JUDGMENT OF THE COURT (Fifth Chamber)

16 March 2000

(Competition - International maritime transport - Liner conferences - Regulation (EEC) No 4056/86 - [Article 102 TFEU] - Collective dominant position - Exclusivity agreement between national authorities and liner conferences - Liner conference insisting on application of the agreement - Fighting ships - Loyalty rebates - Rights of defence - Fines - Assessment criteria)

In Joined Cases C-395/96 P and C-396/96 P,

**Compagnie Maritime Belge Transports SA** (C-395/96 P), established in Antwerp, Belgium,

**Compagnie Maritime Belge SA** (C-395/96 P), established in Antwerp,

and

**Dafra-Lines A/S** (C-396/96 P), established in Copenhagen, Denmark,

represented by M. and D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 Rue Philippe II,

appellants,

APPEAL against the judgment of the [General Court] of the European [Union] (Third Chamber, Extended Composition) of 8 October 1996 in Joined Cases T-24/93 to T-26/93 and T-28/93 *Compagnie Maritime Belge Transports and Others v Commission* [1996] ECR II-1201, seeking to have that judgment set aside,

the other parties to the proceedings being:

**Commission of the European [Union],** represented by R. Lyal, of its Legal Service, acting as Agent, assisted by J. Flynn, Barrister, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

defendant at first instance,

**Grimaldi,** established in Palermo, Italy,

and

**Cobelfret,** established in Antwerp,

represented by M. Clough, Solicitor, with an address for service in Luxembourg at the Chambers of A. May, 31 Grand-Rue,

interveners at first instance,

**Deutsche Afrika-Linien GmbH & Co.,** established in Hamburg, Germany,

**Nedlloyd Lijnen BV,** established in Rotterdam, Netherlands,

applicants at first instance,

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward (Rapporteur), President of the Chamber, J.C. Moitinho de Almeida, L. Sevón, C. Gulmann and P. Jann, Judges,

Advocate General: N. Fennelly,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 14 May 1998,

after hearing the Opinion of the Advocate General at the sitting on 29 October 1998,

gives the following

**Judgment**

1. By applications lodged at the Court Registry on 10 December 1996, Compagnie Maritime Belge SA ('CMB') and Compagnie Maritime Belge Transports SA ('CMBT'), in Case C-395/96 P, and Dafra-Lines A/S ('Dafra'), in Case C-396/96 P, brought an appeal under Article 49 of the E[U] Statute of the Court of Justice against the judgment of 8 October 1996 in Joined Cases T-24/93 to T-26/93 and T-28/93 *Compagnie Maritime Belge Transports and Others v Commission* [1996] ECR II-1201 ('the contested judgment'), in which the [General Court] dismissed their applications for the annulment of Commission Decision 93/82/EEC of 23 December 1992 relating to a proceeding pursuant to [Articles 101] (IV/32.448 and IV/32.450: Cewal, Cowac and Ukwal) and [102] (IV/32.448 and IV/32.450: Cewal) of the [FEU] Treaty (OJ 1993 L 34, p. 20; 'the contested decision').

2. CMB is the holding company of the CMB group, whose activities include shipowning and managing and operating shipping operations. On 7 May 1991, its liner and intermodal services were established as a separate legal entity, CMBT, with effect from 1 January 1991.

3. CMB is a member of Associated Central West Africa Lines ('Cewal') which is a shipping conference whose secretariat is in Antwerp. The conference is made up of shipping companies operating a regular liner service between the ports of Zaire (which has since become the Democratic Republic of Congo) and Angola and those of the North Sea, with the exception of the United Kingdom.

4. Dafra is a member of Cewal and has also been a member of the CMB group since 1 January 1988.

5. The contested decision states:

'*Article 1*

The Cewal, Cowac and Ukwal shipping conferences and the undertakings that are members thereof, a list of which is attached as Annex I to this decision, have infringed [Article 101(1) TFEU] by entering into non-competition agreements according to which each member undertaking of one conference refrains from operating as an independent shipping company ("outsider") in the area of activity of the other two conferences in order to share out the liner market between northern Europe and western Africa on a geographical basis.

*Article 2*

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

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

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

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

*Article 3*

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

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

*Article 4*

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

*Article 5*

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

*Article 6*

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

The fines are as follows:

- Compagnie Maritime Belge: ECU 9.6 million,

- Dafra Line: ECU 200 000,

- Nedlloyd Lijnen BV: ECU 100 000,

- Deutsche Afrika Linien-Woermann Linie: ECU 200 000.

*Article 7*

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

On expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this decision was adopted, plus 3.5 percentage points, i.e. 13.25%.

*Article 8*

[This decision is addressed to the Cewal, Cowac and Ukwal shipping conferences and the undertakings that are members thereof, a list of which is attached as Annex I to this decision.]

...'

6. By application lodged at the Registry of the [General Court] on 19 March 1993, CMB and CMBT brought an action, registered as Case T-24/93, seeking primarily to have the contested decision annulled.

7. By applications lodged at the Registry of the [General Court] on 19 and 22 March 1993, Dafra, Deutsche Afrika-Linien GmbH & Co. and Nedlloyd Lijnen BV each brought an action. Those applications, registered as Cases T-25/93, T-26/93 and T-28/93 respectively, likewise sought primarily to have the contested decision annulled.

8. The applicants relied on four pleas in support of their actions for annulment:

- in Case T-26/93, the applicant asserted a plea alleging procedural defects;

- in Cases T-24/93, T-25/93 and T-28/93, the applicants maintained that the practices in question did not affect intra-[Union] trade and, in Cases T-24/93 and T-25/93, that the markets in question were not part of the common market;

- in Cases T-24/93 to T-26/93, the applicants denied that the practices at issue had as their object or effect the distortion of competition within the meaning of [Article 10(1) TFEU];

- in each of those cases, the applicants maintained that the practices in question did not constitute an abuse of a dominant position within the meaning of [Article 102 TFEU].

