

WORKING PAPER OF DGIV:

REPORT ON COMMISSION REGULATION NO 870/95

LINER SHIPPING CONSORTIA

1.	INTRODUCTION	1
2.	ADOPTION BY THE COMMISSION OF REGULATION 870/95	2
2.1.	The need for a consortia regulation.....	2
2.2.	The Council enabling Regulation.....	4
2.3.	The draft Commission Regulation.....	5
2.4.	Observations of third parties	8
2.5.	Regulation 870/95	9
3.	RELATIONSHIP BETWEEN REGULATIONS 4056/86 AND 870/95	12
4.	APPLICATION OF THE REGULATION.....	12
4.1.	List of decisions.....	12
4.2.	Points of interpretation arising in the course of applying the Regulation	12
5.	POLICY OPTIONS	21
5.1.	Renewal without modification.....	21
5.2.	Renewal with modification	21
5.3.	Non-renewal.....	23
6.	CONCLUSIONS AND PROPOSALS	23

1. INTRODUCTION

1. On 22 December 1986, the Council adopted Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport¹. The Regulation also granted a block exemption for certain practices of liner conferences. At the time of adopting Regulation 4056/86, the Council invited the Commission to study liner shipping consortia and consider whether it was necessary to submit new proposals in this field.
2. The Commission presented a communication and report to the Council in June 1990² favouring the adoption of a new block exemption for consortia agreements. The objective of consortia agreements, which are in effect joint ventures between two or more vessel operating carriers, is to bring about co-operation between the parties so as to improve the productivity and quality of the liner shipping service, and to encourage greater utilisation of the containers and the more efficient use of vessel capacity.
3. On 20 April 1995, the Commission adopted Commission Regulation (EEC) No 870/95 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92³. Regulation 870/95

1 OJ L 378, 31.12.1986, p. 4.

2 COM 90 (260) final of 18.6.1990.

3 OJ L 89, 21.4.1995, p. 7.

came into force on 22 April 1995 and is valid for a period of five years starting from the day following its publication in the Official Journal. That period expires on 22 April 2000.

4. This Report assesses the various policy options available to the Commission when the Regulation expires. These are, in no particular order: renewal without modification, renewal with modification and non-renewal. To assist in the making of this assessment, this Report analyses the background to the adoption of Regulation 870/95 including the policy options taken at that time as well as the lessons which have been learnt in applying the Regulation since it came into effect.
5. In the first section of the Report the history of the adoption of the Regulation is explained, along with the reasons for including certain provisions. The Report also examines the relationship between Regulation 870/95 and Regulation 4056/86. The practical aspects of implementation are looked at in the middle section, with an analysis of the notifications received and specific legal issues raised so far during the life of the Regulation. The final section of the Report outlines the options open to the Commission and the procedural steps which would be necessary to adopt a revised regulation.

2. ADOPTION BY THE COMMISSION OF REGULATION 870/95

2.1. The need for a consortia regulation

6. At the time of the adoption of Regulation 4056/86, the Commission undertook an extensive examination of consortium arrangements, following a request from the Council. Shipping lines were called on to provide information and give some examples of their consortia agreements.
7. The Commission had become increasingly aware of developments and structural changes in the liner shipping sector. The end of the 1960s had seen the start of the development of container services and since then there has been a need for capital investment in new vessels and containers. This has in turn led to increasing co-operation between shipping lines.
8. From its research, the Commission became aware that the nature of co-operative arrangements ranges from, on the one hand, slot charter agreements (which do not qualify as consortia and will be examined later) to, on the other hand, highly integrated joint ventures where the parties provide a joint service and also co-operate in the joint use of terminal facilities, revenue or equipment pools and joint marketing of the service whilst, at the same time, maintaining their separate legal identities.
9. The Commission recognised that this form of co-operation usually leads to substantial economies of scale which in turn lead to lower prices for consumers. In addition, co-operation between shipping lines enables them to rationalise and develop a regular sailing timetable, usually weekly, which benefits shippers. Accordingly, although most consortia agreements restrict competition within the meaning of Article 85(1), the Commission concluded that the benefits generally outweigh the drawbacks
10. A hearing was organised by the Commission in June 1986 where members of the shipping industry and representatives of the Member States met in order to clarify the

answers to an earlier questionnaire set by the Commission. An interim report, submitted to the Council by the Commission in January 1988, concluded that the Commission did not yet have sufficient information to proceed with the presentation of a formal report. Consequently, a second request for information was made to the industry. A Commission report entitled "Measures to improve the operating conditions of Community shipping" was submitted to the Council in August 1989⁴. The Council called for the need to clarify the position of consortia with regard to competition rules.

11. At that point the Commission had three options. First, the European Community Shipowners' Association (ECSA) and the Council of European and Japanese National Shipowners' Associations (CENSA) argued that it would be far easier and less complex for all concerned simply to amend Regulation 4056/86 as this would guarantee a consistent approach to consortia and conferences.
12. Secondly, the European Shippers' Council (ESC) considered that consortia have objectives distinct from those of conferences. Accordingly, a new Regulation would be necessary to deal with the specific characteristics of consortia.
13. The third option reflected the views of those who believed that because of the wide variety of consortia agreements it would be difficult to draw up a block exemption to incorporate the majority of consortia agreements and therefore the Commission should only grant individual exemptions.
14. In June 1990, the Commission, using the additional information provided by the shipping lines, produced a working report.⁵ The working report focused on the possibility of a separate block exemption for consortia agreements. The working report found that consortia do indeed have a different structure and objectives to a conference agreement because their primary objective is the rationalisation of the service by reducing or withdrawing capacity. Co-operation is maintained at an operational level in order to achieve this goal.
15. Consortia are, therefore, more than purely technical agreements whose sole objective is to achieve technical improvements or technical co-operation (as defined in Article 2 of Regulation 4056/86). Nor are they mergers as the parties remain free to join other consortia or act independently on other routes.⁶ Consortia may, however, restrict competition between the parties to the agreement on the provision of capacity, sailing schedules, marketing, and inland operations. These restrictions go beyond the scope of application of the block exemption for liner conferences contained in Article 3 of Regulation 4056/86.
16. The working report concluded:

4 COM (89) 266 final of 3.8.1989.

5 COM (90) 260 final of 18.6.1990.

6 More recently, the Commission has stated that Art. 3(2) of the Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (as amended by Regulation (EC) No 1310/97) does not apply to consortia in the liner trades sector. See Commission statement for the Council Minutes, 9296/97 ADD 1, 20 June 1997, reproduced in *Merger control law in the European Union, Situation in March 1998*, at page 66.

