



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.12.2005
SEC(2005) 1641

COMMISSION STAFF WORKING DOCUMENT

Annex to the

**Proposal for a
COUNCIL REGULATION
repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of
Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as
regards the extension of its scope to include cabotage and international tramp services**

IMPACT ASSESSMENT

{COM(2005) 651 final}

COMMISSION STAFF WORKING DOCUMENT

Annex to the

Proposal for a COUNCIL REGULATION repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services

IMPACT ASSESSMENT

Table of Contents

1	Executive summary	4
2	Foreword: the origins of the review process	5
3	Procedural issues and consultation of interested parties	6
4	Problem definition.....	7
5	Objectives.....	8
6	Policy options.....	8
7	Cabotage and tramp.....	9
8	Analysis of impacts	10
8.1	Economic impacts	11
8.1.1	Transport prices.....	11
8.1.2.	Long-term economic growth and the Lisbon objectives.....	14
8.1.3	Reliability of services.....	14
8.1.4	Service quality and innovation.....	17
8.1.5	Competitiveness of EU liner shipping, small EU carriers, trade and cross-border investment flows	18
8.1.6	Competition in the internal market and market structure.....	23
8.1.7	Specific maritime regions and sectors (including ports and port calls)	24
8.1.8	Small shippers and consumers	25
8.1.9	Trade and developing countries	27
8.2	Social impacts and impacts on employment.....	28

8.3 Environment..... 28

9 Monitoring and evaluation 29

10 Conclusion: Comparison of options..... 30

1 EXECUTIVE SUMMARY

1. In the context of the review of Council Regulation 4056/86 the Commission analysed the impact of three policy options: a ‘No action’, a ‘Repeal’ and ‘Replace’ option.
2. The first option would be to keep the current block exemption for liner shipping conferences in force and transform it into a Commission regulation for a limited period of five years, to be followed by a subsequent review which is common for all other block exemption regulations (‘No action option’).
3. The second option would be to repeal the present block exemption and not replace it by any other instrument (‘Repeal option’). This option would bring the whole liner shipping industry on equal footing with all other industrial sectors and would imply that conference members, like any other shipping carrier, will have to carry out a self-assessment as to whether their activities would fall within the scope of Article 81(1) of the Treaty and, if so, whether they would fulfil the conditions for an exemption under Article 81(3) of the Treaty.
4. The third option would be to repeal the present block exemption, but also to establish an alternative regime that allows other forms of cooperation between carriers operating liner services to and from the EU (‘Replace option’), in addition to current forms of co-operation for which there exists a legal framework (e.g. consortia, alliances or mergers).
5. The Commission’s impact assessment identified the ‘Repeal option’ as the best available option in social and economic aspects. It also positively contributes to the Lisbon objectives. With respect to the four areas transport of prices, reliability of services, competitiveness of EU liner shipping and small EU carriers, which are of particular importance in the review process, the ‘Repeal option’ would bring about substantial benefits to industry and consumers.

2 FOREWORD: THE ORIGINS OF THE REVIEW PROCESS

6. The impact assessment should be placed in a wider economic context. Sea transport is responsible for about 45% of EU external trade in value terms and about 75% in volume terms. Scheduled container transport by sea accounts for approximately 40% of EU external trade by sea in value terms. Therefore, maritime transport services are crucial to the development of the EU economy.
7. Rules applying to the liner shipping sector should reflect today's market conditions. In keeping with the Lisbon agenda, existing impediments for EU business to compete, innovate and grow should be removed. Legislation needs to be simplified and to be cost effective.
8. Although Regulation 4056/86¹ contains a block exemption for liner shipping conferences, unlike other such exemptions, it remains in force for an unlimited period. Moreover, it does not contain any review clause. As a result, no comprehensive review has taken place in the almost twenty years since the Regulation and the liner conference block exemption entered into force.
9. The last twenty years have seen considerable changes in market conditions. The continuing trend towards containerisation has led to an increase in the number and size of fully-cellular container vessels and to an emphasis on speed, frequency of service and global route networks. This has contributed to the popularity of consortia and alliances as a means of sharing the cost of the investments required to provide a competitive liner shipping service. The growth in importance of these operational arrangements, which do not involve price-fixing, has been accompanied by a decline in the significance of conferences. The latter trend has been particularly marked on the trades between the EU and the United States, largely as a consequence of the Commission's anti-trust decisions and changes in US legislation, which have promoted individual service contracts at the expense of carriage under the conference tariff. These developments raise the question of whether reliable scheduled maritime transport services can be achieved by less restrictive means than horizontal price-fixing and capacity limitation. This in itself is sufficient to justify a review of the EU liner conference block exemption.
10. The need for a review was however also underscored by the fact that some of the Community's main trading partners have conducted reviews of their own liner shipping exemptions. Developments in the United States deserve particular mention. On 1 May 1999 the Ocean Shipping Reform Act (OSRA) entered into force, substantially amending the United States 1984 Shipping Act and bringing the US liner shipping competition regime closer to its EC counterpart. Two pro-competitive changes in particular had a profound impact: (1) carriers were no longer required to make public all essential terms of service contracts and (2) conferences could no longer prohibit their members from entering into individual service contracts. Canada, Australia and Japan are also re-examining the case for antitrust immunity or exemption.

¹ 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, OJ L 378, 31.12.1986, p. 4.

11. Furthermore, the review has also been inspired by a report of the OECD Secretariat that was published in April 2002² and that recommended to consider removing anti-trust exemption for price fixing and rate discussions in liner shipping.

3 PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

12. The Commission published a first consultation paper in March 2003 on which it received in total 38 submissions from Member States, carriers, shippers, freight forwarders, a consumer organisation and interested third parties. The answers to the consultation paper were analysed by maritime experts of the Erasmus University. In December 2004, DG Competition organised a public hearing with the aim of allowing stakeholders to develop arguments that they had made in writing and to clarify certain key issues.
13. In June 2004, the Commission issued a consultation paper setting out the results of the first stage of the review process (information gathering) of Council Regulation 4056/86, and laying down DG COMP's preliminary analysis and conclusions. The consultation paper was discussed with Member States in an Advisory Committee. Thereafter on 6 August 2004, the European Liner Affairs Association (ELAA) submitted to the Commission services a proposal for a framework for a new regulatory structure for liner shipping services operating to and from the EU, replacing Council Regulation 4056/86. The Commission invited the ELAA to present an analysis as to the compatibility of the information exchange system of 6 August 2004 with Article 81 of the Treaty. The ELAA's "Article 81 EC impact assessment" was submitted on 10 March 2005.
14. The Commission published a White Paper on 13 October 2004 on the review of Regulation 4056/86 which also included an analysis of the ELAA's proposal of 6 August 2004. Furthermore, the annex to the White Paper contained a first impact assessment of the repeal of the block exemption regulation. The Commission received in total 87 submissions on its White Paper from Member States, liner shipping carriers, shippers (i.e. exporters and importers), freight forwarders and third parties. Furthermore, the European Economic and Social Committee (EESC) and the Committee of the Regions submitted their views on the Commission's White paper. The European Parliament is in the process of adopting an own-initiative report on the Commission's White paper.³
15. An "Economic Assistance Study on Liner Shipping" of ICF consultants commissioned by DG TREN was published in May 2004. The main objective of this study was to provide a preliminary economic assessment aimed at detecting those features of liner shipping for which the end of the conference system is likely to have the most significant impacts. In July 2004, DG Competition discussed with Member States a second discussion paper on the review process summarising responses to the White Paper, results of contacts with international trading partners and setting out its preliminary views on the compatibility of the ELAA proposal with Article 81. A further study "The Application of Competition Rules to Liner

² OECD (2002): Competition policy in liner shipping, final report, DSTI/DOT(2002)2.

³ Report on the application of EC competition rules to maritime transport (2005/2033(INI)).

Shipping” commissioned by DG Competition and carried out by Global Insight in association with the Institute of Shipping Economics, Policy and Logistics and the Workgroup for Infrastructure of the Berlin University of Technology was finalised in October 2005. The study examines the impacts and effects of all three policy options described below and provided major input into the Commission’s impact assessment.

