II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 December 1992

relating to a proceeding pursuant to Articles 85 (IV/32.448 and IV/32.450 : Cewal, Cowac and Ukwal) and 86 (IV/32.448 and IV/32.450 : Cewal) of the EEC Treaty

(Only the Danish, Dutch, English, French, German, Italian and Portuguese texts are authentic)

(93/82/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport [1], and in particular Articles 11 (1) and 19 (2) thereof,

Having regard to the applications lodged on 10 and 20 July 1987, for a finding of an infringement pursuant to Article 10 of Regulation (EEC) No 4056/86,

Having regard to the Commission decision to initiate proceedings in these cases,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission and to present any other comments in accordance with Article 23 (1) of Regulation (EEC) No 4056/86,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions in the field of maritime transport,

Whereas :

[1] OJ No L 378, 31. 12. 1986, p. 4.

I. THE FACTS

Introduction

(1) Associated Central West Africa Lines (Cewal) is a shipping conference whose secretariat in Europe is situated at 1 Meir, B-2000 Antwerpen.

Cewal is one of the shipping conferences operating between Europe and west and central Africa, the other conferences being Cowac (Continent West Africa Conference), Ukwal (United Kingdom West Africa Lines Joint Service) and Mewac (Mediterranean West Africa Conference).

Cewal is made up of shipping companies operating a regular liner service between the ports of Zaire and Angola and those of the North Sea (except the United Kingdom). Specific agreements with the southern section of the Cowac shipping conference govern the trade between Zaire and Angola on the one hand and the ports on the western coast of France on the other. Cewal also, 'by delegation from Cowac', transports wood from Pointe-Noire to ports on the European Atlantic coast.

Continent West Africa Conference (Cowac) is a shipping conference comprising two sections : Cowac northern section and Cowac southern section.

Cowac northern section is made up of shipping companies operating a regular liner service between ports situated between the North Cape and Belgium on the one hand and ports in west Africa (from Mauritania to the Republic of the Congo) on the other.

Cowac southern section is comprised of shipping companies operating a regular liner service between ports in France (from Dunkirk to Bayonne) and Africa (from Nouadhibou to Angola).

Ukwal is a conference made up of shipping companies operating a regular liner service between ports situated in the United Kingdom and Ireland on the one hand and in west Africa (from Nouadhibou to Mocamedes) on the other.

Members of the Cewal, Cowac and Ukwal conferences are listed in Annex I.

Mewac is a conference comprising shipping companies operating a regular liner service between Spain, the French Mediterranean coast, Italy and the former Yugoslavia on the one hand and the west African coast (from the northern border of Mauritania to the southern border of Angola) on the other.

(2) Aiwasi (Association of Independent West African Shipping Interests) is an informal association representing independent shipping interests in the Community. Its members include the following shipping companies: Grimaldi (Italy), Cobelfret (Belgium), and OT Africa Line Ltd (United Kingdom). The Association has its head office in London.

The Danish Shipowners' Association (Danmarks Rederiforening), with its head office in Copenhagen, represents the interests of the main Danish shipping companies, one of which (Maersk Line) operates a regular liner service between Europe and west Africa.

(3) On 10 July 1987 the Commission received a complaint from the Danish Shipowners' Association pursuant to Article 10 of Regulation (EEC) No 4056/86. The purpose of the complaint is to obtain:

— the abolition of the various systems of arbitrary allocation of cargoes claimed to be applied in trade between west Africa and the Community, and

— a guarantee of free access to the trade of non-conference shipping companies.

(4) On 20 July 1987 the Commission received a complaint from the Danish Government pursuant to the Article 10 of Regulation (EEC) No 4056/86 in support of the complaint lodged by the Danish Shipowners' Association.

(5) On 7 September 1987 the Commission received a complaint from Aiwasi pursuant to Article 10 of Regulation (EEC) No 4056/86 referring in general terms to 'restrictive practices and agreements applied or planned between the liner conferences operating in the shipping trade with west Africa'. It was claimed that the practices in question were intended to impose the sharing-out of all cargoes carried on shipping routes between Europe and west and central Africa according to a 40 : 40 : 20 apportionment rule (40 % for the domestic companies of each of the two countries at either end of the route and 20 % for the shipping companies of third countries, be they conference members or independent). In particular, it was alleged that such practices obstructed the freedom of non-conference companies (outsiders) to compete with the conferences.

(6) In response to these complaints received primarily from non-conference companies, the Commission opened an inquiry into the practices of the various shipping conferences involved in the trade in question. The Commission carried out on-the-spot checks at the head offices of the conferences operating shipping services between Europe and west Africa, i.e. Cewal, Cowac, Mewac and Ukwal, and at the secretariat of the shipowners' committees (Secrétama).

On 19 December 1990 the Commission adopted Decision 91/55/EEC [1] in which it imposed a fine of ECU 5 000 on Secrétama for having supplied incorrect information in response to a request.

On 1 April 1992 the Commission adopted a second Decision 92/262/EEC [2] in which it found that the shipowners' committees set up in respect of shipping trade between France and 11 west and central African States constituted agreements which contravened Article 85 of the EEC Treaty and that their practices infringed Article 86. It imposed fines on the member shipping companies totalling ECU 15,3 million. The deadlines for appealing against that Decision have now expired.

On 6 April 1992 the Commission adopted a further Decision 92/237/EEC [3] in which a fine was imposed on the Ukwal conference, which had not submitted to an investigation ordered by a decision.

[1] OJ No L 35, 7. 2. 1991, p. 23.
[2] OJ No L 134, 18. 5. 1992, p. 1.
[3] OJ No L 121, 6. 5. 1992, p. 45.

(7) This Decision is in answer to these complaints, which were directed generally against all the activities of the Euro-African shipping conferences.

A. The market

1. *Liner transport services*

(8) This Decision concerns practices observed on the market for services supplied by liner vessels for the transport of general cargo principally between the ports of northern Europe and those of Zaire.

(9) Trade between the Community countries of northern Europe (including those with a North Sea coastline) and Zaire (see the figures in Annex II) can be effected by the following means of transport:

(i) air transport: this mode concerns only limited quantities of perishable or high value-added goods. In terms of tonnage this share of trade may be regarded as insignificant;

(ii) tramp vessels: specially chartered to shippers for the bulk transport of specific categories of goods for which the vessels are specially designed (oils, minerals, cereals, etc.);

(iii) liner services: regular services carrying general cargo; on the Euro-Africa routes, the companies operate container vessels and also 'break bulk' or conventional ships capable of carrying certain goods (log carriers, banana boats) or mixed vessels capable of carrying both containers and bulk goods.

(10) Liner services constitute a separate market from that of tramp services. The gap has widened in recent years with the increase in container services: this new mode of transport produces such gains in productivity compared with traditional modes (according to some studies, the productivity gain is one to three times greater, and one to seven times greater in port operations which can be carried out much more quickly, thus speeding up vessel turnaround times) [1] that bulk transport by chartered vessels of containerizable goods is no longer economically justifiable. In addition, charters are only viable (for non-containerizable goods) provided the shipper has a sufficiently large cargo, or is able to combine with other shippers for each trip.

(11) As regards comparable trade between France and the majority of French-speaking countries of the west African coast, Secrétama has produced, at the request of the Commission, an estimate of liner traffic between France and Togo, Benin, Gabon, Congo and Niger [2]. On the basis of the trade balance produced by French customs for 99 items, Secrétama considered that the following products were transported in bulk (chiefly by chartered vessels and, to a lesser extent, by liner vessels equipped to carry bulk):

'cereals', 'steel', 'sugar', 'mineral oils and fuels' and 'malt'; a non-conference shipowner operating in the trade between Europe and west Africa suggested that the list should include 'iron ores' and 'salt, sulphur'. The other categories of goods are carried by liner vessels.

This is in substance confirmed by the expert in maritime economy quoted by the French members of the shipowners' committees, who suggets that potential trade on the liner routes between Europe and west Africa should be assessed on the basis of the foreign trade statistics produced by Eurostat, after deducting the figures for categories 10 (cereals), 25 (salt, sulphur), 27 (mineral fuels) and 89 (transport by sea or inland waterway).

(12) The Commission concludes from these estimates that liner services constitute almost the sole mode of transport for most of the categories of products traded between Europe and west and central Africa, in particular containerizable goods and some bulk cargoes.

2. *The supply of liner services*

(13) The markets on which Cewal and the other Euro-African conferences (Ukwal and Cowac) operate comprise all liner trade routes between the Community (excluding the Mediterranean Basin) [3] and the coast of west Africa (from Mauritania to Angola).

[1] S. Gilman and M. Graham: 'The case for conference ratemaking authority in the inland sector', July 1990.

[2] See Decision 92/262/EEC, cited above.

[3] For the Mewac conference, see recital 1.

(14) The shipping companies belonging to Cewal, which are listed in Annex I, are, alongside Grimaldi (Italy) and Cobelfret (Belgium), which operate a joint service (G&C Africa Line), the principal ones to provide regular liner services between the North Sea ports and Zaire and Angola. According to information supplied by Cewal, Cewal accounted for some [...] % (1) of Zairian trade in its area in 1989 and [...] % in 1991. No reliable data seem to be available concerning the limited trade to or from Angola, and this Decision therefore concerns only Cewal's practices in the trade between Europe and Zaire.

(15) The Cowac and Ukwal conferences also had a large share of the market in their respective trades.