9. Although the [General Court] reduced the fines imposed, it dismissed the applications for annulment of the contested decision.

10. Only Dafra, CMB and CMBT have appealed against the contested judgment.

11. In the present appeal, Dafra, CMB and CMBT rely on three pleas to challenge the contested judgment:

- they deny the collective dominant position which Cewal members are presumed to hold;

- they dispute each of the three findings of the [General Court] as to abuse of a dominant position, concerning respectively the agreement with the [Zairean] Office de Gestion du Fret Maritime ('Ogefrem'), 'fighting ships' and loyalty contracts;

- they object to the fines imposed.

**The plea relating to the existence of a collective dominant position**

*Arguments of the appellants*

12. By their first plea, the appellants challenge the finding of the [General Court], after it had dealt with the existence of a collective dominant position in paragraphs 59 to 68 of the contested judgment, that the Commission, in its decision, had demonstrated sufficiently that the position of Cewal members on the relevant market should be assessed collectively. The appellants raise three grounds of appeal in this regard.

13. The first is that the [General Court] erred in law in basing its reasoning on grounds not included in the contested decision.

14. The Commission stated in point 61 of the contested decision that the Cewal conference held a dominant position and that '[t]his dominant position is held jointly by the members of Cewal given that they are linked to each other by the conference agreement, which creates very close economic links between them' (see also point 49). However, it is clear from paragraph 67 of the contested judgment that the [General Court] considered that, quite apart from the agreements concluded between the shipping companies creating the Cewal conference, there were links between the companies such that they had adopted uniform conduct on the market. The appellants stress that the [General Court] did not define the nature of those links.

15. There is nothing in the contested decision to show that the Commission considered that there were economic links between Cewal members apart from the conference agreement, such that Cewal's position on the market had to be assessed collectively. Those links should have been clearly mentioned in the contested decision and the [General Court] cannot be allowed to supplement the Commission's reasoning by extracting individual elements from the contested decision to support a collective assessment. It follows that the contested decision does not support the reasoning of the [General Court] on that point.

16. The second ground of appeal is that in order to establish the economic links necessary to justify application of the concept of a collective dominant position, the [General Court] has in fact 'recycled' concerted practices between the members of Cewal within the meaning of [Article 101 TFEU]. That approach contradicts the case-law of the Court of Justice which requires for a finding of a collective dominant position, that the group of undertakings in question be bound by links other than mere concerted practices or agreements within the meaning of [Article 101 TFEU].

17. The appellants rely in particular on paragraph 65 of the Advocate General's Opinion in Joined Cases C-140/94 to C-142/94 *DIP and Others v Comune diBassano del Grappa and Comune di Chioggia* [1995] ECR I-3257, in which he acknowledged that, in order to establish the existence of such close economic links, it is not sufficient to rely on the fact that the undertakings in question take part in what, if anything, is essentially a concerted practice under [Article 101 TFEU].

18. In paragraph 65 of the contested judgment, the [General Court] specifically based its finding that the position of Cewal members on the market had to be assessed collectively, first, on the existence of a number of committees to which Cewal members belonged and, second, on the fact that those members had agreed to pursue, through certain agreements concluded within committees, certain practices judged to be abusive by the Commission.

19. However, the [General Court] did not give any indication why the creation of those committees should be regarded as leading to economic links such as those referred to in Joined Cases T-68/89, T-77/89 and T-78/89 *SIV and Others v Commission* [1992] ECR II-1403, paragraph 358, from which it is evident that the undertakings concerned must be united by sufficient economic links.

20.

The third ground of appeal is that the [General Court] erred in law in deciding that the concerted practices between the shipping companies who were Cewal members could be condemned as an abuse of a collective dominant position.

21.

Concerted practices between undertakings which could potentially be regarded as collectively dominant should not be 'recycled' as abuse of a collective dominant position, but rather dealt with under the rules applicable to concerted practices. [Article 102 TFEU] applies solely to the unilateral conduct of undertakings holding a dominant position, whereas [Article 101 TFEU] applies to concerted conduct: Case 172/80 *Züchner* v*Bayerische Vereinsbank* [1981] ECR 2021, paragraph 10, and Case 247/86 *Alsatel v Novasam* [1988] ECR 5987, paragraph 20.

22.

Furthermore, it is clear from Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paragraph 39, that [Article 102 TFEU] applies solely to conduct of undertakings which is determined unilaterally and not to concerted conduct between independent undertakings. Moreover, the Court of Justice has held, in Case 66/86*Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803, paragraph 36 et seq., that [Article 102 TFEU] can apply only exceptionally to an agreement between two undertakings.

23.

The [General Court] thus erred in law in deciding that those agreements and/or concerted practices could be regarded as contrary to [Article 102 TFEU] although they were not the result of unilateral conduct on the part of Cewal members.

24.

The appellants further claim that the [General Court] failed to examine their plea in that regard, or at least that the contested judgment contains contradictory statements.

25.

The proper characterisation of the alleged abuse is not clear. In paragraph 64 of the contested judgment, the [General Court] stressed, in somewhat contradictory terms, that '[a]s a result of the close relations which shipping companies maintain with each other within a liner conference, they are capable together of implementing in common on the relevant market practices such as to constitute unilateral conduct. Such conduct may involve infringement of [Article 102 TFEU] ...'. Similarly, in paragraph 65 of the contested judgment, the [General Court] observes that Cewal members had 'an intention to adopt together the same conduct on the market in order to react unilaterally to a change, deemed to be a threat, in the competitive situation on the market on which they operate'.

