freight rates and access to aircraft capacity or to handling facilities.

The assurances apply to companies which already compete with DHLI in Europe or which may do so in the future, for express door-to-door delivery of documents or packages within the operational weight limits of DHLI.

The Commission judged these assurances to be sufficient and, taking them into account, considered that the agreements were well-balanced. It has therefore decided to grant an exemption by allowing the statutory 90-day limit to expire, with the result that the notified agreements are exempted for a maximum of three years (for that part of the arrangements which are under the road transport Regulation) or six years (under the air transport Regulation).

1) The following are considered not to be especially dependent on these services or facilities:

Major integrated express delivery companies, their agents and subsidiaries; Post Office EMS services; undertakings in which one or more of the 20 leading airlines, based on international cargo ton- miles on scheduled services, have a shareholding; and undertakings with which such airlines enjoy a special contractual arrangement which, according to one or more of the parties to such arrangement, generates advantages in the provision of express services.

## **Commission Fines Aer Lingus for Withdrawing Interlining Rights**

IP/92/132

Date: 1992-02-26

Following a complaint by British Midland, the Commission has found that Aer Lingus has abused its dominant position, in breach of Article 86 of the EEC Treaty, by terminating its interlining agreement with British Midland. The Commission has imposed a fine of 750,000 ECU on Aer Lingus and ordered it to resume its interlining relationship with British Midland.

Aer Lingus is the dominant airline on the London-Dublin route. After British Midland announced its intention in 1989 to start its own service on that route in competition with Aer Lingus, Aer Lingus terminated its interlining relationship with British Midland. As a result of that action, passengers holding British Midland tickets could no longer, as of right, change flights onto Aer Lingus services and travel agents could no longer issue tickets combining flights by both airlines. The withdrawal of interlining facilities made British Midland's flights less attractive to travellers - in particular business travellers who prefer the higher-priced fully flexible tickets - and to travel agents. By terminating its interlining relationship, Aer Lingus made it more difficult for British Midland to compete. British Midland was deprived of significant revenue and forced to incur higher costs in order to overcome the handicap imposed on it.

Sir Leon Brittan, EC Commissioner for competition policy, said: "This decision is evidence of the Commission's determination to act against airlines holding dominant positions, if they attempt to prevent the development or maintenance of competition. At a time when the European air transport industry is being liberalised, airlines making use of the new opportunities for competition should be given a fair chance to develop and sustain their challenge to established carriers". Airlines holding dominant positions should not penalise this competition. They should not withhold facilities which the industry traditionally provides to all other airlines, and they should take care to compete strictly on the merits of their own services.

The Commission consequently took the view that Aer Lingus should resume its interlining relationship with British Midland. However, it also accepts that new entrants should not be able to rely indefinitely on frequencies and services provided by their competitors, but must be encouraged to develop their own frequencies and services. Therefore the duration of a duty to interline can be limited to the time period which is objectively necessary for a competitor to become established on the market. Taking into account that three years have lapsed since British Midland started its new services, the duty to interline imposed by the decision has been limited to two years from now, subject to review in the light of the development of competition on the relevant route.

### Interlining

Interlining is essentially based on an IATA agreement pursuant to which most of the world's airlines have authorised the other signatories to sell their services. As a result travel agents can offer passengers a single ticket providing for transportation by different carriers (e.g. leaving on the airline issuing the ticket and returning on another

airline serving the same route, or continuing to destinations not served by the issuing airline).

In addition, airlines recognise each other's authority to change a ticket so that passengers can change reservations and routings on airlines after the ticket has been issued. These changes would normally require the consent of the airline indicated on the ticket for the sector concerned ("endorsement") but most airlines have agreed to waive this requirement in practice.

As a result the interlining system benefits airlines, travel agents and passengers alike; it enables the issuing of travel documents for complex journeys and allows flexible uses of these documents with minimal constraints. It is a very significant part of the worldwide air transport system and is of particular value to business travellers.

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## **New Block Exemptions In Air Transport**

IP/93/521

Date: 1993-06-25

On a proposal by Commissioner Van Miert, the Commission has approved new Commission regulations on cooperation between airlines.

These regulations on "block exemptions" to enter into force on 1 July, set out the conditions under which airlines are authorised, under the EEC competition rules, to cooperate in certain ways.

The new rules are part of the third package of air transport liberalisation. That package created an internal market in air transport which opens the way for more competition throughout the Community. This new environment does not, however, prevent airlines from joining forces in particular areas where transport users benefit from cooperation provided that effective competition is guaranteed. The block exemptions define in what areas airlines can cooperate and the conditions which must be satisfied for their cooperation to be acceptable.

The new block exemptions adopted for 5 years from July 1993 cover the following categories of agreements. Broadly, these exemptions are similar to the previous ones with the exception of joint operations which is a new form of cooperation covered by the block exemptions.

### Joint planning and coordination of schedules

Airlines may agree to coordinate schedules with a view to providing service at less busy times or to facilitate connections for passengers from one airline to the other. Airlines must remain free to introduce additional services and to terminate the coordination on reasonable notice.

### Joint operations

This block exemption enables smaller airlines to operate a service with marketing and financial support from another airline, thereby helping them to develop new routes or to continue service on less busy routes. In order to maintain effective competition, the partner airlines must be free to operate independently alongside the joint operation if they wish to do so. The block exemption authorises joint operations for three years ; after that time, the Commission will have to consider whether or not to approve each operation on an individual basis.

### Tariff consultations

Even though discussions on pricing are usually a serious restriction of competition, tariff consultations in the airline industry may be treated favourably in so far as they facilitate interlining, i.e. the possibility for passengers to combine services by different airlines on a single ticket and to change reservations from one airline onto another. However, in order to maintain effective competition, participating airlines may not be prevented from charging their own prices if they wish. The Commission will follow this area carefully during the next few years and will, if necessary, make changes to the block exemption if there is any lack of effective price competition in the EC airline sector.

### Slot allocation

Airlines are authorised to agree on the distribution of airport slots under a number of conditions, essentially intended to make sure that the process is open to all interested airlines and that slot allocation is transparent and non discriminatory. In line with the Council regulation on the same subject, the Commission insists on favourable treatment for the new entrants in order to ensure that there are genuine access opportunities even at congested airports.

### Computer reservation systems

There is a block exemption currently in force which allows airlines to set up and operate jointly-owned computer reservation systems under a number of conditions, essentially intended to make sure that all intered airlines have access to these systems and that they do not discriminate against other airlines. There is also a Council Regulation on the same subject which is being amended. Therefore, the current block exemption will be extended until the end of this year, so that due account may be taken of the changes to the Council regulation.

Commissioner Van Miert concluded :

"These block exemptions will enable airlines to cooperate even in commercially sensitive areas, in order to lower costs and improve service. At the same time, they limit cooperation to areas where there are genuine consumer benefits and they contain safeguards in order to protect effective competition. The Commission retains the rights to intervene in individual cases where these objectives are not met, but otherwise agreements which are covered by the new regulations will not need to be notified to the Commission".

## **Statement By Mr Van Miert On Ground Handling Services For Air Transport**

IP/93/714

Date: 1993-08-25

Now that the third set of measures liberalizing Community air transport is in place, the Commission has to ensure that their effect is not diluted by restrictions on competition in the provision of ground handling services at airport.

The Commission has received ten formal complaints from airlines on this subject. The press has recently reported some of these complaints about the position at Milan and Frankfurt airports and at Spanish airports. These complaints, along with others about similar cases, are being examined by my officials, in the light of the competition rules of the EEC, Treaty in order to deal with any abuses of dominant positions which could arise.

Aside from infringement proceedings against individual abuses, I am convinced that the real problem lies with the granting to operators by the authorities of exclusive or special rights for the provision of ground handling services. These monopolies restrict competition to the detriment either of airlines prepared to supply these services or of independent ground-handling companies. These restrictions apply even, in some cases, to "self-handling" services which airlines provide to meet their own requirements.

To the Commission it is of paramount importance for the right of airlines to organize their own ground handling services to be respected, whether those services are individually or jointly organized. In view of this we are drawing up measures for opening up this market to effective competition in order to improve the quality and reduce the cost of these services while observing national rules and regulations in so far as they are necessary to ensure full service at all times combined with security at airports and passenger protection.

Above and beyond the question of processing complaints without delay, it seems to me that a general move to settle the conditions under which the competition rules should apply in this sector would be a way of opening up these markets, on those conditions, in all 12 Member States. So that action can be taken as swiftly as necessary it should in my opinion take the form of a directive adopted by the Commission itself using its powers under Article 90 of the EEC Treaty. A preliminary draft prepared by my officials is even now the subject of inter-departmental discussions within the Commission. A move of this kind would only be completed, of course, after consulting the Member States and all institutions and parties concerned.

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## **Commission Imposes Conditions On Cooperation Agreement Between Lufthansa And SAS**

IP/96/49

Date: 1996-01-16

On Tuesday, acting on a proposal from Mr Karel Van Miert, the Commission Member with special responsibility for competition policy, the Commission approved in Strasbourg a cooperation agreement concluded on 11 May 1995 between Lufthansa and SAS.

However, the Commission imposed four conditions covering the following main points:

(a) At Frankfurt, Düsseldorf, Stockholm and Oslo airports, where available capacities are saturated at peak periods, Lufthansa and SAS must as necessary give up up to eight slots a day to other airlines wishing to operate services on the following routes:

- Düsseldorf-Copenhagen
- Düsseldorf-Stockholm
- Frankfurt-Copenhagen
- Frankfurt-Gothenburg
- Frankfurt-Oslo
- Frankfurt-Stockholm
- Hamburg-Stockholm
- Munich-Copenhagen.

(b) Where a new entrant starts operating on one of those routes, Lufthansa and SAS may not increase the number of their daily frequencies by more than one. However, this figure may be increased to match, but not exceed, the combined number of frequencies operated by airlines other than Lufthansa and SAS.

(c) The new entrants must, subject to certain conditions, be able to conclude interlining agreements with and participate in the joint frequent-flyer programme of Lufthansa and SAS.

(d) Lufthansa and SAS must terminate the following cooperation agreements with other airlines:

- SAS must terminate its cooperation agreement with Swissair and Austrian Airlines within the European Quality Alliance;
- Lufthansa must terminate its cooperation agreement with Transwede within the Marketing Alliance in Scandinavia;
- Lufthansa must terminate its cooperation agreement with Finnair in respect of routes between Scandinavia and Germany.

These conditions are applicable until 31 October 2002.

The Commission has also asked the two airlines to provide regular information on how their cooperation is working in practice, particularly as regards the level of fares

charged. This information will be particularly important in enabling the Commission to assess the agreement's impact on air transport users.

The parties intend through the agreement to create a long-term alliance, establishing an operationally and commercially integrated air transport system.

The agreement provides for the setting-up of a joint venture to act on behalf of the two airlines as their exclusive vehicle for offering scheduled passenger and cargo air transport services between Scandinavia and Germany. However, the joint venture will not be a new airline. The transport services will be supplied to the joint venture by Lufthansa and SAS in their own names, on the basis of close operational and commercial cooperation, which will include the setting of fares.

As regards worldwide cooperation, the parties intend to establish an integrated transport system involving joint network planning, a joint pricing policy and the harmonization of product and service levels, though without creating a common entity.

According to the parties, the object of the cooperation is twofold: firstly, to enhance the two airlines' European and worldwide networks and, secondly, to carry out a plan for reducing their costs.

The economic significance of the arrangement is considerable. In terms of passenger-kilometres within Europe, Lufthansa and SAS are respectively the second and third largest European airlines. Their cooperation agreement will thus have the effect of restricting competition significantly, particularly on routes between Scandinavia and Germany.

However, account must also be taken of the positive aspects of the agreement, which must be seen in the light of the restructuring of European air transport.

The alliance between the two airlines will give them a much more efficient worldwide network, enabling them to stand up more effectively to competition from other airlines, notably non-European airlines. Furthermore, the study on the future of European air transport carried out in 1993 by the "Committee of Wise Men" showed that the European airlines are handicapped by much higher unit costs than those of American or Asian airlines. The cost reduction plan accompanying the agreement between Lufthansa and SAS.

Consumers will derive benefit from the agreement, firstly, by having much more extensive services available, notably as regards network size, better connections and the availability of a joint frequent-flyer programme and, secondly, by benefiting indirectly from the airlines' lower costs.

The Commission has therefore concluded that the cooperation can be authorized for a period of ten years, but that conditions should be imposed to allow other airlines to operate services on the routes between Scandinavia and Germany in competition with Lufthansa and SAS.

In general, the Commission has adopted the same approach in this case as that adopted in 1995 in the Swissair/Sabena case. In the wake of the liberalization of European air transport, new groupings between airlines may be useful in helping airlines to adjust to

new market conditions, provide a better service to consumers and deal more effectively with competition from non-Community airlines.