16. Furthermore, the ELAA submitted two studies of the consultancy CRA. One study deals with the impact of the FEFC conference activities on prices on the North Europe – Asia trade. The second study analyses in general the competitive impacts of information exchange without particular reference to the liner shipping sector. A study of Cap Analysis submitted by the ELAA explains surcharges and ancillary charges.
17. The ELAA has been unwilling to provide confidential proprietary data to consultants of ICF and Global Insight. Yet it is interesting to note that the CRA study commissioned by the ELAA has obtained such data. However, Global Insights’ investigation has been designed so that this data is not necessary for its findings.
18. All non-confidential documents and studies that have been delivered by and that have been submitted to the Commission during the consultation process were published on the Europa Competition public web-site.⁴

4 PROBLEM DEFINITION

19. The Lisbon European Council in March 2000 asked the Commission “*to speed up liberalisation in areas such as gas, electricity, postal services and transport*” in the context of the overall goal to make the European Union “*the most dynamic and competitive knowledge-based economy in the world*”.
20. The Commission’s White Paper concluded that there is no conclusive economic evidence that the assumptions on which the conference block exemption was justified at the time of its adoption in 1986 are, in the present market circumstances and on the basis of the four cumulative conditions of Article 81(3) of the Treaty, still justified. On that basis, the Commission considered to repeal the present block exemption for liner shipping conferences.
21. The Commission also committed itself in the White Paper to assess the relevant suggestions from the industry and comments from stakeholders with a view to taking a position on an alternative co-operation framework among liners. The ELAA has already put forward concrete ideas about such a framework.
22. The Council’s request for liberalisation in the transport sector and the Commission’s findings with respect to the block exemption for maritime conferences raise the following questions:

⁴ <http://europa.eu.int/comm/competition/antitrust/legislation/maritime/#review4056>.

- Would a liberalisation of the liner shipping market positively contribute to the Lisbon objectives?
- What is the likely impact of a removal the conference block exemption?
- What would be the likely impact of the alternative co-operation framework as proposed by the ELAA (version of 10 March 2005)⁵?

5 OBJECTIVES

23. The overall objective of the liberalisation of scheduled maritime transport services is to contribute to the implementation of the Lisbon strategy for growth and jobs⁶. A review of the conference system for liner shipping will create a more competitive environment which will strengthen the competitiveness of EU liner shipping carriers and ensure reliable services at lower transport prices to the benefit of consumers.
24. Liner shipping is the only economic sector which benefits from a block exemption for horizontal price-fixing and capacity management. The conference system is “wholly exceptional”⁷ since such immunity does not apply to any other sector.
25. Horizontal price-fixing paralyses competitive forces. Bringing liner shipping conferences under the competitive regime applicable to all other sectors of the economy will therefore inevitably have important pro-competitive effects on liner shipping services in terms of increased economic efficiencies (less efficient lines will be forced to become more efficient due to competitive pressure) and, in a competitive market, these efficiencies are expected to be passed on to shippers (e.g. in terms of more competitive prices and better quality of service) and the ultimate consumers.
26. The alternative regulatory structure for liner shipping services operating to and from the EU as proposed by the ELAA (of 10 March 2005) is supposed to ensure regular and reliable liner services. However, any form of alternative regulatory structure for the liner shipping industry has to create a competitive environment, which the current ELAA proposal does not promote.

6 POLICY OPTIONS

27. In essence there are three policy options: The first option would be to keep the current block exemption in force and transform it into a Commission regulation for a limited period of five years, to be followed by a subsequent review which is common for all other block exemption regulations (‘No action option’).

⁵ Please note that the Commission is currently in discussions with the ELAA in order to make amendments to the proposal with a view to bringing it in line with EC competition rules, these discussions have not been finalised and could therefore not be taken into account in the impact assessment.

⁶ See also http://europa.eu.int/growthandjobs/key/index_en.htm

⁷ See Judgment of the Court of First Instance of 28.2.2002 in Case T-395/94 *Atlantic Container Line and others v Commission* [2002] ECR II-875 (the ‘TAA judgment’).

28. Conferences have lost significant market power over the last 15 years and according to the industry “there is no recent evidence of market power being exerted by conferences”, and nor are conferences a forum for collusion. This option would allow the Commission to periodically review the block exemption, for instance in order to verify whether conferences further lost market power.
29. Moreover, since 1986, the Commission and the European Court of First Instance, in a number of cases⁸, considered several aspects of conference activities. The Court adopted a number of legal principles in the application of Council Regulation 4056/86. These principles were emulated by the conferences operating in EU liner trades and could be explicitly included in the block exemption, if it would be transformed into a Commission Regulation.
30. The second option would be to repeal the present block exemption and not replace it by any other instrument (‘Repeal option’). This option would bring the whole liner shipping industry on equal footing with all other industrial sectors and would imply that conference members, like any other shipping carrier, will have to carry out a self-assessment as to whether their activities would fall within the scope of Article 81(1) of the Treaty and, if so, whether they would fulfil the conditions for an exemption under Article 81(3) of the Treaty. Lines would be assisted in this regard by the decisional practice of the Commission, various guidelines issued by the Commission and the case law of the Court.
31. The third option would be to repeal the present block exemption, but also to establish an alternative regime that allows other forms of cooperation between carriers operating liner services to and from the EU (‘Replace option’), in addition to current forms of co-operation for which there exists a legal framework (e.g. consortia, alliances or mergers).
32. In the present impact assessment the ELAA proposal in its version of 10 March 2005⁹ containing an alternative information exchange system between liner shipping carriers, will be examined as the ‘Replace option’, i.e. the block exemption regulation would be repealed and replaced by the ELAA system. Likely impacts of the information exchange system will be analysed without specifying whether each individual element of the proposal actually falls within the scope of Article 81(1) of the Treaty or if it does, whether it meets the four cumulative conditions of Article 81(3).

7 CABOTAGE AND TRAMP

33. International tramp vessel services as defined in Article 1(3)(a) of Regulation 4056/86 and maritime transport services that take place exclusively between ports in

⁸ For example Commission decisions Revised Trans-Atlantic Container Agreement (14.11.2002 OJ L 26 of 31.1.2003, p. 53), Trans-Atlantic Agreement (OJ L 376, 31.12.1994, p.1), Far Eastern Freight Conference (OJ L 378, 31.12.1994, p. 17) or Europe-Asia Trades Agreement (OJ L 193, 26.7.1999) and Judgments of the Court of First Instance: Case T-395/94 of 28.2.2002 in *Atlantic Container Line and others v Commission* [2002] ECR II-875 (the ‘TAA judgment’) and Case T-86/95 of 28.2.2002 in *Companie Generale Maritime and others v Commission* [2002] ECR II-1011.

⁹ Note that Commission services have engaged in subsequent discussions with the industry in order to explore the details of the proposal and its compatibility with Article 81(3) of the Treaty.

one and the same Member State (cabotage) as foreseen in Article 1(2) of Regulation 4056/86 are currently excluded from the Community competition implementing rules pursuant to Article 32 (a) and (b) of Regulation 1/2003. On the other hand these services are not excluded from the scope of application of Article 81 and 82 of the Treaty.

34. As is explained in the White Paper, no credible consideration has been put forward to justify why these services need to benefit from different enforcement rules than those which the Council has decided should apply to all other sectors of the economy. Moreover, the industry stakeholders assert that the cabotage and tramp sector are highly competitive. On that basis, the Commission proposes to bring maritime cabotage and tramp vessel services within the scope of the general enforcement rules of Regulation 1/2003.
35. To conclude the proposed legislative change does not modify the substance of competition rules applicable to these sectors. At present the Commission is not in possession of any indication that the tramp and the cabotage markets are not functioning well. Moreover, the inclusion of both sectors into the general enforcement rules will have a deterrent effect with respect to possible anti-competitive practices in future. Thus no further impact assessment is necessary with respect to the inclusion of cabotage and tramp services into Regulation 1/2003.
36. This said, during the consultation process various stakeholders emphasised the need for guidance on the application of the EC competition rules to the tramp sector in particular with regard to pools. As stated in its White Paper, the Commission is considering issuing some guidance on issues yet unresolved by the Court's jurisprudence and the Commission practice.
37. Although this guidance can be formally issued only after the Commission has been empowered by Regulation 1/2003, the Commission is currently exploring with industry whether it is necessary and appropriate to issue informal guidance before the changes to Regulation 1/2003 are made.

