Applying competition rules to maritime transport

European Parliament resolution on the application of EC competition rules to maritime transport (2005/2033(INI))

The European Parliament,

– having regard to Articles 80, 81, 82, 83, 85 and 86 of the EC Treaty,


– having regard to the White Paper 'European Transport Policy for 2010: time to decide' (COM(2001)0370),

– having regard to the conclusions of the Presidency of the Lisbon European Council of 23 and 24 March 2000 asking the Commission 'to speed up liberalisation in areas such as gas, electricity, postal services and transport',

– having regard to Council Regulation (EEC) No 954/79\(^1\), which contains a framework for applying the Code of Conduct for Liner Conferences so as to be compatible with the EC Treaty,

– having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 (now Articles 81 and 82) of the Treaty to maritime transport\(^2\),

– having regard to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)\(^3\),

– having regard to Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)\(^4\),

– having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty\(^5\),

– having regard to the Commission discussion paper of 13 July 2005 on the review of Regulation (EEC) No 4056/86,

– having regard to the final report of the 'Economic Assistance Study on Liner Shipping' conducted by ICF Consulting on behalf of the Commission's Directorate-General for

\(^1\) OJ L 121, 17.5.1979, p. 1.
A. whereas European shipping is a sector which is constantly developing and operates in a particularly globalised and competitive market characterised by new forms of cooperation, mergers and alliances which are constantly transforming the circumstances and conditions of the market in maritime transport, and whereas there is a tendency towards concentrations in a number of large shipping companies,

B. whereas maritime transport has so far fallen into two major categories: (a) the liner services market, i.e. scheduled services and (b) the market in international tramp vessel services, i.e. non-scheduled services, and whereas the first category of liner services has since 1875 been organised according to the system of liner conferences, while the second category operates in a non-scheduled manner and freight rates are freely negotiated according to supply and demand,

C. whereas the stabilising role of conferences was recognised in the Code of Conduct for Liner Conferences of the United Nations Conference on Trade and Development,

D. whereas Regulation (EEC) No 4056/86 exempted conferences from the rules of

competition policy (Articles 81 and 82 of the Treaty), but allowed free trade, which means that substantive competition from outsiders is ensured, while international tramp vessel services and cabotage services (maritime transport services that take place exclusively between ports in one and the same Member State) are excluded from the Community competition implementing rules (Regulation (EC) No 1/2003),

E. whereas other forms of cooperation are already appearing, such as consortia of liner shipping companies, which are also the subject of a block exemption (Regulation (EC) No 823/2000, which has been amended, inter alia by Regulation (EC) No 611/2005\(^1\)); whereas, however, their scope is different because reference rates cannot be set under the regulation,

F. whereas the exemption for liner conferences which has been in effect for the last nineteen years has played a significant regulatory role in the development of international trade, and the present conference regime appears much more ‘liberal’ than in the past, while retaining the advantages of providing reliable liner services at competitive rates,

G. whereas over the period 1997 - 2004 there was a remarkable increase in the volume of international trade handled by major liner conference systems and a significant increase in the volume of such trade handled by minor conference systems (with some fluctuations),

H. whereas, as regards the review of Regulation (EEC) No 4056/86, the Commission concludes that:

(a) there is no further justification for exempting liner shipping conferences,

(b) there is no justification for the exclusion of tramp services and cabotage from the competition implementing rules,

(c) there is no valid reason for maintaining the provisions for technical agreements or the conflict of laws provision and proposes that they be abolished;

I. whereas a majority of the parties involved is in favour of a review of the existing regime with a view to achieving price stability, effective, high-quality services and the continued competitiveness of liner shipping companies and small and medium-sized shipping companies,

J. whereas an impact study was carried out by consulting firm Global Insight, on the Commission’s initiative, with a view to assessing the consequences which might ensue if the block exemption for liner conferences provided for in Regulation (EEC) No 4056/86 were to be repealed and replaced with a system based on the alternative proposal put forward by the ELAA;

General

1. Calls upon the Commission and all parties concerned to understand that the purpose of

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the review of Regulation (EEC) No 4056/86 should be to preserve, and promote the expansion of, a viable and competitive European shipping sector within the framework of the Lisbon Strategy in conjunction with transport policy strategy, as summarised in the White Paper and the Marco Polo I and the Marco Polo II programmes, and that it is vital to do so especially in view of the fact that new maritime powers have emerged, namely China, South Korea, and Taiwan;

2. Calls upon the Commission carefully to consider the consequences of a possible alternative system for the entire marine transport sector, namely members and non-members of liner conferences and their competitors (independent bodies) their customers (shippers) and the final consumers;

3. Notes that the conclusions of the study by Global Insight do not provide a solid basis for abolishing the block exemption for maritime conferences, as the shortcomings outlined in previous studies in terms of scope and data were not really dealt with in this latest study either; calls upon the Commission to take this into consideration in the framework of its new proposal and to discuss it with the circles concerned, with Parliament and with the Council;