The Commission has no wish to stand in the way of such operations, but it has to ensure that competition is not eradicated on the routes in question and that new airlines can still enter the market and compete with established airlines.

### **Europe's Free Market In Air Travel Has Delivered Cheaper Fares, New Airlines And A Wider Choice Of Routes, But There Is Still Room For Improvement, Commission Study Finds**

IP/96/950

Date: 1996-10-24

Since 1993 when the European Union dismantled national barriers to air travel and began the final stage of opening Europe's air transport up to competition, the number of routes has increased and monopolies have been broken up; 20 new airlines have opened for business, and fares have fallen. Indeed, given the drop in the ticket price for many scheduled routes and the fact that the charter market accounts for more than half the total market, around 90 per cent of all passengers now travel on cheap fares. The European Commission's approach to creating a single market in European air travel, first launched in 1987, was deliberately phased in three stages to avoid the market disruption that was the US experience of the "Big Bang" approach to liberalisation. The last barrier falls in Europe in April 1997 after which any EU airline may fly between two points anywhere in the Union.

In anticipation of that date, the Commission has published a report into the impact of the third and final stage of liberalisation from 1993-1996 to assess progress so far and outline future action. Presenting the report Neil Kinnock, European Commissioner for Transport Policy, said: "Liberalisation is not an end in itself. The opening of the market has a meaning only if the highest possible safety standards are maintained and increased competition ensures that the travelling public are better served at lower cost." He drew attention to four areas where, despite significant gains, the report suggests that more work needed to be done: continued monitoring of air fares, the lifting of capacity restrictions, the reduction of air transport costs, and improved market access. He pledged to use EU legislation to prise open those sectors of the air market that still remain closed to free and fair competition to ensure that the public gets a fair deal from a liberalised European air market that is efficient and competitive while upholding the highest possible standards of safety, environmental protection and public service.

#### *Airline liberalisation - EU style*

The report notes that: "The single market in aviation did not occur with a "Big Bang": there was no spectacular reduction in fares nor any dramatic disappearance of the more important carriers. Liberalisation has happened in a progressive way and without major upsets. This contrasts with the situation that the US experienced at the time of the deregulation of the aviation market. The Community has been able to find the

correct balance between competition and control mechanisms. Competition and the consumer have both benefitted."

*Between 1993 and 1996:*

- The number of routes flown rose from 490 to 520
- 30 per cent of Community routes are now served by two operators and six per cent by three operators or more, against two per cent in 1993. The dominant carrier's market share often fell to the advantage of the second carriers.
- 80 new airline companies were created, 60 disappeared
- Air fares fell on the routes where at least three operators are in competition. These tend to be the largest in terms of traffic and thus represent a substantial part of the market, eg: from Brussels to Madrid, Barcelona, Milan, Rome, Vienna and Copenhagen and from London to Paris, Amsterdam, Brussels and Frankfurt, as well as on certain domestic routes in France, Germany and Spain. An impressive number of promotional fares has developed and the share of passengers travelling on scheduled flights with tickets at reduced prices rose from 60.5 per cent in 1985 to 70.9 per cent in 1995. Taking into account the fact that the share of the charter market accounts for approximately 50 per cent of the total market, some 90 to 95 per cent of passengers are travelling at prices significantly lower than those in operation in 1993.

*More still needs to be done*

The report nonetheless notes that much still needs to be done to consolidate on this very encouraging beginning and has pledged action in four specific areas.

1. Air fares. Despite the advances in the development of promotional fares the Commission is concerned that most of the fully flexible fares have continued to increase. On certain routes these could be described as excessive. Also, the procedures by which the fares are arrived at are little understood and certainly not transparent, which makes it difficult for consumers to take the best advantage of the wider travel opportunities that liberalisation has, overall, created.

The Commission has pledged to investigate those cases where fares seem particularly high and, if necessary, will use the existing legislation against the imposition of excessive fares to correct them. It costs for example six times less per kilometre to travel from London to Palma de Majorca than it does from Strasbourg to Vienna. The Commission will also look at ways of ensuring the public is better informed as to how fares are set in the market.

2. Capacity restrictions. Competition, clearly, has led to an increase in traffic and potential problems in terms of capacity limitations on runways and at airport terminals. Congestion in the sky is also putting a strain on air traffic management.

The Commission will propose revisions to the existing legislation regulating slot allocation by the end of the year with the aim of optimising capacity and encouraging more competition. In March it submitted a paper on air traffic management (ATM) which proposes common rules applied at the broadest European level so that air traffic can be managed more efficiently.

3. Air transport costs. Infrastructure costs alone account for 25 per cent of all operational costs. In the EU these costs are already 40 per cent higher than those in the US. Airlines themselves are restructuring, in large part as a result of the increased competition brought about by liberalisation, to bring down the costs that they can control. But more could be done to reduce those charges that are outside their control.

The Council has already approved legislation designed to liberalise groundhandling. In terms of ATM, the Commission has proposed the separation of regulation from the provision of services which should improve the cost/efficiency ratio for airlines. The Commission also plans to submit a proposal before the year end to make airport fees more transparent and non-discriminatory and to ensure that the charge is more closely linked to the cost of the service provided.

4. Market Access. Increased competition and the rapid globalisation of the air market has led to the rapid development of alliances and associated practices such as code-sharing and franchising arrangements. Airlines are increasingly coming to realise that a reliance on state aid cannot be a guarantee of medium or long term competitiveness and all national EU carriers are seeking to privatise all or part of their operations. The Commission's role in regulating these alliances and developments is becoming ever-more important. While the report shows that Europe's internal market is flourishing the full potential of the changes will not be felt so long as there is no single external air market.

The Commission is thus negotiating agreements with the US and the countries of central and eastern Europe, to ensure that competition is free, fair and reciprocal. Extra vigilance will be required to ensure that alliances do not become a disguised means of restricting the market. To this end, the Commission will use all its powers under the competition rules to investigate perceived or actual abuses of a dominant position and will pursue an ever-stricter approach to state aid.

### *Conclusions*

- A large number of airlines have been set up since 1993.
- In the case of scheduled traffic, the development of capacity (expressed in numbers of flights or seats available) has been mainly attributable to the activities of smaller carriers.
- The share of the national carriers in total output is declining compared with their direct competitors (eg. Ryanair's output is already more than half that of Aer Lingus).
- The charter market is continuing to grow as a result of the changes brought about between 1993 and 1996. In certain countries charter traffic may account for more than 80 per cent of total traffic.
- In keeping with the international trend, alliances within the Community continue to develop.
- 1995 stands out as the year when most of the European scheduled airlines got back into the black thanks, among other things, to sustained traffic growth coupled with a moderate increase in output. This was reflected in improved load factors and increased productivity.

- The flying public have greatly benefitted from a wider choice of routes, operators and fares but they are entitled to expect more. The Commission will take action wherever justified and possible and work with the airline industry and consumer organisations to increase transparency and raise public awareness, enabling travellers to take full advantage of the potential created by liberalisation. Airline liberalisation cannot and must not lead to a weakening of safety or environmental protection standards. The Commission is thus working actively on improving the Community aviation safety framework and limiting the impact of increased air traffic on the environment.

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## **B**      **AIRPORTS**

### **Commission Opens Up The Market For The Storage And Movement Of Jet Fuel At Milan's New Malpensa Airport**

IP/93/684

Date: 1993-07-30

Under an agreement between certain oil companies and the managing company of Milan's Malpensa Airport, a joint venture was created under the name DISMA for the installation and operation of equipment for storing jet fuel and transferring it to supply points on the site of the new airport. The Commission demanded, and has obtained, the changes needed to guarantee non-discriminatory access for the companies operating on this market.

The agreement envisages the creation on the site of the airport of a new fixed aircraft-refuelling installation essentially comprising a fuel and lubricant depot directly linked via underground pipelines to supply points. This will enable fuel to be transferred direct from the depot's reservoirs to the fuel tanks of aircraft by means of specially installed pipelines and pumping equipment without the use of the traditional tankers. Once it has been completed, this equipment will be the only means of refuelling aircraft at the new airport.

At the outset, the Commission acknowledged that the technological characteristics of the DISMA installations would enable jet fuel to be stored and transported advantageously in terms of Community environmental legislation, particularly with regard to traffic and air pollution. Moreover, the advantages benefit not only the oil companies but also the customer airlines and their users.

However, the initial version of the agreements notified to the Commission contained clauses preventing non-DISMA companies from having access on non-discriminatory terms to the joint venture's services. For one thing, the almost insurmountable obstacles making impossible in practice the transfer of holdings in DISMA to third parties prevented the latter from gaining access to the market. The founding members had also agreed to impose significantly higher charges on non-members. Some users of DISMA's installations and services were thus forced to accept unequal conditions for equivalent services, and this placed them at a competitive disadvantage.

In view of the foregoing considerations, and given the more important role that Milan Malpensa Airport is likely to play as regards air transport in the Community, a sector which is gradually being liberalized, the Commission initiated proceedings with a view to eliminating these unjustified barriers to access and ensuring neutrality and equality of treatment for all users of DISMA's installations, it being borne in mind that all oil companies, whether or not members of the joint venture, have to use these installations to supply their customers. The members of DISMA have therefore proposed a uniform tariff although actual charges are on a sliding scale according to the quantities of jet fuel supplied. The principle of a sliding scale can indeed be justified by the existence of fixed costs associated with the services supplied to each customer.

The parties to the agreement have finally agreed that access by firms not participating in the capital of DISMA should be made easier once Malpensa's static refuelling system is operational.

The Commission takes the view that the agreements concerning the DISMA joint venture are now compatible with the common market. Accordingly, it has adopted a favourable position in their regard and has terminated the proceedings it initiated earlier.

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## **The Commission Approves Draft Directive On Market Access Of Ground Handling Services In Airports**

IP/94/1206

Date: 1994-12-13

On a proposal from Mr Marcelino Oreja, the member of the Commission responsible for transport, with the agreement of Mr Van Miert, the member responsible for competition, the Commission has adopted a draft Directive designed to open up access to the ground handling market in Community airports.

Ground handling means all services provided at airports to allow airlines to perform their air transport activities. These range from marshalling of the aircraft on the ground to cleaning, refuelling, and passenger and baggage registration and handling.

Most airports in the Community reserve the right to provide these services for the national carrier or the airport itself. This situation is out of keeping with the principle of free competition, which calls for complete liberalization of air transport.

For this reason, in accordance with the conclusions of the Comité des Sages and with its own action programme on civil aviation approved on a proposal from Mr Oreja in June, the Commission has decided to present the Council with a proposal for a Directive on this subject. This proposal attempts to strike a balance between the need for optimum management of airport infrastructure and, on the other hand, European air carriers' needs to remain competitive against carriers from outside the Union, by gaining a firmer grip on their costs, a large proportion of which are accounted for by ground handling.

The proposal adopted by the Commission is intended:

- to define Community rules which will allow effective application of the general principles laid down in the Treaty to the specific ground handling market;
- to introduce detailed rules to accompany the principles of liberalization of air transport and of the ancillary activities, by organizing access to the various categories of handling service and granting airlines the right to provide their own services (self-handling);



- to make costs more transparent by keeping the accounts and funding for handling activities separate and prohibiting any funding which could distort competition. However, to allow for the unique nature of airports and of the numerous constraints on space, capacity, security and safety imposed on the managing bodies, it was essential to define certain framework measures laying down a transparent, non-discriminatory procedure to limit access to the market where there are special constraints.

This proposal therefore takes a balanced approach, tailored to the specific features of this market and to the needs of the various partners - airports, carriers and service-suppliers.

The proposal is based on Article 84(2) of the Treaty since ground handling is an integral part of air transport.

It will therefore be subject to the procedure for cooperation between the Council and Parliament. This proposal will in no way prejudice the Commission's appraisal of any complaints made in individual cases on the basis of the rules on competition (Articles 86 and 90).

"This proposal", said Mr Oreja, "completes the legislative framework for creating a true single market in aviation in Europe."

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## **Commission Launches Consultations On Draft Decision Concerning Ground Handling Services In Airports**

IP/93/1135

Date: 1993-12-14

On a proposal from Mr Van Miert and Mr Matutes, the Commission today approved a draft decision authorizing consultation of the European Parliament, the national authorities, air transport operators and the institutions and parties concerned, on a document relating to ground handling services. Ground handling covers all services supplied at an airport for the aircraft itself, the passengers and the cargo. They are very varied and do not form a homogenous whole (ground administration and supervision, passenger handling, baggage handling, cargo and mail handling, ramp services, cleaning, etc.).