26.

In the appellants' view, conduct may be concerted or unilateral, but it cannot be concerted and unilateral at the same time.

27.

In those circumstances, the contested judgment should be set aside for defective reasoning.

*Findings of the Court*

The first ground of appeal: the [General Court] based its reasoning on grounds not included in the contested decision

28.

This ground proceeds on a misinterpretation of paragraphs 64 to 67 of the contested judgment.

29.

In paragraph 64, the [General Court] stated that [Article 102 TFEU] could apply to the unilateral conduct of a liner conference. In paragraph 65, it stated that, in view of the evidence set out in the contested decision, the practices of which Cewal members were accused revealed an intention to adopt together the same conduct on the market in order to react unilaterally to a change, deemed to be a threat, in the competitive situation on the market on which they operate. The [General Court] held, consequently, in paragraph 66, that the Commission had sufficiently demonstrated that the position of Cewal members on the relevant market should be assessed collectively.

30. In paragraph 67, the [General Court] was responding to the argument that the Commission had 'recycled' the facts constituting an infringement of [Article 101 TFEU]. That paragraph was not, however, intended to show links other than those already established in paragraph 65.

31. Accordingly, the first ground of appeal must be rejected as unfounded.

The grounds of appeal concerning the alleged 'recycling' of concerted practices, the possibility of concerted practices constituting an abuse of a dominant position and the reasoning of the contested judgment in that regard

32. The second and third grounds of appeal, which should be examined together, relate essentially to the issue whether the Commission is entitled to base a finding that there is abuse of a dominant position solely on circumstances or facts which would constitute an agreement, decision or concerted practice under [Article 101(1) TFEU], and therefore be automatically void unless exempted under [Article 101(3) TFEU].

33. It is clear from the very wording of [Article 101(1)(a), (b), (d) and (e) TFEU] and [Article 102 (a) to (d) TFEU] that the same practice may give rise to an infringement of both provisions. Simultaneous application of [Articles 101 and 102 TFEU] cannot therefore be ruled out a priori. However, the objectives pursued by each of those two provisions must be distinguished.

34. [Article 101 TFEU] applies to agreements, decisions and concerted practices which may appreciably affect trade between Member States, regardless of the position on the market of the undertakings concerned. [Article 102 TFEU], on the other hand, deals with the conduct of one or more economic operators consisting in the abuse of a position of economic strength which enables the operator concerned to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers (see Case 322/81 *Michelin v Commission* [1983] ECR 3461, paragraph 30).

35. In terms of [Article 102 TFEU], a dominant position may be held by several 'undertakings'. The Court of Justice has held, on many occasions, that the concept of 'undertaking' in the chapter of the Treaty devoted to the rules on competition presupposes the economic independence of the entity concerned (see, in particular, Case 22/71 *Béguelin Import v G.L. Import Export* [1971] ECR 949).

36. It follows that the expression 'one or more undertakings' in [Article 102 TFEU] implies that a dominant position may be held by two or more economic entities legally independent of each other, provided that from an economic point of view they present themselves or act together on a particular market as a collective entity. That is how the expression 'collective dominant position', as used in the remainder of this judgment, should be understood.

37. However, a finding that an undertaking has a dominant position is not in itself a ground of criticism but simply means that, irrespective of the reasons for which it has such a dominant position, the undertaking concerned has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market (see *Michelin*, paragraph 57).

38. The same applies as regards undertakings which hold a collective dominant position. A finding that two or more undertakings hold a collective dominant position must, in principle, proceed upon an economic assessment of the position on the relevant market of the undertakings concerned, prior to any examination of the question whether those undertakings have abused their position on the market.

39. So, for the purposes of analysis under [Article 102 TFEU], it is necessary to consider whether the undertakings concerned together constitute a collective entity vis-à-vis their competitors, their trading partners and consumers on a particular market. It is only where that question is answered

in the affirmative that it is appropriate to consider whether that collective entity actually holds a dominant position and whether its conduct constitutes abuse.

40. In the contested judgment, the [General Court] was careful to examine separately those three elements, namely the collective position, the dominant position and the abuse of such a position.

41. In order to establish the existence of a collective entity as defined above, it is necessary to examine the economic links or factors which give rise to a connection between the undertakings concerned (see, *inter alia*, Case C-393/92 *Almelo* [1994] ECR I-1477, paragraph 43, and Joined Cases C-68/94 and C-30/95 *France and Others* v*Commission* [1998] ECR I-1375, paragraph 221).

42. In particular, it must be ascertained whether economic links exist between the undertakings concerned which enable them to act together independently of their competitors, their customers and consumers (see*Michelin*).

43. The mere fact that two or more undertakings are linked by an agreement, a decision of associations of undertakings or a concerted practice within the meaning of [Article 101(1) TFEU] does not, of itself, constitute a sufficient basis for such a finding.

44. On the other hand, an agreement, decision or concerted practice (whether or not covered by an exemption under [Article 101(3) TFEU]) may undoubtedly, where it is implemented, result in the undertakings concerned being so linked as to their conduct on a particular market that they present themselves on that market as a collective entity vis-à-vis their competitors, their trading partners and consumers.

45. The existence of a collective dominant position may therefore flow from the nature and terms of an agreement, from the way in which it is implemented and, consequently, from the links or factors which give rise to a connection between undertakings which result from it. Nevertheless, the existence of an agreement or of other links in law is not indispensable to a finding of a collective dominant position; such a finding may be based on other connecting factors and wouldd depend on an economic assessment and, in particular, on an assessment of the structure of the market in question.