*"It follows that consortia agreements which restrict competition and affect trade between Member States must, if they are not to be considered null and void in accordance with Article 85(2) of the Treaty, be covered either by an individual or block exemption."*⁷

17. The most appropriate option for administrative purposes was judged to be a block exemption, particularly in view of the variety of consortia agreements and the fact that consortia are in effect a specialised form of a joint venture. It has always proved difficult in the past to lay down generally applicable competition law rules for joint ventures since they vary widely in nature.
18. The Commission did, however, find a number of common features amongst consortia agreements, namely, joint sailing schedules, joint depots, slot charter agreements, joint terminal arrangements, revenue pools, joint marketing, multiple membership of consortia and a high proportion of consortia operating within conferences. On that basis a proposal for a Council Regulation on the application of Article 85(3) of the Treaty to these types of agreement was annexed to the working report.

2.2. The Council enabling Regulation

19. The purpose of the Council enabling regulation proposed by the Commission was to establish the scope of the proposed block exemption by setting out the definition of a consortium and explaining that the application of the intended regulation was without prejudice to the application of Regulation 4056/86. The working document of the Commission recommended the duration of the proposed regulation and put forward an idea of the obligations and conditions which would attach to the block exemption.
20. Under the draft enabling regulation, the task of defining the scope and application of the proposed block exemption was delegated to the Commission, which was required to take into account the opinions of the European Parliament and the Economic and Social Committee and consult the Advisory Committee of the Member States.
21. According to Article 1 of the draft enabling regulation, the fact that most consortia offer a multimodal service meant that the proposed Regulation would be based on Regulation 4056/86, Regulation 1017/68 and Regulation 17. This would also enable the Commission to clarify the position of multimodal transport under competition law.
22. The Economic and Social Committee was consulted on the draft enabling regulation, as required by the procedural rules. The opinion of the Committee was duly published in March 1991⁸ in which it endorsed the Commission's positive evaluation of consortia and emphasised the need for legislation on two counts. First, to guarantee competition whilst avoiding bureaucracy - the Committee maintained that this was especially important as consortia are replacing conferences as the predominant form of industrial organisation in the liner shipping sector. Secondly, since the development of consortia

⁷ It is interesting to note that, notwithstanding this clear expression of the Commission's understanding of the legal position, not a single consortium was notified for individual exemption prior to the coming into effect of the block exemption regulation.

⁸ OJ C 69, 18.3.1991, p. 16.

is recent and given the structural changes in the shipping world, the Committee considered that the Commission should be careful in drafting legislation.

23. The Economic and Social Committee favoured the option of a new independent block exemption in view of the fact that consortia are fundamentally different from conferences both in structure and in operation. It also called for further clarification of the proposed conditions of the block exemption. In addition, the Committee objected to the proposed legal basis of the block exemption which was Article 87 alone, in contrast to Regulation 4056/86 which is based both on Articles 87 and 84. The Committee argued that this dual legal basis was necessary as the proposed block exemption combined both transport and competition law aspects.
24. The European Parliament, in its opinion on the Commission's draft⁹, also requested the inclusion of Article 84 as a second legal basis for the Regulation and suggested that the life of the Regulation should be five years.
25. The principle objection of both the European Parliament and the Economic and Social Committee was the inclusion of multimodal transport within the scope of the regulation. In their opinion, such a complex area should not be resolved within the context of a regulation addressing consortia but should be examined in greater detail as a separate issue.
26. These comments were noted by the Commission and a new proposal for an enabling regulation was submitted to the Council incorporating a number of the amendments suggested by the European Parliament and the Economic and Social Committee, in particular the exclusion of multimodal transport from the proposed regulation.
27. The enabling Regulation 479/92 was formally adopted by the Council on 25 February 1992¹⁰. Unlike Regulation 4056/86 which has a dual legal basis of Articles 84(2) and 87 of the Treaty, Regulation 479/92 refers only to Article 87. The Regulation formally delegated power to the Commission to authorise and institute a new block exemption and set out the scope of the proposed Commission regulation. The scope and intention of the new block exemption had been clearly defined and accepted by the numerous institutional bodies. The importance of this first draft lay in defining the nature of conditions and obligations falling on consortia coming within the block exemption.
28. Under Article 5 of the enabling Regulation, the Advisory Committee on Agreements and Dominant Positions in Maritime Transport must be consulted on the draft Commission regulation.

2.3. The draft Commission Regulation

29. The draft block exemption regulation was published on 1 March 1994¹¹ in accordance with Article 4 of the enabling Regulation, for the observations of the European

9 OJ C 305, 25.11.1991, p. 39.

10 Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) OJ No L 55, 29.2.1992, p. 3.

11 OJ C 63. 1.3.1994, p. 8.

Parliament, the Economic and Social Committee and the comments of third parties. The opinions of the Parliament¹² and the Economic and Social Committee¹³ were published in the Official Journal.

30. The idea behind the draft Commission regulation was to create a framework which would give shipping lines commercial flexibility whilst ensuring that shippers received a fair share of the benefits. The regulation's framework was intended to reflect the wide variety of consortia agreements and the fact that they are frequently amended to incorporate new members or working practices.
31. This reasoning led the Commission to discard the orthodox framework of a black list of prohibited clauses and a white list of exempted activities, in favour of a more accommodating structure which exempts all agreements whose objective is the joint operation of liner shipping services, provided that they fulfil the conditions and obligations set out in the regulation.
32. The main provisions of the draft Commission regulation were as follows.
33. Articles 1 and 2 set out the definitions used in the draft regulation and the scope of application of the regulation.
34. Article 3 listed the following activities which would be exempted pursuant to Article 85(3):
 - (a) the co-ordination and/or joint fixing of sailing timetables,
the exchange of space or slots on vessels,
the pooling of vessels and/or installations,
a joint operations office,
the provision of containers and/or container rental contracts,
 - (b) the joint operation of port terminals and related contracts (e.g. stevedoring contracts),
 - (c) participation in a tonnage and/or revenue pool,
 - (d) the joint exercise of voting rights held by the consortium in a conference within which its members operate where the vote concerns the consortium's activities,
 - (e) the joint marketing and/or the issues of a joint bill of lading.
35. According to Article 3, the exemption would not apply to a consortium when either the consortium or its members were parties to arrangements entailing a significant limitation or a significant reduction in the use of capacity except where there was a reduction in capacity in order to adjust to a seasonal or cyclical change in demand or to permit the introduction of more efficient vessels.