The aim of the consultations is to devise measures ensuring that the beneficial effects of air transport liberalization are not jeopardized by restrictions of competition in the provision of ground handling services in Community airports.

Stronger competition in air transport has revealed the existence of ground handling monopolies in most Community airports. Ground handling in a number of Community airports is not open to competition:

- in many cases the airport or the national carrier operates a monopoly or duopoly;
- in addition, carriers are not always allowed to provide their own handling services.

The many complaints received by the Commission on this subject are a measure of the extent and general nature of the problem.

The new initiative was announced in August by Commissioner Van Miert (IP 714):

"Above and beyond the question of processing complaints without delay, it seems to me that a general move to settle the conditions under which the competition rules should apply in this sector would be a way of opening up these markets in all twelve Member States. So that action can be taken as swiftly as necessary it should in my opinion take the form of a directive adopted by the Commission itself using its powers under Article 90 of the EEC Treaty."

"A preliminary draft prepared by my officials is even now the subject of inter-departmental discussions within the Commission. A move of this kind would only be completed, of course, after consulting the Member States and all institutions and parties concerned."

The document being presented by the Commission for consultation proposes the following measures:

- full liberalization of all services subject to only minor constraints (security, space, etc.);

- requirement for a minimum number of service suppliers at each airport (the number to be determined in the light of the outcome of the consultations), one supplier at least being independent of the airport and of the dominant carrier;

- in any event, removal of restrictions on own-handling;

- transitional periods and derogations will be established to take account of the problems at certain airports;

- framework measures:

- Ground handling services will in any event have to be provided by operators with a separate legal personality from that of the body managing the airport.

- Procedures for the approval of suppliers wishing to provide services that are fully open to competition. The airport would have the right to impose the conditions necessary for the proper management of infrastructures and the maintenance of safety and security, provided that they are non-discriminatory and proportional to the purpose in view. The measures and conditions would apply to all service suppliers.

- Impartial public tendering procedures to designate suppliers where it is necessary to limit their number.

- Transparent, objective and non-discriminatory conditions governing the access of suppliers and airlines wishing to provide their own handling services to the airport areas and facilities.

- Machinery for consultation and conciliation between airports, carriers and suppliers of services, to deal particularly with disputes concerning rent charged for access to

infrastructures or with changes in the prices of services for which the airport has secured exemption and which are therefore not open to competition.

These measures would apply to airports and airport systems recording no less than 2 million passenger movements or 50 000 tonnes of cargo a year.

Mr Van Miert and Mr Matutes will present formal proposals to the Commission in the light of the results of the consultation.

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**The Commission obtains a significant improvement in the supply of ground-handling services at Athens airport : the Commission ends an infringement procedure begun in 1994**

IP/97/876

Date: 1997-10-15

The Commission obtains a significant improvement in the supply of ground-handling services at Athens airport : the Commission ends an infringement procedure begun in 1994

A number of airlines had complained to the Commission that the ground handling services (check in, despatching luggage, cleaning, catering etc.) operated as a monopoly by Olympic Airways (OA) at Athens airport were of poor quality and based on a non-transparent tariff. The service level provided did not enable them to provide their passengers with a quality air transport service.

The Commission considered that the situation resulted from an abuse of dominant position and opened an infringement procedure. As a result, the Greek authorities carried out works to improve the eastern terminal at Athens airport which houses foreign airlines. The Greek authorities also recently amended a law on temporary work which prevented OA from easily recruiting seasonal personnel to cope with the peaks of traffic during the tourist season.

A new operator, chosen by tender, will provide as from 1 January 1998, ground handling services in competition with OA. With regard to ramp services, a second operator will begin services in accordance with the timetable envisaged by the Council Directive concerning access to the ground-handling market, i.e. on 1 January 1999.

OA has put in place a system of quality control and minimum standards which it has committed itself to respecting in the airports of Athens, Heraklion, Chania, Rhodes, Corfu and Salonika. Statistics concerning the respect of these standards will be transmitted to the airlines at the end of each season. OA has also established a new tariff structure better related to the actual cost of the service. In order to increase transparency, these

tariffs will be published and any modification of these tariffs will be announced and justified.

In addition, important work is or will be undertaken soon in other Greektourist airports.

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**The Commission Imposes Fines on Members of a Cartel in the Sea Transport Sector**

IP/92/242

Date: 1992-04-01

Sir Leon Brittan, the Member of the Commission responsible for competition, welcomed the decision and made the following statement: "This case represents an important breakthrough for competition policy in the sea transport sector. The Commission decision and the undertakings given by the Bolloré Group will put an end to a particularly harmful cartel. A market that was hitherto virtually sealed off from competition will, in fact, be opened. The case also has implications for sea transport operations generally since it bears witness to the Commission's determination to ensure compliance with the Community's competition rules in this sector".

The Commission found that the shipowners' committees set up in respect of trades between France and 11 West African and Central African countries<sup>1</sup> constitute agreements which are contrary to the provisions of Article 85 of the EEC Treaty and that their practices are in breach of Article 86. The Decision follows a number of complaints lodged by independent shipowners against a whole set of practices the effect of which was to establish a cartel covering a large proportion of the bilateral trades between the Community and the West African and Central African countries. The Commission accordingly initiated procedures against four liner conferences and the 11 shipowners' committees covered by this Decision.

The purpose of the shipowners' committees is to apportion between their members all the freight carried by liners, with machinery to supervise this arrangement set up to cover each of the shipping lines concerned. The members of the shipowners' committees systematically shared out between them, on a monthly basis, all the traffic between France and 11 African countries. Competition was accordingly eliminated leading to excessively high freight rates.

1 The countries in question are: Benin, Togo, Congo, Senegal, Mali, Guinea, the Central African Republic and Cameroon.

2 The Commission is continuing to examine these four cases.

In addition, after seeking the adoption by the authorities in the African countries concerned, of measures intended to reserve all freight traffic for them, the members of the shipowners' committees took a willing and active part in the implementation of the said measures with a view to denying shipowners wishing to operate outside the committees access to the traffic concerned.

The Commission points out that, in accordance with Regulation (EEC) No 4056/86 of 22 December 1986, shipowners are entitled to be members of liner conferences that have been granted a block exemption. The Commission will, however, take action against attempts to establish a cartel in respect of the whole of a trade or a number of

trades so as to hinder outsiders from securing access to a trade or to exclude them, the object or effect of which would thus be to eliminate all effective competition.

This is a major, serious breach of the law and the Commission has decided to impose fines totalling ECU 15 million on the Delmas Group, Société Navale de l'Ouest, Navale Caennaise and the Hoegh-SWAL Group. In fixing the level of the fine the Commission took account of the fact that the Bolloré Group has given certain important undertakings. These undertakings (see Annex) will ensure that active steps are taken to open up the market to intensive competition.

Lower fines (of between ECU 2 400 and 56 400) were imposed on 13 cross-traders who are members of the shipowners' committees; in fixing the level of these fines, the Commission took into account, inter alia, the fact that the said shipowners, who are not signatories to the agreements setting up the shipowners' committees, played only an ancillary role within them.

Lastly, the Commission emphasizes that, leaving aside this decision, it is ready to enter into talks with the authorities in the West African and Central African countries with a view to helping those countries' carriers secure a greater share of the traffic generated by their external trade.

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### **Commission Gives Go-Ahead to Agreements between Danske Statsbaner (DSB), Statens Jaernvager (SJ) and Scandinavian Ferry Lines (SFL) on the Joint Operation of a Ferry**

IP/92/396

Date: 1992-05-18

After expiry of the 90-day period within which it would have had to notify its doubts, the Commission decided not to oppose the agreements concluded by the above-mentioned parties concerning the joint operation of a ferry service between the Danish port of Helsingor and the Swedish port of Helsingborg.

Under the agreements, notified in accordance with the opposition procedure provided for in Article 12 of Council Regulation No 4056/86, SFL, owned by the SJ group, and DSB will set up a joint venture, owned in equal proportion by them, to operate the route with a view to making it more profitable. This involves joint operation of the ferry services currently provided on the route, separately by SFL on the one hand, and jointly by DSB and SJ on the other.

The Commission considered that although the joint operation of the ferry service under the agreements imposes restrictions of competition on the parties, it will help to improve the services provided and promote technical and economic progress whilst allowing consumers a fair share of the resulting benefit. Passengers will be offered more frequent sailings on new, larger vessels, thus allowing an improvement in the quality of service compared with that currently provided. It will also allow capacity to be better matched to demand, leading to a reduction in costs and in prices charged.

The Commission also considered that the agreements did not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question since the parties remain subject to sufficient competition on the market as defined below. 1 Council Regulation No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, OJ No L 378, 31.12.1986, p. 4.

Having noted that the parties hold a dominant position in the northern ØOresund,<sup>2</sup> the Commission considered that the relevant geographic market for the purpose of assessing the real effect on competition of the notified agreements is, however, wider. A large proportion of the traffic between Sweden and Denmark is through-traffic going to Germany, so that the position of the parties must also be assessed in the light of both the ferry links between Sweden and Denmark, i.e. in the Kattegat and the ØOresund, and the direct ferry links between Sweden and Germany. At the request of the Commission, the parties deleted a clause requiring them to cooperate if one of them set up or operated a new ferry service between Sweden and Denmark.

The Commission therefore granted the joint operation an individual exemption under Article 85(3) of the Treaty, to run for six years from 14 February 1992. It reserved the right, however, to review the situation at the end of two years and to require the parties to submit every year their price list for the link to enable it to monitor the effect of the agreements on those prices.

As this is one of the first cases in which the Commission has applied the competition rules to ferries, it should be made clear that it concerns the joint operation of a ferry service between two ports and consequently relates to the market for the provision of ferry transport services: a market on which, in principle, other transport services from other ports may be substituted for the service in question. This case does not in any way concern the market for the supply of the port services that an operator needs in order to provide a transport service, an activity which can, in most cases, be carried out only from a particular port. Such ports may in certain cases be owned by companies that also operate, through another company linked to them, a ferry service in competition with the operator in question. One of the three areas into which the market for ferry links between Sweden and Denmark<sup>1</sup> may be divided, the other two areas being the Kattegat and the southern ØOresund.

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### **Commission Fines Shipping Companies for Abusing Dominant Position on Shipping Trade between Northern Europe and Zaire**

IP/92/1110

Date: 1992-12-23

The European Commission has imposed fines totalling 10.1 MECU on four shipowners (armateurs) for anti-competitive practices on behalf of the CEWAL shipping conference (Associated Central West Africa Lines). The Compagnie Maritime Belge (CMB) has been fined 9.6 MECU, while the remainder has been

imposed on Woermann Linie, Dafra Line (both currently owned by CMB) and Nedlloyd. CMB has a period of four years within which to pay the fine.

In determining the size of the fines, the Commission took account of the minor role played by Woermann, Dafra and Nedlloyd, and their small market share, compared to the CMB. The fines also aim to reflect certain mitigating circumstances which came to the Commission's attention.

Following complaints from the Danish Government and from several shipowners, the Commission opened proceedings against 11 Shipowners' Committees and 4 Liner Conferences (CEWAL, MEWAC, COWAC and UKWAL). Regarding the Committees, the Commission imposed a heavy fine last April for violating the EC Treaty (Articles 85 and 86) on traffic between France and 11 West and Central African countries.

Today's decision, the first against a maritime conference, primarily concerns CEWAL, which groups together several shipping companies in order to provide a regular shipping service between Western European ports and the ports of Zaire and Angola. The decision only applies to traffic between Northern European ports (except the UK) and Zaire.

The Commission has found that on these routes the members of CEWAL abused their dominant market position, in breach of Article 86, in three different ways in order to eliminate competition from their chief competitor, G&C (a common service between the Belgian shipowner Cobelfret and the Italian shipowner Grimaldi):-

1: They participated in a cooperation agreement with the Zairean maritime authorities (Ogefrem: l'Office Zairois de Gestion de Fret Maritime) under which all cargo on this line would be carried by CEWAL members.

2: They used the "fighting ships" method. If a competitor offered cheaper rates than those set by CEWAL, the conference would hold a meeting to undercut that competitor, and ensure that CEWAL members scheduled their sailings at or around the same time as those of the competitor in order to win over its customers. Charges equivalent to the losses incurred by the competitor would then be shared out among CEWAL members.

