I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 4260/88

of 16 December 1988

on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

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 Article 26 thereof,

Having regard to the opinion of the Advisory Committee on Agreements and Dominant Positions in the field of Maritime Transport.

Whereas, pursuant to Article 26 of Regulation (EEC) No 4056/86, the Commission is empowered to adopt implementing provisions concerning the scope of the obligation of communication pursuant to Article 5 (5), the form, content and other details of complaints pursuant to Article 10 and of applications pursuant to Article 12 and the hearings provided for in Article 23 (1) and (2) of that Regulation;

Whereas the obligation of communication to the Commission of awards at arbitration and recommendations by conciliators provided for in Article 5 (5) of Regulation (EEC) No 4056/86 concerns the settlement of disputes relating to the practices of conferences referred to in Articles 4 and 5 (2) and (3) of that Regulation; whereas it seems appropriate to make the procedure for this notification as simple as possible; whereas it is appropriate, therefore, to provide for notifications to be made in writing, attaching the documents containing the text of the awards and recommendations concerned;

Whereas complaints pursuant to Article 10 of Regulation (EEC) No 4056/86 may make it easier for the Commission to take action for infringement of Articles 85 and 86 of the EEC Treaty in the field of maritime transport; whereas it would consequently seem appropriate to make the procedure for submitting complaints as simple as possible; whereas it is appropriate, therefore, to provide for complaints to be submitted in one written copy, the form, content and details being left to the discretion of the complainants;

Whereas the submission of the applications pursuant to Article 12 of Regulation (EEC) No 4056/86 may have important legal consequences for each undertaking which is a party to an agreement, decision or concerted practice; whereas each undertaking should, therefore, have the right to submit such applications to the Commission; whereas, on the other hand, if an undertaking makes use of that right, it must so inform the other undertakings which are parties to the agreement, decision or concerted practice, in order that they may protect their interests;

Whereas it is for the undertakings and associations of undertakings to inform the Commission of the facts and circumstances in support of the applications submitted in accordance with Article 12 of Regulation (EEC) No 4056/86;

Whereas it is desirable to prescribe that forms be used for applications in order, in the interest of all concerned, to simplify and expedite examination thereof by the competent departments;

Whereas in most cases the Commission will in the course of the procedure for the hearings provided for in Article 23 (1) and (2) of Regulation (EEC) No 4056/86 already be in close touch with the participating undertakings or associations of undertakings and they will accordingly have the opportunity of making known their views regarding the objections raised against them;

Whereas in accordance with Article 23 (1) and (2) of Regulation (EEC) No 4056/86 and with the rights of the defence, the undertakings and associations of undertakings concerned must have the right on conclusion of the procedure

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

to submit their comments on the whole of the objections raised against them which the Commission proposes to deal with in its decisions;

Whereas persons other than the undertakings or associations of undertakings which are involved in the procedure may have an interest in being heard; whereas, pursuant to the second sentence of Article 23 (2) of Regulation (EEC) No 4056/86, such persons should have the opportunity of being heard if they apply and show that they have a sufficient interest;

Whereas it is desirable to enable persons who pursuant to Article 10 of Regulation (EEC) No 4056/86 have lodged a complaint to submit their comments where the Commission considers that on the basis of the information in its possession there are insufficient grounds for action;

Whereas the various persons entitled to submit comments must do so in writing, both in their own interest and in the interests of good administration, without prejudice to an oral procedure where appropriate to supplement the written procedure;

Whereas it is necessary to define the rights of persons who are to be heard, and in particular the conditions upon which they may be represented or assisted and the setting and calculation of time limits;

Whereas the Advisory Committee on Restrictive Practices and Dominant Positions in Maritime Transport delivers its opinion on the basis of a preliminary draft Decision; whereas it must therefore be consulted concerning a case after the inquiry in that case has been completed; whereas such consultation does not prevent the Commission from re-opening an inquiry if need be,

HAS ADOPTED THIS REGULATION:

SECTION I

NOTIFICATIONS, COMPLAINTS AND APPLICATIONS

Article 1

Notifications

1. Awards at arbitration and recommendations by conciliators accepted by the parties shall be notified to the Commission when they concern the settlement of disputes relating to the practices of conferences referred to in Articles 4 and 5 (2) and (3) of Regulation (EEC) No 4056/86.