8 ANALYSIS OF IMPACTS

38. Hereinafter the possible impacts on liner shipping services on trades to and from the EU of the three policy options - the 'No action', the 'Repeal option' and the 'Replace option' - are examined in detail.
39. The analysis of economic impacts will take up all issues that we raised by stakeholders during the consultation and review period, notably the impact on competitiveness of the EU liner shipping industry, trade and investment; reliability of services; transport prices; shippers and consumers; trade and developing countries; specific regions and long-term economic growth.
40. As regards social impacts, only institutional stake-holders, raised the question of potential impacts of a reform on employment. No other social aspect was brought to the attention of the Commission during the review process.

41. No stakeholder has detected any link between a potential liberalisation of liner services and (positive or negative) environmental impacts thereof. Some environmental impacts can nevertheless be predicted following the liberalisation of the liner shipping industry.

8.1 ECONOMIC IMPACTS

8.1.1 Transport prices

Does the option affect transport prices, i.e. the freight rate level?

42. The total transport price shippers have to pay to liner shipping companies for carrying their cargo between two deep sea ports consists of two elements: the ocean freight rate as well as surcharges¹⁰ and ancillary charges¹¹. Surcharges and ancillary charges in theory aim at passing through cost elements to shippers.
43. The ocean rate shippers pay is either the spot rate, where the conference tariff sets the maximum price, or a discounted rate which is fixed in an individual confidential service contract (contract rate). Surcharges and ancillary charges account for on average 30% of the total costs of transport.¹² These charges are collectively fixed by the conference and are, unlike the conference tariff for the ocean transport, respected by the conference members. The ELAA also claims that non-conference members follow the conferences' surcharges and ancillary charges. Moreover, conferences decide on "general rate increases" (GRIs) and provide their members with so-called "annual rate guidance".
44. No action option: Ocean rates: The ICF (p. 26) found that while on the high volume East-West trades the conference members compete on the ocean rate, on the small and less competitive trades, conferences have the market power to keep the tariff rates high (i.e., higher than they would be in a competitive market). This conclusion is however rather based on stakeholders' perceptions since ICF has not been able to obtain confidential pricing and revenue data from carriers.
45. CRA are the only consultants which have been able to process confidential proprietary revenue data from ELAA carriers (CRA – FEFC study, p. 29). In their study on the impact of conference activities on the North Europe – Asia trade, that has been commissioned by the ELAA, the consultants found that conference members receive higher ocean rates than non-conference members (CRA – FEFC study, p. 28). This trade is the most important EU trade.

¹⁰ Surcharges are meant to cover uncertainties, such as the Bunker Adjustment Factor (BAF), Currency Adjustment Factor (CAF), Congestion Surcharges and War risk Surcharge.

¹¹ Ancillary charges are meant as additional increase in charges that are triggered by or associated with the operation of moving containers, e.g. terminal handling charges (THC), demurrage costs, change of destination, special equipment and charges based on the nature of the cargo (dangerous, toxic, refrigerated etc).

¹² According to shippers surcharges and ancillary charges vary substantially according to the trade. The variation is between 5-70% of the cost of transport. The Commission is, unlike Global Insight, in the possession of confidential pricing data from shippers and carriers.

46. Global Insight (p. 215) found that conferences do currently have an impact on ocean rates, notably through “annual rate guidance” and the exchange of views in conference meetings. Their theoretical results show that conferences can lead to excess pricing (p. 214), i.e. rates that are above competitive levels.
47. *Surcharges and ancillary charges*: The results of Global Insight (p. 142-147) and ICF (p. 26) show that rates for surcharges and ancillary charges do not reflect actual costs incurred and are used to generate extra profits.
48. Repeal option: *Ocean rates*: According to Global Insight conferences currently have an impact on ocean rates, in particular their annual rate guidance, announcements of general rate increases and the fact that conference members assemble and exchange views. Therefore they expect moderate decreases of ocean rates. Moreover, they expect increased competition to induce further pressure on carriers to innovate and improve performance which is the basis for stronger rate reductions in the future (p. 215).
49. The ICF consultants also assume a decline in freight rates. They were, however, not able to prove this assumption by empirical data in the context of the liner shipping liberalisations that have occurred in the past. In their view it is likely that operational and technological advances (e.g. larger vessels which trigger economies of scale) are more important determinants of rates, and thus are masking any such potential impact (ICF, p. 3). Another reason might be the lack of confidential pricing data.
50. *Surcharges*: One ICF interviewee asserted that the repeal of Regulation 4056/86 would have a bigger impact on surcharges than on the tariff levels since each carrier would have to base the surcharges on its own cost structure, without referring to the conference level (ICF, p. 26).
51. If the imposition of jointly-fixed surcharges and ancillary charges of conference members and non-conference members would be brought to an end by the ‘Repeal option’, Global Insight expects significant rate declines (p. 215).
52. Replace option: *Ocean rates*: Global Insight considers the ELAA information exchange system of 10 March 2005 “as is” unacceptable (p. 12). As a package, the set-up and procedures constitute an invitation to collude on prices or capacity to the detriment of shippers. Consequently, if collusion would be reinforced ocean rates may even rise above today’s levels.
53. Furthermore, the ELAA proposal is very likely to lead to collusion not only among current conference members but also formerly independent carriers. Since conferences have been less able to control ocean rates in the recent past it may lead to a reinforced cartel both in terms of price discipline and market coverage. Thus, ocean rates are very likely to increase above today’s levels.
54. *Surcharges and ancillary charges*: With respect to surcharges and ancillary charges the carriers propose to elaborate collective formulae which have not yet been presented to the Commission. Collective fixing of formulae for surcharges and ancillary charges will effectively lead to the continuation of price fixing with respect to this transport price element. Global Insight also question common

formulae since they pose a considerable danger to competition without contributing to efficiency. In their view it is a clear attempt to continue the present system of price-fixing (p. 218).

55. Conclusion: In the ‘No action option’ shippers will continue to pay transport prices that are above competitive levels, i.e. the option has a negative impact on transport prices. The ‘Repeal option’ has a positive impact on transport prices as it will lead to reductions of the ocean rates and even more so to reductions in surcharges and ancillary charges. The ‘Replace option’ is most likely to result in total transport prices that are even higher than today and has hence a negative impact.

Does the option have an effect on price stability, i.e. freight rates stability or volatility?

56. Recital 8 of Regulation 4056/86 attributes a “stabilising effect” to liner shipping conferences. This stabilising effect was frequently interpreted in the sense of conferences as guarantors of price stability on the liner shipping market.¹³ Regardless of whether conferences actually guarantee price stability, it is highly questionable whether this concept should be maintained under the present market conditions. Moreover, price stability on a particular market is, contrary to macro-economic price stability, not compatible with basic market economy principles. The Commission nevertheless analysed the potential impacts of the options on price stability.
57. ‘No action option’: ICF (p.3) confirmed that conferences are not able to guarantee price stability. Furthermore, ICF found that other, recently liberalised transport modes that share some important characteristics with shipping have exhibited significantly less price volatility.
58. Global Insight found that with or without conferences, there can be price volatility. However, price volatility in the conference system is a fundamental and wasteful problem (p. 214).
59. ‘Repeal option’: With respect to price volatility the Global Insight (p. 214) consultants state that the repeal will not lead to more price volatility than the status quo. Without conferences, price volatility is due to price-mixing behaviour which is normal activity similar to other industries, e.g. promotional campaign pricing in the airline industry.
60. ICF expects (p. 31) that there might be some increase in volatility in the short-term following the repeal of Regulation 4056/86 until the markets reach a new equilibrium state.
61. ‘Replace option’: Global Insight states that with or without conferences price volatility is due to ‘price-mixing’ behaviour that is decided by the individual carrier and therefore also the ‘Replace option’ will not change this situation. Only in the undesirable case, if the ‘Replace option’ would lead to collusion with strict price discipline, price volatility might be reduced.