46. Under Article 1(3)(b) of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of [Articles 101 and 102 TFEU] to maritime transport (OJ 1986 L 378, p. 4), a liner conference is 'a group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services'.

47. The eighth recital in the preamble to that regulation states that such conferences 'have a stabilising effect, assuring shippers of reliable services; ... they contribute generally to providing adequate efficient scheduled maritime transport services and give fair consideration to the interests of users; ... such results cannot be obtained without the cooperation that shipping companies promote within conferences in relation to rates and, where appropriate, availability of capacity or allocation of cargo for shipment, and income; ... in most cases conferences continue to be subject to effective competition from both non-conference scheduled services and, in certain circumstances, from tramp services and from other modes of transport; ... the mobility of fleets, which is a characteristic feature of the structure of availability in the shipping field, subjects conferences to constant competition which they are unable as a rule to eliminate as far as a substantial proportion of the shipping services in question is concerned'.

48. It emerges from those provisions that, by its very nature and in the light of its objectives, a liner conference, as defined by the Council for the purposes of qualification for block exemption under Regulation No 4056/86, can be characterised as a collective entity which presents itself as such on

the market vis-à-vis both users and competitors. So seen, it was logical for the Council to lay down in Regulation No 4056/86 the provisions necessary to avoid a liner conference having effects incompatible with [Article 102 TFEU] (see, in particular, Article 8 of that regulation).

49. That in no way prejudges the question whether, in a given situation, a liner conference holds a dominant position on a particular market or, a fortiori, has abused that position. As is clear from Article 8(2) of Regulation No 4056/86, it is by its conduct that a conference holding a dominant position may have effects which are incompatible with [Article 102 TFEU].

50. It is in the light of those considerations that the merits of the second and third grounds of appeal must be examined.

51. It must be noted at the outset that the appellants have not disputed, in their appeal, either the definition of the relevant market or the evidence showing the dominant position of the Cewal conference on that market (always assuming the existence of a collective position to be established).

52. Admittedly, in Section II(A) of the preamble to the contested decision, entitled 'Applicability of [Article 102 TFEU] to shipping conferences', the Commission merely stated, in point 49, that Article 8 of Regulation No 4056/86 deals with the possibility of an abuse of a dominant position by shipping conferences, that the [General Court] had cited shipping conferences as an example of agreements between economically independent entities enabling economic links to be formed which could give those entities jointly a dominant position in relation to other operators on the same market, and that the agreement between the members of Cewal constituted such an agreement. According to point 50, the fact that some of Cewal's activities were covered by a block exemption did not prevent [Article 102 TFEU] from being applied to the activities of the conference.

53. It is true that the [General Court] referred, in paragraph 65 of the contested judgment, to a number of factors which, although appearing in the contested decision, were not expressly mentioned in points 49 and 50 thereof.

54. However, it does not follow that the [General Court] must be deemed to have considered that, in the absence of the particular factors which it mentioned in paragraph 65 of the contested judgment, the Commission would not have been entitled to find that the Cewal conference constituted a collective entity capable of holding a dominant position on the relevant market. On the contrary, the reasoning in paragraph 65 of that judgment is intended to show, in response to the appellants' arguments, that implementation of the Cewal agreement resulted in the conference members presenting themselves on the market as a collective entity.

55. It should also be noted that the appellants have neither disputed the accuracy of the matters referred to by the [General Court] in paragraph 65 of the contested judgment, which already appeared in the contested decision, nor claimed that they had not had the opportunity to put forward their views in that regard during the administrative procedure.

56. The soundness of a legal assessment by the Commission such as that contained in points 49 and 50 of the contested decision is to be assessed in the light not only of the facts and circumstances expressly mentioned in the part of the decision devoted to that assessment, but also of any other undisputed factor referred to in the same decision.

57. It follows that the [General Court] did not err in law in stating that, in this case, the Commission had shown to the requisite legal standard that the Cewalagreement, as it had been implemented, enabled the conduct of the members of the conference thus constituted to be assessed collectively.

58. In those circumstances, it is not necessary to rule on the question whether the conduct of the members of a shipping conference must always be assessed collectively for the purpose of applying [Article 102 TFEU].

59. Accordingly, the second and third grounds of appeal and therefore the first plea must be rejected.

**The plea relating to the alleged abuse of a dominant position by Cewal**

60. By their second plea, the appellants claim that none of the three alleged infringements upheld against them by both the Commission and the [General Court] can be characterised as such.

*The abuse concerning the cooperation agreement ('the Ogefrem Agreement')*

Arguments of the appellants

61. The appellants allege, first, that the [General Court] infringed the rights of defence and the right to a fair hearing; second, that there is a contradiction in the reasoning of the contested judgment; and, finally, that the [General Court] did not mention some of their arguments.

62. As regards infringement of the rights of defence and of the right to a fair hearing, the [General Court] infringed their rights when it substituted a new complaint for the complaint concerning Ogefrem in the contested decision.

63. In points 63 to 72 and 115 of the contested decision the Commission criticised them, first, for having failed to terminate Articles 1 to 6 of the Ogefrem Agreement and, second, for having reminded Ogefrem that the exclusivity granted to them should be respected. The [General Court] replaced that double complaint with a new one based on their alleged failure to make a reasonable use of their right of veto.

64. There is a fundamental difference between requesting a public authority to act and formally 'vetoing' action by that authority, since where there is a right of veto the person with such a right has a blocking power. The appellants claim that they have never had the chance to submit their observations concerning that new complaint. Furthermore, it is not supported by any factual evidence.