3: CEWAL imposed 100% loyalty rebates, under which members would have to surrender all their cargo to the Conference in order to qualify for a rebate. Black lists would be drawn up with the names of shippers who broke the 100% rebate system. This went beyond the terms of the rules

### **Commission Initiates Proceedings Against The Far Eastern Freight Conference (FEFC) And Its Members In Respect Of Agreements To Fix Inland Transport Tariffs**

IP/93/7

Date: 1993-01-06



On 28 April 1989, the Commission received a complaint lodged by the Bundesverband der Deutschen Industrie (BDI), the Deutscher Industrie- und Handelstag (DIHT) and the Bundesverband der Deutschen Gross- und Aussenhandels (BDGA), the bodies which sponsor the Deutsche Seeverladerkomitee (DSVK - German Council of maritime shippers), under the terms of Article 10 of Council Regulation (EEC) n° 1017/68(1) and of Article 10 of Council Regulation (EEC) n° 4056/86(2) laying down detailed rules for the application of Articles 85 and 86 of the Treaty to the maritime transport.

These bodies have complained that the collective price-fixing activities of the FEFC and its members are not covered by the block exemption contained in Article 3 of Regulation n° 4056/86, which concerns only maritime transport as such, whereas the FEFC collectively fixes prices for maritime transport services but also for inland transport services. The complainants claim that, because of the limited scope of the block exemption which maritime conferences benefit from under the terms of Regulation n° 4056/86, the applicable legislation is consequently Regulation n° 1017/68 which provides for the application of the rules of competition to transport by rail, by road and by inland waterway, and which, in Article 2, prohibits certain restrictive practices including price-fixing, and which does not exempt activities of the type practised by the FEFC in the field of land transport.

According to the FEFC, the FEFC's tariff seeks to provide a comprehensive rate structure reflecting the door-to-door services offered by its member lines. The FEFC rejects the soundness of the complaint and argues that its tariff should not be considered as price -fixing as such but as part of its overall tariff in a competitive inland transport market.

Following its examination of the complaint and without prejudice to the subsequent proceedings in this matter, the Commission, on the basis of the material in its possession and the current state of the file, is disposed to adopt a decision finding an infringement on the part of the FEFC of Article 85, paragraph 1, of the Treaty and of Article 2 of Council Regulation N° 1017/68, the infringement consisting of the collective fixing of land transport rates in Europe by the member companies of the FEFC.

Consequently, the Commission has decided to send a statement of objections to the FEFC and to its members, in order to allow them to take note of the objections concerned, and to allow them to present their arguments in response.

(1) OJ n° L175 of 23.7.1968, p. 1

(2) OJ n° L378 of 31.12.1986, p. 4

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**Commission Terminates Procedure Initiated Against The East African Conference (EAC)**

IP/93/739

Date: 1993-09-09

The Commission has terminated the procedure initiated in October 1991 under Articles 85 and 86 of the Treaty against the liner conference serving trade between Europe and East Africa (the EAC) and member shipping companies in respect of the length of notice which companies wishing to leave the Conference should give.

The rule in question provided for a minimum period of notice of twelve months, such notice to expire only at the end of a calendar year.

The Commission had acted in response to a complaint lodged in June 1989 by the Compagnie Maritime Belge (CMB) against the EAC in respect of the obstacles which the Conference had placed in the way of CMB's introduction of a non-Conference service. The EAC had then brought various legal actions and had instituted an arbitration procedure with a view to preventing CMB from operating a new liner service (non-Conference) competing with that offered by the EAC.

CMB had lodged a complaint in which it alleged in particular that the clause of the Conference agreement relating to the length of notice to be given in order to leave the Conference was not covered by the block exemption granted to liner conferences (by Article 3 of Regulation (EEC) No 4056/86) and therefore constituted a restriction of competition that was contrary to Article 85(1) of the Treaty.

The Commission found that the arrangements for giving notice could restrict, for a period of up to two years, the freedom of a member shipping company wishing to leave the Conference to offer a non-Conference service as an outsider.

The Commission held that the period of notice provided for in the Conference agreement was unreasonably long and constituted a restriction of competition that was contrary to Article 85(1). As the provision in question did not satisfy the conditions necessary for it to benefit from the block exemption granted to liner conferences or from an individual exemption, it was therefore declared to be automatically void pursuant to Article 85(2) of the EEC Treaty.

According to the Commission, the notice-giving clauses in the Conference agreements are closely linked to effective non-Conference competition from outsider companies, which constitutes the main counterweight to the block exemption granted to the liner conferences.

The Commission therefore informed the EAC that it considered that the maximum period of notice required of a member before it could leave a conference without incurring any penalty should not generally exceed six months and that it should be possible for such notice to be given at any time.

The EAC having expressed its intention of amending its Conference agreement as requested by the Commission and having in fact carried out that amendment in June 1993, the Commission has decided to terminate the case without adopting a formal decision.

## **Commission Adopts Report On The Application Of The Competition Rules To Maritime Transport**

IP/94/508

Date: 1994-06-08

On a proposal by Mr Van Miert, the European Commission has approved a general report indicating how it intends to apply the competition rules to liner shipping, as regards the land section of multimodal transport operations. This report will be presented for information to the Transport Council on 13 and 14 June. In certain circumstances, it allows for individual exceptions for the fixing of uniform tariffs on the land section.

The Commission is thus complying with the undertaking which Mr Van Miert gave the Council on 29 November 1993.

The report begins by analysing the legal situation of price-fixing agreements concluded by conference shipping companies concerning the land section of multimodal transport operations, and goes on to consider the conditions necessary to ensure balance between the interests of the shipping companies and the shippers.

### *Practices*

With the development of containerization, shipping companies in the 1970s began to offer door-to-door transport services combining land with sea transport (multimodal transport).

- The liner conferences then extended the fixing of uniform sea tariffs (over the maritime segment) to the land section, even though Council Regulation No 4056/861 confers a block exemption only for their sea transport operations. Under the existing exemption, they can lawfully fix rates within a uniform tariff only for the sea section. The price of land transport on European routes is a substantial proportion of the final price of a multimodal transport operation (between 10% and 30% depending on the routes).

- Outsiders not operating within the framework of the conferences also offer door-to-door services but at a price set by themselves alone.

*1 Regulation laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, OJ No L 378, 22.12.1986, p. 4.*

### Consequences

Following a complaint lodged by shippers against a liner conference in respect of the fixing of the uniform tariff, the Commission in December 1992 adopted a statement of objections<sup>2</sup> in which it held that the conference agreements for the collective fixing of land transport rates infringed Article 85(1) and Article 2 of Regulation (EEC) No 1017/68.<sup>3</sup> The Commission felt that the conditions necessary for an individual exemption to be granted had not been demonstrated.

The Report adopted by the Commission today recognizes the importance of multimodal transport in meeting the needs of shippers, and indicates that the

Commission is in favour of the development of this mode of transport. Nevertheless it stresses that the fact that it is indispensable for the conferences to fix land rates for the supply of multimodal transport services has not been established.

Members of liner conferences generally sub-contract the inland part of operations to inland hauliers and make their own inland transport arrangements on behalf of shippers, with the exception of pricing which is based on the conference's inland transport tariff. Each shipping line usually uses its own containers, its own inland container parks and its own electronic data exchange system.

Unlike sea transport, where a conference to some extent acts as organizer (which has enabled it to qualify for a block exemption since it improves the service for the user), a conference as such does not have a direct role in the supply and management of the inland transport activities of its members and does not undertake any related activities. Its sole task is to fix a uniform tariff for its members.

Such a tariff agreement does not encourage more efficient and rational organization of the land transport of containers. By contrast, the more efficient management of container parks and movements seems possible if shipping companies jointly (and no longer individually) manage the land section.

Having completed this analysis, the Commission feels that it is not possible to consider granting a block exemption or, more generally, a series of individual exemptions for the fixing of land rates. The fixing of uniform prices restricts competition and cannot qualify for an exemption from the competition rules unless it brings about subsequent advantages for users.

( 2 IP(93)7)

*3 Regulation of the Council applying rules of competition to transport by rail, road, and inland waterway, OJ No L 175, 23.7.1968, p.2.*

## RECOMMENDATIONS

However, in certain circumstances, specific cooperation agreements between groups of shipowners or between shipowners and inland carriers could sufficiently promote technical or economic progress to be allowed, by individual exemption, to provide for uniform inland rates. These are, in particular, the pooled management of container fleets and containers.

These circumstances result from pooled activities on the land part, substantial enough in economic terms to justify the granting of such individual exemptions.

Against this background, the report envisages the following system:

- any group of shipowners that has sufficiently pooled its activities (in conjunction with land transporters where appropriate) to bring about advantages for users on the land part could propose a uniform (multimodal) land tariff and be granted an individual exemption, attributed on a case-by-case

basis;

- any other shipping line not having so pooled activities could only have an individual (multimodal) inland tariff based on its negotiations with inland carriers.

The Commission concludes by requesting the parties concerned to comment on the proposals contained in the report in order to evaluate the impact on the multimodal transport sector of future cooperation agreements, and urges maritime shipping companies to notify their future cooperation agreements, preferably after consultation with the users, with a view possibly to granting them individual exemption.

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**“Maritime Transport And Competition”: Opening Speech Of Mr Karel Van Miert At The Maritime Forum - Rotterdam, 20 June 1994**

IP/94/559

Date: 1994-06-21

Address by Mr Van Miert to the Maritime Industries Forum (Rotterdam, 20 June 1994)

Without wishing to prejudge any individual cases currently being examined by the Commission, Mr Van Miert set out to deal with the subjects of price-fixing in intermodal transport, agreements on the management of capacities, and consortia. He outlined the content of the report adopted by the Commission on 13 June on price-fixing in intermodal transport (importance of maritime transport to Community trade, contraction of the Community fleet, etc). He said that, in order to be accepted, agreements restricting competition had to enable transport users to benefit from a substantial share of the improvements which they brought about for shipowners. Without denying the importance and practicality of intermodal transport by container, the Commission took the view that competition rules applied to carriers in the same way as they did to other professions. Maritime transport already benefited from much more generous exemption rules than other branches of industry under the conferences (Regulation No 4056/86). The current exemption had been granted in respect of maritime transport and could not be automatically extended to land transport.

This area of transport was still suffering from poor organization. For example, the pricing agreements between shipowners on the portion of transport operations carried out on land had not been matched yet by management agreements between transport companies which would make it possible to minimize the cost of transporting empty containers, which was estimated to run into billions of ecus a year. The shortcomings resulted from a collective lack of organization on the part of carriers. They could not, therefore, call for pricing agreements without rationalizing their activities in such a way as to benefit users. For that reason, Mr Van Miert considered it impossible at present to consider granting a general exemption from the competition rules to enable shipowners to fix rates for land transport. Individual exemptions could, on the other hand, be contemplated where land transport services were organized jointly by maritime transport companies and this resulted in improved transport conditions and reduced costs without excessively affecting conditions of competition.

Mr Van Miert then referred to the existing agreements fixing both prices and capacity without improving services to users. Such agreements could not be accepted unless they fulfilled strict conditions.

Furthermore, they could not be allowed to penalize Community exporters alone by being applied in only one direction. An agreement aimed at reducing or not using capacity offered no advantages unless it eliminated excess or inefficient capacity in such a way as to reduce costs. Recent examples of freezing capacity in order to increase rates did not represent a real solution to the problem of a lack of competitiveness on certain maritime routes in Europe, while they could prove more advantageous to non-Community, integrated companies with low costs. Moreover, substantial increases in maritime transport rates had had adverse effects on users. Without going into details of cases under way, Mr Van Miert stated that it was clear

that it was the Commission's responsibility to ensure that Community exporters were not penalized by abnormally high transport costs which might force them to lose market shares or even to withdraw from certain markets.

Finally, Mr Van Miert raised the subject of consortia, which could prove to be effective where they were in line with current developments in means of transport and helped reinforce the efficiency and competitiveness of Community maritime transport.

After outlining the draft Regulation published by the Commission in March, he said that the Commission was at present making the amendments suggested during the public consultations and that a second draft would shortly be presented to the Member States with a view to its definitive adoption, in principle, in the autumn. The Commission's objective was to create a balanced and flexible framework which would enable shipowners to conclude agreements restricting competition that passed on a fair share of the benefits to users. Such agreements could be authorized if they allowed for an adequate level of competition outside the scope of the agreement.

By way of conclusion, Mr Van Miert stressed the fact that it was the function of Community competition policy in the maritime transport sector to advocate a shipping industry which balanced the interests of shipowners and exporters and importers. Measures primarily aimed at boosting shipowners' profits without enhancing their efficiency were in the true interests of neither the shipowners nor Community industry. Moreover, Community legislation had to avoid conflicts with other national legislation. Mr Van Miert was convinced that Community competition policy in the maritime sector had developed in a constructive and balanced manner, reflecting the interests of both shipowners and consignors.

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### **Commission Prohibits Transatlantic Agreement (TAA)**

IP/94/956

Date: 1994-10-19

Acting on a proposal from Mr Van Miert, the Commission decided today to prohibit the TAA. The agreement does not meet the conditions that would allow it to qualify for the block exemption for liner conferences. Nor is it eligible for individual exemption under Article 85(3) since it does not provide sufficient benefits for users.