¹³ See for the Consultation paper 27 March 2003, para. 43-49

62. Conclusion: The impact of the ‘No action option’ is weakly negative since price instability stems from a fundamental and wasteful problem, while the impact of the ‘Repeal’ and ‘Replace option’ on price volatility is neutral. Based on the ICF analysis and the experience in other liberalized transport industries, we expect tariff rates would be less volatile in the long-run under a more competitive system.

8.1.2. Long-term economic growth and the Lisbon objectives

What are the overall consequences of the option for economic growth and employment? How can the option contribute to the Lisbon objectives?

63. No action and Replace option: The options are not leading to a general decrease in transport prices which would remain above competitive level. No additional economic growth dynamics from these two options can be expected.
64. Repeal Option: Liberalisation of the liner shipping sector will lead to a decrease in transport prices and that might bring about more demand for exports and imports in Europe. Moreover, a more competitive and dynamic environment in liner shipping will have important positive spill-over effects into neighbouring sectors like logistics, intermodal freight forwarding or other inland transport sectors. Overall, the repeal option contributes to the Lisbon objectives.
65. Conclusion: Both the ‘No action option’ and the ‘Replace option’ will have a negative impact on the Lisbon objectives and economic growth. The ‘Repeal option’ will have a positive impact on the Lisbon objectives and long-term economic growth.

8.1.3 Reliability of services

Does the option have an effect on the reliability of services, i.e. the world-wide provision of capacity, or investment decisions of liner shipping companies?

66. The industry holds the view that the conference system ensures regular and reliable liner shipping services. According to the industry, market trends are analysed in conferences which allows carriers to carry out capacity planning and demand forecasting. Such planning and forecasting guarantees both the provision of sufficient capacity in the future and ensures the carriers to make a reasonable return on investment to be sufficiently confident to make substantial investments in vessels. According to the industry, the ELAA proposal for an information exchange system aims not only at replacing the conference system but even more at improving currently available data in order to further improve demand forecasting and capacity planning.
67. No action option: The industry claims that the conference system has guaranteed reliable liner shipping services on all EU trades. Hence, it would continue to make investment decisions on the basis of the publicly available information sources. To carriers the information provided by publicly available information sources today is not reliable. However, carriers, as the owners of the data, could resolve this problem by making more reliable data available to information providers.

68. There are indications that the conference system has led to structural excess capacity in the market, which can not necessarily be attributed to the lack of information or wrong data (Global Insight, p. 181 and Erasmus University, annex p. 102).
69. Global Insight goes further and claims that conferences may even have a destabilising effect on the reliability of services, e.g. experience on the West Africa trade (p. 215 and p. 113-115). As the theoretical results of Global Insight (p. 214) show, the de-stabilising effect which may endanger service reliability is due to a possible instability with respect to market participation and conference membership which gives rise to constant moves in and out of the market, as well as in and out of the conference.
70. Repeal option: ICF states (p. 2) that there has been widespread theoretical and practical agreement that the abolition of the block exemption for liner conferences will not have significant overall impacts on capacity. This viewpoint has been shared by shippers and carriers.
71. The termination of the conference on the Europe – East Coast South America trade in the beginning of 2004 had no effect on service reliability (Global Insight, p. 215).
72. The theoretical analysis of Global Insight (p. 214) did not find an indication for the fact that competition between liner shipping carriers leads to an “inherent instability” of the liner shipping market which would require a conference system or any other form of co-operation between carriers. Competition between carriers would remove the potential instability with respect to market participation and conference membership. Therefore, their theoretical results indicate that a repeal of the block exemption will enhance stability of supply. Thus, the removal of the conference system (Global Insight, p. 215) will have a positive impact on service reliability, i.e. excess capacity of the present system would be reduced while at the same time there is no risk of collusion which may lead to artificial capacity reductions.
73. As regards investment decisions of individual carriers the option does not significantly alter the present situation. There are about 22 information sources and 10 periodicals related to container transport available to all carriers (see Global Insight, annex C). A guaranteed profitability of investment as demanded by industry that might have been ensured by the conference system, may have led some carriers to overinvest, which could explain today’s overcapacity on certain trades (annex to Erasmus University study, p.102). The ‘Repeal option’ appears to be the best option in both aspects, i.e. capacity provision and reliability of services.
74. It should however be noted that more information in the market may improve forecasting and capacity provision. Moreover, conference secretariats currently collect market information from conference members and redistribute it back to the members. Some of this information is said to be of value to conference carriers in order to plan their investments in capacity. As set out below, the Commission is currently examining ways in which the availability of this information could be preserved by an information exchange system without running the risk of collusion.

75. Replace option: In the ELAA's view the information distributed by the conference secretariats today, although highly accurate¹⁴, could be made even more accurate by inclusion of information of non-conference members, i.e. 100% market coverage.
76. This scenario may result in reliable services and capacity provision. If the present conference system already ensures reliable liner shipping services, as the industry claims, it is difficult to argue for the inclusion of non-conference members into the information exchange system.
77. Global Insight has shown that collusion is highly likely in the present form of the ELAA proposal. Reliability of services and capacity provision would not be better ensured than in the 'No action option', the ELAA system will not have a noticeable effect (Global Insight, p. 16).
78. Conclusion: If the 'No action option' were taken, the liner shipping market would continue to offer reliable services, but at the expense of a loss of economic welfare due to structural overcapacity or excessive pricing. The experts of Global Insight even see a risk that conferences endanger service reliability. Therefore the 'No action option' has a weakly negative impact on service reliability. The 'Repeal option' would reduce structural overcapacity in the market while ensuring reliable liner shipping services, i.e. a positive impact on service reliability. The 'Repeal option' would ensure reliable liner shipping service at the expense of a collusion risk and hence has a weakly negative impact on reliability of services.

Does the option have an effect on the provision of capacity and reliability of services on particular trades (e.g. larger versus smaller trades, intra-EU trades and Short Sea trades)?

79. No action option: This option involves no change the status quo. In general, on a global scale sufficient capacity is being provided and services are regular. It should however be noted that due to entry and exit into conferences and trades, the conference system has not been able to guarantee the provision of sufficient capacity on all trades or service schedules and arrangements change frequently, in particular on thin trades (see for instance the thin West Africa trade, Global Insight pp. 8+125).
80. Repeal option: In the course of the ICF study a number of interviewees, carriers and shippers, agreed that the impacts of the repeal of Regulation 4056/86 are likely to be greater on small trades than on the large volume, major trades. Especially while market adjustments are occurring, there is the potential for capacity withdrawals that would not be instantly filled. To the extent that some carriers (e.g., low-cost carriers) can earn normal profits on the smaller trades, the long-term impacts will not be significant (ICF, p. 31).
81. Global Insight's analysis of the short Sea North Europe – Mediterranean trade shows that most of the lines active on this trade are also active on other trades and use this particular trade as an opportunity to increase vessel utilisation. They conclude that the absence of a conference would make little difference on this route (p. 142).

¹⁴ ELAA answer dated 29 September 2005 to Global Insight consultants.

82. The example of the thin Europe – East Coast South America shows that reliable services are possible in the absence of conferences. Based on the experiences from other industries, their theoretical results and trade route analysis Global Insight expects that service reliability can improve but definitely will not be reduced if conferences are abolished. This applies to all trades – thin versus thick, North-South versus East-West and deep Sea and Short Sea (Global Insight, p. 215).
83. Replace option: In general, service reliability would not noticeably improve (Global Insight, p. 16). However, the replace option may improve the information available on smaller trades. On the other hand, the danger of collusion is even more severe on the smaller trades with only a few participants. A few market participants will more easily collude which may lead to capacity reductions and higher transport prices.
84. Conclusion: In general, all three options will guarantee the same reliability of services on small EU liner shipping trades as in the present situation. The impact of the first two options is neutral. Due to the collusion risk the ‘Replace option’ may have weakly negative impact on service reliability on small trades.