65. That new complaint enabled the [General Court] to disregard the dual nature of the complaint made by the Commission against the members of Cewal.

66. As regards the first complaint, that Cewal did not terminate Articles 1 to 6 of the Ogefrem Agreement, the [General Court] found that the infringement ended in September 1989. Since the agreement was never terminated, it can be concluded that the [General Court], unlike the Commission, considered that the agreement as such did not amount to an abuse or, at least, that it did not consider whether that part of the complaint constituted an abusive practice. In any event, the [General Court] should have annulled the fine in respect of that abuse.

67. If, on the other hand, the [General Court] considered that the exclusivity provisions themselves constituted an abuse, it should have replied to their pleas that the exclusivity had been granted to them by the Republic of Zaire and thus constituted an act of State.

68. As to the second complaint, concerning the requests from Cewal members that the Ogefrem Agreement be strictly complied with, the difference between requesting an authority to act and formally vetoing action by that authority allowed the [General Court] to dismiss the appellants' arguments in respect of that complaint.

69.

Alternatively, the appellants submit that even if the [General Court] did not modify the Commission's complaint, it should have responded to their pleas to the effect that mere inducement of government action cannot be characterised as an abusive practice.

70. The appellants' second argument is that, since the [General Court] considered that the members of Cewal were not accused of having failed to terminate the Ogefrem Agreement or of having encouraged a government to take action, it could not, without contradicting itself, decide that the Commission had been entitled to take the view that, by actively participating in implementation of the agreement and repeatedly requesting that it be strictly complied with, the members of Cewal had infringed [Article 102 TFEU].

71. Their third argument is that the fact that they did not waive their exclusive rights cannot constitute an abuse for the purpose of [Article 102 TFEU].

Findings of the Court

72. It is necessary, first, to examine whether the [General Court] substituted for the complaint concerning Ogefrem in the contested decision a new complaint based on the appellants' alleged failure to make a reasonable use of their right of veto.

73. It is clear from Article 2 of the contested decision that the Commission considered that the member undertakings of Cewal had abused their joint dominant position by participating in implementation of the Ogefrem Agreement and by repeatedly requesting by a variety of means that it be strictly complied with.

74. In paragraph 109 of the contested judgment, the [General Court] found that the Commission was entitled to take the view that, by actively participating in implementation of the Ogefrem Agreement and repeatedly requesting that it be strictly complied with as part of a plan designed to remove the only independent shipping operation for which Ogefrem had authorised access to the market, the members of Cewal had infringed [Article 102 TFEU].

75. Although the [General Court] mentioned, in paragraph 108 of the contested judgment, use of the right of veto, that can only be a reference to the power given to Cewal under the Ogefrem Agreement to refuse to approve derogations from the exclusivity granted to it. As the Advocate General pointed out in paragraph 58 of his Opinion, that reference does not affect the characterisation of the abuse, which consists, according to both the [General Court] and the Commission, in the insistence with which Cewal demanded strict observance of its exclusive right.

76. The reference to the right of veto was not intended to describe an abuse, but rather to respond to the arguments put forward by the appellants that their conduct had been imposed upon them by the Zairean authorities.

77. As regards the other arguments put forward on this point, given that neither the Commission nor the [General Court] considered that the Ogefrem Agreement constituted an infringement of [Article 102 TFEU], the [General Court] was entitled to conclude that the infringement had ended in September 1989, even if the agreement itself was still in force.

78. Nor did the [General Court] consider that the exclusivity granted by the Ogefrem Agreement constituted an abuse in itself. It was thus under no obligation to examine the appellants' arguments that the granting of that exclusivity was an act of State.

79. It is therefore necessary to determine whether the [General Court] should have considered the appellants' arguments that mere inducement of government action could not be characterised as an abuse.

80.

It is clear from paragraphs 104 and 105 of the contested judgment that the first paragraph of Article 1 of the Ogefrem Agreement provided for exclusivity for the benefit of members of Cewal in respect of all cargoes to be carried within the field of activity of the conference. The second paragraph of that article made express provision for possible derogations, subject to agreement of the two parties. Ogefrem unilaterally granted approval to an independent shipping operation, in principle to the extent of 2% of aggregate Zairean trade, although its share subsequently increased. Thereupon, the members of Cewal made approaches to Ogefrem in order to have Grimaldi and Cobelfret ('G & C') removed from the market. In particular, the members of Cewal reminded Ogefrem of its obligations and requested that they be strictly complied with.

81. The first question is whether the fact that the appellants insisted, in the context of an agreement concluded with the Zairean authorities, that the terms of that agreement be strictly complied with is to be treated in the same way as mere inducement to government action. If so, the next question is whether such inducement can itself constitute an abuse.

82. It cannot be disputed that there is a difference between a request to a public authority to comply with a specific contractual obligation and mere incitement or 'inducement' of the authority to take action. In the latter case, there is a simple attempt to influence the authority concerned in the exercise of its discretion. The purpose of a request to comply with a specific contractual obligation, by contrast, is to enforce legal rights which the authority concerned is, by definition, bound to observe.

83. It follows that the appellants' insistence that the terms of the Ogefrem Agreement be complied with cannot be treated in the same way as mere incitement of the Zairean authorities to take government action. It is therefore unnecessary to consider whether, and in what circumstances, mere incitement of a government to take action may constitute abuse within the meaning of [Article 102 TFEU].

84. As has been stated, the [General Court] and the Commission considered that the abuse consisted in the fact that Cewal had repeatedly insisted that the Zairean authorities strictly observe its exclusive right.