B. Legal context

(16) Cewal's members claim that some of practices referred to in this Decision are in response to the wishes of the public authorities concerned as set out in documents having the force of law. It is therefore necessary, before examining the operation and practices of Cewal, to take account of the legal framework in which it operates.

1. *The Unctad code of conduct*

(17) Until the years following the end of the Second World War, the liner traffic between Europe and west and central Africa was operated solely by European lines organized for the most part as liner conferences.

The desire of the newly independent African States to play an active part in the traffic generated by their foreign trade resulted in :

— the setting-up of national shipping companies,

— the 'companies' insistence that they be admitted to the conferences and benefit from a 'fair' cargo-sharing system.

(18) These demands resulted in 1974 in the adoption by the United Nations Conference for Trade and Development (Unctad) of a code of conduct for liner conferences (Unctad code) which provides, in particular, that the national lines at each end of a given shipping route are to have equal shares of the cargoes carried by the conference operating on that route, non-conference lines being allocated a significant share of that trade, of the order of 20 %.

This provision must lead to the application by the conferences of the 40 : 40 : 20 sharing rule : 40 % of the conference cargo to the home traders at each end of a given bilateral route and the balance (20 %) to the shipping companies of third countries that are members of the same conference.

In the light of Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by the Member States of, or their accession to, the United Nations Convention on a code of Conduct for liner Conferences (2), the 40 : 40 : 20 rule was in principle to apply to a shipping conference such as Cewal involved in trade covered by the code.

On 15 May 1979 the Council adopted this Regulation with a view to allowing the Member States to adopt a common postition on the code and to ratify it in accordance with the provisions of the EEC Treaty.

The Third and Fourth Lomé Conventions acknowledge the importance of shipping services as one of the engines of economic development and the promotion of trade between the ACP States and the Community. They underline the importance of the code of conduct for liner conferences while establishing the principle that the Contracting Parties should not prevent non-conference lines from operating in competition with a conference line as long as they comply with the principle of fair competition on a commercial basis.

The Conventions also lay down that no restriction should be imposed on tramp services.

2. *The CMEAOC resolutions*

(19) In 1975 the Ministers for Transport of the States of west and central Africa set up a standing body for cooperation known as the Ministerial Conference

(1) In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 24 (2) of Regulation (EEC) No 4056/86 concerning non-disclosure of business secrets.

(2) OJ No L 121, 17. 5. 1979, p. 1.

of the States of west and central Africa for Maritime Transport (CMEAOC).

In a series of meetings, this body adopted resolutions on the development of African merchant fleets which, in particular, invited the participating States to adopt shipping rules aimed at:

— giving their national lines priority in the allocation of freight, and

— adopting freight monitoring systems on the basis of the 40 : 40 : 20 rule.

These resolutions are, for the most part, based on the Unctad code of conduct and therefore concern all liner trade (1).

Other CMEAOC resolutions, however, extend the measures giving the west and central African countries a share of the transport generated by their foreign trade to the bulk trades (not covered by the Unctad code).

C. Conduct of Cewal

1. *The Cewal-Ogefrem agreement (Office zaïrois de gestion du fret maritime)*

(20) Up to 1972 Cewal applied exclusively a system of loyalty agreements involving deferred rebates. This system had two effects:

— first, the loyalty of customers was secured because shippers had to remain loyal to the conference and ship goods solely with it for two successive periods (normally of six months) to obtain cash rebates for the first period at the end of the second. If the shipper decided to use an independent liner service which was not a member of the conference before the expiry of the second period, he would no longer qualify for the rebate not only for the second period but also for the first,

— secondly, it reduced the Zairian foreign-exchange reserves (the Zairian banking system had to supply Zairian shippers with the necessary foreign currency to pay the full freight charge whereas the rebate paid *a posteriori* by the conference in Europe was not in most cases seen to be repatriated to Zaire by shippers).

(21) In 1972, following a request from the Zairian authorities, anxious to save on foreign exchange, Cewal agreed to a system of loyalty agreements with immediate rebates consisting in a reduced freight charge for loyal shippers, and the Bank of Zaire issued a circular (No 139(IV) of 13 January 1972) authorizing Zairian banks to issue foreign currency only to shippers which used exclusively the services of the Cewal conference. This circular reads as follows:

'La Banque du zaïre, agissant en vertu de l'Ordonnance-loi n° 67/272, du 23 juin 1967, définissant ses pouvoirs dans le domaine de la réglementation du change, arrête les dispositions suivantes en matière de:...

IV. TRANSPORT MARITIME DES MARCHANDISES IMPORTÉES OU EXPORTÉES

Les marchandises importées en République du zaïre au départ des ports allemands, belges, hollandais et scandinaves, ou exportées de la République du zaïre à destination de ces ports, doivent dorénavant être transportées par les navires des armements affiliés à la conférence maritime "Associated Central West Africa Lines" (Cewal), à laquelle participe la Compagnie Maritime Zaïroise.

Les banques agréées ne sont plus autorisées à régler en monnaies étrangères le coût des transports maritimes qui, n'ayant pas respecté ces dispositions réglementaires, ne bénéficient pas du rabais immédiat, figurant en facture.

A l'exportation les banques agréées ne sont pas autorisées à valider les Modèles "E" sans les assortir de cette clause.' (see Annex III) (2).

(1) In trade between Zaire and Belgium there is a bilateral agreement requiring all cargoes to be shared out according to the 40 : 40 : 20 rule; it was signed in 1981 and entered into force on 1 January 1987.
The Commission has initiated a proceeding against Belgium for its failure to comply with Article 169 of the EEC Treaty in a bid to ensure that this Member State meets the obligations incumbent upon it in this respect pursuant to Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and third countries (OJ No L 378, 31. 12. 1986, p. 1).
Belgium has declared its readiness to apply a procedure which would enable it to meet its Community obligations with regard to this bilateral agreement. This agreement has played no role in this infringement proceeding against Cewal pursuant to Articles 85 and 86.

(2) Annex III not published pursuant to the provisions of Article 24 (2) of Regulation (EEC) No 4056/86 concerning non-disclosure of business secrets.

Following the issue of this circular the clause 'Embarquement par navire Cewal' (loading by Cewal vessel) was required to appear on foreign-exchange documents.

The Cewal document of 25 August 1988 from 'A.G.H.', the initials of the Secretary-General of Cewal, reproduced in Annex III, reveals that, as far as the conference was concerned, the issue of this circular was supposed to restore the protection *vis-à-vis* non-conference companies which Cewal had lost following its acceptance of loyalty agreements with immediate instead of deferred rebates.

(22) The Zairian Maritime Freight Administration (Ogefrem) was established in 1980 as a Zairian 'instrument of national freight management'. It became operational in 1983.

In 1984 and 1985, CMB (Compagnie maritime belge) and other European shipping companies asked the Belgian, Dutch and German Governments, together with the Commission, to intervene with the authorities of various African States, including Zaire, with a view to putting an end to the system of cargo allocation by freight offices.

On 29 August 1985, CMB wrote to Ogefrem pointing out that the three Governments concerned had entered into discussions with the CMEAOC (see recital 19) in order to put an end to unilateral control measures and related payments which were not compatible with the Unctad code of conduct. CMB told Ogefrem in this letter that it had been warned by the Belgian Government against any application within Belgium of foreign laws relating to international maritime transport.

Ogefrem replied to CMB by letter of 4 September 1985 that the three Governments concerned and the CMEAOC had agreed on 3 July 1985 to establish a system of cargo reservation. Meanwhile, Ogefrem hoped that CMB would continue to comply with the system in force, as it had done in the second half of 1984.

(23) In December 1985 the Bank of Zaire decided to authorize the issue of foreign currency to any Zairian shipper using a carrier 'having paid a guarantee and applying freight charges previously approved by Ogefrem'. This resulted in the clause 'Embarquement par navire Cewal' required to appear on foreign-exchange documents under the abovementioned circular no longer being used (see Annex III).

(24) As is revealed by the document of 25 August 1988 referred to in recital 21, Cewal, faced with this new situation, concluded a cooperation agreement with Ogefrem in December 1985 after consultations with that body. Article 1 of that agreement lays down the following:

'L'Ogefrem, tenant compte des prérogatives légales lui confiées, et la Conférence Cewal veilleront à ce que l'ensemble des marchandises à transporter dans le cadre du champ d'action de la Conférence Cewal soit confié aux armements membres de cette conférence maritime.

Avec l'accord explicite des deux parties concernées, des dérogations pourront être accordées.'

Article 2 of the agreement specifies that the two parties 'Ogefrem and the Secretariat of the Cewal conference shall monitor trade to and from Zaire from ports situated in the geographical area covered by the Cewal conference'. The bilateral nature of the agreement is again emphasized by its Article 11, which provides that each of the parties may terminate the agreement subject to one year's notice.

(25) Despite what is laid down in Article 1 of the agreement, Ogefrem granted its approval (without Cewal's prior agreement) to a non-conference company with regard to 2 % of total Zairian trade (thus leaving 98 % of that trade for Cewal).