2. The obligation of notification applies to any party to the dispute resolved by the award or recommendation.

3. Notifications shall be submitted forthwith by registered letter with an acknowledgement of receipt or shall be delivered by hand against receipt. They shall be written in one of the official languages of the Community.

Supporting documents shall be either originals or copies. Copies must be certified as true copies of the original. They shall be submitted in their original language. Where the original language is not one of the official languages of the Community, a translation in one of the official languages shall be attached.

4. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such notifications, they shall produce written proof that they are authorized to act.

Article 2

Complaints

1. Complaints pursuant to Article 10 of Regulation (EEC) No 4056/86 shall be submitted in writing in one of the official languages of the Community, their form, content and other details being left to the discretion of complainants.

2. Complaints may be submitted by:

(a) Member States

(b) natural or legal persons who claim a legitimate interest.

3. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such complaints, they shall produce written proof that they are authorized to act.

Article 3

Persons entitled to submit applications

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Article 85 (1) of the Treaty may submit an application under Article 12 of Regulation (EEC) No 4056/86. Where the application is submitted by some but not all of the undertakings concerned, they shall give notice to the others.

2. Where applications under Article 12 of Regulation (EEC) No 4056/86 are signed by representatives of undertakings, of associations of undertakings, or of natural or legal persons, such representatives shall produce written proof that they are authorized to act.

3. Where a joint application is submitted, a joint representative shall be appointed.

Article 4

Submission of applications

1. Applications pursuant to Article 12 of Regulation (EEC) No 4056/86 shall be submitted on Form MAR shown in Annex I.

2. Several participating undertakings may submit an application on a single form.

3. Applications shall contain the information requested in the form.

4. Fourteen copies of each application and of the supporting documents shall be submitted to the Commission.

5. The supporting documents shall be either originals or copies. Copies must be certified as true copies of the original.

6. Applications shall be in one of the official languages of the Community. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages, a translation in one of the official languages shall be attached.

7. The date of submission of an application shall be the date on which it is received by the Commission. Where, however, the application is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.

8. Where an application submitted pursuant to Article 12 of Regulation (EEC) No 4056/86 falls outside the scope of that Regulation, the Commission shall without delay inform the applicant that it intends to examine the application under the provisions of such other Regulation as is applicable to the case; however, the date of submission of the application shall be the date resulting from paragraph 7. The Commission shall inform the applicant of its reasons and fix a period for him to submit any comments in writing before it conducts its appraisal pursuant to the provisions of that other Regulation.

SECTION II

HEARINGS

Article 5

Before consulting the Advisory Committee on Agreements and Dominant Positions in the field of Maritime Transport, the Commission shall hold a hearing pursuant to Article 23 (1) of Regulation (EEC) No 4056/86.

Article 6

1. The Commission shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communication shall be addressed to each of them or to a joint agent appointed by them.

2. The Commission may inform the parties by giving notice in the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the objections were notified in the manner provided for in paragraph 1.

4. The Commission shall, when giving notice of objections, fix a period within which the undertakings and associations of undertakings may inform the Commission of their views.

Article 7

1. Undertakings and associations of undertakings shall, within the appointed period, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the Commission hear persons who may corroborate those facts.

Article 8

The Commission shall in its Decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 9

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 23 (2) of Regulation (EEC) No 4056/86 the Commission shall afford them the opportunity of making known their views in writing within such period as it shall fix.

Article 10

Where the Commission, having received a complaint pursuant to Article 10 of Regulation (EEC) No 4056/86, considers that on the basis of the information in its possession there are insufficient grounds for acting on the complaint, it shall inform the persons who submitted the complaint of its reasons and fix a period for them to submit any further comments in writing.

Article 11

1. The Commission shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the Commission proposes to impose on them a fine or periodic penalty payment.

