

July 2005

UNICE COMMENTS ON THE EUROPEAN COMMISSION'S WHITE PAPER ON THE REVIEW OF REGULATION 4056/86, APPLYING EC COMPETITION RULES TO MARITIME TRANSPORT

On 13th October 2004, the European Commission issued a White Paper on the review of Regulation 4056/86, applying the EC competition rules to maritime transport – COM (2004) 0675.

Given some of the response to these Commission proposals (and in particular the European Economic and Social Committee's response to the Commission's White Paper which was adopted in December 2004), UNICE believes that it is necessary that we elaborate our views, and those of our constituent member federations, on this issue.

SPECIFIC COMMENTS ON THE COMMISSION'S WHITE PAPER

UNICE would like to state categorically that it supports the conclusions outlined in the Commission's White Paper that there is "no conclusive economic evidence that the assumptions on which the block exemption was justified at the time of its adoption in 1986 are... still justified"¹ and we would fully support any future Commission proposal to "repeal the present block exemption for liner shipping conferences"².

The time has come to create a level playing field in respect of competition rules in the transport sector. The current Block Exemption for the liner shipping conferences – which allows for price fixing, supply regulation and the exclusion of some maritime services (such as cabotage) from normal competition rules is no longer in line with today's rules that govern competition in other modes of transport. These are practices which are either outlawed or are in the process of being outlawed in other transport sectors for very good reasons (i.e. they are distortions to competition) and as such should be outlawed in the maritime sector as well.

In addition UNICE would also support proposals to bring "maritime cabotage and tramp vessel services within the scope of Regulation 1/2003"³, for the same reason (i.e. there is no logical justification for their not falling under the normal competition rules that apply to other transport sectors) and to repeal both the "provision on technical agreements laid down by Article 2 of Regulation 4056/86"⁴ and Article 9 (conflicts of laws) of the same regulation. UNICE also calls upon the Commission to consider the global nature of maritime transport (like aviation) when determining the future rules.

¹ White Paper on the review of Regulation 4056/86, applying the EC competition rules to maritime transport, European Commission, Brussels, 13 October 2004, page 9, paragraph 30 (a);

² *Ibid*;

³ *Ibid*, paragraph 30 (c);

⁴ *Ibid*, paragraph 30 (d);

POSSIBLE ALTERNATIVES TO THE REPEAL OF REGULATION 4056/86

The Liner Shipping Conferences (through the representative body: the ELAA) has proposed a number of mechanisms which they believe could replace Regulation 4056/86. These include replacing the existing regulation with what amounts to a system of exchanging of information, a common discussion forum, a price index etc. We do not believe that these proposals have any merit and we firmly believe that they should not be seriously considered.

It is the experience of the shippers that proposals such as these will not change anything. When asked whether there has ever been discussion between the two sides and what the outcome has been, shippers have responded that discussion has “not been very useful”, that “history shows that these discussions were pointless” and that what is required is “increased competition, operating in a free market”. When asked in the recent Commission consultation “If liner conferences in their present form (as defined in Regulation 4056/86) would cease to exist on trades to and from the EU, would you feel a need for an alternative from co-operation between shipping lines on those trades to replace the present conference system?”, shippers responses varied from a plain: “no” to “not needed” to “why?”.

“Increased competition... focusing on customer relations... [and] an open business concept rather than protection through regulation”⁵ is what the customers of the Liner Shipping Conference’s believe is required to ensure a healthy competitive maritime sector in Europe, not more regulation.

CONCLUSION

UNICE is the leading independent organisation representing European business. We speak for more than 20 million companies, the vast majority of which are small and medium-sized. Altogether, these companies provide employment for more than 110 million people and have a total turnover of around €18,000 billion. As such, when commenting on this White Paper, UNICE is commenting on proposals that directly affect our constituents the most. With reference to this proposal UNICE’s Member Federations are of the opinion that the existing block exemption for liner shipping conferences should be repealed.

The Commission itself has said that there is no economic justification for its continued existence. What is more, a system which is not responsive to market trends and the needs of industry in the Europe of today cannot in the long run expect to survive and prosper. Practices which act as barriers to trade, inflate prices and threaten the sustainability of international services are as unacceptable in the maritime sector as they are in every other branches of Europe’s transport infrastructure and have no place in an EU of 25+. At a time when the European Commission and Member States are attempting to encourage modal shift and encourage short sea shipping, the 4056/86 block exemption undermines their efforts and should be dispensed with as soon as is possible.

* * *

⁵ All quotations have been taken from shippers responses received in relation to the "Consultation Paper on the Review of Council Regulation 4056/86 located at: http://europa.eu.int/comm/competition/antitrust/review/marine_transport_comments.html.