(26) With a view to obstructing the activity of its principal competitor on Zairian trade, Cewal has not since then ceased, as evidenced by numerous documents in the Commission's possession, at several meetings or through the dispatch of various items of correspondence [1] to:

[1] Minutes of the Zaire Pool Committee meetings of 20. 11. 1986, 28. 6. 1988, 13. 9. 1988, 15. 11. 1988, 20. 1. 1989, 15. 6. 1989, 19. 9. 1989 and 20. 4. 1989.
Minutes of the Special Fighting Committee meetings of 18. 5. 1989 and 15. 11. 1988.
Minutes of Cewal meetings of 6. 10. 1988, 17. 3. 1989 and 21. 9. 1989.
Records of Ogefrem/Cewal meetings of 9. 6. 1988, 31. 8. 1988, 4. 10. 1988 and 2. 2. 1989.
Telexes and letters from Isuard/Martin to Useo (3. 2. 1986), CMB to Cmz (24. 4. 1987), Woermann-Linie to Cewal (19. 5. 1988), Cewal to its members (13. 6. 1988, 7. 11. 1988, 23. 8. 1989 and 6. 10. 1989), Cewal to Ofregem (27. 10. 1988, 2. 12. 1988 and 12. 12. 1988), Cewal to Cowac (6. 10. 1989).

— remind Ogefrem that it should comply with the terms of Article 1 of the cooperation agreement,

— draw Ogefrem's attention to the 'irregular' transport services provided by the non-conference shipping company, and

— ask that sanctions be taken against those services.

Cewal also considered the possibility, if Ogefrem persisted in not granting it a monopoly of trade in accordance with the cooperation agreement, of:

— restoring the exclusive deferred-rebate system (1),

— suspending payment to Ogefrem of a clawback fee amounting to [...]% of freight, as provided for by Article 7 of the agreement (minutes of the Cewal meeting of 21 September 1989). Cewal warned Ogefrem that if it persisted in not granting the conference a monopoly of trade (in accordance with the cooperation agreement referred to in recital 24), Cewal might suspend payment to Ogefrem of the fees provided for in the agreement (2).

(27) The facts cited in recitals 20 to 26 show that Cewal took part in devising and implementing the measures in question in trade between the North Sea ports (except in the United Kingdom) and Zaire. The conference indeed handles virtually all Zaire's trade with the northern part of continental Europe. The following measures were adopted:

— initially, in return for the immediate rebate system, the monetary authorities adopted provisions limiting the issue of foreign currency to shippers using the conference's services,

— subsequently, an agreement was reached with Ogefrem which in principle gave the conference the power to prevent any intrusion of competition on its market (Article 1) and allowed it to monitor trade (Article 2).

2. *Loyalty contracts*

(28) The Cewal conference concluded loyalty contracts relating to trade between northern Europe and Zaire with shippers using its services. The main clauses of these contracts (standard contract drawn up by the conference) may be summed up as follows:

1. shippers were obliged to let the conference handle all their goods transported in its area of activity, including those exported on a fob basis;

2. an immediate rebate of 12,5 % was granted;

3. the conference's members undertook 'to make space available for the goods of the shippers within normal limits as may be ascertained from previous shipments, in proportion with the usual number of sailings and with the tonnage of the ships and having regard to the difficulties of the moment as well as to the provisions, regulations and limitations which may be imposed on them by virtue of a national or international regulation';

4. each party was free to terminate the contract, without any penalty, subject to six months' notice, either on 1 January or 1 July of each year.

(29) Cewal also drew up a blacklist of shippers using the services (even if only for limited quantities) of the only independent shipping company operating in the conference's area in Zairian trade. These shippers could no longer claim the benefits offered by the loyalty contract (3) nor could they count on a normal adequate service from Cewal (4).

3. *Agreement between conferences*

(30) It is clear from the documents obtained in this case that Cewal, Cowac and Ukwal have for several years agreed that the members of each one refrain from operating as independent shipping companies (outsiders) in the other conferences' respective area of activity. Negotiations took place on sharing out 'disputed territories' (trade between Zaire and the Atlantic coast of Spain and Portugal).

(1) Abovementioned Cewal document of 25. 8. 1988.
(2) Minutes of the Cewal meeting of 21. 9. 1989, p. 5.
(3) Minutes of the Zaire Pool Committee meeting of 28. 6. 1988 (Copenhagen) and of 20. 4. 1989 (Antwerp).
(4) According the minutes of the Zaire Pool Committee of 28. 6. 1988, in particular on the question of wood, '... the defensive strategy should be based on deterring the customers by instituting a blacklist of unfaithful shippers/consignees whose other northbound shipments by conferences' vessels would no longer benefit from normal adequate conference treatment'. Moreover, according to the minutes of the Zaire Pool Committee of 20. 4. 1989, '... it would seem the blacklist system is working for the northbound trade. The only shipments other than mining products so far are, for the Cewal range, some logs and other cargo for Raab Karcher and Interholco'.

(31) It also emerges from correspondence between the conferences concerned that intrusions by members of one conference onto the 'territory' of another are quite exceptional and each time give rise to specific protests followed by assurances from the conference of the 'intruder' that such incidents will not be repeated (1). In no instance has the principle of territorial sharing between conferences been disputed in that correspondence.

4. *'Fighting ships'*

(32) Documents on Cewal's activites in the Commission's possession indicate that it has constantly used the practice of 'fighting ships' in trade with Zaire in order to keep out non-conference companies.

The steps taken against the last non-conference company operating between the North Sea ports (excluding those in the United Kingdom) and Zaire, at least between spring 1988 and autumn 1989, the time when the Commission was carrying out checks at Cewal's head office, were along the following pattern (2):

— the conference secretariat informed members of the dates of forthcoming departures scheduled by the independent company, of the type of cargoes to be loaded and, as far as information was available, of the identity of the shippers,

— a meeting of the Special Fighting Committee was convened (approximately every two months) with a view to deciding which Cewal ships would offer reduced 'fighting rates', different from the conference's normal rates; these ships were those which sailed either on or close to (before or after) the date on which the outsider ship was scheduled to sail,

— 'fighting charges' (derogating from the conference's scale of charges) were fixed by common agreement depending on the charges applied by the independent company (3),

— differences from the conference's normal rate resulting from the rates charged were borne by all conference members.

It should be noted that:

— during the period 28 May to 12 September 1988 alone, Cewal lined up 23 'fighting ships' giving an estimated tonnage (freight tonnes) of [...] tonnes. This figure should be compared with the tonnage carried by the independent company during the same period [...] tonnes and with the total freight transported by Cewal to Zaire in 1988 [...] tonnes,

— in view of the cost of these operations, the conference members questioned their effectiveness (in connection with the pressure exerted on Ogefrem to 'control' the activity of the independent operator) on several occasions:

— 'One member suggests at this point to cut out the fighting actions altogether for a certain period, until the end of the year for instance, and then assess the situation again.

Another member suggests to stop the yoyo-system presently used, and to adjust some container rates to "market levels" instead.

This point of view is not shared by other members, who state that the final result will only be that the conference and G&C will still carry their containers, but at a lower/reduced freight [rate]' (Fighting Committee, 18 May 1989),

— 'The Committee is informed that the latest Matadi call advertised by G&C Africa Line with their "Marine Coral" of 14/11, has been cancelled. One member got this confirmed just before the meeting. The ensuing question is, of course, if this is the result of the fighting actions instigated by the Special Fighting Committee or caused by the Cewal intervention with Ogefrem' (Fighting Committee, 15 November 1988),

(1) See:
— telex from L. Martin to Cowac (3. 2. 1986),
— minutes of the Zaire Pool Committee (20. 11. 1986),
— telex from Cewal to Cowac and Ukwal (23. 8. 1989),
— minutes of the Zaire Pool Committee (19. 9. 1989),
— telex from Cewal to Cowac (6. 10. 1989),
— minutes of the Zaire Pool Committee (20. 4. 1989),
— exchanges of letters and telexes between Cowac and Cewal on Spain and Portugal (spring 1989),
— Cewal's annual activity reports mentioning the conference's exclusive rights on its range, special agreements with Cowac concerning trade between France and Zaire and the 'délégation reçue de Cowac' (delegation received from Cowac) concerning wood trade between Pointe-Noire and the west coast of western Europe.

(2) See in particular the minutes of meetings of the Special Fighting Committee of 21. 6. 1988, 12. 9. 1988, 15. 11. 1988, 20. 1. 1989, 15. 3. 1989 and 18. 5. 1989.

(3) Thus, for example, the minutes of the Special Fighting Committee meeting of 12. 9. 1988 contain the following passage: '... the fighting rate for passenger cars can be upgraded to LS 900,- DM net all-in as from 1 November 1988 and valid until 31 December 1988. Indeed, rumour has it that G&C African Line are still charging DM 1 100,- (...). The situation has to be followed up very closely: the aim remains to keep the cars for shipment on Cewal vessels, and not to turn them back to G&C Africa Line'.

— 'The members note that the schedule of G&C Africa Line is at present far from being regular and that instead of a pretty regular monthly schedule, it now shows since the fourth quarter of 1988, two-monthly sailings instead; this change has begun since the direct discussions between Cewal and Ogefrem (Antwerp) during their monthly meetings have been taken up' (Fighting Committee, 20 January 1989).

II. LEGAL ASSESSMENT

SECTION I

ARTICLE 85: AGREEMENTS BETWEEN THE MEMBERS OF THE VARIOUS EURO-AFRICAN SHIPPING CONFERENCES

1. Article 85 (1)

(a) *Object and effect of the agreements. Market concerned.*

(33) The Cewal conference constitutes an agreement between undertakings within the meaning of Article 85 of the EEC Treaty. The same applies to the Cowac and Ukwal conferences. The correspondence referred to in the footnote (recital 31) reveals that agreements existed between the members of the three conferences. The agreements between the conferences by virtue of which the members of one conference refrain from operating as an independent shipping company ('outsider') in the area of activity of the other two conferences constitute agreements between undertakings within the meaning of Article 85.