8.1.4 Service quality and innovation

Does the option have an effect of the quality of liner shipping services?

85. No action option: No change can be expected. The conferences might even have an adverse effect on service quality. ICF confirms this assumption by stating (p. 16) that the largest foreseeable impacts in service quality of a repeal of the block exemption are in the trades in which the conferences currently are dominating the market.
86. In its submission to the Commission in response to the White Paper on the review of Regulation 4056/86, a large multi-national company states with respect to service quality that “our experience is that we do not derive any such benefit from a conference organization any more. Worse, we witness situations (notably on the Europe-Australia trade) where, under the impulsion of a conference, freight rates are constantly going up whereas service levels are constantly deteriorating.”
87. Repeal option: Concerning quality of services, experience from other liberalised transport sectors suggests that there will be significant service improvements (e.g. compensation for delays).
88. ICF (p. 16) states: If conference carriers would start to compete more aggressively not only on price but also on the quality of services once Regulation 4056/86 has been repealed, services would greatly improve. In their assessment of the impacts of the Ocean Shipping Reform Act, the US Federal Maritime Commission (FMC) concluded that increased competition in the US liner industry has contributed to a variety of service improvements. Among the trends reported by the FMC are advances in “track-and-trace technologies,” e-commerce portals, and “supply-chain collaboration” between industry and shippers. According to FMC, these and similar service enhancing changes can help streamline logistics and could contribute to lower costs for carriers and better values for shippers.

89. Global Insight foresees a positive impact on service quality following a repeal of the block exemption (p. 216).
90. Replace option: In terms of quality of services no improvements can be expected as the so-called ‘trade association’ is only discussing industrial standards and security issues. Service quality is so far not on the agenda of the ‘trade association’ and a regular dialogue has not yet been established with shippers.¹⁵ Since there is a risk that the ELAA proposal in its current form may lead to collusion among the whole liner shipping industry service quality may deteriorate.
91. Conclusion: Both the ‘No action’ and the ‘Replace option’ will have a negative impact on the quality of liner shipping services. In contrast, the ‘Repeal option’ will bring about substantial improvements in service quality.

Does the option stimulate or hinder innovation? Does it facilitate the introduction and dissemination of new technologies or service offers?

92. No action option: Conferences are not engaged in any operational activities, i.e. they do not provide services. Therefore they do not stimulate operational innovations nor have they contributed to the dissemination of new technologies and services in liner shipping
93. Repeal option: Experience in other liberalised transport sectors suggests more innovations and quicker dissemination of innovations (e.g. business models – low cost airlines). Also more differentiated services emerge and the market becomes more segmented.
94. ICF (p. 15) states that as the industry adjusts to new opportunities presented by a more competitive environment, low cost providers might enter markets that were not served in the past. These carriers might be able to realize a normal profit on such routes.
95. Drawing conclusions from liberalisation in other transport sectors, Global Insight (p. 172-174) also expects substantial service innovations and improvements following a repeal of the block exemption regulation.
96. Replace option: Since the information exchange system in its present form is likely to hamper competition, it will not create a stimulating environment for innovation.
97. Conclusion: The ‘No action option’ and the ‘Replace option’ will have a negative impact on innovation, while the ‘Repeal option’ will have a positive impact on innovation in liner shipping.

8.1.5 Competitiveness of EU liner shipping, small EU carriers, trade and cross-border investment flows

Does the option have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

¹⁵ Please note that the ELAA and the ESC recently attempted to set up a regular dialogue.

98. Four out of the top 5 carriers are European carriers and of these four carriers, three are EU based (Global insight, p. 28) and control 33% of global liner capacity. Chinese carriers control 9.5% of the global fleet and orderbook while the Japanese lines have just over 10%. There is virtually no liner shipping industry based in North America. Between 2000 and 2005, European carriers have increased their global capacity share in liner shipping. During the same period the share of Chinese, Japanese and other South East Asian carriers has decreased, although container exports from Far East have tripled since 1995. Moreover, European carriers earn good returns on investment (Global Insight, p. 11).
99. European carriers dominate liner shipping trades world-wide. They have a strong position on all international trade routes not only on EU trades. The Commission analysed 30 US export and import trades, which would not be affected by a change of legislative regime in the EU (i.e. excluding US-EU trades)¹⁶. Maersk is the biggest liner shipping company on all US trades aggregated. Other EU carriers are strong on particular US trades, e.g. CMA CGM has the largest share of exports and imports on the US Gulf – North East Asia trade and the largest export share on the US Gulf – South East Asia trade. Hamburg Süd is the leading operator on US East Coast – East Coast South America (exports) and P&O Nedlloyd is the largest carrier on the US West Coast – Africa export trade.
100. The following 13 US trades are dominated by European carriers, i.e. the top three carriers are European owned: US Gulf – Caribbean (imports); US Gulf – West Coast South America (imports); US East Coast – East Coast South America (imports and exports); US Gulf Coast – East Coast South America (imports); US West Coast – East Coast South America (imports); US East Coast – India (imports and exports); US Gulf Coast – India (exports); US East Coast – Africa (imports and exports); US Gulf Coast – Africa (imports and exports); US West Coast – Africa (imports); US East Coast – Oceania (imports); US Gulf Coast – Oceania (exports); US East Coast – Middle East (exports).
101. There are only two US trades without an EU carrier among the top three operators: US East Coast – Central America (imports); US East Coast – Caribbean (imports and exports). Both trades are relatively thin and are dominated by specialised reefer carriers for the transport of tropical fruit, e.g. Tropical Shipping, Dole Fresh Fruit Co or Antillean Lines.
102. No action option: The option would not entail any change to the competitive environment of liner shipping and hence would not have an impact on the competitiveness of EU liner shipping in the short-run. However, in the long run the lack of competitive pressure in the present system may have a negative impact on the competitiveness of EU liner shipping firms as regards their ability to adopt to new regulatory environments in other parts of the world. (see also ICF, p. 27).
103. Repeal option: As regards the ‘Repeal option’ the ICF study rightly pointed out that conference members are typically from different countries. Liner conferences serving EU trades contain EU carriers as well carriers from third countries. EU carriers are also conference members on non-EU trades. Since all members will be

¹⁶ See PIERS/Journal of Commerce – US Global Container Report, 2004 annual issue.

affected similarly by removal of the exemption on EU trades, in theory, competitive positions should not be affected and concluded that “the competitiveness of EU carriers relative to non-EU carriers would not be significantly altered by removal of the exemption” (ICF, p. 26).

104. In the long-run, according to the ICF consultants the abolition of Regulation 4056/86 may force some high cost shipping lines to cut their costs or exit the industry. Moreover, the ICF consultants claim, “it is possible that cost restructuring could make some of the EU shipping liners more competitive in the long-run” (ICF, p. 27).
105. Global Insight expects a positive or no impact on competitiveness of EU liner shipping firms. European firms are doing well in terms of profitability and capacity share and in a more competitive environment they should be able to compete and grow.
106. Replace option: The option allows carriers to exchange information *inter alia* to make better informed investment decisions which may improve competitiveness of the liner shipping sector as a whole. Since the information is also exchanged with third country carriers, there would not be any particular advantage for EU carriers.
107. Conclusion: The ‘No action option’ has a weakly negative impact on the competitiveness of EU liner shipping while the ‘Repeal option’ has a weakly positive impact on EU liner shipping. The ‘Replace option’ is neutral with respect to competitiveness of EU liner shipping.

Will ‘small’ EU carriers be adversely affected by any of the options?