The TAA was notified to the Commission in August 1992. A total of 15 shipping lines are members of the TAA (see annex). The TAA members operate on the market for containerized liner shipping services between the western European ports, in the range from Bayonne to the North Cape, and the ports along the eastern coast of the United States. They hold about 80% of that market and some 70% of the market for containerized liner shipping services between Europe as a whole and the United States (including access to the United States via the Canadian ports).

The TAA provides for its members to take joint decisions on matters such as prices, conditions of carriage and capacity. The TAA members draw up tariffs for both the

maritime and inland sectors and publish them jointly. The service contracts concluded by the TAA members must conform to certain rules, in particular:

- no contracts may last for longer than one year;
- no contracts may be signed for annual volumes of less than 200 TEU (Twenty-Foot Equivalent Units) containers.

All the members of the TAA participate in a capacity management programme, which is implemented only in the westbound, i.e. Europe-United States, sector of the trade. The purpose of the programme is to limit the supply of transport on the market without reducing the real available capacity of shipowners.

Following numerous complaints from firms exporting to the United States and from organizations representing shippers, the Commission established that a number of practices engaged in by TAA members infringed the competition rules. These practices included:

- a two-tier tariff structure that differentiates between former conference members and independents;
- a programme of artificially freezing part of the capacity available on ships;
- an agreement on prices for inland haulage (in the case of combined transport).

As a result of the TAA, which affects a substantial proportion of the trade, and the combined impact of the agreements on prices and capacities, the TAA members were able to impose very large price increases in 1993 and 1994. The price increase resulting from the freezing of capacity in the westbound sector (Europe-United States) artificially penalized European exporters.

The practices covered by the TAA do not fall within the scope of the block exemption for liner conferences because:

- the agreements on price fixing and on capacity restriction are not allowed under the block exemption for liner conferences;
- the TAA does not provide for uniform freight rates for the transport of goods. However, the members of a conference must establish a joint or uniform tariff to be eligible for the block exemption. Such a requirement ensures some price stability for shippers using the services of a conference member. If shipping lines apply differentiated rates, this has the effect of altering the competitive structure of the market by reducing or eliminating competition between conference members and outsiders;
- the block exemption granted to liner conferences applies to maritime transport and not to inland transport. However, the TAA price agreement covers both the maritime and inland sectors.

The Commission also took the view that the TAA was not eligible for exemption under Article 85(3) of the Treaty since it is not of sufficient benefit to users.



After consulting the Advisory Committee, and acting on a proposal from Mr Van Miert, the Commission has accordingly decided to prohibit the Transatlantic Agreement. The TAA had been notified to the Commission, and the immunity from fines afforded by notification was not withdrawn.

Although the TAA members have notified the Commission of a new agreement, the TACA, the TAA existed and operated between August 1992 and July 1994. It still constitutes the reference basis for shipowners in setting tariffs for 1995. The Commission was therefore obliged to take a decision prohibiting it.

The shipowners recently informed the Commission that they intended to make substantial changes to the terms of the TACA, but such changes must be formalized and must be examined by the Commission.

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### **Commission Prohibits The Members Of The Far Eastern Freight Conference From Fixing Prices For The Inland Transport**

IP/94/1260

Date: 1994-12-21

Acting on a proposal from Commissioner Van Miert, the Commission decided today to prohibit the members of the Far Eastern Freight Conference from fixing prices for the inland transport of containerised cargo. The practice does not fall within the scope of the group exemption for liner conferences. Moreover, since it does not fulfill the conditions of Article 85(3) of the Treaty, it cannot be granted individual exemption. The Commission set symbolic fines to the members of the FEFC (see annex).

On 28 April 1989, the Commission received a complaint from the German Shippers' Council (DSVK), concerning certain price fixing activities of the members of the Far Eastern Freight Conference (FEFC) relating to multimodal transport.

Multimodal transport services provided by the members of the FEFC consists in the following five elements:

- a) inland transport to the port of embarkation
- b) cargo handling in that port
- c) sea transport
- d) cargo handling in the port of destination
- e) inland transport from the port of destination to the place of final destination.

The group exemption for liner conferences, contained in Regulation 4056/86 permits price fixing for sea transport services. The BDI/DSVK complained that members of the FEFC agreed between themselves prices not only for sea transport but also for the other elements of a multimodal transport service, including inland transport services.

The Decision therefore prohibits the fixing of prices for the following services -

The inland transport services supplied by members of the FEFC, within the territory of the European Community, to shippers as part of a multimodal transport operation, for the carriage of containerised cargo between Northern Europe and the Far East.

The FEFC had argued that all its price fixing activities, including those relating to inland transport services, were covered by the group exemption for liner conferences contained in Article 3 of Regulation 4056/86. However, the scope of the exemption contained in Article 3 cannot be wider than the scope of the Regulation itself.

Article 1(2) of Regulation 4056/86 provides that -

"it shall apply only to international maritime transport services from or to one or more Community ports".

The FEFC has also argued that the absence of collective inland rate-fixing would endanger the stabilizing role of liner conferences. They suggested that if inland rates were being set on an individual basis rather than collectively, members would be tempted to compete on those prices and therefore undermine the conference-set rates for the maritime services. The FEFC therefore considered that, if the group exemption were found not to apply, all their price fixing activities should qualify for individual exemption.

The Commission rejected this argument for the following reasons -

-an exemption for one activity (maritime price fixing) cannot in itself justify an exemption for all other revenue producing activities, .

-the FEFC does not itself organise directly or indirectly any inland transport activities other than the collective fixing of prices and conditions for carrier haulage,

-only those members of the FEFC which undertake joint inland activities which produce benefits to consumers can qualify for exemption under Article 85(3) (in respect of inland price fixing),

-other providers of inland transport services (which are not permitted to fix prices) would be placed at a competitive disadvantage.

The Commission set symbolic fines (10 000 ECUs): they mark the existence of the offence and the need for future compliance with the Community's competition rules by the undertakings in question and by other undertakings which may be engaged in similar practices.

The approach followed in the Decision carefully follows that approved by the Commission in its Report to the Council (note IP 508/94 and BIO 94/301-1) concerning the application of the Community's Competition Rules to Maritime Transport. In particular it does not prejudge the outcome of applications for individual exemption which the Commission expects to receive following the prohibition of inland transport price fixing by the the members of the FEFC.

As Commissioner Van Miert said "In certain circumstances, specific cooperation agreements between groups of shipowners or between shipowners and inland carriers

could sufficiently promote technical or economic progress to be allowed, by individual exemption, to provide for uniform inland rates. These are, in particular, the pooled management of container fleets and containers".

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## **Commission Approves Block Exemption For Consortium Agreements In Shipping**

IP/95/409

Date: 1995-04-28

On a proposal from Mr Van Miert, the Commission has recently adopted a second block exemption Regulation in the liner shipping sector.

In this sector, liner conferences - a traditional way of organizing maritime transport - have since 1 July 1987 been covered by such an exemption

The new Regulation grants block exemption to liner shipping consortia. These are agreements aimed at establishing a greater or lesser degree of cooperation with a view to providing, by means of various arrangements, a common liner shipping service.

### *The exemption*

#### Scope

The exemption is to apply for an initial period of five years; it covers both consortia operating within a liner conference and consortia operating outside such conferences, in so far as they provide international liner shipping services to or from one or more Community ports.

The service must be for the sole carriage of cargo; the exemption does not cover agreements in respect of passenger transport, between ferry companies for example. The regulation forbids price fixing and only covers maritime activities and not inland transport activities of the consortia.

#### Description

The block exemption covers the following activities: the coordination and/or joint fixing of sailing timetables and the determination of ports of call; the exchange, sale or cross-chartering of space or slots on vessels; the pooling of vessels, port installations or operations offices; the provision of containers, chassis and other equipment; the use of a computerized data exchange system; temporary capacity adjustments; the joint use of port terminals; participation in various other forms of pool; the joint exercise of voting rights in liner conferences; a joint marketing structure; and any other activity ancillary to any of these and necessary for its implementation.

#### Background

In June 1990 the Commission presented to the Council a communication[1] in which it came out in favour of granting block exemption to this modern method of organizing liner shipping, which came into being in the late 1960s with the appearance of containers.

The growth of container services and the amount of investment needed, notably in container ships, to operate such services meant there was a greater need for cooperation between shipowners. This cooperation usually took the form of consortium agreements.

The Commission's favourable attitude towards such agreements is due to the fact that users generally receive a fair share of the resulting benefits.

Thanks to the agreements, shipowners can organize jointly the services they supply and thus provide users with a better service while rationalizing their maritime transport activities and securing economies of scale and cost reductions.

### Objective

The Regulation seeks to strike a balance between the interests of shipowners and those of transport users. Such a balance can be achieved only if, among other things, consortia operate in trades in which they continue to face effective competition from other shipowners, thereby ensuring that shippers also benefit from the advantages of such agreements. The Commission, in pursuing a policy of promoting consortia, cannot act against the interests of transport users, who are working on behalf of European importers and exporters, for whom the availability of a maritime transport service that is efficient and competitive in terms of both quality and price is essential.

[1] COM(90)260 of 18 June 1990.

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## **Commission Says It May Impose Fines On Members Of The Trans-Atlantic Conference Agreement (TACA)**

IP/95/646

Date: 1995-06-21

The Commission has threatened the sixteen maritime companies of the TACA Agreement with fines relating to inland transport rate fixing they apply.

Indeed acting on a proposal from Commissioner Van Miert the Commission decided today to send the TACA partners a statement of objections envisages an expedited procedure enabling the Commission to adopt a decision withdrawing the immunity from the imposition of fines in respect to those TACA provisions.

On 5 July 1994, the parties to the Trans-Atlantic Conference Agreement (TACA) submitted an application to the Commission seeking an exemption under Article 85 of the EC Treaty.

The TACA is a revised version of the Trans-Atlantic Agreement (TAA), an agreement originally notified to the Commission on 28 August 1992. The Commission adopted a Decision prohibiting the TAA on 19 October 1994. On 10 March 1995 the Court of First Instance ordered the suspension of the TAA Decision. This however does not prejudice the decision on the substance of the case. On 12 May 1995, the Commission lodged an appeal with the Court of Justice to annul the order.

Amongst other restrictions of competition, the TACA contains a price agreement between the parties to the TACA relating to inland transport services supplied within the territory of the Community to shippers as part of a multimodal transport operation

for the carriage of containerised cargo between Northern Europe and the United States of America.

The group exemption for liner conferences contained in a regulation from 1986 permits only price fixing for sea transport. The scope of this Regulation covers indeed solely maritime transport services from or to one or more Community ports.

This type of agreement has been prohibited not only in the TAA Decision, but also in the FEFC Decision (adopted by the Commission on 21 December 1994) and, in more general terms, in the Commission's Report of 8th June 1994 to the Council concerning the Application of the Competition Rules to Maritime Transport. In these Commission Decisions, it has been established that such inland price fixing agreement infringes the provisions of Article 85(1) of the EC Treaty and cannot benefit from an exemption pursuant to Article 85(3).

The TACA parties have chosen to notify an arrangement which, they clearly know, is unlawful following the Decisions of the Commission. It is normal and consistent with the Commission's approach to the case that it should withdraw the immunity from fines attaching to the notification.

A decision withdrawing immunity from fines has no immediate effect. It merely opens the possibility for the Commission to impose fines should it think fit in its ultimate decision.

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## **Commission Gives Green Light To Five Consortium Agreements**

IP/96/400

Date: 1996-05-08

On the basis of proposals from Mr Van Miert, the Commission has recently authorised a series of consortium agreements in the maritime transport sector. These are the first cases involving the application of the regulation which the Commission adopted on 20 April 1995 (see IP/95/409 and Annex) and which grant a block exemption to liner shipping consortia offering international maritime liner services from one or more Community ports. Liner shipping consortia are agreements between shipping companies, the object of which is to bring about cooperation for the joint operation of a maritime liner transport service by means of various arrangements. Four of these consortium agreements, all of which existed before the entry into force of the regulation, have been authorised and may operate until 21 April 2000, the date on which the regulation expires. So far as the fifth agreement, it is not a consortium falling within the scope of the exemption regulation and has been granted individual exemption.

The Commission has been able to establish that each of these consortia has not only allowed the participating shipping lines to rationalise their activities but has also contributed to significant improvements in the quality and frequency of liner shipping services offered to shippers as well as, in some cases, the number of ports served. The Commission has checked that the consortia remain subject to effective competition on

the routes where they operate thereby guaranteeing that shippers obtain a fair share of the benefits which result from these agreements.