85. It should be remembered that the existence of a dominant position means that, irrespective of the reasons which have led to such a position, the dominant undertaking or undertakings have a special responsibility not to allow their conduct to impair genuine undistorted competition on the common market (*Michelin*, paragraph 57).

86. It is established, in the present case, that Cewal sought to rely on the contractual exclusivity provided for in the Ogefrem Agreement in order to remove its only competitor from the market. Such conduct was in no way required by that agreement, since, under the second paragraph of Article 1 thereof, express provision is made for possible derogations, so that the requirements of [Article 102 TFEU] could be met.

87. Accordingly, the second argument must be rejected and the third, that the appellants were criticised for not having waived their exclusive rights, is irrelevant.

88. It follows that the first, second and third arguments put forward by the appellants in support of their plea concerning the Ogefrem Agreement must be rejected.

*The abuse concerning the practice known as 'fighting ships'*

Arguments of the appellants

89. The appellants submit, first, that the [General Court] failed to respond to their plea that the Commission's definition of the abuse of which they were accused was different from that in the

statement of objections, so that the contested decision should have been annulled for breach of the rights of the defence.

90. The appellants assumed, on the basis of the statement of objections and the contested decision, that the abuse of which they were accused lay in placing a vessel on berth alongside the 'outsider' vessel, charging at the same time lower rates than those of the outsider and distributing the losses suffered by the fighting ships among the members of the conference. The appellants also assumed that the existence of losses was taken to imply predatory pricing as opposed to the normal practice of matching a competitor's rates in order to compete fairly with it.

91. In its defence before the [General Court], the Commission stated that the condition that a sailing should be deliberately scheduled to coincide with that of the competitor's vessel was not essential. It also stated that the condition that the rates charged should be lower than those of the competitor was likewise not an essential feature of the practice known as 'fighting ships'. In addition, the Commission claimed that it was not essential, in the case of a conference in a dominant position, that the freight rates charged should result in operating losses for companies which were members of a conference.

92. Finally, the Commission denied the relevance of the concept of predatory pricing.

93. The appellants submit that it is only at that stage of the proceedings that they realised that the Commission had changed its definition of the abuse of which they were accused. That is why they stressed in their reply that if the contested decision were to be read as having been based on that new definition, it had condemned the members of Cewal for a practice of which they were not accused in the statement of objections. Accordingly, the decision should have been annulled for breach of the rights of defence and of [Article 296 TFEU].

94. After having examined a number of extracts from the contested decision, the [General Court] found that it was based on the same definition as that put forward by the Commission in its defence. However, it did not examine the plea that in that case the decision should have been annulled for breach of the appellants' rights of defence. For that reason the contested judgment should be set aside.

95. Secondly, the contested judgment should be annulled for misinterpretation of the contested decision. The [General Court] erred in concluding that the decision was based on a new definition of the alleged abuse. The Commission itself, in its *Twenty-Second Report on Competition Policy of 1992*, gave a different interpretation of the contested decision, stressing that the practice known as 'fighting ships', for which the members of Cewal were condemned, involved thethree elements required in the statement of objections. By wrongly interpreting that decision, the [General Court] itself changed the nature of the complaint against them, in breach of the rights of defence and the right to a fair hearing.

96. Thirdly, the newly defined practice cannot be characterised as an abuse. It is well established that undertakings in a dominant position are entitled to react to competition from competing undertakings. The [General Court] erred in law in refusing to recognise that a dominant undertaking may, in reaction to price competition from a new undertaking wishing to penetrate the market, devise a plan designed to eliminate that undertaking by using selective price-cutting, so long as the prices it quotes are not abusive, within the definition given by the Court of Justice in Case C-62/86 *AKZO v Commission* [1991] ECR I-3359.

97. In addition, both the Commission and the [General Court] failed to show that the conditions of predatory pricing were met in this case. In *AKZO*, the Court of Justice established strict criteria for regarding 'predatory' pricing as an abuse of a dominant position under [Article 102 TFEU]. Those criteria require pricing below production costs. In the present case, given that the prices charged by members of Cewal were not below costs, those members could not be accused of having set

predatory prices. The mere fact that the aim of that price competition was to drive a competitor from the market cannot render legitimate competition unlawful.

98. If those grounds of appeal are to be rejected, the appellants submit, in any event, that the definition of the abuse is new, with the result that no fine could be imposed on them.

Findings of the Court

99. As to the first ground of appeal, that the [General Court] failed to respond to the plea raised in the reply, Article 48(2) of the Rules of Procedure of the [General Court] provides that no new plea in law may be introduced in the course of the proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

100. The plea raised by the appellants was admissible before the [General Court] only if the alleged difference between the statement of objections and the contested decision had appeared in the course of the procedure initiated before that court.

101. Point 23 of the statement of objections indicates that the appellants were criticised for having determined fighting rates, fixed in common, which departed from the tariff normally set by Cewal and which were determined not according to 'economic criteria (that is to say on the basis of costs) but solely in order for them to be lower than the prices advertised by G & C, with the losses resulting from the application of that price-fixing system being shared between the members of Cewal'. On page 20 of the statement, the Commission added that '[s]uch conduct (predatory pricing) intended to eliminate a competitor from the market' constitutes an abuse of a dominant position within the meaning of [Article 102 TFEU].

102. Article 2 of the contested decision states that the appellants abused their dominant position by modifying their freight rates and thus departing from the tariffs in force in order to offer rates the same as or less than those of the principal independent competitor for vessels sailing on the same date or neighbouring dates. In point 73 of the contested decision, the Commission explained that the shortfall in revenue resulting from application of this price-fixing system rather than the conference tariff was borne by all Cewal members. In point 74, the Commission also explained that, because Cewal vessels sailed so frequently, the conference was able to designate fighting ships without having to alter its scheduled timetables.