108. During the review process the European Community Shipowners’ Associations (ECSA) informed the Commission that attention has to be drawn to the needs of specific services particularly short Sea (feeder) services and services to smaller trades. Since such trades generally do not require a large number of vessels to be serviced, relatively small carriers might be able to operate side by side with large carriers on these trades. The question arises whether small carriers would be more affected by any of the policy options, in particular on short Sea (feeder) and smaller trades.
109. In order to analyse the needs of these specific services and small carriers, the Commission asked ECSA to submit a list of EU owned carriers that would fall within the scope of Commission Recommendation concerning the definition of small and medium sized enterprises.¹⁷ ECSA presented so far a number of ‘small carriers’ from one Member State without indicating whether they can be considered SME’s.¹⁸
110. Instead ECSA proposed a distinction between ‘global’ services, which primarily operate in deep Sea trades/world market and ‘regional’ or ‘niche’ services, which

¹⁷ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20 May 2003.

¹⁸ ECSA submitted names of five ‘small carriers’ from Germany: Three appear to belong to a larger economic entity and the remaining two are family owned.

mainly operate on intra-Community trades (short Sea operators), on thin trades and on North-South trades. It therefore appears that liner shipping necessitates a rather large minimum efficient scale and therefore a ‘small carrier’ is rather a relatively large economic entity in comparison to other economic sectors. No liner shipping company appears to fall within the Commission Recommendation concerning small and medium-sized enterprises.

111. No action option: According to ECSA ‘regional’ or ‘niche’ liner carriers need co-operation under Regulation 4056/86 since they lack the necessary resources to provide independent services on their own.¹⁹ Conferences do not offer services and therefore they cannot provide any resources to ‘niche’ or ‘regional’ carriers. It is the consortia block exemption regulation²⁰ which allows ‘niche’ and ‘regional’ carriers to enter into operational co-operations in order to provide joint services with other carriers. Thus, only consortia provide ‘niche’ and ‘small’ carriers with the necessary resources to offer independent services on thin North-South or short Sea trades.
112. In principle the ‘No action option’ does not change the position of small carriers vis-à-vis large carriers. It can be expected that if the conference system would be maintained the concentration processes that can be observed today would continue. Recent examples of take-over include large (e.g. merger between Maersk and P&O Nedlloyd, Hapag Lloyd and CP ships) as well as relatively small carriers (e.g. CMA CGM taking over Delmas).
113. Repeal option: Some stakeholders perceive a potential greater impact of a repeal on small shipowners than on large (ICF, p. 3). It is however rather a matter of perception than of facts. Even a small shipowner itself (ICF, p. 28) operating on a thin short Sea trade does not agree with the perception of most other carriers. The shipowner is of the view that the abolition of Regulation 4056/86 would not have any impact on the competitiveness of the EU liner shipping serving the Italy-East Mediterranean trades as these short Sea trades are already characterized by a high level of competition. The conference, whose members are small and medium-size liners, does not dominate the Mediterranean trades. The largest market share is controlled by MSC, which operates globally and is not a member of the Conference. The interviewee asserted that the conference members have been facing competition not only from each other and MSC, but also from other modes of transport, namely trucking, ro-ro ferries or rail services. Small and medium-sized liners, thus, have had to adapt to such competitive market conditions and the abolition of the conference system would not impair their position.
114. From a purely theoretical perspective, the distributional implications of the adjustment period are not clear according to ICF. Smaller shipowners might or might not be more adversely affected by the adjustments than their larger counterparts (ICF, p.17). In general, smaller liners, may be able to adapt more quickly to the new market conditions and hence would be better off.

¹⁹ ECSA answer of 30 September 2005.

²⁰ Commission Regulation (EC) No 823/2000, OJ L 100, 20.4.2000 as amended by Commission Regulation (EC) No 611/2005, L101, 20.4.2005.

115. The impact on carriers will differ depending on whether they are currently operating as independent liners or conference members (ICF, p. 31). To the extent that conferences were successful in discouraging independent liners from entering certain markets, independent liners are expected to benefit the most as the barriers to entry will be reduced. Hence, small independent lines may have the possibility of entering new routes.
116. The Commission's own investigations revealed less than ten independent EU-owned 'small' carriers that are members of deep Sea conferences on EU trades. Hence, a small share of 'small' EU-owned carriers would potentially be affected by a repeal.
117. Liberalisation creates a market environment that allows for quicker growth than a regulated environment, in particular for small companies. It creates more new services and new niche markets which especially small companies are able to quickly enter. These market niches usually allow for rapid growth. Hence, small innovative companies are able to grow much quicker in a competitive environment – see for example the rapid growth of Ryanair that started as a small company with a new innovative business model.
118. According to Global Insight there is a positive impact on small carriers. Liberalisation gives small carriers the opportunity to grow fast if they follow an innovative business model. The success of small carriers depends on their ability to adapt to a competitive environment and not on their actual size. Small carriers may join alliances or find niche markets in a liberalised environment. (p. 216). In particular, the short sea route North Europe – Mediterranean is an example of a route where small carriers are able to challenge the big ones (p. 135).
119. Replace option: There are neither indications that the information exchange system would particularly benefit small carriers nor that it would harm small carriers.
120. Conclusion: The impact of the options 'No action' and 'Replace' is neutral. The 'Repeal option' is weakly positive.

Do the options provoke cross-border investment flows (including re-location of economic activities)?

121. Any legislative change would affect all carriers operating on EU trades regardless of where a company or vessel is registered. Hence, the question is irrelevant for all three options.
122. The White Paper (paragraph 79) stated that investment decisions of the manufacturing industry could be affected by 'too high' transport costs. Since the cost of transport is only one of numerous factors to be taken into account when deciding where to produce, it is however impossible either to determine the direction of the investment flows nor to quantify them.
123. Conclusion: None of the three options has an impact on cross-border investment flows.

Is there a significant effect on EU trade?

124. No action option: This option does not lead to any reduction in transport prices and hence has a weakly negative impact on EU trade.
125. Repeal option: According to the ICF study “the effects of the abolition on the competitiveness of EU trade is unlikely to be significant, or even noticeable” (ICF, p. 34). Global Insight expects a marginally positive effect (p. 216).
126. Replace option: It is not excluded that transport prices would rise above current levels if the ELAA proposal would be implemented. Therefore, EU external trade at least in theory negatively affected.
127. Conclusion: The ‘Repeal option’ has a weakly positive impact on EU trade, while the ‘No action option’ has a weakly negative and the ‘Replace option’ a weakly negative impact on EU trade.

8.1.6 Competition in the internal market and market structure

Does the option affect the functioning of the internal market or will it lead to undesirable market outcomes?

128. No action option: This option will not affect consumer choice. The ‘No action option’ will maintain transport prices above competitive levels. The conference system has led to overcapacity which constitutes a barrier to entry for new companies wanting to enter the liner shipping market. Conferences are still able to successfully collude on some elements of the transport price, namely on surcharges (see for instance Global Insight, p. 159). Thus the status quo leads to an undesirable market outcome.
129. Repeal option: The option will significantly improve service quality and thus consumer choice. Ocean rates and surcharges are expected to decrease. In a competitive scenario existing structural overcapacities will disappear and therefore there will be lower barriers to entry for newcomers (structural entry barriers) (Global Insight, p. 9).
130. ICF found (p. 31): To the extent that conferences were successful in discouraging independent liners from entering certain markets, independent liners are expected to benefit the most from a repeal of the block exemption as the barriers to entry (behavioural entry barriers) will be reduced.
131. Replace option: The replace option in its current form bears a collusion risk which may lead to even higher prices than currently observed since all carriers participate. In term of capacity the option may reduce overcapacity and thus structural barriers to entry would be removed. On the other hand all carriers are involved in the information exchange system. Therefore they might be able to collectively act against any newcomers in the industry or trades (e.g. by fighting ships) and thereby creating new behavioural entry barriers.
132. Conclusion: The ‘No action option’ will have a negative impact on the functioning of the internal market. The ‘Repeal option’ has a positive impact on the functioning of the internal market. Finally, the ‘Replace option’ overall has a negative impact on the functioning of the internal market.

Will the options lead to changes in the market structure or of industrial organisation, for instance is the emergence of monopolies likely?