2. The Commission may likewise afford to any other person the opportunity of orally expressing his views.

Article 12

1. The Commission shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the Member States, who may appoint an official to take part in the hearing.

Article 13

1. Hearings shall be conducted by the persons appointed by the Commission for that purpose.

2. Persons summoned to attend shall either appear in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the Commission may be assisted by lawyers or university teachers who are entitled to plead before the Court of Justice of the European Communities in accordance with Article 17 of the Protocol on the Statute of the Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by him.

Article 14

Without prejudice to Article 6 (2), information and summonses from the Commission shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by hand against receipt.

Article 15

1. In fixing the periods provided for in Articles 4 (8), 6, 9 and 10, the Commission shall have regard both to the time required for preparation of comments and to the urgency of the case. A period shall be not less than two weeks; it may be extended.

2. Periods shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the Commission or be dispatched by registered letter before expiry of the period. Where the period would expire on a Sunday or a public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating the extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in Annex II to this Regulation, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

Article 16

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 December 1988.

For the Commission
Peter SUTHERLAND
Member of the Commission

ANNEX I

This form must be accompanied by an annex containing the information specified in the attached Complementary Note (1).

The form and annex must be supplied in fourteen copies (two for the Commission and one for each Member State). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the Acknowledgement of Receipt annexed.

If space is insufficient, please use extra pages, specifying to which item on the form they relate.

FORM MAR

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate-General for Competition
200, rue de la Loi
B-1049 Brussels

Application under Article 12 of Council Regulation No 4056/86 of 22 December 1986 with a view to obtaining a decision under Article 85 (3) of the Treaty establishing the European Economic Community.

Identity of the parties

1. *Identity of applicant*

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

For partnerships, sole traders or any other unincorporated body trading under a business name, give, also, the name, forename(s) and address of the proprietor(s) or partner(s).

Where an application is submitted on behalf of some other person (or is submitted by more than one person) the name, address and position of the representative (or joint representative) must be given, together with proof of his authority to act. Where an application or notification is submitted by or on behalf of more than one person they should appoint a joint representative. (Article 3 (2) and (3) of Commission Regulation No 4260).

(1) See page 19 of this Official Journal.

2. *Identity of any other parties*

Full name and address and brief description of any other parties to the agreement, decision or concerted practice (hereinafter referred to as 'the arrangements').

State what steps have been taken to inform these other parties of this application.

(This information is not necessary in respect of standard contracts which an undertaking submitting the application has concluded or intends to conclude with a number of parties.)

Purpose of this application
(see Complementary Note)

(Please answer yes or no to the question)

Would you be satisfied with a comfort letter? (See the end of Section VII of the Complementary Note).

The undersigned declare that the information given above and in the . . . pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere. They are aware of the provisions of Article 19 (1) (a) of Regulation (EEC) No 4056/86 (see attached Complementary Note).

Place and date .....

Signatures: ....

....

....

Write nothing in this margin

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Directorate-General for Competition

Brussels .....

To

ACKNOWLEDGEMENT OF RECEIPT

(This form will be returned to the address inserted above if the top half is completed in a single copy by the person lodging it)

Your application dated: .....

.....

concerning: .....

Your reference: .....

Parties:

1. .....

2. ..... and others

(There is no need to name the other undertakings party to the arrangement)

(To be completed by the Commission.)

was received on: .....

and registered under No IV/MAR/ .....

Please quote the above number in all correspondence

Provisional address:
200, rue de la Loi
B-1049 Brussels

Telephone:
Direct line: 235....
Telephone exchange: 235 11 11

Telex:
COMEU B 21877

Telegraphic address:
COMEUR Brussels

ANNEX II

(List of public holidays)

New Year	1 Jan
Good Friday	
Easter Saturday	
Easter Monday	
Labour Day	1 May
Schuman Plan Day	9 May
Ascension Day	
Whit Monday	
Belgian National Day	21 July
Assumption	15 Aug
All Saints	1 Nov
All Souls	2 Nov
Christmas Eve	24 Dec
Christmas Day	25 Dec
The day following Christmas Day	26 Dec
New Year's Eve	31 Dec