

COMMISSION

COMMISSION DECISION

of 30 April 2004

concerning cases COMP/D2/32448 and 32450 *Compagnie Maritime Belge SA* (Follow-up after the Court of Justice judgment of 16 March 2000)

(notified under document number C(2004) 1779)

(Only the Dutch text is authentic)

(2005/480/EC)

I. INTRODUCTION

- (1) On 30 April 2004, the Commission adopted a decision relating to a proceeding under Article 82 of the EC Treaty, imposing a fine of EUR 3 400 000 on the Antwerp shipping company *Compagnie Maritime Belge SA* (hereinafter CMB). In accordance with the provisions of Article 30 of 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 ⁽¹⁾, the Commission herewith publishes the name of the party and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages on the website of the Directorate-General for Competition at http://europa.eu.int/comm/competition/index_en.html

II. PROCEDURE

- (2) The decision is a follow-up to the so-called Cewal-case in which the Commission imposed fines on the members of a liner shipping conference called Associated Central West Africa Lines (hereinafter Cewal) for violating Article 86 of the EC Treaty (presently Article 82 and referred to below as such).
- (3) In Commission Decision 93/82/EEC ⁽²⁾ (hereinafter the original decision) the Commission established, *inter alia*, that Cewal and two other liner conferences, Cowac and Ukwac and the undertakings who were members of those conferences had infringed Article 85(1) of the EC Treaty (presently Article 81(1) and referred to below as such). Moreover, by engaging in three different forms of abuse of dominant position the undertakings who were members of Cewal had also infringed Article 82 of the EC Treaty. The undertakings were ordered to bring the infringements to an end.
- (4) In the original decision the Commission imposed fines for infringement of Article 82 of the EC Treaty on four of the member undertakings of Cewal. A fine of ECU 9,6 million was imposed on CMB.
- (5) All four companies and CMB's subsidiary CMBT submitted applications for annulment of the original decision to the Court of First Instance (CFI). In its judgment of 8 October 1996 ⁽³⁾ (hereafter the CFI judgment) the CFI dismissed the applications. However, it reduced the fines. CMB's fine was reduced to ECU 8 640 000.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

⁽²⁾ OJ L 34, 10.2.1993, p. 20.

⁽³⁾ Joined cases T-24/93, T-25/93, T-26/93 and T-28/93, *CMB, CMBT and Dafra-Lines v Commission*, [1996] ECR II-1201.

- (6) CMB, CMBT and a second company that had been fined, Dafa-Lines A/S, appealed the CFI judgment. In its judgment of 16 March 2000 ⁽¹⁾ (hereafter the ECJ judgment) the Court of Justice (ECJ) rejected all appeal grounds submitted in relation to the substance of the original decision:
- but annulled the Articles of the original decision imposing the fines, and
 - dismissed the remainder of the appeal.
- (7) The reason for the annulment was that the Commission had failed to indicate clearly in the statement of objections:
- that it was contemplating imposing fines on each individual member of Cewal, and
 - that the amounts of the fines would be fixed in accordance with an assessment of the participation of each company in the conduct constituting the alleged infringement.
- (8) On 16 April 2003 the Commission sent CMB a new statement of objections informing them that it intended to adopt a new decision imposing fines for the infringements established in the original decision. In the statement of objections the Commission made CMB explicitly aware that it intended to impose fines on it individually, and that the amount of the fine imposed would be fixed in accordance with an assessment of the participation of each company in the conduct constituting the infringement.

III. THE DECISION

- (9) The present decision is based on the substantive findings of the original decision. It contains the explicit statement that it is not meant to supplement or amend the facts presented or the infringements established in the original decision. With a view thereto, the decision only contains a descriptive summary of the elements of the original decision that form the basis of the infringements established in it and a description of how these elements were assessed by the CFI and ECJ.
- (10) In the original decision the Commission found that the members of Cewal had a joint dominant position on the shipping routes between Zairean ports and northern European ports. They had abused that dominant position in order to eliminate competition from two other competing shipping companies by:
- insisting on the implementation of an exclusivity agreement between Cewal and a Zairean quasi-governmental agency (Ogefrem);
 - systematically using 'fighting ships'; and
 - imposing 100 % loyalty agreements and using blacklists to enable reprisals against users of independent vessels.
- (11) In the legal assessment it is reflected that the Commission considers the elements of the original decision as to the existence, character and extent of the infringements either as:
- *res judicata*, or
 - as having acquired a definitive nature since the time-limit for bringing an action against them has expired long ago.

⁽¹⁾ Joined cases C-395/96 P and C-396/96 P, CMB, CMBT and Dafa-Lines v Commission, [2000] ECR I-1365.

- (12) As regards the legal assessment of the situation regarding the fines the position is taken that CMB has been enabled to put forward a proper defence with respect to the fine to be imposed on it and the elements substantiating the fine.
- (13) As to the statute of limitations it is established that neither the five-year nor the ten-year limitation periods based on Regulation (EEC) No 2988/74 of the Council ⁽¹⁾ have expired, so that it is within the Commission's competence to impose a new fine.

IV. FINE

- (14) The Commission considers it necessary to impose a fine pursuant to Article 19(2) of Council Regulation (EEC) No 4056/86 ⁽²⁾ on CMB for the infringements of Article 82 of the EC Treaty established in the original Decision.
- (15) The present decision is based on the considerations regarding the imposition, level and allocation of the fines in the original decision, and the CFI's considerations with regard thereto.
- (16) The fine imposed is also based on the 1998 Guidelines. As to the amounts for gravity, account was taken of the nature of the infringements, their actual impact on the market and the relevant geographic market.
- (17) The relevant geographic market is the market in liner services between northern European ports and Zaire.
- (18) The infringements of Article 82 of the EC Treaty committed by CMB and the other members of Cewal are of a serious nature, in as much as they enabled Cewal to maintain a virtual monopoly on its routes to and from Zaire. Moreover, they were implemented in order to drive out the only competitor on the market.
- (19) Account was also taken of the fact that the President and secretary of Cewal were staff members of CMB and Cewal had its office in the same premises as CMB.
- (20) In its judgment the CFI held that for reasons of deterrence, the Commission was lawfully entitled to take account of the fact that vessels belonging to the CMB group carried, at the time when the original decision was adopted, almost all the cargoes of the conference. However, since at the time of the adoption of the present decision no such specific circumstance applies this circumstance was not taken into account when calculating the fine in the present decision.
- (21) On the basis of the foregoing considerations the Commission defined a basic amount of EUR 1 million for each infringement.
- (22) These basic amounts were increased with 20 %, 15 % and 20 % respectively in view of the duration of the infringements.
- (23) In view of the lapse of time since the conduct was terminated, as well as the time passed following the ECJ judgment until the issue of the statement of objections in April 2003, an amount of EUR 50 000 was subtracted from all three amounts.
- (24) This lead the Commission to impose a fine of EUR 3,4 million.

⁽¹⁾ OJ L 319, 29.11.1974, p. 1. Regulation as amended by Regulation (EC) No 1/2003.

⁽²⁾ OJ L 378, 31.12.1986, p. 4. Regulation as last amended by Regulation (EC) No 1/2003.