133. No action option: Concentration in the industry has increased over the last years. It should be noted, however, that liner shipping is not a concentrated industry at a world-wide level. ICF found (p. 13) that to the extent that cost differences do exist, it is reasonable to assume that, in setting price schedules, conferences will have a tendency to ensure that all members are able to earn at minimum a normal profit on their investments. As a result, pricing structures are most likely to reflect the cost structure of the least efficient member of the conference. The least efficient member is able to stay in the market due to dampened competition.
134. Repeal option: Concentration is not high on a global scale (the current top four HHI in terms of operated and ordered capacity accounts for 630, see table III-1 Global Insight, p. 22). On a trade level concentration is much higher, in particular on small trades where conferences still exert considerably market power and prices are high (for instance on the West Africa trade the HHI amounts to almost 7000, Commission discussion paper, July 2005). It is on those trades where prices might considerably drop and concentration will decrease. ICF (p. 2) found that there has been widespread, but not total, theoretical and practical agreement that the abolition of the block exemption for liner conferences will not have significant overall impacts on capacity, or market structure. This viewpoint has held across both shippers and carriers. Some re-organisation in consortia memberships could be expected.
135. According to Global Insight (p. 11) the concentration process in liner shipping is independent of a possible repeal. Carriers are integrating horizontally and vertically (for instance investing in port terminals), in order to control larger parts of the supply chain.
136. Replace: The replace option will not have an impact on concentration processes in the industry.
137. Conclusion: All three options will have a neutral impact on the market structure of liner shipping.

8.1.7 Specific maritime regions and sectors (including ports and port calls)

Will it have a specific impact on certain maritime regions, for instance in terms of jobs created or lost?

138. All options: There is no regional impact in any of the options.

Does the option have an impact on ports or port calls?

139. No action option: Conferences currently do not engage in the determination of port calls, such co-ordination is either done on the level of consortia or by an individual line.
140. Repeal option: As stated above conferences do not co-ordinate port calls, therefore in principle the repeal does not have an impact on ports or port calls.

141. However, according to ICF (p. 4) increased operational flexibility may occur with the abolition of conferences, and for example this has the potential to change routings, to the benefit or detriment of individual ports. One possibility in this area is the development of new trade routes with new or different ports of call that allow carriers to enhance the overall profitability of the services they provide. To the extent that eliminating the block exemption for conferences increases flexibility for carriers, the associated changes could prove beneficial for both carriers and shippers. However, depending on the particulars of a given trade, it could also mean better or worse service for a given port of call and the shippers in its hinterland (ICF, p. 15).
142. On the other hand, after liberalisation of the European air transport sector a higher number of European airports are served, namely small regional airports. One could imagine similar tendencies in liner shipping, i.e. after the repeal of the block exemption a higher number of small regional ports will be served.
143. Moreover, the re-organisation of liner shipping towards more hub-and spoke operations leads to more small (regional) ports being served by feeder services (Global Insight, p. 216). Finally, port congestion in major European ports dampens the potential for so-called mega carriers to concentrate on the main ports only.
144. Replace option: The ‘Replace option’ will have similar impacts on port calls as the ‘Repeal option’. However, if the ‘Replace option’ strengthens the market power of carriers towards ports due to collusion among carriers, small ports are worse off than large ports since small ports do not have significant bargaining power vis-à-vis carriers.
145. Conclusion: The ‘No action option’ and the ‘Repeal option’ have a neutral impact on small ports. The ‘Replace option’ has potentially a weakly negative impact on small ports.

8.1.8 Small shippers and consumers

Does the option have a negative impact on small shippers ?

146. Over 90% of the carriers’ customers are small shippers in terms of overall volume shipped (see paragraph 156, Commission discussion paper, July 2005) and consequently do not appear to exert a significant amount of buyer power. These shippers are not necessarily SMEs. Globally operating freight forwarders offer their services to small shippers. Freight forwarders are able to bundle small shippers’ demand and are therefore in a position to offer better rates than an individual shipper would receive from carriers directly. On the other hand it is also understood that smaller shippers inevitably pay higher transport prices than larger shippers similar to any other industrial sector.
147. No action option: The ‘No action option’ will not reduce transport prices.
148. Repeal option: Data provided by the stakeholders to ICF (p. 32) indicate that volatility of rates varies significantly across the goods transported. To the extent that liberalisation in the shipping industry could induce rate stability in the long-run, shippers who have been experiencing a high degree of volatility of rates under the

conference system would benefit. The impact also will depend on how sophisticated [small] shippers are in increasing their market power (for example, through joining shipping associations).

149. An interviewee stated during the ICF interview that small shippers would benefit more from a repeal of Regulation 4056/86 than large ones. He asserted that smaller shippers who have to use the services of freight forwarders are exposed to the "passing-on" syndrome where all conference charges are billed whether or not the forwarder has been able to negotiate better terms with the carrier. Larger shippers, on the other hand, negotiate directly with carriers and thus may be in a position to negotiate some of the conference charges.
150. With respect to rates ICF (p. 25) reports that one interviewee asserted that a repeal of Regulation 4056/86 would impact the way rate increases are carried out in the trades, where "general" increases (as per General Rate Increase) would be replaced by individual increases, as per each carrier's aspirations and need for revenue enhancement. The interviewee also asserted that the "collusion effect" of a conference representing 60 to 70 percent of the trade (for example, the FEFC on the Asia-Europe trade) would disappear and open more room for one-on-one negotiations without the interference of a supervising body, restoring a better balance in the pricing discussions, particularly for small and medium shippers.
151. Based on the available information, ICF (p. 32) has not been able to assert whether the repeal of Regulation 4056/86 would have a greater effect on the small shippers than on the large ones.
152. Replace option: If the information exchange system leads to a strengthening of market power of carriers participating to the conferences' successor regime, smaller shippers with little market power might face considerable adverse effects which would be more severe than their large counterparts.
153. Conclusion: Overall the 'No action option' and the 'Repeal option' will have neutral impact on small shippers. Some stakeholders even see a positive impact of the 'Repeal option' on small shippers. A negative impact on small shippers can be expected from the 'Replace option'.

Does the option affect the prices consumers pay?

154. No action option: No significant change to the status quo is likely. In general, the effect of high maritime transport prices on final consumer prices is relatively limited (annex to the White paper, p. 20). However, in certain areas, such as commodities or fruit, the share of transport costs in the final consumer prices can be very significant.
155. Repeal option: In general, ICF (p.18) expects that consumers will tend to benefit, even if prices are initially variable, and that the net impact on economic welfare will be positive.
156. Global Insight (p. 10) expects declines of transport prices and surcharges. The overall effect on consumer prices will be limited except for certain foodstuffs.

Nevertheless, Global Insight also shows that consumers benefit from the increase of overall economic welfare (p. 194).

157. Replace option: If the block exemption is repealed and replaced by the information exchange system which may reinforce collusion, gains of economic welfare cannot be reaped to the detriment of consumers.
158. Conclusion: The ‘No action’ and the ‘Replace option’ has a weakly negative impact on consumers. In contrast, the ‘Repeal option’ has a weakly positive effect on final consumers.

8.1.9 Trade and developing countries

Does the option affect EU trade policy and its international obligations, including the WTO and UN?

159. The UNCTAD Code of Conduct for Liner shipping has failed to achieve its objectives, notably the protection of the national fleets of developing countries. It has no relevance for today’s trade, a view that is supported by Member States and the ELAA. The Commission has also explored with Member States the implication of a repeal of the block exemption on their membership of the UNCTAD Code and has concluded that its implications are minimal as only 2 Member States still have bilateral agreements that rely on provisions of the Code.
160. No action option: No change in international obligations, i.e. UNCTAD code is unaffected.
161. Repeal option and Replace option: 14 EU Member States are members of the UNCTAD code. Both options will provide the time necessary for Member States to resile membership in the code by the Member States. No international re-negotiations are necessary.
162. Conclusion: None of the three options has an economic impact on EU trade policy. The ‘Repeal’ and the ‘Replace option’ have an impact on certain Member States’ international obligation.