12 EP Report of the Transport and Tourism Committee A3-0220/94, 7/4/94.

13 CES 562/94, 27.4.94.

36. Article 5 stated that the consortium needed to come within one of the following situations if the agreement was to benefit from the exemption:
- there was effective competition in terms of price within the consortium itself by virtue of the fact that the individual lines were free to apply independent rate action to any freight rate in the conference tariff;
 - there existed within the conference in which the consortium operated a sufficient degree of competition between the conference members in terms of the service offered since the conference allowed the individual lines to offer individual service arrangements;
 - that the members of the consortium were subject to "effective competition, actual or potential" from other shipping lines which were not members of the consortium.
37. Articles 6 and 7 set out the conditions relating to trade share, that is the maximum share of trade that a consortium could have to obtain the benefit of the block exemption. Three levels of trade share were distinguished:
- a trade share of 30% or 35% (depending on whether it was operating within a conference) which would mean a consortium was automatically exempt.
 - a trade share of between 30/35% and 50% which would allow a consortium to apply for exemption under a simplified opposition procedure .
 - a trade share in excess of 50% which would require a consortium to seek an individual exemption.
38. Article 7 also provided that the benefit of the opposition procedure could not be claimed where the consortium had more than six shipping line members
39. Article 8 set out a number of conditions attaching to the exemption, such as the freedom for consortium members to offer individual service arrangements, and limits on the duration of notice periods for leaving a consortium benefiting from the block exemption. The Commission considered that, for the majority of consortia, six months' notice following an initial period of eighteen months constituted a reasonable balance between the restrictive nature of such a notice period and the need for the members of a consortium to plan their activities. However, where the consortium was highly integrated, the initial period would be extended to twenty-four months.
40. Article 8 contained an obligation, similar to the provision in Article 4 of Regulation 4056/86, not to discriminate between ports within the Community unless it can be economically justified.
41. Article 9 attached various obligations relating to consultation between the shipping lines and the transport users.
42. Article 12 gave the Commission powers to withdraw the benefit of the block exemption and Article 13 contained various "grandfather" provisions relating to consortia agreements in effect on the date of coming into force of the regulation.

2.4. Observations of third parties

43. Thirty-nine third parties, including governments of non-Member States, submitted observations on the draft Commission regulation. Comments were focused principally on the following issues:
- ancillary restrictions of competition,
 - capacity non-utilisation,
 - trade share limitations,
 - the limit on the number of shipping line members,
 - the duration of the permitted periods of notice.
44. A number of third parties pointed to the legal uncertainty surrounding the exact definition of ancillary services especially in relation to the provision of multimodal transport services given the fact that ancillary services are governed by Regulation 17. It was suggested that this difficulty might be overcome by including, in the list of exempted activities, an express provision relating to ancillary restrictions of competition.
45. It was argued, in relation to the non-applicability of the exemption if the consortium engages in certain capacity management activities, that surplus capacity can occur for a number of reasons even when demand is stable. Moreover, a more common cause of over-capacity was a decline in the rate of growth of demand falling short of the estimated levels, thus rendering meaningless the reference to capacity adjusted in accordance with seasonal demand. The Commission was also accused of seeking to punish members of consortia who are at the same time members of a conference which is operating a capacity management programme.
46. Many of the third parties argued that either no, or significantly more lenient, trade or market share limitations should be imposed on consortia wishing to qualify for the benefit of the block exemption. Several reasons were put forward for this view. These included the reasons that Regulation 4056/86 contains no such limitations and the consortia block exemption regulation should adopt the same approach; that there are practical difficulties in calculating trade or market shares; and that certain consortia might seek to reduce their trade or market shares so as to fall within the scope of the block exemption thereby disadvantaging shippers.
47. It was also pointed out that in any event the draft regulation included the power for the Commission to withdraw the benefit of the block exemption in an individual case and a trade or market share limitation was therefore unnecessary.
48. The limitation on the number of shipping lines if a consortium wished to benefit from the opposition procedure (six) was also criticised on the grounds that in a highly fragmented market several lines may only hold a small proportion of the market share. The requirement therefore constituted an inaccurate measure of the parties' market power.

49. As far as limitations on notice periods were concerned, it was suggested that many consortia involve substantial investments and that short notice periods would discourage the formation of new consortia.

2.5. Regulation 870/95¹⁴

50. Commission Regulation 870/95 was adopted on 20 April 1995. The purpose of the Regulation is explained in Recitals 4 and 6.

"to clarify the conditions to be met by the consortia in order to benefit from the block exemption" and

"to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity:"

51. A broad definition of consortia is given in Article 1 and Recitals 1 to 5 ranging from the highly integrated to those agreements where co-operation is minimal, sometimes referred to as technical agreements. The purpose of such a broad definition was to include agreements which cover vessel, equipment and terminal rationalisation agreements. Article 1 of the Regulation defines a consortium as:

"an agreement between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade and the object of which is to bring about co-operation in the joint operation of a maritime transport service, which improves the service which would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial arrangements, with the exception of price-fixing."

52. Passenger or tramp services are excluded from this definition but the use of the expression "chiefly by container" means that consortia operating ro-ro and semi-container vessels fall within the scope of the Regulation. Arrangements which include price fixing agreements are expressly excluded although Recital 8 makes clear that this provision does not prevent consortium members from being members of liner conferences.

53. Recital 22 states that the Regulation does not extend to agreements between a consortium and a non-conference line operating in the same trade. This clarification was added in order to avoid those problems of interpretation which arose pursuant to Regulation 4056/86 relating to "Tolerated Outsider Agreements".

54. The scope of the application of the Regulation is limited, under Article 2, to those liner transport services which operate to or from a Community port and does not include agreements between shipowners offering cabotage services.

55. An exhaustive list of exempted activities is found under Article 3. These activities were found to be the most common among consortia agreements which satisfied the

¹⁴ See Eric Van Ginderachter and Serge Durande, *EC Regulation 870/95: The Consortia Block Exemption*, European Transport law Vol. XXXVI No. 2 – 1996 ("EMLO 3"), p. 241-264; Mark Clough, *The Devil and the Deep Blue Sea (EC Competition law and Liner Shipping Consortia)*, [1995] 7 ECLR 417-427.

conditions of Article 85(3). A provision was added in the list of exempted activities, to include "any other activity ancillary to those referred to above in points (a) to (f) which is necessary for their implementation" (paragraph (g)).