103. It is clear that there is, prima facie, a difference between the definition of the abuse in the statement of objections and that used in the contested decision. The first refers to rates lower than those advertised by G & C and to losses, while the second refers to rates the same as or lower than those advertised by G & C, and to a shortfall in revenue.

104. However, that difference is clear from a mere comparison of the terms of the two documents and should have been obvious when the contested decision was communicated. It cannot be claimed that this is a matter of law or of fact which came to light in the course of the procedure before the [General Court].

105. It is therefore necessary to determine whether the [General Court] was required to rule on that plea, which was raised for the first time in the reply.

106. It is true that the [General Court] must, in principle, reply to the arguments presented in the course of the procedure and give reasons for a decision on the inadmissibility of an application so that the Court of Justice is able, in the context of an appeal, to exercise its power of review (see, to that effect, Case C-259/96P *Council v De Nil and Impens* [1998] ECR I-2915, paragraph 32).

107. However, the [General Court] cannot be required, every time that a party raises, in the course of the procedure, a new plea in law which clearly does not satisfy the requirements of Article 48(2)

of its Rules of Procedure, either to explain in its judgment the reasons for which that plea is inadmissible, or to examine it in detail.

108. In any event, the fact that the [General Court] did not expressly rule on the admissibility of that plea did not affect the appellants' situation, since the plea was clearly inadmissible.

109. As to the appellants' second ground of appeal relating to the interpretation by the [General Court] of the contested decision, it must be recalled that the Commission stated in its defence that it was unnecessary for a fighting ship to have been specially placed on berth, for the prices to be lower than those of the competitor or for the operation to result in actual losses.

110. As the [General Court] found, there are no differences in that regard between the contested decision and the defence. Far from introducing a new definition of the abuse concerning fighting ships by comparison with the decision, the defence is consistent with it. Consequently, this ground of appeal must be rejected as unfounded.

111. The third ground of appeal concerns the question whether the alleged abuse, as defined in the contested decision and the defence, can properly be so characterised.

112. It is settled case-law that the list of abusive practices contained in [Article 102 TFEU] is not an exhaustive enumeration of the abuses of a dominant position prohibited by the Treaty (Case 6/72 *Europemballage and Continental Can v Commission* [1973] ECR 215, paragraph 26).

113. It is, moreover, established that, in certain circumstances, abuse may occur if an undertaking in a dominant position strengthens that position in such a way that the degree of dominance reached substantially fetters competition (*Europemballage and Continental Can*, paragraph 26).

114. Furthermore, the actual scope of the special responsibility imposed on a dominant undertaking must be considered in the light of the specific circumstances of each case which show that competition has been weakened (Case C-333/94 P *Tetra Pak v Commission* [1996] ECR I-5951, paragraph 24).

115. The maritime transport market is a very specialised sector. It is because of the specificity of that market that the Council established, in Regulation No 4056/86, a set of competition rules different from that which applies to other economic sectors. The authorisation granted for an unlimited period to liner conferences to cooperate in fixing rates for maritime transport is exceptional in light of the relevant regulations and competition policy.

116. It is clear from the eighth recital in the preamble to Regulation No 4056/86 that the authorisation to fix rates was granted to liner conferences because of their stabilising effect and their contribution to providing adequate efficient scheduled maritime transport services. The result may be that, where a single liner conference has a dominant position on a particular market, the user of those services would have little interest in resorting to an independent competitor, unless the competitor were able to offer prices lower than those of the liner conference.

117. It follows that, where a liner conference in a dominant position selectively cuts its prices in order deliberately to match those of a competitor, it derives a dual benefit. First, it eliminates the principal, and possibly the only, means of competition open to the competing undertaking. Second, it can continue to require its users to pay higher prices for the services which are not threatened by that competition.

118. It is not necessary, in the present case, to rule generally on the circumstances in which a liner conference may legitimately, on a case by case basis, adopt lower prices than those of its advertised tariff in order to compete with a competitor who quotes lower prices, or to decide on the exact scope of the expression 'uniform or common freight rates' in Article 1(3)(b) of Regulation No 4056/86.

119. It is sufficient to recall that the conduct at issue here is that of a conference having a share of over 90% of the market in question and only one competitor. The appellants have, moreover, never seriously disputed, and indeed admitted at the hearing, that the purpose of the conduct complained of was to eliminate G & C from the market.

120. The [General Court] did not, therefore, err in law, in holding that the Commission's objections to the effect that the practice known as 'fighting ships', as applied against G & C, constituted an abuse of a dominant position were justified. It should also be noted that there is no question at all in this case of there having been a new definition of an abusive practice.

121. The grounds of appeal concerning fighting ships must therefore be rejected as inadmissible or unfounded.

*The abuse concerning loyalty contracts*

Arguments of the appellants

122. Cewal is criticised for having established 100% loyalty arrangements (including goods sold fob) which went beyond the terms of Article 5(2) of Regulation No 4056/86, accompanied by the use of 'blacklists' of disloyal shippers. In that regard the appellants put forward four arguments.

123. First, they claim that Article 5(2) of Regulation No 4056/86 authorises loyalty rebates unless they are 'imposed' by a dominant undertaking. They submit that the [General Court] did not interpret that provision correctly. It considered that a loyalty arrangement could be regarded as unilaterally 'imposed' where the liner conference is in a dominant position, as in the present case.