(34) In order to assess the object and effect of these agreements, which relate to competition between the members of different shipping conferences outside their areas, i.e. as 'outsiders', in the respective trades of the other conferences, it is necessary to examine the markets covered by the activities of the conferences operating between the European Atlantic coast and west and central Africa first.

(35) The markets covered by the activities of Cowac, Ukwal and Cewal are the liner routes between the Community ports served respectively by the three conferences (excluding its Mediterranean coast) and the coast of west Africa (from Mauritania to Angola) (see recital 1).

(36) These liner routes account for a major proportion of total trade conducted by sea between the above-mentioned ports, the remainder being covered by tramp services. Even if some competitive pressure may be exerted by tramp services on liner carriers, this pressure is limited to a few marginal products. Generally speaking, and for virtually all products, it must be concluded that tramp services cannot substitute for liner services (see recitals 9 to 12).

(37) The factual data above indicate that the members of the Cewal, Cowac and Ukwal conferences have concluded trade-sharing agreements which have the effect of partitioning off each group of shipping routes by prohibiting the members of one conference from operating in the ports served by another conference unless they obtain membership, after a long and uncertain procedure, of that second conference. Thus, a ship cannot operate between Hamburg, Rotterdam, Antwerp and Le Havre, on the one hand, and the African ports covered by Cowac, on the other, unless it is a member of Cowac; it cannot serve ports in Zaire or Angola from these ports unless it is a member of Cewal, and cannot call at a United Kingdom port unless it is a member of Ukwal. Similarly, a container intended for Togo and originating on the European mainland can only be loaded as conference cargo on a Cowac vessel since the undertakings between the conference members prevent:

— an Ukwal ship sailing from, for example, Harwich, from calling at a continental port (unless its owner is also a member of Cewal or Cowac),

— a Cewal ship sailing from a continental port from taking on cargo for a destination other than Zaire or Angola (unless its owner is also a member of Cowac).

(38) The agreements between the members of the Cowac, Ukwal and Cewal conferences amount to agreements between the members of these conferences whereby they will not compete with each other as outsiders in their respective areas of operation. Consequently, their object and effect is to prevent, restrict or distort competition within the common market in an appreciable manner since their object and effect is to partition the European Atlantic coast into several separate areas, with each area taking in one or more Member States, in breach of Article 85 (1) (c). The agreements also have the effect of limiting, within the meaning of Article 85 (1) (b), the supply of transport services available to shippers from each conference area.

(b) *Effect on trade between Member States*

(39) Trade between Member States is affected appreciably since (Community and non-Community) carriers operating in the North Sea accept by virtue of these agreements that they should serve only some Community ports to the detriment of others, thus creating artifical barriers between Member States.

(40) This situation of non-competition between carriers from some ports also influences competition between the various Community ports covered by the agreements by altering their respective catchment areas and the activities located in those catchment areas, which has the effect of disturbing trade patterns within the common market (see the sixth recital in the preamble to Regulation (EEC) No 4056/86).

2. Article 2 of Regulation (EEC) No 4056/86

(41) The agreements in question between the members of the conferences do not constitute technical agreements within the meaning of Article 2 of Regulation (EEC) No 4056/86 as they are aimed solely at commercial objectives and are therefore, on the basis of that Article, caught by Article 85 (1) of the Treaty.

3. Article 3 of Regulation (EEC) No 4056/86

(42) The object and effect of such agreements between conferences is therefore to share markets and limit the supply of services, within the meaning of Article 85 (1) (b) and (c), by regulating access to the port according to whether or not a shipping company is a member of a particular conference.

Moreover, such agreements do not meet the exemption criteria for conferences set out in Article 3 of Regulation (EEC) No 4056/86 since, in particular, they do not have as their objective the fixing of common or uniform prices between conferences.

They amount, in each geographical area, to agreements between conference and non-conference lines and are aimed at eliminating the competition of the latter.

These agreements therefore fall outside the scope of the exemption provided for by Article 3 of Regulation (EEC) No 4056/86.

4. Article 85 (3) — Individual exemption

(43) The agreements concluded between the members of Cewal, Cowac and Ukwal do not help to improve liner services and do not present any other economic or technical advantage given that they are intended solely as a means of eliminating the competition of other 'outsiders' lines.

(44) The agreements offer no benefit to users. On the contrary, they reduce their choice of liner services.

(45) The agreements are not indispensable to the attainment of any of the advantages of shipping conferences or any of the objectives for which shipping conferences have received a block exemption.

(46) Finally, the agreements enable the Cewal, Cowac and Ukwal conferences to eliminate competition on a substantial part of the various markets isolated in this way.

(47) The Commission consequently considers that the conditions for applying Article 85 (3) are not met in this case.

SECTION II

ARTICLE 86

(48) Article 86 of the EEC Treaty prohibits as incompatible with the common market any abuse by one or more undertakings of a dominant position within the common market, or in a substantial part of it, in so far as such abuse may affect trade between Member States.

A. Applicability of Article 86 to shipping conferences

(49) Article 8 of Regulation (EEC) No 4056/86 deals with the possibility of an abuse of a dominant position by shipping conferences. The Court of First Instance of the European Communities has, moreover, cited shipping conferences as an example of agreements between economically independent entities which enable economic links to be formed that can give these entities jointly a dominant position in relation to other operators on the same market [1]. The agreement between the members of Cewal constitutes such an agreement.

[1] Cases T-68, T-77 and T-78/89, Verre Plat, Judgment of 10 March 1992, not yet published, paragraph 359.

(50) The fact that some of Cewal's activities are authorized by a block exemption does not prevent Article 86 from being applied to the activities of the conference (1).

(51) The member shipping companies of Cewal, which are undertakings within the meaning of Article 86, have abused their joint dominant position in the three ways described in recitals 63 to 91.

B. The relevant market

— *Services market*

(52) As stated in recitals 8 to 12 of this Decision, liner services constitute the relevant services market.

— *Geographic market*

(53) In its judgments of 11 April 1989 (2), the Court of Justice ruled that, for the application of Article 86 of the Treaty to the air transport sector, a scheduled flight on a particular route may, if the alternative possibilities are not interchangeable with it, be regarded as a market in which a carrier may hold a dominant position. The same reasoning may be applied to a sea route or a series of shipping routes to the extent that there is substitutability between certain ports.

(54) The different European ports (excluding those in the Mediterranean) which control ocean trade between northern Europe and Zaire may be subdivided as follows :

(i) Northern European ports (from Scandinavia to Antwerp-Zeebrugge)

In 1988, Cewal transported a total of [...] tonnes in the direction north/south and [...] tonnes in the direction south/north from these ports ;

(ii) French North Sea, Channel and Atlantic ports (area covered by Cowac-south) (3)

These ports, in particular Dunkirk, Le Havre and Rouen, are valid alternatives to Antwerp or Rotterdam for shippers in Zairian trade (4). However, looking solely at trade between France and Zaire (assuming that it is all transported by sea), cargoes transported :

— by tramp services (which constitute a different services market),

— by Mewac (which is a conference operating in a different trade), and

— by those members of Cowac-south which are also members of Cewal and cannot therefore be regarded as competitors of Cewal,

must be excluded. The balance (some [...] tonnes (5) in the direction north/south) is insignificant (amounting as it does to barely more than 10 % of trade in the Cewal area).

In addition, Cewal has indicated in its annual activity report that Cowac-south's transport operations to Zaire are governed by 'special agreements' between the two conferences, without however specifying the content of those agreements (see recital 30).

In these circumstances, the French ports compete in reality only to a marginal extent with Cewal's activities to and from Zaire.

(iii) United Kingdom ports (Ukwal areas)

These ports offer very limited possibilities of substitution to continental shippers since they can be used only after relatively costly transhipment.

(55) As indicated in recital 30, these three conferences have also concluded agreements among themselves under which each of their members undertakes to refrain from operating as an outsider on the 'territory' of the other conferences, the effect of these agreements being to partition the various areas of activity of the three conferences in question.

(56) Because of the above factors and in particular the absence of significant competition from other maritime routes, the whole of the routes on which Cewal's members operate between Zaire and

(1) Case T-51/89, Tetra Pak v. Commission, [1990] ECR II-309, paragraphs 25, 29 and 30.
(2) Case 66/86, Ahmed Saeed Flugreisen v. Zentrale zur Bekämpfung unlauteren Wettbewerbs, [1989] ECR 803, paragraph 40.
(3) The ports served by Cowac-north must be left out of account since it does not cover trade to Zaire.
(4) Such substitutability does not exist, however, to any significant degree between African ports, mainly because of infrastructure problems and administrative difficulties linked to the crossing of frontiers.
(5) This balance also includes goods collected by outsiders in the Mediterranean since the Commission does not have any data enabling it to isolate them.

northern European ports constitute a specific market (1).

C. Dominant position of Cewal

(57) Trade between the northern European ports (from Scandinavia to Antwerp-Zeebrugge) and Zaire is in principle reserved exclusively for Cewal since the 1985 Ogefrem-Cewal agreement (Article 1) grants the conference an exclusive right to transport all cargoes, unless a derogation is granted with the consent of both co-signatories. In reality, and despite Cewal's protests, Ogefrem is reported to have granted an initial quota of 2 % of cargoes to the joint independent service offered by the Italian and Belgian shipowners Grimaldi and Cobelfret ('G&C'). Moreover, Cewal maintains that this quota is frequently exceeded, which G&C admits to a certain extent.

The tonnages announced by Cewal were around 90 % of the market in 1987. In 1989 they were [...] % and in 1991 [...] % after the discontinuance of certain infringements established under Article 86 of the EEC Treaty.