56. Article 3(2)(b), which should be read in conjunction with Article 4 and Recital 7, permits some temporary capacity adjustments for example in response to a seasonal fall in demand. This accords with the actual premise of consortia which is to rationalise the service offered. Article 4 provides for the non-applicability of the block exemption for any agreement which seeks to freeze the use of a fixed percentage of capacity by members of the consortium.
57. This provision was included so as to avoid the possibility of an agreement similar to the TAA which was prohibited by the Commission in October 1994¹⁵. Such capacity programmes are not common to consortia and are therefore prohibited as they are under Regulation 4056/86. If the Regulation did not expressly provide for the non-applicability for the block exemption in the case of such capacity non-utilisation agreements, those consortia operating within a conference might have been able to exploit a legal loophole so as to benefit from the consortia block exemption to authorise a capacity management scheme which would be prohibited under Regulation 4056/86.
58. The conditions relating to trade share are laid down in Article 6 and Recitals 16 and 17. Since the Regulation must accommodate a wide variety of consortia agreements, the Commission felt that the most appropriate and balanced way of measuring competition was to examine the level of trade share held by the consortium as a whole: it did not seek to cap the level of trade held by the consortium.
59. Thus a consortium whose trade share increases and as a result exceeds one of the thresholds, will not be obliged to reduce their trade share or employ a capacity management scheme in order to bring their trade share below the thresholds. On this basis, Articles 6 and 7 set out the maximum share of trade under which a consortium may obtain the benefit of the block exemption.
60. Following this premise of flexibility, three levels of trade have been distinguished each one with a different legal consequence. There is also a guarantee that consortia which have been exempted do not eliminate competition for the services in question. Guidance on the calculation of the trade share and legal consequences for each trade share division are described in Recitals 16 to 21.
61. Any consortium with a trade share below 30% (if within a conference) or 35% (if operating outside a conference) shall automatically be exempt if it fulfils all the other conditions of the Regulation. The distinction between consortia within and outside a conference is based on the view that the former are agreements superimposed onto an already existing restrictive conference agreement operating within the trade.

15 Commission Decision 94/980/EC of 19 October 1994 (IV/34.446 – Trans-Atlantic Agreement) OJ L 376, 31.12.1994, p. 1. The Commission decided in that case that a capacity management programme such as the one established by the TAA parties did not comply with Article 3(d) of Regulation 4056/86 which exempts from the prohibition laid down in Article 85(1) of the EC Treaty conference agreements which have as their objective the fixing of rates and conditions of carriage and “the regulation of the carrying capacity offered by each member”.

62. A "margin of tolerance" of 10% allows the continued application of the block exemption for any period of two consecutive years where the prescribed market share is not exceeded by more than one-tenth. If the margin is exceeded then the consortium will continue to enjoy the benefit of the block exemption for a further six months from the end of the calendar year in which the threshold was passed. After this time the parties are obliged to notify their agreement under the opposition procedure in Article 7 of the Regulation.
63. Article 7 provides for an opposition procedure under which a consortium whose trade share is above 30% or 35% (depending on whether it operates within or outside a conference) but below 50% may benefit from the block exemption on condition that it is notified to the Commission and that the Commission does not oppose exemption within six months of the notification. This opposition procedure is similar to that contained in several of the other block exemption regulations¹⁶. It is less complicated and time-consuming than the objections procedure under Article 12 of Regulation 4056/86 where the Commission is obliged to publish a summary of the notification.
64. In the case of a consortium with a trade share above 50%, an individual exemption is required. The agreement must be notified under Article 12 of Regulation 4056/86 and, if it includes inland activities, Article 12 of 1017/68.
65. Article 8 of Regulation 870/95 sets out additional conditions, so for example the consortium must preserve the right of each individual line to offer individual service arrangements. Article 8(2) stipulates that the consortium agreement must allow an individual line to withdraw from the agreement following a six-month notice period. This serves to ensure that the trade is kept flexible and therefore as competitive as possible.
66. Article 9 obliges the consortium to institute "real and effective" consultations between the consortium and the shippers or other transport representatives. Following comments over the precise meaning of "real and effective" the Commission drafted further details as to the nature and scope of these discussions and concluded that they should be restricted to discussing those matters relating to the operations of the consortium service and not conference-related issues.
67. Article 10 includes an exemption for agreements, between transport users and consortia exempted under Article 3, which concern the use of scheduled maritime transport services, when they are based on the consultations envisaged in Article 9.
68. Article 12 retains the right of the Commission to withdraw the block exemption from any consortium exempted under the Regulation which is, nevertheless, found not to comply with the requirements of Article 85(3) or which is prohibited by Article 86.

¹⁶ The opposition procedure can also be found in the block exemptions for franchise agreements (Art. 6 of Reg. 4087/88), specialisation agreements (Art. 4 of Reg. 417/85), R & D agreements (Art. 7 of Reg. 418/85), and technology transfer agreements (Art. 4 of Reg. 240/96). The technology transfer Reg. 240/96 provides for a period of four months in which the Commission can oppose; the others six months.

69. Finally, under Article 13, consortia with a trade share in excess of 50% which were operational at the time of the implementation of the Regulation and which amend their agreement within 6 months of the implementation of the Regulation so as to fulfil the conditions of the Regulation may also benefit from the opposition procedure by way of a "grandfather" provision described in Recitals 28 and 29.

3. RELATIONSHIP BETWEEN REGULATIONS 4056/86 AND 870/95

70. A number of questions have arisen as to the relationship between Regulation 4056/86 and Regulation 870/95, in particular regarding the circumstances under which liner shipping companies can benefit from both block exemptions. There have also been questions concerning the choice of regulation under which agreements should be notified and the consequences of such a choice.
71. Recital 8 to Regulation 870/95 states that the block exemption applies to both consortia operating within and outside a conference except as regards price-fixing of freight rates. A consortium operating within a conference can apply for exemption under Regulation 4056/86, while a consortium operating outside a conference which wishes to fix rates but fails to fulfil the conditions for the block exemption contained in Regulation 4056/86 must apply for an individual exemption (Recital 9). This avoids the possibility of consortia operating outside a conference being put at a disadvantage in comparison to those consortia operating within a conference.
72. As mentioned above, one of the conditions attached to the exemption under Article 9 of Regulation 870/95 is the obligation to hold consultations with the shippers and transport users; these consultations are restricted to those issues relating directly to the consortium service.

4. APPLICATION OF THE REGULATION

4.1. List of decisions

73. A list of decisions and comfort letters is attached as Annex 2.

4.2. Points of interpretation arising in the course of applying the Regulation

74. In the course of applying the Regulation, the services of the Commission have been asked to provide clarification on the following issues arising out of the interpretation of the regulation.

