

## **International Chamber of Shipping**

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Directorate-General for Competition  
European Commission  
Unit D2 (transport)  
White Paper on Maritime Review

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### **“White paper” on the Review of Regulation 4056/86, applying the EC Competition Rules to Maritime Transport**

#### **Comments by the International Chamber of Shipping**

1. The International Chamber of Shipping (ICS) appreciates the opportunity to comment on the Commission’s “white paper” published in October. ICS is the international trade association for the shipping industry representing all sectors and trades, including international containership operators, “tramp” ship operators (oil tankers, chemical tankers, dry bulk carriers and specialist ships) based inside and outside the European Union. ICS membership comprises national shipowners’ associations from 38 countries, including most of the EU Member States engaged in maritime trade.

#### **Liner shipping**

2. As stated during the Consultation exercise in 2003, ICS still believes that liner conferences have had a stabilising effect on volatile and cyclical shipping markets, assuring reliable services for shippers, while contributing to the provision of adequate and reliable maritime transport that has underpinned the rapid expansion of world trade.
3. ICS also reiterates that the existing block exemption for liner conferences from EU competition law, contained in Regulation 4056/86 (as currently

applied in the light of recent legal decisions), is broadly in alignment with the various maritime competition regimes that currently exist elsewhere in the world today.

4. The above notwithstanding, however, the preference of the European Commission to abolish the block exemption, as contained in the “white paper” published in October, is noted. The willingness of the European Commission to explore options for an alternative regime that might preserve some of the advantages of current arrangements is welcome.
5. However, if the preservation of the status quo is not deemed to be acceptable by the Commission, a regime along the lines of that proposed by the European Liner Affairs Association could, **as a minimum**, be accepted as an alternative.
6. ICS is concerned that the “white paper” does not appear to examine the following issues sufficiently:
  - the international implications at the regulatory level of abolishing conferences, such as existing treaty commitments of the EU and its Member States, e.g. those arising from the UNCTAD Convention on a Code of Conduct for Liner Conferences, 1974 (the basic legal instrument governing liner trades worldwide and which several EU Member States might need to renounce), other bilateral agreements that may exist, or the offers already made by the EU in the context of the WTO negotiations covering maritime transport services.
  - the economic consequences for non-EU shipping lines trading to Europe, both inside and outside of the existing conferences involved in European trade; and
  - most importantly, the wider effects on the trade and economies of non-EU trade partners, which have depended on the availability and reliability of liner services that have been facilitated by conferences.
7. The shipping industry notes with concern that in section 8 of the “white paper” (Conflict of Laws) the Commission concludes that the retention of provisions similar in scope to Article 9 of Regulation 4056/86, which provides for the possibility of negotiations with non-EU countries in the event of a conflict of laws, is unnecessary. While the Commission states that no conflicts of law arose under the application of 4056/86, any new regime adopted by Europe could represent a major departure from the regimes that exist in the rest of the world. The abolition of conferences, and the conflict with the UN Liner Code and other agreements that could result, would seem to require negotiations with the EU’s trade partners. In view of the critical importance to world trade of maritime transport, and uncertainty about possible future

developments outside the EU concerning maritime competition regulation, it would seem prudent to maintain a provision similar to the current Article 9.

8. To conclude, before any firm decision is taken to remove the current block exemption for liner conferences from EU competition law, ICS believes it will be critically important for the Commission to conduct the necessary legal and economic research on the issues referred to above, not least the implications for existing international commitments of the EU and its Member States, which may require negotiation with the EU's trading partners.

### **Tramp shipping**

9. ICS notes the proposal by the Commission to bring tramp vessel services within the scope of the general enforcement rules of Regulation 1/2003, and wishes to associate fully with the comments on the "white paper" being submitted by the European Community Shipowners' Association (ECSA).
10. ICS is encouraged to note that the Commission has responded to the industry's request "to provide the tramp industry with some guidance on the implementation of competition rules to this sector". ICS looks forward to continuing dialogue between the industry and the Commission about the form such guidance might take, following on from the report prepared in early 2004 by Clarkson Research Studies (commissioned by ECSA and ICS) to explain to the Commission how the non-liner trades operate.