(58) It should also be noted that even if the tonnage transported in the area covered by Cowac-south to Zaire (see recital 54 (ii)) were included, Cewal's market share in trade to Zaire would still be more than 70 % of the market defined in this way.

(59) Apart from this very large market share which normally creates a presumption of a dominant position (2), Cewal's power also stems from :

— the fact that it holds a considerably larger market share than its principal competitor (3),

— the benefits it derives from the agreement concluded with Ogefrem, even if Ogefrem has been able to interpret this agreement flexibly,

— its network of routes, the capacities of its fleet and the frequency of the services it can provide, all of which have to be assessed by reference to the advantages at the disposal of the principal rival service, and

— the experience acquired from having provided a service for several decades and the network of influence established in Zaire.

(60) This situation enables Cewal to act independently *vis-à-vis* its competitors and customers without being damaged by such an approach. Moreover, Cewal is a vital commercial partner for any importer or exporter having trade links with Zaire.

(61) Taking such factors into account, the Commission concludes that Cewal has a dominant position within the meaning of Article 86 on the group of shipping routes it operates between northern Europe and Zaire. This dominant position is held jointly by the members of Cewal given that they are linked to each other by the conference agreement, which creates very close economic links between them, as evidenced, for example, by the existence of a common scale of freight rates.

D. Abuse of a dominant position

(62) The facts of the case indicate that Cewal has abused its dominant position by three different means (which are analysed below) in an attempt to eliminate its main rival (G&C).

1. *The Cewal-Ogefrem agreement*

(a) Abusive conduct

(63) It is a well established principle that any behaviour on the part of dominant undertakings which obstructs the maintenance of the degree of competition still existing on the market or the development of that competition constitutes an abuse within the meaning of Article 86 (4).

(64) The Commission considers that Cewal has abused its dominant position within the meaning of recital 63 by actively participating in implementation of the Cewal-Ogefrem agreement and by repeatedly asking through various means, that it be strictly complied with in order to ensure the elimination of its sole competitor for the trade in question.

(1) As indicated above (recitals 9 to 12 and 36), tramp services are not generally substitutable for liner services.

(2) Case C-62/86, Akzo Chemie BV v. Commission, [1991] ECR 3359, point 60 ; the Court ruled that, unless there is an exceptional circumstance, a market share of 50 % gives rise to a strong presumption that a dominant position exists.

(3) As the Court ruled in its Judgment of 14 February 1978 in Case 27/76, United Brands Company v. Commission, [1978] ECR, p. 207, a market share must be assessed with due regard to the strength and number of competitors.

(4) Case 85/76, Hoffmann-La Roche v. Commission, [1979] ECR, p. 461.

(65) Cewal's dominant position, given that the conference handled the great majority of Zaire's trade with the northern part of the European mainland, has been strengthened in principle by the agreement with Ogefrem, Article 1 of which has consolidated Cewal's already very strong position by granting it an exclusive right over the trade in question.

(66) It is in order to maintain this privileged position that the conference has continually exerted pressure on Ogefrem to ensure the latter's compliance with the said agreement and, consequently, the elimination of its principal competitor (1).

(67) The fact that the conduct of shipping conferences, as described above in relation to Cewal, can be regarded as an abuse of a dominant position was moreover acknowledged in 1987 by the OECD in a resolution of the OECD Council concerning common principles of shipping policy and liberalization of operations relating to maritime transport (2).

In Annex II to that document ('Guidelines concerning competition policy as applied to liner shipping') it is specified in Section B ('Specific practices of conferences and conference members which can be generally considered desirable or undesirable') at point (ii) ('Specific practices with relation to lines outside the conference') as follows:

'Possible practices in which conferences might indulge with regard to non-conference lines, which could be regarded as abuse of their dominant position, include:

(a) (...)

(b) The deliberate conclusion of agreements with governmental or quasi-governmental authorities which have the effect of restricting competition by the exclusion of non-member lines from participation in the trade or of placing them at a substantial disadvantage *vis-à-vis* conference lines.

(c) (...).'

(b) Applicability of Article 86

(68) The members of the Cewal conference have alleged that the practices referred to in the complaints are not covered by Article 86 as they are solely the result of obligations imposed by public authorities. It is therefore necessary to examine the facts described above in the more general context of the public order provisions applicable to maritime transport between the Community and Zaire.

(i) The Unctad code of conduct

(69) As regards the Unctad code of conduct for liner conferences, the provision of this international agreement which deals with cargo-sharing (Article 2) simply states that, where a conference operates in a liner trade, the national shipping lines of each of the two countries the foreign trade between which is carried by the conference have equal right of access to cargoes carried by that conference, third-country vessels having a right to a 'significant share, such as 20 %' of the same cargo carried by the conference. Article 2 does not advocate the creation of conferences on trades where there are none or the sharing-out of all cargoes transported by all shipowners operating in a given trade, whether or not members of a conference, or, still less, the elimination of outsiders. Consequently, the obligations imposed by the adoption of the Unctad code of conduct are applicable, where ratified by the Member States concerned, to Cewal only in respect of the cargoes at its disposal.

(ii) The Ogefrem-Cewal agreement and national rules

(70) The agreement between Ogefrem and Cewal referred to in recital 24 cannot be considered to constitute national rules obliging the Cewal members to act as they did. On the contrary, as its title and content indicate, the agreement is in itself not a State measure, being an agreement which imposed obligations on its two signatories concerning the monitoring of the trade in question and which can be terminated by them subject to due notice being given. At all events, Cewal accepted it and insistently urged Ogefrem to comply with its provisions with a view to eliminating its principal competitor.

(71) It should also be stressed that the Zairian rules in force do not oblige shipowners who are members

(1) The following passage can be found in the minutes of the Special Fighting Committee meeting of 18. 5. 1989:
'It is the Committee's view that, in the meantime, pressure on Ogefrem should be maintained in order to, also on that side, achieve that the ideal circumstances are created for G&C to have them stop their service'.

(2) OECD Council recommendation and resolution concerning common principles of shipping policy and liberalization of operations relating to maritime transport, adopted on 13. 2. 1987. OECD Document C (87) 11 (final). (Reproduced in *International Legal Materials* (Washington DC), Vol. 26, No 3, May 1987, p. 861).

of a conference to set up systems aimed at ensuring that cargoes are channelled towards their own ships while excluding independent companies.

(72) Consequently, the conclusion of this agreement and Cewal's reminders that it be complied with do not result from obligations imposed by the public authorities.

2. *'Fighting ships'*

(73) The facts related in recital 32 indicate that, at least between May 1988 and November 1989, Cewal used the method of fighting ships and that the use of that method formed part of a plan aimed at eliminating its principal competitor in the trade between the North Sea (excluding the United Kingdom) and Zaire. This method consisted in designating as fighting ships those Cewal vessels whose dates of sailing were closest to the sailings of G&C ships and in fixing special 'fighting rates' for the ships so designated. These jointly fixed rates were different from the rates normally charged by Cewal and were determined not according to economic criteria (i.e. on the basis of costs) but solely in order for them to be the same or lower than the prices advertised by G&C, with the shortfall in revenues resulting from application of this price-fixing system rather than the conference tariff being borne by all Cewal's members. It was clearly accepted by those members that the system of fighting ships was in principle likely to result in a loss of revenue, which they would have to shoulder (1).

(74) The practice of fighting ships is described in maritime literature as follows:

'A "fighting ship" is a vessel placed on berth by the conference to sail in competition with a non-conference carrier. The "fighting ship" would be scheduled to sail on the same day as the "interlopers" vessel, or several "fighting ships" would bracket the outsider's sailings. The "fighting ship" would call at the same ports as the non-conference competitor, and it would charge the same or lower rates as the outsider even if such rates were well below the conference tariff. Financial losses of the "fighting vessel" would be distributed over the several members of the conference, who would each suffer proportionately much less than the one outside line; furthermore, the conference members would often have the advantage of obtaining higher rates on their other sailings' (2).

In the case in hand, because Cewal ships sailed so frequently, the conference was able to designate fighting ships without having to alter its scheduled timetables (3).

(75) It should be noted that the various laws dealing with shipping conferences in the world have, since their emergence in the nineteenth century, taken an exceptionally grave view of this practice.

(76) In 1914 a committee set up in the United States to study shipping conferences concluded that the practice of fighting ships should be prohibited (4). The United States Shipping Act of 1916 thus contained an express prohibition of fighting ships, which was maintained in the new Shipping Act of 1984 (5).

(1) Telex from Woermann Linie to Cewal, 19. 5. 1988.

(2) Marx, Daniel Jr. *'International shipping cartels: a study of industrial self-regulation by shipping conferences'*, Princeton University Press, Princeton, New Jersey, 1953, p. 54 *et seq.*

(3) Telex of 10. 2. 1989 from the Cewal Zaire Action Committee to Cewal members indicating which Cewal ships had been designated as fighting ships.

(4) This was the 'Alexander Committee', the report of which served as a basis for the drafting of the 1916 Shipping Act. An author remarked:
'... notwithstanding denials by liner representatives that the practice existed, the Alexander Report declared that "fighting ships" or similar predatory measures had been employed by the conferences or affiliated groups against independent lines. It noted the appointment by a certain conference of a committee that was empowered to select fighting ship vessels from any of the conference lines to sail on the same day and between the same ports as had been scheduled by the independent carrier, at rates reduced sufficiently to secure the traffic. The expenses of the voyage and the incidental loss would be distributed among the conference members, who collectively were far better able to bear them than the independent line. The result, therefore, was that the independent would ultimately be driven from the trade.'
Singman, Julian H., 'Conference standards and rate policies', in *'Merchant marine policy. Proceedings of the Symposium of the 15th Ocean Management Institute of the American University's School of Business Administration'*, edited by Howard C. Reese, Cornell Maritime Press, Inc. Cambridge, Maryland, 1963, p. 174, on page 177.