The following five consortia will benefit from exemption:

(1) St Lawrence Coordinated Service

On 13 October 1995, Canada Maritime Limited and Orient Overseas Container Line (UK) notified to the Commission the St Lawrence Coordinated Service (SLCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in North-West Europe.

On 27 March 1996, the Commission decided not to oppose this agreement and to allow it to benefit from the group exemption. In order to be able to benefit from exemption, the parties agreed to delete, at the request of the Commission, a clause in the agreement which required all goods of Quebec or Ontario origin or destination to be shipped via the port of Montreal, which restricted the possibility of the parties to use, even within the scope of a different agreement, the competing Canadian port of Halifax. This clause was not considered to be indispensable for the objectives of the consortium. The deletion of this clause clearly shows the wish of the Commission not to allow parties to a consortium agreement to impose restrictions of competition relating to routes other than the routes on which the consortium operates.

(2) East African Container Service

On 17 October 1995, six shipping companies notified to the Commission the East African Container Service (EACS), a consortium agreement under which they operate a joint liner service between ports in Europe (including in the UK and Mediterranean) and ports in East Africa and the Red Sea. The six companies are The Charente Steam-Ship Co Ltd, DSR-Senator Lines, Ellerman Lines Ltd, P&O Containers Ltd, WEC Lines, Mediterranean Shipping Company. On 27 March 1996, the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(3) Joint Mediterranean Canada Service

On 19 October 1995, Canada Maritime Limited and DSR-Senator Lines notified to the Commission the Joint Mediterranean Canada Service (JMCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in the eastern Mediterranean. On 2 April 1996 the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(4) Joint Pool Agreement

On 20 October 1995, Andrew Weir Shipping Ltd and Euro Africa Shipping Line Co Ltd notified to the Commission the Joint Pool Agreement (JPA), a consortium agreement under which these shipping companies operate a joint liner service for the transport of goods between the British ports of Hull and Felixstowe and the Polish port of Gdynia. On 1 April 1996 the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(5) Agreement benefitting from Individual Exemption - Exemption Decision of 9 April 1996

On 11 August 1995, Finncarriers Oy Ab and Poseidon Schiffahrt AG applied to the Commission for an exemption under Article 85(3) of the EEC Treaty in respect of the Baltic Liner Conference Agreement. Under the agreement the parties operate a joint service on a jointly agreed schedule at jointly agreed tariff and service arrangement rates. The joint service consists in the provision of regular ferry services for ro-ro, container and rail/ferry traffic between ports and points in Finland and (i) ports and points in Germany (and other Continental points via German ports) and (ii) ports and points in Scandinavia (Sweden, Denmark and Norway), with a small volume of traffic to and from Russia via Finland to those countries.

The parties take joint investment decisions, in particular for the acquisition of vessels and equipment that are specifically designed for the climatic conditions where they operate and which are also specially designed to meet the specific needs of Finnish shippers. The joint service is managed by Finncarriers.

Such an agreement which brings about a highly integrated joint service does not amount to a consortium agreement falling within the scope of the regulation adopted in April 1995 since it does not concern exclusively the transport of goods principally by containers. A large part of the goods are not containerised and the consortium is therefore unable to benefit from the group exemption and must benefit from an individual exemption if it is to be authorised.

In order to obtain the comments of third parties, in accordance with normal procedures, the Commission published a notice in the Official Journal on 16 February 1996 setting out a summary of the application. No observations were received and within a period of ninety days following publication the Commission considered that the conditions of Article 85(3) were fulfilled and decided on 9 April 1996 not to oppose the exemption of this agreement; Accordingly, in accordance with the applicable regulations, the maritime activities are exempted for a period of six years and the inland activities (which in this case are minor) are exempted for a period of three years.

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**The Commission Fines Five Cross-Channel Ferry Companies A Total 645,000 Ecu For Operating A Price Cartel In 1992**

IP/96/971

Date: 1996-10-30

The Commission decided to fine P&O (UK), Stena-Sealink (S), Brittany Ferries(F), Sea France (F) and North Sea Ferries (NL-UK) for having agreed, in 1992, to impose a surcharge on cross-channel freight shipments. In spite of the very limited success and the short application of this surcharge, the Commission considered that the companies effectively developed a concerted practice contrary to article 85 of the Treaty and decided to fine them proportionally to their responsibility and to their turnover on the



market concerned. P&O and Stena-Sealink were fined respectively 400,000 and 100,000 ECU since they were the main instigators of the practice. Having played a minor role, Sea France and Brittany Ferries will have to pay a fine of 60,000 ECU while North Sea Ferries is being fined 25,000 ECU.

In order to compensate for the effects of the devaluation of the British pound in September 1992, these companies agreed, in October, to similarly raise their tariffs. The surcharge was introduced in November of the same year, at identical rates, and with the same method of calculation, between the United-Kingdom and France for P&O, Stena-Sealink, Sea France and Brittany Ferries and between the United-Kingdom and Belgium as well as the Netherlands for P&O and North Sea Ferries. The Commission considered that the infringement lasted until the end of that year.

The simultaneous application of the surcharges was only partly successful because of the reluctance of the clients to the measure and was of short duration. That is why the Commission decided to impose moderate penalties on the ferry companies while establishing higher fines to P&O and Stena-Sealink as they initiated and organised the concertation by taking the contacts and developing the calculation scheme of the tariff increase. Sea France, Brittany Ferries and North Sea Ferries then followed their competitors. The five companies continued however to coordinate themselves afterwards in order to assess their clients reactions.

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### **The Commission Lifts The TACA Parties' Immunity From Fines In Respect Of Inland Rate Fixing**

IP/96/1096

Date: 1996-11-28

The European Commission decided today to adopt a decision lifting the immunity from fines benefitting to the TACA parties - the containers carriers members of the Trans-Atlantic Conference Agreement - in respect of inland rate fixing. The Commission considers that inland price fixing is a manifest and serious infringement of the competition rules and that inland price fixing is not indispensable, as claimed by the parties, for the introduction of a limited form of information exchange on the location of empty container. These arrangements do not justify such an exemption; any line wishing to reduce costs and limit environmental harm has sufficient incentive to participate in such an arrangement.

In its Decision to lift the immunity from fines, the Commission also states that :

(a) the decision does no more than terminate an immunity which the TACA parties could claim by virtue of the formal notification of their agreement and re-establishes them in the legal position in which they found themselves before the notification (at which time they knew that the Commission was not prepared to grant individual exemption to inland price fixing), and

(b) the withdrawal of immunity does not entail any obligation on the Commission to impose fines. It allows the Commission to do so should it think fit at the appropriate time.

For procedural reasons, the Decision is not addressed to Hyundai Merchant Marine Co Ltd, which became a party to the TACA after the adoption of the statement of objections.

On 5 July 1994, the TACA parties submitted an application to the Commission seeking an exemption under Article 85(3) of the EC Treaty. In principle, parties who notify their agreements to Commission obtain an immunity from fines in respect of the activities covered by the notification. The Commission adopted, on 1 March 1996, a statement of objections stating that it intended to lift any immunity from fines in respect of inland rate fixing since the TACA parties had not shown either (i) that any benefits had arisen to shippers from the new system of exchanging information as to the whereabouts of empty containers or (ii) that inland price fixing was in any way related to that system.

Amongst other restrictions of competition, the TACA contains an agreement to fix the prices of inland transport services supplied to shippers as part of a multimodal transport operation. This type of agreement has been considered not only in the TAA Decision, but also in the Far Eastern Freight Conference Decision (adopted by the Commission on 21 December 1994) and, in more general terms, in the Commission's Report to the Council concerning the Application of the Competition Rules to Maritime Transport (June 1994).

On 29 November 1995, the TACA parties notified to the Commission the "European Inland Equipment Interchange Arrangement" whereby they set up a computerised reporting system for empty containers so that they are better able to conclude bilateral exchanges of containers. This in turn is said to be likely to reduce the number of movements of empty containers, the global cost of which is estimated to be a staggering three and a half billion US dollars per year. The TACA parties argued that this arrangement not only qualified for exemption under Article 85(3) but also justified exemption being granted to inland price fixing.

The TACA is the successor agreement to the Trans-Atlantic Agreement (TAA) originally notified to the Commission in 1992. The Commission adopted a formal negative decision prohibiting the TAA on 19 October 1994. The number of members of the TAA and then TACA has risen from eleven in 1992 to seventeen in 1996. Together they have a market share in excess of sixty percent. In 1995, the TACA parties carried over 1.3 million TEUs (twenty-foot equivalent containers) between Northern Europe and the United States.

Their customers comprise all those importers and exporters who ship their goods in containers, ranging from agricultural produce to white goods to raw materials.

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**The Commission gives green light to the North Sea Liner Conference Agreement**

Date: 1997-01-15

The European Commission has decided to authorise the North Sea Liner Conference agreement in the maritime transport sector. Under this consortium agreement, three shipping lines, Finncarriers, Poseidon and United Baltic Corporation, operate jointly a regular ferry service by which they provide transport services for ro-ro and containerised cargo between ports and points in Finland and ports and points in Belgium and the Netherlands as well as ports and points in the UK and on to Ireland. The Commission has considered that the conditions of Article 85(3) of the EC Treaty are fulfilled and has decided to grant this agreement an individual temporary exemption. Accordingly, the maritime activities exempted for a period of six years and the inland activities are exempted for a period of three years Regulation 4056/86 of 22 December 1986 regards the application of Art. 85 & 86 to maritime transports & Regulation 1017/68 of 19 July 1968 applies rules of competition to transport by rail, road and inland waterway.

The parties take joint investment decisions, in particular for the acquisition of vessels and equipment that are specifically designed for the severe winter conditions in the eastern part of the Baltic sea. They run the joint service according to jointly agreed schedules and pool their assets (vessels, equipment and containers). They operate a pooling system for their container fleet which is used not only by the North Sea Liner Conference but also by the Baltic Liner Conference. The latter agreement was exempted on 9 April 1996 by the Commission see IP/96/400 about this agreement. They do not have a published inland transportation tariff.

The Commission considered that the cooperation in question has increased the efficiency of the parties' operations and has enabled them to undertake significant investment in equipment particularly suited to the unique climatic conditions in the Baltic sea and to the special needs of Finnish shippers which are located in a peripheral region. The Commission has therefore decided to grant the agreement an individual exemption.

Such an agreement which brings about a joint service does not amount to a consortium agreement falling within the scope of Commission Regulation n° 870/95 granting a block exemption to liner shipping consortia since it does not concern exclusively the transport of goods principally by containers. A large part of the goods are not containerised. The transportation of cargo in containers represents approximately one quarter of their business on this trade, and the consortium is therefore unable to benefit from the block exemption and must benefit from an individual exemption if it is to be authorised. On 16 August 1995, the parties applied to the Commission for such an exemption in respect of the North Sea Liner Conference Agreement.

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**D     PORTS**

## **Commission Orders Interim Measures against Sealink**

IP/92/478

Date: 1992-06-11

Following a complaint by B&I (an Irish ferry operator) the Commission has found that Sealink (a British ferry operator which is also the port authority at Holyhead, Wales) has, *prime facie*, abused its dominant position, in breach of Article 86 of the EEC Treaty. In its capacity as port authority at Holyhead, it has permitted changes to its own ferry sailing times which might cause serious damage to B&I. The Commission has ordered interim measures against Sealink which oblige it to alter some of its sailing times until the end of the Summer season. A final decision on the case has yet to be made. Sealink and B&I use different berths at Holyhead. B&I uses a berth in the mouth of the harbour. Due to the port's limitations, when a Sealink vessel passes a moored B&I ship, the water in the harbour rises. As a result, the ramp to the B&I ship must be disconnected for safety reasons and loading or unloading of the vessel is interrupted. In October 1991 Sealink informed B&I that it intended to introduce new sailing times on 9 January 1992, which would involve the movement of two ships past the B&I vessel while it is in its berth. In the past, only one vessel passed a B&I ferry while it was loading. B&I asked the Commission to adopt interim measures to prevent the implementation of Sealink's new schedule on the grounds that its services would be seriously disrupted due to the reduced time available in which to carry out its loading and unloading operations.

The Commission considers that a company which both owns and uses an essential facility, in this case a port, should not grant its competitors access on terms less favourable than those which it gives its own services. The interim measures have the purpose of preventing any harm which might occur to B&I due to increased interruptions in its loading and unloading procedures and the effects of this on its services, its customer relations and its commercial reputation. The aim of the interim measures is to prevent irreparable damage to B&I's business while the Commission finishes its examination. They are limited to the minimum necessary to achieve this aim. Sealink has been ordered either to return to its previous schedule or to adopt any other schedule which does not lead to two vessels passing a B&I ferry during loading.