4.2.1.	Scope of the Regulation	13
4.2.2.	Definition of a consortium	13
4.2.2.1.	“an agreement”.....	14
4.2.2.2.	“between two or more vessel-operating carriers”.....	14
4.2.2.3.	“which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container”.....	15
4.2.2.4.	“with the exception of price fixing”	15
4.2.3.	Calculation of trade share	15
4.2.4.	Calculation of market share	16
4.2.5.	Ancillary arrangements.....	17
4.2.6.	Exclusivity clauses.....	17
4.2.7.	Third party clauses	17
4.2.8.	Feeder services.....	18

4.2.9.	Inland co-operation.....	18
4.2.10.	Exchange of information.....	18
4.2.11.	Joint buying.....	18
4.2.12.	Severability and the effect of additional restrictions	19
4.2.13.	Equipment exchange agreements	19
4.2.14.	Provisions relating to common conference membership	19
4.2.15.	Notice periods.....	20

4.2.1. Scope of the Regulation

75. The scope of the Regulation is clearly defined in Articles 1 and 2: the Regulation applies to those consortia offering international shipping services which call at one or more Community ports. This however does not exclude consortia which offer consortia services only between community ports.
76. The definition contained in Article 1 of the Regulation appears to assume that consortia are established for a particular trade. This is no longer the case as a number of consortia have been established which operate over two or more trades. The Commission's services have taken the view that when examining a multi-trade consortium, each trade upon which it operates should be separately examined.

4.2.2. Definition of a consortium

77. As explained above, in order to promote the concept of consortia, the Commission decided that a more flexible regulation was required than has been the case with other block exemptions. Therefore the definition had to be broad enough to encompass all co-operation agreements where the main objective is to rationalise liner services, that is to say the majority of consortia.
78. Article 1 of the Regulation 870/95 provides that:
'consortium` means an agreement between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade and the object of which is to bring about cooperation in the joint operation of a maritime transport service, which improves the service which would be offered individually by each of its members in the absence of the consortium, in order to rationalize their operations by means of technical, operational and/or commercial arrangements, with the exception of price fixing,
79. Rationalisation in this context is to be understood in the light of Recital 4 which recites that:
Whereas consortia, as defined in this Regulation, generally help to improve the productivity and quality of available liner shipping services by reason of the rationalization they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilization of port facilities; whereas they also help to promote technical and economic progress by facilitating and encouraging greater utilization of containers and more efficient use of vessel capacity; (emphasis added)
80. The Recitals lay down the general parameters of those practices and activities which fall within the block exemption. In particular Recitals 3 and 4 acknowledge the

characteristics of and benefits of consortia and Recital 7 recognises the aspect of capacity adjustments in a number of consortia. This is tempered by Recitals 9 and 13 which state that price-fixing on the maritime leg is not a recognised element of consortia and therefore not covered by this Regulation.

81. A number of agreements have been notified to the Commission which are not consortia within the meaning of the Regulation. For example, under the Lloyd Triestino and Contship agreement whereby Lloyd Triestino hires slots from Contship on its joint CMB-T service from Northern Europe to the Arabian Gulf and the Indian Sub-Continent, there is no other form of co-operation between the parties in terms of equipment/container interchange or marketing of the service. These arrangements do not serve to rationalise or improve the service nor are there any joint undertakings between the parties. The agreement is a slot charter arrangement which is an exempted activity under Article 3(2)(a)(ii) but unless there are reciprocal undertakings, or similar factors, between the parties it does not qualify as a consortium.

4.2.2.1. “an agreement”

82. In one joint service notified to the Commission, the parties had, for reasons unrelated to the provision of the joint service, based their arrangements on separate (but inter-related) legal agreements. The agreements were of identical duration and subject to identical termination provisions. Under the agreements, the parties had effectively the same rights and obligations. The Directorate-General for Competition informed the parties that in such circumstances it took the view that the arrangements should be considered to constitute a consortium within the meaning of Article 1 of the Regulation, the legal form of the arrangements being less important than the underlying economic reality that they created a single joint service.
83. In Contship/Italia/TMM/Italia,¹⁷ the Commission similarly considered that a set of linked agreements under which the parties operated a single service constituted “an agreement” within the meaning of Article 1 of the Regulation.

4.2.2.2. “between two or more vessel-operating carriers”

84. The Regulation applies to agreements between vessel operators and carriers who do not operate vessels on the trade in question. It not only covers agreements whereby the parties pool their vessels but also an agreement whereby one supplies the vessel (be it owned or chartered) on which slots are divided between the parties.
85. The Regulation does not apply to agreements between a consortium and other carriers operating outside the consortium relating to the restriction of capacity on the relevant trade. Likewise, the Regulation does not cover multi-consortia agreements.

¹⁷ See IP/98/219.

4.2.2.3. “*which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container*”

86. The Regulation specifies that it applies to liner services for the carriage of cargo chiefly by container: this does not preclude other types of liner service, such as ro-ro or multi purpose vessels provided that the majority of cargo is carried by container.

4.2.2.4. “*with the exception of price fixing*”

87. In accordance with Article 1 of the enabling regulation, the scope of the Regulation is limited to the maritime activities of consortia only. Moreover the Regulation does not authorise any form of price-fixing on the maritime (Recital 8) or inland leg. Any consortium engaging in price-fixing must satisfy the conditions of Article 3 of Regulation 4056/86 or apply for an individual exemption.

4.2.3. *Calculation of trade share*

88. After the scope of the Regulation and the definition of a consortium, the next most important issue has been the calculation of trade shares.

89. The trade share test in Regulation 870/95 relates to the trade share of a consortium in respect of the ranges of ports it serves calculated by reference to the volume of goods carried measured either in freight tonnes or in 20-foot equivalent units. The trade share test relates to the ports actually served by the consortium. The relevant parts of Regulation 870/95 include the following:

Recital 16 “... consortium’s share of direct trade between the ranges of ports it serves, calculated on the overall basis of all of those ports ...”

Recital 17 “... ports which may be substituted for those served by the consortium ...”

Article 1 “... relating to a particular trade ...”

Article 6 “... in respect of the ranges of ports it serves, a share of the direct trade ...”

90. In the context of Regulation 870/95, a trade is clearly different from a market, since a trade may exclude substitutable ports (see Recital 17)¹⁸. Equally, on some occasions it may include a port which is not substitutable with the other ports served.