(5) A contemporary author on the 'Alexander Committee' commented as follows with reference to the bill that would become the 1916 Shipping Act:
'After defining, in the first section of the bill, the term "common carrier by water" and drawing the necessary distinction between such carriers "in interstate commerce" and "in foreign commerce", the bill, in section two, prohibits the granting of deferred rebates, the operation of fighting ships, and retaliatory action by carriers against shippers for patronizing non-conference lines. These provisions reach the chief abuses of the steamship conferences. Unquestionably, fighting ships ought to be prohibited; by their use unfair competition is waged against independent carriers. The use of fighting ships to destroy competitors is analagous to the practice of local price cutting by trusts to drive small competitors out of business.'
Johnson, Emory R., 'Competition versus cooperation in the steamship business: proposed legislation', Annals of the American Academy of Political and Social Science, Vol. 55, September, 1914, p. 1, on pages 8-9.
The prohibition was indeed included in the 1916 Shipping Act. The United States Shipping Act of 1984 defines fighting ships as follows: 'Section 3, "fighting ships" means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade.' Section 10 (b) (7) prohibits the use of fighting ships by all liner carriers.

(77) For its part, the Unctad code of conduct for liner conferences lays down in Article 18 that:

'Members of a conference shall not use fighting ships in the conference trade for the purpose of excluding, preventing or reducing competition by driving a shipping line not a member of the conference out of the said trade.'

(78) In Annex II, Section B, point (ii) (a) of its recommendation referred to in recital 67, the OECD regards the practice of fighting ships as an abuse of a dominant position which should be outlawed:

'Possible practices in which conferences might indulge with regard to non-conference lines, which could be regarded as abuse of their dominant position, include:

(a) the use of fighting ships or similar means to forestall a non-conference line in obtaining cargo;

(b) (. . .);

(c) (. . .).'

(79) Given that the very notion of 'fighting ships', as described above, and what it implies is thus widely known to the shipping world, Cewal's use of the term 'fighting ships' in numerous documents in the Commission's possession and the creation within Cewal of a 'Special Fighting Committee' indicates clearly the intention and will of its members to use this anti-competitive practice.

(80) In this regard, a distinction must be made between a concerted decision by several undertakings forming, in this case, a shipping conference aimed at fixing, within the framework of a plan, a special price to remove a competitor, and the case already examined by the Commission and the Court of Justice of abusively low prices established by a single undertaking acting unilaterally, where it was necessary to distinguish between predatory prices and aggressive competition [1].

In the latter case, the Court of Justice established criteria based on the production costs of the undertaking in question; in the former, which is the case at issue, the multilateral and intentional character demonstrates the abusive nature of conduct that consists in establishing a concerted exceptional price with the aim of removing a competitor.

(81) Such conduct by undertakings in a collective dominant position, such as the members of Cewal, is inadmissible. Indeed, the Court held that recourse to methods different from those which condition normal competition on the basis of merit constitutes an abuse of a dominant position [2]. This is the case with fighting ships, especially since, Cewal being a shipping conference, its members are bound to respect the common tariff. The members of Cewal thus abused their joint dominant position by seeking to eliminate the competition of their principal competitor through the use of fighting ships.

(82) Cewal has claimed that its members did not lose money through the fighting rates; they merely earned less than they would have done from charging 'normal' rates. On this point, it must be stressed that, even if these claims seem to be contradicted by the statements of conference members contained in the minutes of the meetings of the Fighting Committee, subsidization of the cost of fighting rates by the conference's normal rates charged on its other sailings is in itself in the case at issue abusive, anti-competitive conduct which might have the effect of eliminating from the market an undertaking which is perhaps as efficient as the dominant conference but which, because of its lesser financial capacity, is unable to resist the competition practised in a concerted and abusive manner by a powerful group of shipowners operating together in a shipping conference. Even if Cewal's claims were true, this would simply show that, because of the existence of the conference, the 'normal' freight rates are substantially above the costs of its members, which in turn points to the existence of a low degree of competition on the market.

(83) Moreover, Cewal's establishment of fighting rates different from those of the conference tariff, by which the conference is bound in order to benefit from the block exemption, has a discriminatory effect against shippers who, having to load on dates some time from the sailing dates of G&C ships,

[1] Commission Decision 85/609/EEC, OJ No L 374, 31. 12. 1985, p. 1, and Judgment of 3 July 1991 in Case C-62/86 (see footnote to recital 59).

[2] Hoffmann-La Roche Judgment, (footnote to recital 63) and AKZO Judgment (footnote to recital 59).

must therefore pay the higher regular conference tariff for the carriage of the same goods, and thus also constitutes a clear abuse of a dominant position in breach of Article 86 (c). This is because shippers have dissimilar conditions imposed on them for equivalent transactions, which places those who are forced to pay higher rates at a competitive disadvantage.

3. *Loyalty contracts*

(84) The conditions for obtaining loyalty rebates imposed by Cewal on shippers also constitute, in the case at issue with regard to the two circumstances described below, taken together, a clear abuse of a dominant position. This is because, in view of Cewal's share of the trade, shippers with regular operations between Europe and Zaire are able only occasionally to use the sole non-conference shipping company and depend for the rest of their deliveries on the services provided by Cewal.

(85) In these circumstances, offering shippers rebates only on condition that they entrust 100 % of their goods (including those sold on a fob basis which consequently escape the control of exporters) to the conference is tantamount to unilaterally imposing loyalty arrangements which restrict the freedom of users and, consequently, competition in the maritime transport sector, and to substantially reducing the sole non-conference shipping company's ability to maintain its activity on a durable basis. Such conduct also amounts to applying dissimilar conditions to equivalent transactions with Cewal's trading partners (the shippers), thereby placing them at a competitive disadvantage (Article 86 (c)) [1].

(86) Given that shippers have no real choice, the Commission considers that Cewal, by imposing excessive conditions (i.e. conditions going beyond the provisions in Article 5 (2) of Regulation (EEC) No 4056/86) in its loyalty contracts, has abused its dominant position. The same applies to the use of the blacklists referred to in recital 29, which aggravates still further the terms imposed on shippers under the loyalty contracts by actually imposing sanctions on them linked to the supply or quality of the service.

(87) At all events, even if Cewal's loyalty contracts and the use of blacklists were covered by the block exemption in Article 6 of Regulation (EEC) No 4056/86, nothing would stand in the way of the applicability of Article 86 of the Treaty to agreements and practices authorized by a block exemption [2]. Since Cewal's overall conduct regarding its loyalty contracts is abusive, it cannot invoke the block exemption to prevent Article 86 from being applied.

(88) Cewal has claimed that all shippers, without distinction, were in fact offered the 12,5 % rebate provided for in the loyalty contracts. This is in contradiction with the drawing-up of blacklists and the maintenance of the contracts, which must be deemed to be in force unless they are amended or cancelled [3].

(89) Finally, referring to all the activities considered abusive by the Commission, Cewal has alleged that these activities have not been successful, something which in its view was sufficient to rule out the applicability of Article 86 of the Treaty since that provision did not permit attempted abuse to be punished.

(90) On this point, it must first be stressed that such an interpretation would deprive Article 86 of all its meaning since the aim of that provision is, to a large extent, to prevent abusive conduct from being successful. It is also obvious that the services of the sole outsider have suffered as a result of Cewal's practices, at least as far as their regularity is concerned (see recital 32).

(91) Moreover, the loyalty contracts established by Cewal with transport users do not meet the conditions of Article 5 (2) of Regulation (EEC) No 4056/86 in that:

— they do not explicitly spell out the rights of users or the obligations of the conference members; in particular, no mention is made of the circumstances in which users may be released from their loyalty obligation, notably the circumstances referred to in Article 5 (2) (b) (ii),

[1] Case 85/76, Hoffmann-La Roche v. Commission, [1979] ECR, p. 461.

[2] Tetra Pak Judgment, cited above. See also the Verre Plat Judgment, cited above.

[3] See Cases 43 and 63/82, VBVB and VBBB v. Commission, [1984] ECR 19, paragraph 8.

— they do not list the cargoes excluded from the contract's scope, and

— the notice for termination of the contract exceeds the six months provided for in Article 5 (2) (a) since it cannot be given at any time, as that provision requires.

In these circumstances, the Commission considers it necessary, pursuant to Article 7 (1) of Regulation (EEC) No 4056/86, to address a recommendation to the members of Cewal asking for the terms of their loyalty contracts to be amended so as to conform in this respect with Article 5 (2).

E. Effect on trade between Member States

(92) A shipping conference such as Cewal, made up of companies established in different Member States of the Community and operating international liner services from ports in several Member States is liable to affect trade between Member States, as is acknowledged by the sixth recital in the preamble to Regulation (EEC) No 4056/86 which states:

'Whereas trade between Member States may be affected where restrictive practices or abuses concern international maritime transport, including intra-Community transport, from or to Community ports; whereas such restrictive practices or abuses may influence competition, firstly, between ports in different Member States by altering their respective catchment areas, and secondly, between activities in those catchment areas, and disturb trade patterns within the common market;'.