Sealink must comply within one month of the adoption of this decision. This gives it enough time to inform customers who have already booked of its schedule change, so that the decision will not result in passengers being stranded. It is hoped that a technical solution can be implemented before the next peak season at Christmas 1992.

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## **Irish Ferries Access To The Port Of Roscoff In Brittany: Commission Decides Interim Measures Against The Morlaix Chamber Of Commerce**

IP/95/492

Date: 1995-05-16

Acting on a complaint from the Irish ferry operator, Irish Continental Group, the Commission has decided interim measures against the Chambre de Commerce et d'Industrie de Morlaix, Brittany, France. The Commission decided, prima facie, that the Chamber of Commerce had abused its dominant position as the operator of the port of Roscoff in Brittany by refusing at this stage ICG access to the port facilities there, in violation of Article 86 of the EC Treaty. The Commission has decided that the CCI must grant ICG access to the port of Roscoff by June 10th 1995.

ICG applied to CCI Morlaix for access to Roscoff in November 1994 for the purpose of commencing a ferry service between Ireland and Brittany this Summer. Following negotiations, the parties had agreed in principle on the question of access to Roscoff by 16 December 1994, for the season beginning 27 May 1995, and sailing schedules and a number of technical issues had been agreed.

Following the agreement in principle of December 1994, ICG announced its services to Roscoff and began to take bookings. However, in January 1995 CCI Morlaix indicated its wish to suspend negotiations.

Following ICG's complaint to the Commission, further negotiations took place but no agreement was reached between the parties, at this stage, in particular as to the date to commence operations.

The Commission has decided that, prima facie, the behaviour of CCI Morlaix amounted to a refusal to supply services.

The port of Roscoff is, for the time being, the only port capable of providing adequate port facilities in France for ferry services between Brittany and Ireland, a market which accounted for around 100,000 passengers in 1994. At present, only one ferry company, Brittany Ferries, is operating between Ireland and Brittany.

On the basis of the Commission decision CCI Morlaix must take the necessary steps to allow ICG access to the port of Roscoff by June 10th 1995. In the meantime the Commission hopes that both parties will find a suitable solution to the pending technical problems.

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## **Liberalisation In Italian Ports: A Major Step Forward**

IP/95/802

Date: 1995-07-20

The Italian Government has formally notified to the Commission its commitment to cease anti-competition practices related to the operation of services in Italian ports.

Since January 1994, Italy has been engaged in the process of amending its ports legislation in order to render it compatible with the EU Treaty. The principle of opening port services to competition is central to this. However, the declared objective had not been achieved in practice because, to date, the local authorities had

systematically refused to grant the necessary authorisations for potential competitors of the existing dockworkers organisations.

In recent months, the Commission received a number of complaints on this subject. Faced with a situation which called into question its competition policy in the field of ports, the Commission considered it necessary to act. It was decided that action should be focused on the port of Genoa due to its importance for the Union as a whole, it being the most important Italian port, and the fact that the Court of Justice had already made a judgement concerning this port.

The Commission ordered the Italian Government, on 21 June 1995, to issue, within 10 days an authorisation to a company which had been denied the right to operate in a way constituting an abuse, by the local port authority.

On 11 July 1995, the Italian authorities informed the Commission that the licence in question had been granted within the time limit imposed. This authorisation opens the port operation sector in the Port of Genoa to other operators of services. This measure will strengthen the dynamism of the port in the face of international competition.

The Commission wishes to underline that its approach concerning the port of Genoa is taken in the context of a wider action, in close co-ordination with the national competition authority (l'Autorita Garante della Concorrenza e del Mercato). The Commission hopes that the development in the port of Genoa will be a useful precedent for the action taken in parallel by the national authority in other Italian ports with the same objective of liberalisation.



**The Commission Accepts Proposal From Danish Government To Solve Competition Problem In The Port Of Elsinore**

IP/96/205

Date: 1996-03-06

In a letter dated 06.03.1996 Mr Karel Van Miert has given his acceptance to a proposal from the Danish government of 27 February 1996 to solve the competition problem in the port of Elsinore, situated north of Copenhagen. The proposal from the Danish government would allow a competing ferry operator to be given access to the ScandLines to one of the existing berths in Elsinore state port. The new ferry operator will be chosen following a public tender procedure.

In his letter to the Danish Government Mr Van Miert insisted that a new ferry service should in any case be in a position to start operations no later than 1 June 1996. It has also been emphasized that the tender conditions, including its procedure and the criteria for selection have to be fair, reasonable and non-discriminatory to be consistent with competition law. The Commission is satisfied that the Danish government has agreed to offer access to a facility in Elsinore port, which ensures that a new ferry operator can compete on equal terms with the present operators.

The Elsinore port case started in 1992 when the Danish shipping line, Mercandia, complained to the Commission that the Danish Ministry for Transport had refused it permission to operate a car and passenger ferry service from the port.

Mercandia also complained to the Danish Competition Council. Considering that the matter is of a character which national authorities would, in principle, be in a better position to solve, the Commission, applying the principle of subsidiarity, first awaited the final outcome of the Danish Competition Council's efforts to solve the matter.

On 26 May 1993, the Danish Competition Council, applying national law, recommended to the Ministry for Transport: "To the extent the capacity of the port terminal might already be fully used that DSB cedes part of the terminal capacity to alternative operators", reached a conclusion which could have solve the problem in so far as it proposed the introduction of a competitor in an infrastructure the use of which was in fact reserved to a subsidiary of two national railway companies.

However, Danish state bodies are not obliged to follow recommendations issued by the Danish Competition Council and the problem could not be resolved at the national level.

As the Danish Competition Council could not enforce its recommendation under national law, Community competition law was then relied on to solve the matter. The Commission considered that the refusal to allow access to the port facilities in Elsinore would limit competition on the Elsinore- Helsingborg ferry route and reinforce the dominant position held by ScandLines, a subsidiary of the two national railway companies, contrary to Article 90 of the Treaty read in conjunction with Article 86. Article 90 prohibits Member States, in the case of public undertakings and undertakings to which they grant special or exclusive rights, from enacting or maintaining measures contrary to the rules of the EC Treaty and in particular the competition rules. Article 86 prohibits the abuse of a dominant position.

In July 1994 the Commission therefore started to explore the possibilities of finding a solution. After intense negotiations, the Danish government has now agreed to introduce competition on the ferry route between Elsinore and Helsingborg.

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### **Elsinore Port Opened For Access To A New Competing Ferry Service**

IP/96/456

Date: 1996-05-30

Mr Van Miert has announced today that on 1 June 1996 following the Commission's intervention against the Danish states' refusal of access to the port of Elsinore, the Danish shipping line, Mercandia, has been allowed to start a new ferry service from the port of Elsinore to Helsingborg in Sweden. Mercandia's ferry service will provide an alternative service in competition with the state owned ferry service, ScandLines A/S, which has hitherto held a monopoly right to transship motor vehicles between Elsinore and Helsingborg.

Following a public tender on 29 April 1996 the Danish Transport Minister selected Mercandia among 6 other shipping lines to become the new operator on the route. In his decision to appoint Mercandia, the Transport Minister followed the recommendation from a selection committee consisting of independent experts, which unanimously pointed at Mercandia as providing the best offer.

The Elsinore port case started in 1992 when Mercandia complained to the Commission that the Danish Ministry for Transport had refused it permission to operate a ferry service from the port of Elsinore. Mercandia also complained to the Danish Competition Council. The Commission considered the matter to be of a character which national authorities would, in principle, be in a position to solve and applying the principle of subsidiarity, it first awaited the final outcome of the Danish Competition Council's efforts to solve the matter.

On 26 May 1993, the Danish Competition Council, applying national law, recommended to the Ministry for Transport: "To the extent the capacity of the port terminal might already be fully used that DSB cedes part of the terminal capacity to alternative operators". This could have solved the problem in so far as it proposed the introduction of a competitor in the infrastructure, the use of which was in fact reserved to a subsidiary of two national railway companies.

However, Danish state bodies are not obliged to follow recommendations issued by the Danish Competition Council and since 1994, when it became clear that the Danish Government would not respect the Danish Competition Council's recommendation, Community competition law was relied on to solve the matter.

The Commission contacted the Danish government informally and pointed out the legal position under Community law. Following intense negotiations but without opening a formal infringement procedure, the Commission obtained on 27 February 1996 the Danish government's consent to allow a new operator access to one of the berths in the port of Elsinore, which was used by ScandLines. The Danish government insisted, however, on selecting the new operator following a public tender procedure.

The Commission accepted the Danish government's proposal, being satisfied that it had agreed to offer access to a facility in Elsinore port, which would ensure that a new ferry operator could compete on equal terms with the present operator. However, the acceptance was given on the condition that the tender conditions, including its procedure and the criteria for selection should lead to access to be given on a fair, reasonable and non-discriminatory basis to a second service provider to prevent distortion between incumbent and new enterprises so as to be consistent with competition law. The Commission also insisted that the new operator should be in a position to start operations no later than 1 June 1996.

#### *Legal basis for the case*

Article 90 of the Treaty prohibits Member States, in the case of public undertakings and undertakings to which they grant special or exclusive rights, from enacting or maintaining measures contrary to the rules of the EC Treaty and in particular the competition rules.

The refusal by the Danish government to authorize the provision of port services to a competing ferry service in Elsinore had the effect of eliminating a potential competitor



on the Øresund and hence protecting and reinforcing the commercial position held by DSB and SweFerry, contrary to Article 90 of the Treaty read in conjunction with Article 86.

An undertaking that owns or manages a port facility from which a maritime transport service is provided acts contrary to Article 86, when it exploits its dominant position on the market for port services to protect or strengthen the position of the existing operator in the separate but related market for maritime transport services. This is especially so when the port operator without objectively justifiable reasons refuses to allow new companies access to the infrastructure in question or, by allowing access on less advantageous conditions than those applied to the activities of the existing operator, puts new companies in a less advantageous position.

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### **La Commission condamne la politique portuaire italienne**

IP/97/907

Date: 1997-10-21

La Commission Européenne, à l'initiative de M. Karel VAN MIERT, a adopté ce mardi 21 octobre deux décisions qui déclarent illégales d'une part le monopole - condamné par la Cour en 1991 - dont continuent de bénéficier les corporations de dockers italiens pour fournir de la main d'oeuvre temporaire et d'autre part, le système - déjà condamné par la Cour en 1994 - qui accorde aux deux compagnies maritimes publiques ( Tirrenia di Navigazione et Italia di Navigazione) des rabais discriminatoires par rapport aux autres compagnies de ferries opérant dans le port de Gênes. Les autorités italiennes doivent mettre fin à cette double infraction et informer la Commission dans un délai de deux mois des mesures prises à cet effet.

La première décision concerne la loi de réforme portuaire et demande de mettre un terme au monopole des compagnies portuaires en matière de main d'oeuvre temporaire. Déjà en 1991, la Cour de Justice Européenne avait condamné le système qui réservait le droit d'effectuer les opérations portuaires à des corporations de dockers.

Malgré une première mise en demeure de la Commission, l'Italie n'a opéré qu'une libéralisation partielle du marché. Certes, la loi de réforme prévoit que des entreprises indépendantes répondant à certains critères objectifs soient autorisées à l'exercice de la profession. Néanmoins, cette loi continue de réserver aux anciennes corporations de dockers le privilège substantiel de fournir de la main d'oeuvre temporaire, leur offrant par là des avantages concurrentiels indus.

La Commission a fait usage de son pouvoir de décision après avoir constaté que, six ans après l'arrêt de la Cour, les dockers continuent de bénéficier de privilèges au détriment de l'intérêt général et du développement économique des villes portuaires italiennes.

La seconde décision demande à l'Italie de mettre fin au système de rabais discriminatoires sur le tarif de pilotage appliqués dans le port de Gênes.

Ce système déjà condamné par la Cour en 1994, vise à favoriser les deux compagnies maritimes publiques nationales au détriment des autres compagnies de ferries desservant le port de Gênes. L'Italie a modifié à deux reprises les tarifs en question en maintenant, cependant, leur caractère discriminatoire. La décision de la Commission vise à assurer que, pour un même service fourni par les pilotes, les différentes compagnies maritimes jouissent d'une égalité de traitement.

La Commission a le ferme espoir que ces deux décisions contribueront à relancer le mouvement plus ample de libéralisation dans le milieu portuaire italien, dans l'intérêt des entreprises et des citoyens.

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## **E      RAILWAY TRANSPORT**

### **Commission Authorizes An Agreement Establishing A Price Structure For The Combined Transport Of Goods**

IP/93/143

Date: 1993-02-25

Acting on a proposal from Mr Van Miert, the Member of the Commission with special responsibility for competition policy, and following a favourable opinion from the Advisory Committee on Restrictive Practices, the Commission has adopted a decision which authorizes an agreement establishing a common price structure to be applied by the twelve main railway companies in the Community. The agreement was concluded in 1990 by the railways that were members of the "Interunit Subsidiary Committee" of the International Railways Union (UIC). Railway companies only exceptionally sell combined transport services direct to consignors. In the vast majority of cases, combined transport services are sold by specialized operators which may be subsidiaries of railway companies or independent companies.