91. The purpose of the trade share test in Regulation 870/95 is to provide an indication of the market power of the members of a consortium in any given trade, to ensure that the consortium remains subject to effective competition in that trade. Although market share is a more accurate indication of market power (and hence the criterion more usually used by competition authorities), the Commission adopted the trade share criterion in order to have a criterion that is more simple for undertakings to calculate. The aim was thus to increase legal certainty for companies participating in consortia.

18 For the Commission’s approach to market definition, see Commission notice on the definition of the relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5.

92. The fact that a service¹⁹ may continue on to a third range of ports (as in a pendulum or round-the-world service) does not affect the way a consortium's share of the direct trade between two ranges of ports is calculated.
93. It is possible that there has been some confusion as to the meaning of the expression "ranges of ports". It was the Commission's intention in drafting the Regulation that this expression should encompass only those ports actually served by the consortium in question. It was not intended to refer to a geographic range of ports, in the sense of a range of mountains, only some of which are served by the consortium.
94. "Direct trade" in Article 6 means that where the consortium operates regular feeder service to a particular port, then that port and those feeder services should be included in the calculation of the consortium's share of the trade. However "direct trade" does not otherwise include transshipment of cargo between ports within the range of ports served and so should not be included in the trade share calculation. The purpose of this distinction is to avoid double-counting in the trade share calculation.
95. The question has also arisen whether, where a consortium jointly operates several services (or loops) within a single trade, the share of each such service is simply aggregated for the purpose of calculating whether the block exemption trade share thresholds are reached or whether that calculation is based on all the port pairs served by the consortium vessels taken as a whole.
96. When the Regulation refers to the trade share of a consortium (as in Recital 16 and Article 6), this means the share of the trade carried on all the vessels operated in a trade by a consortium. In the light of the purpose of the trade share test described above (assessment of market power), there is no reason to make a distinction between consortium vessels operating in one service on a particular trade and consortium vessels operating in another service of the same consortium operating in the same trade.
97. Thus, where a consortium jointly operates more than one service within any given trade, the trade share of the consortium should be calculated on the basis of all the port pairs served by the consortium in that trade, irrespective of whether the vessels operated by the consortium are divided into different strings, services or loops.
98. Volumes carried on consortium vessels pursuant to slot charter arrangements should be included for the purpose of calculating the consortium's trade share, and hence for applying the block exemption.

4.2.4. Calculation of market share

99. For the purpose of calculating the market share of the consortium, and hence for applying the opposition and individual exemption procedures, the market share of a slot charterer should be included with that of the consortium where it is

19 The expression 'service' is here used to describe the operation of a string of vessels on a particular route with regular ports of call: it is not intended to suggest that each such 'service' constitutes a consortium in its own right.

reasonable to consider that the slot charterer is part of the overall consortium arrangements. Indications that a slot charterer is part of the overall consortium arrangements include the following:

- an agreement to withdraw vessels,
- an agreement to paint a vessel in the slot charterer’s colours,
- long notice periods,
- initial notice periods,
- an agreement to be a party to another agreement,
- territorial or other restrictions on liftings,
- an agreement not to charter space on a non-consortium vessel,
- joint marketing arrangements, joint service contracts,
- on-shore co-operation, etc.

100. Where a slot charterer is considered not to be a party to the overall consortium arrangements, its trade share should not be included with that of the consortium for the purpose of calculating the consortium’s trade share and applying the block exemption. It should nevertheless be taken into account in applying the opposition or individual exemption procedures since it is likely to be relevant to an examination of the market power of the consortium and whether the consortium is subject to real and effective competition. For that reason, full details should be included in any notification.

4.2.5. Ancillary arrangements

101. Activities which are exempted are listed in Article 3. It is a comprehensive list of activities which are used to achieve the objectives of a consortium. The majority of consortia engage in these activities thus rationalising the services offered. This provision is to be interpreted restrictively. Article 3(2)(g) of Regulation 870/95 (which provides that ” *any other activity ancillary to those referred to above in points (a) to (f) [the exempted activities] which is necessary for their implementation*” benefits from the block exemption.

4.2.6. Exclusivity clauses

102. Obligations on the consortium members to use on those vessels allocated to the consortium service on the trade route in question and to refrain from chartering slots on vessels belonging to third parties have been treated as qualifying as ancillary services within the meaning of Article 3(2)(g). These provisions guarantee that the parties to the agreement bring all available cargo to the joint service.

4.2.7. Third party clauses

103. Provisions in an agreement restricting the ability of the parties to assign, space charter or sub-space charter to other carriers in the relevant trade except with the prior consent of the other parties, are usually considered to be ancillary to the

charter of vessels or space from one carrier to another. It is considered reasonable for the carrier to have the opportunity to increase its allocation of space and - for safety and rate-compatibility reasons - to have control over to whom the space is assigned or sub-chartered.

104. One example was a clause imposing a duty on the member lines not to carry cargo for a third party on the trade without the express approval of the other members. Another example was an arrangement whereby the parties to the consortium are prohibited from chartering slots with vessel carriers outside the consortium who operate on the same trade route as the consortium. Such clauses were exempted in the JMCS and SLCS consortia²⁰.

4.2.8. Feeder services

105. Article 3(2)(g) also allows certain services which are necessary to the functioning of the consortium service to be included provided they are shown to be an integral part of the service. This was the case with the P&O/Maersk consortium agreement which uses common feeder services as part of the consortium service. The agreement stipulates that, where feeder services are used, preference shall be given to those services offered by one of the parties to the consortium agreement. This clause was considered to constitute a necessary and integral part of the service offered by the lines and not restrictive of competition on the trade in question. The agreement was duly exempted with this provision included.

4.2.9. Inland co-operation

106. Co-operation undertaken at ports can within Article 3(2)(g). Such activities were exempted in the case of the EACS agreement which provides a consortium service between Europe and East Africa and co-operates on quayside facilities which have led to noticeable improvements at those African ports called at by the service which in turn has improved the overall service and benefited the consumer.
107. The scope of the Regulation is however limited to the maritime and directly ancillary activities of consortia (Articles 1 and 2). Thus where a consortium is also operating inland, such an agreement should also be notified pursuant to Article 12 of Regulation 1017/68.

4.2.10. Exchange of information

108. Certain arrangements contain implicit provisions providing for the exchange of information relating to the co-operation between the parties. Being ancillary, that type of clause is considered to fall within Article 3(2)(g) of Regulation 870/95 referred to above and should likewise be exempt where the rest of the arrangements are also exempt.