(93) The Court of Justice has also made it clear that for an agreement between undertakings to be able to be regarded as affecting intra-Community trade it is enough that the agreement as a whole, and not each of its clauses taken individually, may affect trade (1).

(94) This reasoning may be transposed to the case of practices engaged in by parties to a conference agreement which itself affects trade between the Member States, especially if the object of the practices in question is to obstruct the activities of a competitor made up of a Belgian and an Italian shipping company operating from several Community ports.

(95) The object or effect of the practices in question is also to limit the choice of transport services available to shippers established in various Member States falling within Cewal's area of activity, to channel those shippers' goods to the transport services provided by Cewal, and thus to disturb normal trade patterns within the common market.

(96) In view also of the fact that:

— virtually all trade between the Community and west and central Africa is transported by sea,

— most maritime trade, with the exception of certain specific categories of goods (minerals, petroleum products, fertilizers, steel, sugar, malt, salts), is carried by liner vessels,

— Cewal controls most of the liner trade between the Community and Zaire,

the relevant market, as defined at points 52 to 56, constitutes a substantial part of the common market.

SECTION III

MEASURES TAKEN BY THE COMMISSION

A. Article 11 (1) of Regulation (EEC) No 4056/86: termination of infringements

(97) Pursuant to the terms of Article 11 (1) of Regulation (EEC) No 4056/86, the Commission may, if it finds there has been an infringement of Article 85 (1) or 86 of the Treaty, require by decision that the undertakings or associations of undertakings concerned bring such infringements to an end.

The Commission considers it is necessary, pursuant to the abovementioned provisions, to require the shipping companies concerned immediately to terminate the agreements referred to in recitals 30 and 31 and the practices referred to in recitals 20 to 29 and 32.

(1) Judgment of 25 Febuary 1986 in Case 193/83, Windsurfing v. Commission, [1986] ECR, p. 643.

The block exemption will be maintained in so far as effective competition is restored on the relevant market by the undertakings in question and through adjustment of the existing rules which unduly restrict access to the trade. The Commission will monitor compliance with these conditions and if the conditions are not met, reserves the right subsequently to withdraw from Cewal the benefit of the block exemption.

B. Article 19 (2) of Regulation (EEC) No 4056/86 : fines

(98) Under the terms of Article 19 (2) of Regulation (EEC) No 4056/86, the Commission may, by decision, impose on undertakings or associations of undertakings fines where, either intentionally or negligently, they infringe Articles 85 (1) or 86.

(99) The Commission considers it necessary in this case to impose a fine pursuant to Article 19 (2) of Regulation (EEC) No 4056/86 on the members of Cewal for having infringed Article 86 by committing the acts described above in recitals 20 to 27 (agreement with Ogefrem), recitals 28 and 29 (blacklists and loyalty contracts which do not meet the conditions of Article 5 (2) of Regulation (EEC) No 4056/86) and recital 32 (fighting ships).

(100) However, the Commission does not intend to impose fines for the infringements of Article 85 (1) committed by the members of Cewal, Cowac and Ukwal, as described in recitals 30 and 31, because of a possible misapprehension on their part of the legal situation which this Decision is intended to clarify.

(101) To determine the amount of the fines, the Commission has taken the following factors into consideration :

(a) *The nature of the infringements*

(102) The infringements of Article 86 described in this Decision are of a particularly serious nature in as much as they enabled Cewal to maintain a virtual monopoly on its routes to Zaire. The infringements also had the effect of impeding the attainment of a single market in so far as they partition the shipping routes in question and favour the shipping lines of certain Community countries to the detriment of their competitors in other Member States.

(b) *The intentional nature of the infringements*

(103) Regulation (EEC) No 4056/86 was adopted following intensive consultations between the Commission and the representatives of shipowners. Apart from the general legal principle that ignorance of the law is no excuse, the members of Cewal cannot in the circumstances claim legal uncertainty as regards their obligations under Community law. It should also be remembered, as stated in recitals 67, 77, 78 and 79, that :

— the practices linked to the Ogefrem/Cewal agreement had been described by the OECD as an abuse of the dominant position of a conference, and

— the practice of fighting ships is prohibited by the world's shipping legislation dealing with shipping conferences, in particular the Unctad code of conduct for shipping conferences, applicable to the trade in question.

In these circumstances, these infringements must be considered to have been committed intentionally.

(c) *The conduct of the enterprises*

(104) The attention of the members of Cewal was drawn in 1987 by the complainants to their obligations under the Community competition rules. It must be noted that neither after the submission of the complaints nor after the requests for information sent by the Commission did the conduct of its members change in any way whatsover. Only after the Commission's inspection of the premises of Cewal did the latter modify some of its practices.

(d) *The nature and value of the goods*

(105) The infringements referred to in this Decision affected the liner concerned; they therefore directly affected the conditions under which all goods were traded (with the exception of basic products carried by tramp vessels) between the North Sea and Zaire.

(106) It should be noted that the incidence of freight rates on the prices of goods carried by liner vessels is generally estimated at between 4 and 12 % ; the incidence can be even higher in the case of low or average value added products which form a large proportion of the trade between Europe and Africa (1).

(107) It is not possible to assess the exact market shares of Cewal and its members had these agreements and practices not existed. It is clear, however, that their present market shares result partly from the practices covered by this Decision and not solely from their own competitive capacity.

(108) These agreements and practices alone enabled the conference to maintain such a high market share, which contrasts with other Euro-African trades for which the market share of the conferences in question is sometimes less than 60 %. This same differential exists as far as prices are concerned. The power of Cewal's members allowed freight rates to be kept at an artificial level, which seems to be significantly above its members' costs, as is suggested by Cewal's statements concerning its fighting rates (see recital 76).

(e) *The degree of involvement*

(109) The main effect of the entry into force of these practices was to establish the supremacy of the CMB group (which has included, in addition to CMB itself, Dafra Lines and Woermann Linie since 1 January 1988 and 1 April 1990 respectively). With regard to the trade in question, companies in the CMB group now carry some [...] % of the conference's cargoes (also using the 'rights' of the Compagnie maritime zaïroise (CMZ), which does not at present have any ships). The President and Secretary-General of the Cewal Conference have been, since the time the infringements took place, members of CMB's executive staff. The Cewal secretariat is moreover situated in premises also occupied by CMB.

(110) The CMB group thus bears a much higher degree of responsibility, all the more so since it controls a considerably larger proportion of the trade than its partners which are not directly controlled by CMB within the conference, and its actions therefore have a far greater impact on the market.

(111) As far as CMZ is concerned, it should be noted that even if its share of cargoes allocated by Cewal is in the region of 40 %, it has no vessels itself at present and in practice transfers its 'rights' to the other Cewal members.

CMZ has been faced with serious difficulties which have prevented it from surviving as a genuine shipowner since the mere resale of cargo rights (to which its activity is limited at present) cannot be considered a genuine maritime activity but rather a levy on the shipowners who actually carry the cargoes.

Moreover, on a general level, CMZ did not gain any advantage in its development as a regular operator of liner transport services from the practices established by Cewal, as is shown by its serious financial difficulties at the present time.

(112) On the basis of the foregoing, it is clear that no fines should be imposed on CMZ which would further weaken its position.

(113) In the case of Angonave (Angola) and Portline (Portugal), which operate in both directions between Angola and Portugal, it would not be appropriate to impose fines for infringements committed in the trade between the North Sea and Zaire.

(114) As regards the other shipping companies which are members of Cewal, it must be pointed out in respect of SWAL that it sold its traffic rights as a member of Cewal to Nedlloyd in 1984. Consequently, it took no real part in the infringements and it is not appropriate to impose a fine on it.

With regard to Nedlloyd, a Netherlands shipowner, account must be taken of the fact that it played only a limited part in Cewal in comparison with the CMB group and has a much smaller share of the trade than the CMB companies.

(1) According to one author, '... transportation costs are clearly a barrier to trade and in that sense ought to be analysed exactly like a customs tariff.' Bernhard J. Abrahamson in 'Shipping nationalism and the future of the United States liner industry : the UNCTAD Code and bilateralism',edited by Lawrence Juda, Times Press Educational Publishing, Wakefield, Rhode Island, 1984, p. 106.
According to the French members of the shipowners' committees (see abovementioned Decision 92/262/EEC), freight expenditure in 1987 represented 11,3 % of the value of foreign trade of the countries of West and Central Africa.

(f) *The duration of the infringements*

(115) The period to be taken into account with regard to the infringement relating to the agreement with Ogefrem runs from 1 July 1987, the date on which Regulation (EEC) No 4056/86 entered into force, up to the present time since the agreement has never been terminated by Cewal. As for the fighting ships, account must be taken, in calculating the fines, of the conduct of the undertakings during the period from May 1988 to November 1989 referred to in recital 70. In the case of the irregular and abusive loyalty contracts and blacklists, the period to be taken into account should be from 1 July 1987 to November 1989.

(g) *The novelty of applying Regulation (EEC) No 4056/86 to infringements*

(116) This Decision is one of the first cases of application of Regulation (EEC) No 4056/86 for the purposes of imposing a fine for infringement of Article 86. It is customary in such cases for the Commission to show moderation in determining the amount of the fine in order to take account of the possibility that the parties concerned by the Decision may not have been fully informed of their obligations under the Community rules on competition or may have underestimated the gravity of the infringements they committed.

(117) This is not the case here since, as stated above (recital 116), the members of Cewal were fully aware of the provisions applicable to them as regards competition. Moreover, the code of conduct for shipping conferences, with which all conferences operating in the trade covered by the code are supposed to be familiar, and which is cited in the third recital in the preamble to Regulation (EEC) No 4056/86, expressly condemns some of the abusive practices carried out by Cewal.

