Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services (Text with EEA relevance)

COUNCIL REGULATION (EC) No 1419/2006

of 25 September 2006

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(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 83 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Whereas:

(1) Application of the rules on competition in the maritime transport sector has been subject to the provisions of Regulation (EEC) No 4056/86[(3)] since 1987. Regulation (EEC) No 4056/86 originally had two functions. Firstly, it contained procedural provisions for the enforcement of Community competition rules in the maritime transport sector. Secondly, it laid down certain specific substantive competition provisions for the maritime sector and notably a block exemption for liner shipping conferences, allowing them to fix prices and regulate capacity under certain conditions, the exclusion of purely technical agreements from the application of Article 81(1) of the Treaty and a procedure for dealing with conflicts of international law. It did not apply to maritime transport services between ports in one or to the same Member State (cabotage) and international tramp vessel services.

(2) 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[(4)] amended Regulation (EEC) No 4056/86 to bring maritime transport under the common competition enforcement rules applicable to all sectors with effect from 1 May 2004, with the exception of cabotage and international tramp vessel services. However, the specific

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1419/2006. (See end of Document for details)*

substantive competition provisions relating to the maritime sector continue to fall within the scope of Regulation (EEC) No 4056/86.

(3) The liner shipping conference block exemption provided for in Regulation (EEC) No 4056/86 exempts from the prohibition of Article 81(1) of the Treaty agreements, decisions and concerted practices of all or part of the members of one or more liner conferences which fulfil certain conditions. The justification for the block exemption in essence assumes that conferences bring stability, ensuring exporters reliable services which cannot be achieved by less restrictive means. However, a thorough review of the industry carried out by the Commission has demonstrated that liner shipping is not unique as its cost structure does not differ substantially from that of other industries. There is therefore no evidence that the industry needs to be protected from competition.

(4) The first condition for exemption under Article 81(3) requires that the restrictive agreement contributes to improving the production or distribution of goods or to promoting technical or economic progress. As regards the efficiencies generated by conferences, liner conferences are no longer able to enforce the conference tariff although they still manage to set charges and surcharges which are a part of the price of transport. There is also no evidence that the conference system leads to more stable freight rates or more reliable shipping services than would be the case in a fully competitive market. Conference members increasingly offer their services via individual service agreements entered into with individual exporters. In addition, conferences do not manage the carrying capacity that is available as this is an individual decision taken by each carrier. Under current market conditions price stability and the reliability of services are brought about by individual service agreements. The alleged causal link between the restrictions (price fixing and supply regulation) and the claimed efficiencies (reliable services) therefore appears too tenuous to meet the first condition of Article 81(3).

(5) The second condition for exemption under Article 81(3) is that consumers must be compensated for the negative effects resulting from the restriction of competition. In the case of hard core restrictions, such as horizontal price fixing which occur when the conference tariff is set and charges and surcharges are jointly fixed, the negative effects are very serious. However no clearly positive effects have been identified. Transport users consider that conferences operate for the benefit of the least efficient members and call for their abolishment. Conferences no longer fulfil the second condition of Article 81(3).

(6) The third condition for exemption under Article 81(3) is that the conduct must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of its objectives. Consortia are cooperative agreements between liner shipping lines that do not involve price fixing and are therefore less restrictive than conferences. Transport users consider them to provide adequate, reliable and efficient scheduled maritime services. In addition the use of individual service agreements has increased significantly in recent years. By definition, such individual service agreements do not restrict competition and provide benefits to exporters as they make it possible to tailor special services. Furthermore, because the price is established in

advance and does not fluctuate for a predetermined period (usually up to one year), service contracts can contribute to price stability. It has therefore not been established that the restrictions of competition permitted under Regulation (EEC) No 4056/86 (price fixing and capacity regulation) are indispensable for the provision of reliable shipping services to transport users as these can be achieved by less restrictive means. The third condition under Article 81(3) is therefore not satisfied.

(7) Finally, the fourth condition under Article 81(3) requires that the conference should remain subject to effective competitive constraints. In current market circumstances conferences are present in nearly all major trade lanes and they compete with carriers grouped in consortia and with independent lines. Whilst there may be price competition on the ocean freight rate due to the weakening of the conference system there is hardly any price competition with respect to the surcharges and ancillary charges. These are set by the conference and the same level of charges is often applied by non-conference carriers. In addition, carriers participate in conferences and consortia on the same trade, exchanging commercially sensitive information and cumulating the benefits of the conference (price fixing and capacity regulation) and of the consortia (operational cooperation for the provision of a joint service) block exemptions. Given the increasing number of links between carriers in the same trade, determining the extent to which conferences are subject to effective internal and external competition is a very complex exercise and one that can only be done on a case by case basis.

(8) Liner shipping conferences therefore no longer fulfil the four cumulative conditions for exemption under Article 81(3) of the Treaty and the block exemption in respect of such conferences should therefore be abolished.

(9) The exclusion from the prohibition of Article 81(1) of the Treaty of purely technical agreements and the procedure for dealing with conflicts of law which may arise are also redundant. Those provisions should therefore also be deleted.

(10) In the light of the above, Regulation (EEC) No 4056/86 should be repealed in its entirety.

(11) Liner conferences are tolerated in several jurisdictions. In this, as in other sectors, competition law is not applied in the same way worldwide. In light of the global nature of the liner shipping industry, the Commission should take the appropriate steps to advance the removal of the price fixing exemption for liner conferences that exist elsewhere whilst maintaining the exemption for operational cooperation between shipping lines grouped in consortia and alliances, in line with the recommendations of the OECD Secretariat in 2002.

(12) Cabotage and international tramp vessel services have been excluded from the rules implementing Articles 81 and 82 of the Treaty originally laid down in Regulation (EEC) No 4056/86 and subsequently in Regulation (EC) No 1/2003. They are currently the only remaining sectors to be excluded from the Community competition implementing rules. The lack of effective enforcement powers for these sectors is an anomaly from a regulatory point of view.

(13) The exclusion of tramp vessel services from Regulation (EC) No 1/2003 was based on the fact that rates for these services are freely negotiated on a case by case basis in