Does it affect developing, least developing and middle income countries?

163. As stated above the UNCTAD code is not applied in practice anymore. The Code has also not contributed to the objective of protecting national lines of the developing countries. These lines have disappeared.
164. Developing countries presently suffer from the grip of conferences. The African Shippers council (UCCA) has complained repeatedly about unjustified rate increases by dominant liner firms. They call for a repeal of the conference system.
165. No action option: Trade is important to developing countries for economic growth and the fight against poverty (Global Insight, p. 65-68). Transport costs account for a large share in the value of developing countries exports of commodities. Transport prices remain high in the ‘No action option’. Therefore these countries are relatively more deprived from trade growth opportunities than the developed world under this scenario.

166. Repeal option: Transport prices will decrease in the ‘Repeal option’ and therefore provide developing countries the opportunity to increase imports and especially exports. Global Insight also expects a positive impact of a repeal on developing countries (p. 10).
167. Replace option: The ‘Replace option’ will not bring about any improvements to the developing countries. Collusive behaviour may continue to lead to high transport prices for developing countries exports.
168. Conclusion: The ‘No action option’ and ‘Replace option’ have a negative impact on developing countries. The ‘Repeal option’ would lead to a weakly positive impact on developing countries.

8.2 SOCIAL IMPACTS AND IMPACTS ON EMPLOYMENT

Do the options lead directly to a loss of jobs? – Do the options have specific negative consequences for particular professions?

169. ‘All options’: As stated in the White paper on the review of Regulation 4056/86 the vast majority of seafarers are from third countries and the EU faces a growing shortage of sailors as well as shipping officers (para 80). Moreover, none of the policy options proposed will have a significant impact on investment in container vessels or the reliability of services and therefore direct loss of jobs on container ships or ports can be excluded (Global Insight, p. 216). Furthermore, there is no indication that any particular profession nor EU citizens will be put at a disadvantage vis-à-vis other professions or third-country nationals. Finally, the working conditions of maritime professions will remain unchanged.
170. Conclusion: The impact on employment of all three options is neutral.

8.3 ENVIRONMENT

What are the environmental consequences of carriers’ activities under the different options?

171. The principal environmental impacts relevant to the present exercise are likely to be air quality and climate change due to bunker fuel consumption. Under the current block exemption regulation liner shipping carriers are jointly fixing bunker surcharges, so-called bunker adjustment factors (BAF), that allow carriers to pass-on the cost of fuel (bunker) to their customers the shippers. The effect of such joint fixing of bunker surcharges is that carriers are not competing on this cost element and all carriers charge the same price to their customers - the shippers - regardless of actual costs incurred, i.e. there is no competition-related incentive for carriers to save bunker or to invest in vessels that consume less bunker.
172. No action option: Clearly, this option does not change the carriers’ incentives concerning the use and consumption of bunker as carriers are not competing on this cost element. Consequently, no environmental improvements can be expected from this policy option; and the impact is likely to be weakly negative.

173. Repeal option: This option will put carriers under more competitive pressure with respect to bunker costs. As a result carriers will have to charge the shippers their actual bunker costs. Carriers with low bunker costs are likely to have a competitive advantage over those carriers that consume large amounts of bunker. The incentive to invest in vessels that consume less bunker may increase. As a result, ships' individual emissions of air pollutants and greenhouse gases might be expected to decrease. On the other hand, if as expected the repeal option leads to more competitive freight rates, this could accelerate growth in transport demand, so that even with emission reductions from individual vessels, emissions from the sector could be expected to increase. Furthermore, if as a result of the repeal option carriers begin to compete more on journey time and therefore choose to operate faster vessels, this would also result in higher emissions, as fuel consumption grows significantly with increasing speed. It is therefore difficult to quantify what, if any, environmental improvements this option might have in terms of air and climate change.
174. Replace option: In this option, carriers propose to jointly agree on a common formula for BAFs. If the input factor, the price of bunker, is almost identical for all carriers, the proposal for a joint formula has the same effect as joint price fixing of BAFs in the current regime. As a result carriers are still not competing on bunker costs and no environmental improvement can be expected from the 'Replace option'; indeed as for the 'No action' option the impact is likely to be weakly negative.
175. Conclusion: The 'No action' and 'Replace option' are likely to have weakly negative impacts on the environment. The environmental impact of the 'Repeal option' is difficult to quantify but unlikely to be positive, so is judged to be neutral for the purposes of this impact assessment.

9 MONITORING AND EVALUATION

176. None of the three proposals has budgetary implications, neither for the Community nor for Member States, that would require financial monitoring.
177. As regards monitoring of the competitive situation, i.e. enforcement of competition rules in the liner shipping sector all three options necessitate identical efforts. In this regard, the Commission, relies on own investigations and procedures as well as market information and complaints of third parties.
178. The fact that the 'No action' option does not imply a policy change, is not disengaging the Commission from constant market monitoring, i.e. the need to establish whether the liner shipping market is functioning well. In the past the present regulatory set-up forced the Commission to engage in a number of anti-trust cases that required a considerable amount of time and human resources. Furthermore, the Commission considers that collective fixing of terminal handling charges does not fall with the scope of Regulation 4056/86 and hence Commission intervention might be necessary in future. Finally, Commission block exemption regulations are usually under review every five years.

10 CONCLUSION: COMPARISON OF OPTIONS

179. The following table provides an overview of the social, economic and environmental impacts of all three policy options. Policy fields marked in bold are of particular relevance in the legislative process.

Impact on	Option		
	No action	Repeal	Replace
Transport prices	--	++	--
Transport price stability	-	0	0
Lisbon objectives	-	++	-
Reliability of services	-	++	-
Reliability of services on small and short Sea trades	0	0	-
Quality of services	--	++	--
Innovation	--	++	--
Competitiveness of EU liner shipping sector	-	+	0
Small EU carriers	0	+	0
Cross-border investment flows	0	0	0
EU trade	-	+	-
Functioning of the Internal Market	--	++	--
Market structure	0	0	0
Ports, port calls and maritime regions	0	0	-
small shippers	0	0	--
Consumer prices	-	+	-
EU trade policy	0	0	0
Developing countries	--	+	--
Employment	0	0	0
Environment	-	0	-

(+ +): The policy option has a positive impact on the policy area.

(+): The policy option has a weakly positive impact on the policy area.

(0): The policy option has a neutral impact on the policy area or it is not relevant.

(-): The policy option has a weakly negative impact on the policy area.

(- -): The policy option has a negative impact on the policy area.

180. When comparing the three policy options, the 'Repeal option' is the superior option in social and economic aspects. It also positively contributes to the Lisbon objectives. With respect to the four areas transport of prices, reliability of services,

competitiveness of EU liner shipping and small EU carriers, which are of particular importance in the review process, the 'Repeal option' would bring about substantial benefits to industry and consumers.

181. The 'No action option' appears to be preferable to the 'Replace option'. It should however be noted that almost all negative impacts of the 'Replace option' stem from the inherent collusion risk of this option. If the collusion risk of the information exchange system were to be avoided by appropriate amendments to the ELAA proposal of 10 March 2005, the option could become equal to the 'Repeal option' or may even result in benefits to industry and consumers that go beyond the 'Repeal option'.
182. The Commission is currently discussing with the ELAA with a view to eliminate the inherent collusion risk of the 'Replace option', i.e. to develop a revised ELAA proposal for an alternative information exchange system in conformity with Article 81 of the Treaty.
183. The Commission is committed to avoiding a situation in which vital market information resulting from the conference system is lost to liner shipping carriers. Both the Commission and transport users recognise the need for liner shipping carriers to have access to market information for the purposes of adequate planning of capacity investments in order to provide regular liner shipping services of a high quality.
184. Provided the Commission is satisfied with a revised ELAA proposal, the Commission is at this stage aiming at issuing a Commission notice concerning the proposed information exchange system. Both options 'Repeal' and 'Replace', contain the repeal of Regulation 4056/86 which would allow for a subsequent switch over from the 'Repeal' to the 'Replace option'.