(118) The members of Cewal were fully informed of the fact that the block exemption granted pursuant to Regulation (EEC) No 4056/86 to liner conferences (after extensive consultations with the parties concerned) does not allow the latter to remove all outside competition and to extend the effects of their agreements to all the liner trades in which they operate.

(119) It is not desirable in these circumstances to give the members of Cewal the benefit of any particular advantage by virtue of the fact that this is one of the first times Regulation (EEC) No 4056/86 has been applied to a case of infringement,

HAS ADOPTED THIS DECISION:

Article 1

The Cewal, Cowac and Ukwal shipping conferencees and the undertakings that are members thereof, a list of which is attached as Annex I to this Decision, have infringed Article 85 (1) of the EEC Treaty by entering into non-competition agreements according to which each member undertaking of one conference refrains from operating as an independent shipping company ('outsider') in the area of activity of the other two conferences in order to share out the liner market between northern Europe and western Africa on a geographical basis.

Article 2

In order to eliminate the principal independent competitor in the trade in question, the undertakings that are members of Cewal have abused their joint dominant position by:

— participating in the implementation of the cooperation agreement with Ogefrem and by repeatedly by a variety of means that it be strictly complied with,

— modifying its freight rates by departing from the tariff in force in order to offer rates the same as or less than those of the principal independent competitor for vessels sailing on the same date or neighbouring dates (practice known as fighting ships), and

— establishing 100 % loyalty arrangements (including goods sold fob) which went beyond the terms of Article 5 (2) of Regulation (EEC) No 4056/86, accompanied by the use, as described in this Decision, of blacklists of disloyal shippers.

Article 3

The undertakings concerned by this Decision are hereby required to bring to an end the infringement referred to in Article 1.

The Member undertakings of Cewal are also required to bring to an end the infringements referred to in Article 2.

Article 4

The undertakings concerned by this Decision are hereby required to refrain in future from any agreement or concerted practice which may have the same or similar object or effect as the agreements and practices referred to in Article 1.

Article 5

It is recommended that the members of Cewal amend the terms of their loyalty contracts so that they conform with Article 5 (2) of Regulation (EEC) No 4056/86.

Article 6

Fines are hereby imposed on the member undertakings of Cewal by reason of the infringements referred to in Article 2, with the exception of the following shipping companies: Angonave, Portline, Compagnie maritime zaïroise (CMZ) and Scandinavian West Africa Lines (SWAL).

The fines are as follows:

— Compagnie maritime belge: ECU 9,6 million,
— Dafra Line: ECU 200 000,
— Nedlloyd Lijnen BV: ECU 100 000,
— Deutsche Afrika Linien-Woermann Linie: ECU 200 000.

Article 7

The fines imposed in Article 6 shall be paid in ecu within three months of the date of notification of this Decision to the account of the Commission of the European Communities No 310-0933000-43, Banque Bruxelles-Lambert, Agence Européenne, Rond-Point Robert Schuman 5, B-1040 Bruxelles.

On expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision was adpted, plus 3,5 percentage points, i.e. 13,25 %.

Article 8

This Decision is enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 23 December 1992.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

CEWAL

Cewal
Meir 1
B-2000 Antwerpen (telefax (03)223 23 86)

Angonave, Linhas Marítimas de Angola u.e.e.
Caixa Postal 5953
Rua Cergueira Lukoki 31
Luanda

Compagnie maritime belge
Management WAD
St. Katelijnevest 61
B-2000 Antwerpen (telefax (03)223 22 69/223 23 77)

Compagnie maritime zaïroise (CMZ)
6e étage — UZB Center
place de la Poste, BP 9496
Kinshasa, Zaïre (telefax 243(12)262 34)

Dafra Line
Rungsted Strandvej 113
DK-2960 Rungsted Kyst (telefax 45(42)57 14 46)

Nedlloyd Lijnen BV
Trade Directorate Europe
Dept. LTE
PO Box 240
NL-3000 DH Rotterdam (telefax 31(10)404 60 90)

Portline, Transportes Marítimos Internacionais Sarl
Rua Actor António Silva 7, 11
P-1600 Lisboa

Scandinavian West Afrika Lines Ltd (SWAL)
Fack S-403-36
S-Göteborg (telefax 46(31)64 53 70)

Deutsche Afrika Linien-Woermann Linie
PO Box 500369/Palmaille 45
D-W-2000 Hamburg 50 (telefax 49(40)38 01 66 63)

COWAC

Cowac
1, rue du Pré Saint-Gervais
F-93000 Pantin (telefax 33(1)48 91 94 45)

Africa Ocean Lines Ltd
5 Creek Road
Lagos, Nigeria

Black Star Lines Ltd
PO Box 2760
Accra, Ghana

Cameroon Shipping Lines SA
BP 4054
Douala, Cameroun

Compagnie maritime belge
Management WAD
St. Katelijnevest 61
B-2000 Antwerpen

Compagnie maritime zaïroise
6e étage — UZB Center
place de la Poste, BP 9496
Kinshasa, Zaïre

Navale Delmas Afrique (SNCDV)
Tour Delmas-Vieljeux
31-32, quai de Dion-Bouton
F-92811 Puteaux Cedex

Deutsche Afrika Linien-Woermann Linie
PO Box 50 03 69/Palmaille 45
D-W-2000 Hamburg 50

Elder Dempster Ltd
India Buildings
Water Street
UK-Liverpool L2 0RB

Estonian Shipping Company
Pst 3/5
Tallinn, Estonia

Europa Afrika Linie GmbH
PO Box 10 60 47
D-W-2800 Bremen

Guinea Gulf Lines Ltd
India Buildings
Water Street
UK-Liverpool L2 0RB

Leif Hoegh and Co.
PO Box 2596, Solli
N-Oslo

L. Martin SA
Tour Delmas-Vieljeux
31-32, quai de Dion-Bouton
F-92811 Puteaux Cedex

Armement Maurel et Prom
Tour Delmas-Vieljeux
31-32, quai de Dion-Bouton
F-92811 Puteaux Cedex

Compagnie béninoise de navigation maritime
BP 2032
Cotonou, Bénin

Compagnie sénégalaise de navigation maritime
BP 683
Dakar, Sénégal

Société togolaise de navigation maritime
BP 4086
Lomé, Togo

Nedlloyd Lines
PO Box 240
NL-3000 DH Rotterdam

Nigenbras Shipping Lines Ltd
PO Box 2005
Lagos, Nigeria

Nigerian Green Lines Ltd
27 Creek Road
Lagos, Nigeria

Société navale de l'Ouest
Tour Franklin — Cedex 11
F-92081 Paris La Défense

Palm Lines Ltd
India Buildings
Water Street
UK-Liverpool L2 0RB

Polish Ocean Lines
Ul Energetykow 3/4
PL-70952 Szczecin

Société navale caennaise
BP 6246
F-14066 Caen

Société ivoirienne de transport maritime
BP 1546
Abidjan, Côte-d'Ivoire

Société nationale de transports maritimes
BP 3841
Libreville, Gabon

The East Asiatic Company
Holbergsgade 2
DK-1099 København

The Nigerian National Shipping Lines Ltd
BP 617
Lagos, Nigeria

The Scandinavian West Africa Line
Fack S-403-36
S-Göteborg

VEB Deutschfracht Seereederei
Überseehafen
D-O-25 Rostock

UKWAL

Ukwal Shipping
1st Floor, India Buildings
Water Street
UK-Liverpool L2 0RB (telefax 44 (051) 236 45 22)

Elder Dempster
India Buildings
Water Street
UK-Liverpool L2 0RB

Palm Lines Ltd
India Buildings
Water Street
UK-Liverpool L2 0RB

Guinea Gulf Lines Ltd
India Buildings
Water Street
Uk-Liverpool L2 0RB

Nigeria Green Lines Ltd
27 Creek Road
Lagos, Nigeria

Cameroon Shipping Lines SA
BP 4054
Douala, Cameroun

The Nigerian National Shipping Lines Ltd
BP 617
Lagos, Nigeria

Compagnie maritime zaïroise
6e étage — UZB Center
place de la Poste, BP 9496
Kinshasa, Zaïre

Société ivoirienne de transport maritime
BP 1546
Abidjan, Côte-d'Ivoire

Compagnie béninoise de navigation maritime
BP 2032
Cotonou, Bénin

Black Star Line (State Shipping Corporation) Ltd
PO Box 2760
Accra, Ghana

Providence Liner Shipping Inc.
India Buildings
Water Street
UK-Liverpool L2 0RB

ANNEX II

Imports from Zaire

(× 1 000 ecus)

	1988	1989	1990	1991
France	76 283	60 036	50 276	36 739
Belgium/Luxembourg	802 887	887 824	722 404	667 579
The Netherlands	18 050	17 499	17 160	17 704
Germany	187 353	194 938	164 611	113 132
United Kingdom	23 113	22 459	19 917	14 303
Denmark	1 758	1 668	718	265

Exports to Zaire

(× 1 000 ecus)

	1988	1989	1990	1991
France	144 479	141 996	186 762	91 116
Belgium/Luxembourg	260 515	291 605	263 378	154 641
The Netherlands	51 633	56 762	47 274	35 729
Germany	101 056	99 556	110 737	85 739
United Kingdom	36 133	42 166	33 097	21 292
Denmark	1 948	1 368	1 296	1 099