4.2.11. Joint buying

109. In principle, joint buying may fall within the scope of Article 85(1). For this reason Article 3(2)(c) of Regulation 870/95 refers to the joint operation of port terminals

20 See IP/96/400.

and related services: it is reasonable to consider that this covers the joint purchase of those services by the consortium parties.

110. The joint purchase of feeder vessel services, however, does not seem generally to be necessary for the joint operation of a maritime service by a consortium. For this reason at least, it does not therefore seem that it can be regarded as ancillary within the meaning of Article 3(2)(g) of Regulation 870/95. Consequently and to the extent that it falls within Article 85(1), this activity would require individual exemption. Severability and the effect of additional restrictions
111. Where a consortium engages in activities which are restrictive of competition and fall within the scope of application of Article 85(1) of the Treaty but not within the scope of the consortia block exemption, the question has arisen as to whether such a consortium is still able to benefit from the block exemption for such of its activities as fall within its scope. Provided that the non-exempted restrictions are separable from the rest of the agreement, the consortium can continue in principle to benefit from the block exemption for activities falling within Article 3(2) of the Regulation. The non-exempted restrictions would however be void pursuant to Article 85(2) and in such circumstances, the prudent course is clearly to submit the arrangements as a whole for individual exemption.
112. It has been the Commission's practice in cases where arrangements would have fallen within the scope of the block exemption for consortia but for the inclusion of minor additional restrictions of competition (for example, in the VSA case), to examine those arrangements on the basis of the assumption that in principle those provisions which would otherwise have qualified for block exemption should in principle qualify for individual exemption. The additional restrictions have then analysed to see if they qualify for individual exemption.

4.2.12. Equipment exchange agreements

113. Equipment exchange agreements do not generally fall within Article 85(1) where their sole object and effect is to achieve technical improvements or technical co-operation. However, such agreements may also have commercial effects where they include provisions relating to the price at which the equipment is exchanged. A bilateral agreement covering pricing would probably not fall within the scope of Article 85(1) but a multilateral agreement is likely to do so.
114. Such agreements are not covered by the scope of the block exemptions contained in Regulations 4056/86 and 870/95. Indeed, such agreements probably fall within the scope of Regulation 17 rather than one of the transport regulations. In consequence, agreements to exchange equipment which include provisions as to price should be notified for individual exemption in accordance with Regulation 17.

4.2.13. Provisions relating to common conference membership

115. Many consortia arrangements contain provisions relating to common conference membership which authorise them to discuss and agree on a voluntary basis on conference membership. It has been argued that such provisions are indispensable for the attainment of the benefits derived from the consortium. It has been argued

that the commercial viability of the co-operation is dependent on a sufficient commonality as to the pricing of the service.

116. The position taken to date by the Commission has been that where the parties are not compelled to become or remain members of any conference, these provisions qualify for exemption in line with the policy of the Commission stated at the time of the adoption of Regulation 870/95.
117. However, the Commission is aware of a number of consortia where the members are not party to a conference and it has been argued that the practice of permitting clauses relating to common conference membership, a form of indirect price fixing, is inconsistent with the policy that consortia should not be permitted to fix prices.

4.2.14. Notice periods

118. Article 8(2) of Regulation 870/95 provides for a maximum period of notice of six months.
119. The notice period contained in the Tricon Services Heads of Agreement and the Tricontinental Services Agreement²¹ required twelve months' notice which may be given only every second year after the initial period ends on 31 December 2000, resulting in a notice period of up to twenty-four months.
120. On the basis of a preliminary examination, the Directorate-General for Competition considered that the Tricon parties had not submitted any sufficient argument why this notice period was indispensable to the attainment of any benefits resulting from the establishment of the Tricon Consortium, in particular in view of the long initial period. The Directorate-General for Competition was of the opinion that this notice period was therefore likely to be considered excessive. The Directorate-General for Competition stated that it considered that, in general, notice periods of the type in question do not fulfil the conditions for exemption where they are for a period of longer than six months.
121. In the VSA case²², the parties argued that a 24 months' notice period was reasonable and indispensable for the proper operation of the agreements considering the highly integrated nature of the VSA and related agreements. For the purposes of the VSA, Sea-Land had made considerable investments in the acquisition of vessels and P&O and Nedlloyd contributed to financing those investments. Furthermore, P&O, Nedlloyd and OOCL agreed to withdraw their existing vessels and to use Sea-Land's vessels. These facts demonstrate the highly integrated nature of the VSA. In view of the highly integrated nature of the VSA and the links between the various agreements, the notice period was considered to be reasonable and was exempted.

21 Parties: Hanjin, Cho Yang, DSR/Senator.

22 See Art. 12(2) notice published at OJ C 185, 18.6.1997, p. 4.

5. POLICY OPTIONS

122. There are three policy options available to the Commission when the Regulation expires. These are, in no particular order: renewal without modification, renewal with modification and non-renewal. It is envisaged that the observations of third parties will formally be invited at two stages as part of this procedure. An outline timetable and the steps involved is attached as Annex 1.
123. However, by way of preparation, it is proposed that this document be made available to interested third parties in order to stimulate debate and to obtain observations as soon as possible.

5.1. Renewal without modification

124. Notwithstanding limited resources and competing priorities in the maritime and other transport sectors, implementation of the Regulation would appear to have gone smoothly. The early wave of applications relating to pre-existing consortia was weathered and subsequent applications have been dealt with in a manner which would appear to the Commission to have been relatively quick and efficient.
125. It does not appear that the opposition procedure adopted under Regulation 870/95 contains any significant flaw requiring substantive modification. Accordingly, so far as the procedural aspects of Regulation 870/95 are concerned, renewal without modification would appear to be an appropriate outcome.
126. Further, the Commission has received no complaints about the activities of consortia which it has exempted or which have not been notified because they fall within the scope of the block exemption. Nor have shipowners claimed to the Commission that the Regulation has operated in such a way as to restrict unduly their commercial activities. This would suggest that the basic conditions for the grant of exemption, both group and through the opposition procedure, are also appropriate and do not require substantial modification.

5.2. Renewal with modification

127. Although it is reasonable to adopt the general position that Regulation 870/95 has worked well and that it does not require substantive modification as to either its procedures or the conditions it lays down for the grant of exemption, it is clear that a number of questions as to its interpretation have arisen.
128. In other circumstances, it might be more convenient to deal with such questions of interpretation by means of a Commission Notice to that effect. However, given that the Regulation is due to expire and given the added legal security of a modification to the Regulation as opposed to a Commission Notice, one possibility would be to revise the Regulation in such a way as to bring additional clarity without substantively modifying the Regulation.
129. A first set of possible modifications would reflect and be based upon the guidance described in Part IV above. In particular, consideration should be given to the following points.