4. Calls upon the Commission, in the event of amendment of Regulation (EEC) No 4056/86, to bear in mind existing legal and operating regimes in other countries (USA, Australia, Japan and Canada), since any misalignment of the European system in relation to those regimes might create destabilising socio-economic effects worldwide and lead to protectionist measures;

5. Emphasises the likelihood of adverse consequences in the event of a general overhaul of the system, not so much for large merchant shipping lines, but rather for small and medium-sized ones, and emphasises also that there is no evidence that the abolition of liner conferences will bring about a fall in prices;

6. Notes that full liberalisation involving the abolition of the exemptions for liner conferences provided for in Regulation (EEC) No 4056/86 will necessitate corresponding changes to Regulation (EC) No 823/2000, which was itself amended by Regulation (EC) No 611/2005, which provides for block exemptions for consortia of liner shipping companies;

7. Maintains that any regulation in the sector will need to allow for the nature of regions affected by specific constraints, for example regions of the type described in Article 299(2) of the Treaty, which depend on the continued provision of services with special characteristics;

8. Underscores, as far as they comply with Community competition law, the importance of an increasing number of forms of cooperation, such as framework agreements, by virtue of which carriers, whether or not they are members of conferences, are able flexibly to coordinate their competitive conduct on the market in relation to freight rates and other service conditions;

Liner conferences

9. Concludes, on the basis of the case-law of the Court of First Instance (Joined Cases T-
191/98, T-212/98 to T-214/98 Atlantic Container Line AB and Others v Commission,\(^1\) "the TACA case"), that the regulation of vessel capacity is permissible only if no artificial demand is created along with increases in freight rates and only if the power of conferences to fix freight rates has been significantly limited, the four cumulative conditions laid down in Article 81(3) of the Treaty thus being fulfilled, if only partially;

10. Points out that while Regulation (EEC) No 4056/86 endorses the system of closed conferences, it also allows free trade, which means that substantive competition from outsiders is ensured and that no further restrictions on competition from liner conferences is permitted;

11. Supports the Commission's intention to review - rather than repeal - Regulation (EEC) No 4056/86 with a view to ensuring compatibility with the rules of competition, chiefly by excluding the possibility of a direct fixing of freight prices and by authorising the fixing by the conferences of a reference price or a price index under an alternative system, in accordance with the case law of the European Court of Justice, and by ensuring that surcharges and associated costs are calculated transparently and after dialogue with shippers, and stresses that any such review must safeguard the stability of freight rates, the high quality of services and sound competition for all enterprises, whatever their size;

12. Takes the view that the proposal of the ELAA contains interesting points, including the introduction of a price index and the creation of discussion forums for carriers, shippers and other industry players, which should be taken up by the Commission, pursuant to competition rules, in drafting any amending regulation, and that any such new regulation might be made to come into force for a limited period of five years after the expiry of which an assessment would be carried out; takes the view that the Commission should examine the compliance of these points with the four cumulative conditions laid down in Article 81(3) of the Treaty;

13. Considers that, whichever alternative solution is chosen, a transitional period should be envisaged to enable all operators (carriers, shippers and other industry players) to adapt to the new regulatory framework;

14. Calls upon the Commission, within its terms of reference and on the basis of undertakings under the Code of Conduct for Liner Conferences to hold discussions with the other contracting parties before proposing amendment or repeal of Regulation (EEC) No 4056/86; believes that those discussions should seek to find the most appropriate method of adaptation for Member States (those than still have bilateral commitments under the Code of Conduct) to the possible new legal status, with a view to avoiding any adverse consequences;

**International tramp vessel and cabotage services**

15. Points out that the tramp sector remains overwhelmingly deregulated and operates on the basis of the rules of fair competition; supports the Commission proposal for these services to be brought within the scope of Regulation (EC) No 1/2003;

16. Considers it to be in the interests of legal certainty and clarity that the Commission should establish, in a single process, guidelines as regards the compatibility of bulk pools and

\(^1\) ECR [2003] II-3275.
specialised trades with the rules of competition, subject to the proviso, however, that it should not do so until the proposals have been published and consultations held with the circles concerned;

17. Points out that the cabotage services sector has already been deregulated pursuant to Regulation (EEC) No 3577/92; takes the view that given that these services are carried out between ports in one and the same Member State, intra-Community trade between the Member States is not affected (Articles 81 and 82 of the Treaty) and consequently there is no need or legal obligation for this sector to be brought within the scope of Regulation (EC) No 1/2003;

**Purely technical agreements**

18. Calls upon the Commission not to continue with the proposal to abolish the arrangements contained in Article 2 of Regulation (EEC) No 4056/86 governing the legality of technical agreements, since it believes that retaining a purely legal framework governing technical agreements will contribute to legal certainty and a better orientation for service providers;

**Conflict of laws**

19. Calls upon the Commission not to continue with the proposal to repeal Article 9 of Regulation (EEC) No 4056/86 which provides for negotiations to be held in the event of a conflict between Community law and the law of third countries, especially in view of the Commission's intention to revise competition law relating to maritime transport;

20. Instructs its President to forward this resolution to the Council and the Commission.