The agreement establishes a common price structure for the sale of rail haulage to these operators. It defines a grid of coefficients which are to be used in calculating prices (based on the lengths and weights of loads), but it does not actually lay down prices.

The Commission takes the view that the agreement will restrict competition, because without it each railway company could adopt its own tariff to attract traffic operating on competing combined transport routes. Against that, however, the new tariff structure will make it easier to set international prices, and operators purchasing haulage from the railways will more easily be able to compare the different international routes and thus to take advantage of competition between them. A common tariff structure that will be in force for several years also gives operators the stability they need to invest.

The Commission has decided to authorize the agreement for five years, and has attached conditions intended to ensure that combined transport operators are protected against abuse of the agreement on the part of the railways.

Mr Van Miert has reiterated his view that combined transport should play a greater part in the international transport of goods. The exemption decision which the Commission has adopted here is fully in line with that policy approach, which was reflected in the adoption of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways.

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### **The Commission Approves The Agreement On The Use Of The Channel Tunnel Concluded Between Eurotunnel, British Railways Board And Societe Nationale Des Chemins De Fer Francais**

IP/94/1202

Date: 1994-12-14

On a proposal from Mr Van Miert, the Commission has approved an agreement between Eurotunnel, the holder of the Channel Tunnel concession, and the British Railways Board (BR) and Société nationale des chemins de fer français (SNCF), two railways equipped to operate international trains.

The usage contract, which is concluded for 65 years, divides the Tunnel capacity into two: one half reserved for shuttle trains, operated so far exclusively by Eurotunnel, and the other half for passenger and freight trains linking the UK and the Continent.

Under the agreement, BR and SNCF are entitled throughout the term of the agreement to 50% of the total capacity of the Tunnel, i.e. 100% of the capacity reserved for international trains, unless they agree to surrender part of their entitlement, any withholding of such agreement requiring justification.

In return, BR and SNCF undertake to run as many passenger and freight trains as possible through the Tunnel and to pay Eurotunnel usage charges.

BR and SNCF are also to pay a proportion of the costs of maintaining and renewing the infrastructure. The railways have furthermore undertaken each to provide on their side of the Channel modern rail infrastructures enabling trains, and in particular high-speed trains, to operate between the UK and France.

The Commission takes the view that the division of Channel Tunnel capacity between shuttle services and international trains and the reservation of a large share of the hourly paths for BR and SNCF has the effect of restricting competition.

However, the positive aspects of the agreement also count. Construction of the Tunnel is a major investment, to be recouped over a very long period.

In this context, the undertakings on the part of BR and SNCF to operate as many trains as possible and to pay charges in a lump-sum form throughout the first 12 years make

a direct contribution to the project's financial equilibrium and ensure its success. They also represent important guarantees for the banks which are providing finance for the project.

Lastly, the agreement enables users to benefit directly from the introduction of new transport services from the opening of the Tunnel.

The Commission therefore takes the view that the agreement is likely to promote economic progress and should be authorized.

Conditions must, however, be attached to ensure that the restrictions of competition do not go beyond what is strictly necessary and that other rail enterprises can operate services in competition with BR and SNCF. In this connection, BR and SNCF have informed the Commission that they intend over the first 12 years effectively to use around 75% of the capacity reserved for international trains. The Commission has therefore made its exemption conditional on BR and SNCF allowing the infrastructure manager to use the hourly paths which they do not need, i.e. 25% of the Tunnel capacity reserved for international trains. These shares will be reviewed by the Commission after 12 years.

For the rest, the Commission considered that, having regard to the exceptional nature of the Channel Tunnel, the agreement could be exempted for 30 years.

By exempting the agreement and ensuring that BR and SNCF have the number of hourly paths they actually need, the Commission stresses the importance it attaches to the construction and financing of new transport infrastructures in Europe, while ensuring that competition between operators is not eliminated.

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## **Commission Imposes Fine On Deutsche Bahn For Abuse Of Dominant Position**

IP/94/259

Date: 1994-03-29

Competition: Articles 85 and 86

The Commission received a complaint that Deutsche Bahn was applying discriminatory pricing on the market for the rail transport of sea-borne containers. The complaint was lodged by HOV SVZ, an association of undertakings operating in the port of Rotterdam.

According to the complainant, Deutsche Bahn has for many years been using its monopoly on the market for rail services in Germany to impose cheaper rail transport tariffs, charged by the combined-transport operator Intercontainer, for the combined transport of sea-borne containers transiting through the German ports (Bremen and Hamburg) rather than through the Belgian and Dutch ports, so as to favour its own services.

The investigation carried out by the Commission bore out the complaint. In 1992, the prices per kilometre for the carriage of full containers from Rotterdam to Germany was higher (by as much as 42%) than the prices per kilometre from Hamburg. In the case of certain special trains, the price differences could be as much as 77% cheaper if carriage was carried out from Hamburg.

In the case of certain destinations within Germany, the price per kilometre is admittedly lower from Rotterdam than from Hamburg. However, such destinations are always much further from Rotterdam than from Hamburg. Consequently, the total price charged to the consignor remains lower from Hamburg. This means that the advantage in terms of price per kilometre enjoyed in such instances by Rotterdam has no practical effect on the market.

Such price differences are all the more unacceptable since, as the representatives of the relevant undertakings emphasized during the proceeding, competition from other means of transport is much fiercer on the western routes than on the northern routes, so that in overall terms prices should be lower on the western routes, contrary to the situation that actually applies. By imposing uncompetitive prices for rail transport via the western ports, DB has in fact encouraged consignors to use road transport, whereas the Community's policy and the policy of the Member States is on the contrary to promote the use of rail transport.

These practices have appreciably restricted competition, firstly, between the railway companies and the combined-transport operators serving the various routes and, secondly, between the German ports and other ports in the Community.

DB's conduct is an abuse of a dominant position, in breach of Article 86 of the EC Treaty. Although, at the time of the facts, the principle of DB's monopoly on its infrastructures was not at issue, it was none the less unacceptable for an undertaking that enjoyed statutory protection against any competitors to abuse its monopoly in order to promote its own activities and those of its subsidiary.

Furthermore, the practices at issue are designed to deflect trade and thus to segregate markets, which is contrary to one of the fundamental objectives of the Treaty.

DB's conduct also restricted competition between ports, mainly at the expense of Antwerp and Rotterdam, and mainly to the benefit of Hamburg.

Lastly, it should be emphasized that DB's management was fully aware of what it was doing in charging discriminatory prices and that the infringement was committed over a long period.

Consequently, the Commission has decided to impose a fine of 11 MECU on DB for infringement of Article 86.

In addition, DB concluded in 1988 an agreement with SNCB, Nederlandse Spoorwegen, Transfracht and Intercontainer, known as the "Maritime Container Network" agreement. The purpose of the agreement was the joint marketing (by DB, SNCB, NS, Transfracht and Intercontainer) of combined-transport services on the basis of a joint tariff grid. The agreement, which was a reaction to the discriminations imposed by DB, proved a disappointment to the parties, since it enabled DB to increase further the effects of its dominant position vis-à-vis its partners.

The agreement was terminated after the Commission sent its statement of objections. Accordingly, no fine is imposed for participation in the agreement, which infringed Article 85.

Mr Van Miert stresses that this decision is fully in line with the measures taken by the Council and the Commission to promote rail transport and combined transport. Such a policy means that consignors must be able to draw on the services of combined-transport operators that are competitive and able to provide efficient services on a European scale. It is therefore not acceptable for undertakings in a dominant position to abuse it so as to maximize their income by preventing combined-transport operators from offering more competitive prices, and for such undertakings thus to work against the general interest.

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### **The Commission Approves a Cooperation Agreement between Railway Undertakings to Operate Intermodal Services between the United Kingdom and the European Continent**

IP/94/762

Date: 1994-07-28

Article 85 of the EC Treaty

On a proposal from Mr Van Miert, the Commission has approved the agreement between British Railways, France's SNCF and Intercontainer on the formation of a joint subsidiary: "Allied Continental Intermodal Services Ltd." (ACI).

ACI's aim is to provide a rail transport service for road vehicles, containers, swap bodies and semi-trailers from terminal to terminal between the United Kingdom and destinations in Italy, Spain, Switzerland, Austria, Germany and France via the Channel Tunnel.

ACI will offer its services to shippers and possibly to other transport operators. BR and SNCF will provide ACI with the rail traction necessary to operate the combined transport trains. They have also undertaken to place at ACI's disposal a large number of special wagons suited for transport through the Channel Tunnel.

The Commission considers that this agreement has the effect of restricting competition between the undertakings in question and that it constitutes a barrier to the entry of other operators.

However, the positive aspects of the creation of ACI have also to be taken into account. It provides shippers with new wagons for an efficient, regular transport service as soon as the Tunnel becomes fully operational. In addition, the groupage of consignments by ACI is important to the future success of intermodal transport.

The Commission therefore considers that the agreement is likely to promote economic progress and should be approved.

However, it must be ensured that other transport operators can enter the market and compete with the undertakings in place. For this reason, the Commission has made its exemption conditional upon BR and SNCF selling to all operators the same essential rail services they have undertaken to sell to ACI, and to hire out any unused specialized wagons.

In exempting this agreement, the Commission stresses the importance it attaches to the development of intermodal transport, while at the same time ensuring that competition between operators is not distorted.

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## **Commission Authorizes Agreement Between Rail Companies On Carriage Of New Motor Vehicles**

IP/94/826

Date: 1994-09-08

Article 85 of the EEC Treaty

Acting on a proposal from Mr Van Miert, the Commission on 7 September 1994 authorized an agreement between thirteen European rail companies to set up a "Motor Vehicle Interest Grouping".

The grouping is based on a framework cooperation agreement between rail companies relating to the international carriage of new motor vehicles.

The objective of the rail companies is to create the conditions conducive to the increased use of rail transport for the carriage of motor vehicles between assembly plants and distribution centres.

In this context, the rail companies will together draw up primarily:

- the strategy to be followed on the relevant market;
- the marketing objectives;
- a common tariff structure.

Tariffs are set not by the grouping but, for each international route, by the companies directly involved.

In addition, the grouping does not provide any transport services directly: these are the sole responsibility of the rail companies.

The Commission took the view that the effect of this agreement was to restrict competition between rail companies but that the positive effects had also to be taken into account.

The agreement is such as to improve the quality and the organization of services and thus to promote the development of rail transport, as encouraged by the European Union.

Consequently, the Commission decided that the agreement should be exempted from the ban on restrictive practices.

In general, the Commission is of the opinion that rail transport is a particularly suitable form of transport for certain products, such as new motor vehicles leaving factories, and that its use should, therefore, be encouraged.

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### **Commission Gives Go-Ahead To An Agreement Between Railway Undertakings To Run Night Trains Through The Channel Tunnel**

IP/94/870

Date: 1994-09-22

On 21 September, on a proposal from Mr Van Miert, the Commission authorized an agreement between British Rail (BR), Deutsche Bahn (DB), Nederlandse Spoorwegen (NS) the Société Nationale des Chemins de Fer Français (SNCF) and the Société Nationale des Chemins de Fer Belges (SNCB), to run night passenger trains between the United Kingdom and the Continent.

They have set up a specialized subsidiary, European Night Services Ltd (ENS), to organize and run night train services to meet the needs of three kinds of passenger:



- business travellers who normally travel by air but may prefer a night rail service offering comfortable cabins, with a high level of service and timetables which fit in with business meetings;
- leisure travellers looking for a high level of comfort;
- leisure travellers looking for lower fares and willing to accept a lower level of comfort, and specifically reclining seats instead of beds.

ENS should, from 1995, be running one train per night in each direction on each of the following routes:

- London-Amsterdam
- London-Frankfurt/Dortmund
- Paris-Glasgow/Swansea
- Brussels-Glasgow/Plymouth.

ENS will not have its own locomotives but will purchase traction from the railway undertakings.

The Commission took the view that this agreement was likely to restrict competition between the parties to it and between them and other operators, who will be faced with an obstacle to entering the market in question.

However, such an agreement also has advantages for consumers. Both business and leisure travellers will clearly benefit from new high-quality rail services, and also from competition between these new services and air transport. The Commission has therefore decided to authorize the agreement for eight years.

In order not to prevent other operators from offering similar services, the Commission is requiring the railway undertakings to sell to them the rail services they have agreed to sell to their subsidiary, on the same terms.

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27 October, 1997