5.2.1. *Scope of the Regulation*

130. Clarification of the applicability of the block exemption to multi-trade consortium.

5.2.2. *Definition of a consortium: “an agreement”*

131. Clarification of the applicability of the block exemption to arrangements which are not based on a single legal document.

5.2.3. *Definition of a consortium: “between two or more vessel-operating carriers”*

132. Clarification of applicability of the block exemption to agreements between carriers not all of which operate vessels on the trade in question.

5.2.4. *Calculation of trade share*

133. Clarification of method of calculation of trade share (unless another indication of market power is adopted: see below).

5.2.5. *Ancillary arrangements*

134. Clarification of applicability of the block exemption to exclusivity clauses (that is, obligations on the consortium members to use on those vessels allocated to the consortium service on the trade route in question and to refrain from chartering slots on vessels belonging to third parties), third party clauses (that is, provisions restricting the ability of the parties to assign, space charter or sub-space charter to other carriers in the relevant trade except with the prior consent of the other parties), preferred feeder clauses (that is, provisions that, where feeder services are used, preference shall be given to those services offered by one of the parties to the consortium agreement), and provisions concerning co-operation undertaken at ports.

5.2.6. *Provisions relating to common conference membership*

135. Clarification of the applicability of the block exemption to provisions relating to common conference membership.
136. A second set of possible modifications would constitute substantive changes to the block exemption. In particular, consideration could be given to the following points.

5.2.7. *Market power indicator*

137. Consideration could be given to whether the trade share thresholds should be replaced by market share thresholds.

5.2.8. *Market power thresholds*

138. Consideration could be given to whether the thresholds for automatic exemption (Art. 6) and for application of the opposition procedure (Art. 7) should be modified upwards or downwards.

5.2.9. *Opposition procedure deadline*

139. Consideration could be given to whether the six month period for the Commission to oppose exemption should be modified.

5.3. Non-renewal

140. The reasons for which the Regulation was adopted are still valid. Indeed, it is abundantly clear that there has been a marked progression towards consortia as the predominant form of industrial organisation in the sector.
141. As indicated above, it is believed that the application of the Regulation has worked well in practice and that it has struck the correct balance between the interests of shipowners and the interests of their customers.
142. All the exemptions granted on the basis of Regulation 870/95 expire on 20 April 2000 and it is likely that applications for renewal of exemption will be made in the majority of cases. If Regulation 870/95 is not renewed, it is likely that these would be replaced with applications for exemption pursuant to Regulation 4056/86.
143. Accordingly, no advantages arising from non-renewal of the Regulation are apparent.

6. CONCLUSIONS AND PROPOSALS

144. The Regulation has worked well in practice.
145. It is considered that the most likely outcome is that the Commission will renew Regulation possibly subject to minor modifications as described above.
146. The observations of third parties will formally be sought as part of the formal procedure for the adoption of a renewed Regulation. In the meantime, this document will be made available to interested third parties who are invited to submit their observations to the Commission.

PROCEDURE FOR RENEWAL/READOPTON OF THE REGULATION

Once third party comments have been received on this working paper, the following procedure and approximate target dates are envisaged for the renewal or re-adoption of the Regulation.

Step	Target date
Adoption of formal proposal by the Commission	31/3/99
First Consultation of the Advisory Committee	12/5/99
Publication of proposed draft text in the OJ	7/7/99
Deadline for reactions to the publication (30 days)	6/8/99
Second Consultation of the Advisory Committee	13/10/99
Second publication in the OJ	15/12/99
Deadline for reactions to the publication (30 days)	15/1/2000
Adoption by the Commission of the Revised Regulation	15/3/2000
Publication of the Revised Regulation	30/3/2000
Expiry of Regulation 870/95	20/4/2000

Annex 2

List of decisions

Case number	Name	Decision date	Reason	Publication	Press release	Annual report	
1	36319	Eurosal Consortium III	6/10/97	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.		
2	36282	Sea-Land + P&O Containers + 3 VSA	3/09/97	Agreement conforms with Art.85(3) EC, 65 ECSC	Art 12 notice publication 18/06/97		XXVII (point 84)
3	35812	Grimaldi + Cobelfret + G & C Lines	23/05/96	Comfort letter: conformity with Communication/group exemption	n.a.		XXVI (point 85)
4	35808	Italia di Navigazione + CIA Sud-american	23/05/96	Comfort letter: conformity with Communication/group exemption	n.a.		
5	35807	Medecs/Seagull express service	14/06/96	Agreement conforms with Reg. 4056/86 on maritime transport	n.a.		XXVI (point 87)
6	35806	Medway	14/06/96	Agreement conforms with Reg. 4056/86 on maritime transport	n.a.		XXVI (point 87)
7	35804	Medipag	30/05/96	Agreement conforms with Reg. 4056/86 on maritime transport	n.a.		XXVI (point 87)
8	35803	AWS+CMA+DSR+SENATOR (IPEX)	20/01/97	Comfort letter: conformity with Communication/Group exemption	n.a.		XXVI (point 86)
9	35774	West Coast-Mediterranean Agreement	5/03/97	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.		XXVII (pages 134-135)
10	35773	Contship/Italia/TMM/Tecomar consortia	17/02/98	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	IP/98/219	
11	35770	Joint Operational Service Agreement (JC)	3/06/97	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.		XXVII (point 82)

Annex 2

List of decisions

12	35768	Joint Pool Agreement	23/05/96	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	IP/96/400	XXVI (point 486)
13	35763	NCS Consortium	6/10/97	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	non	XXVII (point 82)
14	35762	Canmar + DSEN (JMCS)	2/04/96	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	IP/96/400	
15	35754	EACS + 7	27/03/96	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	PI/96/400	XXVI (point 86)
16	35750	SLCS	27/03/96	Agreement conforms with Reg. 870/95 on maritime transport (consortia)	n.a.	IP/96/400	
17	35681	North Sea Lines Conference Agreement	9/01/97	Agreement conforms with Art. 85(3) EC, 65 ECSC	Art 12 notice publication 09/10/96	IP/97/12	
18	35680	Finncarrier/Poseidon	9/04/96	Agreement conforms with Art. 85(3) EC, 65 ECSC	Art 12 notice publication 09/10/96		XXVI (point 87)
19	35614	SAECS Southern Africa Europe	30/01/98	Agreement conforms with Art. 85(3) EC, 65 ECSC	Art 12 notice publication 20/11/1997	IP/98/219	