124. Second, the [General Court] erred in law in finding, in paragraph 184 of the contested judgment, that the fact that the loyalty contracts included fob sales imposed on the seller an obligation of loyalty even when he is not responsible for shipping the goods. The appellants stress that Regulation No 4056/86 exempts 100% loyalty contracts. Article 5(2) thereof should thus be interpreted as also exempting loyalty contracts covering fob sales.

125. Third, the [General Court] erred in law when it stated, in paragraph 185 of the contested judgment, that drawing up 'blacklists' could not be regarded as exempted by Regulation No 4056/86. A system of rebates applicable to shippers using exclusively the members of a conference could not work in practice without a list of 'unfaithful shippers' or an equivalent system to record the names of those having used the services of a competitor. The use of such lists must necessarily be exempted by Regulation No 4056/86.

126. Fourth, even if the [General Court] was right to consider that, in the case of dominant undertakings, any loyalty contract must be regarded as 'imposed' within the meaning of Article 5(2)(b)(i), it none the less infringed Articles 7 and 8(2) of Regulation No 4056/86. The only consequence of a failure to fulfil its obligations under Article 5 would be that Cewal had not satisfied an obligation associated with the exemption as opposed to a condition attaching to the actual grant of the exemption.

127. The relevance of that distinction is that where a condition is not fulfilled, the exemption, by that fact alone, does not apply or no longer applies, whereas failure to fulfil an obligation may result only in the withdrawal of the exemption, without retroactive effect.

128. According to the appellants, the benefit of the exemption had never been withdrawn. The existence of a formal procedure for the withdrawal of the exemption implies that no fines can be imposed for conduct covered by a block exemption prior to withdrawal. Once the Commission has withdrawn the exemption, it can, at that stage, pursuant to Article 10 of Regulation No 4056/86,

take all appropriate measures for the purpose of bringing to an end infringements of [Article 102 TFEU]. Such measures cannot, however, include the imposition of a fine, since the purpose of a fine is to penalise past conduct.

Findings of the Court

129. By the four grounds of appeal, the appellants claim, first, that the allegation of an infringement of [Article 102 TFEU] cannot be based on a practice which is the subject-matter of a specific provision (Article 5(2)) of Regulation No 4056/86 granting an exemption. Second, and in any event, before the Commission may make a finding of an infringement of [Article 102 TFEU], it should withdraw the benefit of the block exemption from the undertakings concerned.

130. That argument is based on a misreading of the provisions and a misunderstanding of their logic. As was stated in paragraph 33 of the present judgment, the applicability to an agreement of [Article 101 TFEU] does not prevent [Article 102 TFEU] being applied to the conduct of the parties to the same agreement, provided that the conditions for the application of each provision are fulfilled. More particularly, the grant of an exemption under Article 85(3) [Article 101(3) TFEU] does not prevent application of [Article 102 TFEU] (see, to that effect, Case C-310/93 P *BPB Industries and British Gypsum v Commission* [1995] ECR I-865, paragraph 11).

131. So the fact that operators subject to effective competition have a practice which is authorised does not mean that adoption of that same practice by an undertaking in a dominant position can never constitute an abuse of that position.

132. Analysis of the conduct of an undertaking in a dominant position must take account of the fact that an undertaking which has a very large market share and has held it for some time is in a position of strength which makes it an unavoidable trading partner (*Hoffmann-La Roche*, paragraph 41).

133. As regards, more specifically, the 'imposition' of loyalty contracts (the expression used in Article 5(2)(b)(i) of Regulation No 4056/86), a dominant undertaking can, in practice, 'impose' loyalty contracts on its customers without having to insist expressly on such a contract as a condition of access to its services.

134. Consequently, it would not have been relevant, for the purpose of analysing Cewal's conduct under [Article 102 TFEU], to decide the conditions which have to be fulfilled, in the case of a conference subject to normal competition, for loyalty arrangements to be characterised as 'imposed' within the meaning of Article 5(2)(b)(i) of Regulation No 4056/86.

135. As to the fourth ground of appeal, Article 8(1) of Regulation No 4056/86 expressly provides that abuse of a dominant position is to be prohibited, no prior decision to that effect being required. As the Advocate General pointed out in paragraph 164 of his Opinion, that plain wording is fully in harmony with the principles regarding the effectiveness of [Article 102 TFEU] and the impossibility of exemption. It is settled case-law that no exemption of any kind may be granted in respect of an abuse of a dominant position (*Ahmed Saeed Flugreisen*, paragraph 32).

136. It follows that Article 8(2) of Regulation No 4056/86, which provides that the Commission may withdraw the benefit of the block exemption where it finds, in a particular case, that the conduct of conferences benefiting from the exemption laid down in Article 3 has effects which are incompatible with [Article 102 TFEU], does not and could not restrict the Commission's power to impose fines for infringement of [Article 102 TFEU].

137. It follows that the second plea must be rejected.

**The plea relating to the fines**

*Arguments of the appellants*

138. The appellants submit, first, that the [General Court] erred in law in accepting all the factors which the Commission took into account in order to determine the amount of the fines imposed.

139. Their second ground of appeal is that the [General Court] erred in law when it confirmed that the Commission was entitled to impose on them individual fines whereas, in the statement of objections, the Commission threatened to impose fines on Cewal and not on any one of its members.

140. Furthermore, the fact that the fines were imposed not on Cewal but on some of its members constitutes a breach of their fundamental procedural rights. The amount of the fine was to be calculated on Cewal's turnover and not on that of its members. Moreover, it would have been for the members of Cewal to decide how the burden of the fine should be shared, if only in accordance with their shares in the conference, whereas in fact the fines were imposed as to 95% on CMB.

*Findings of the Court*

141. It is appropriate first to examine the second ground of appeal.

142. It is settled case-law that the statement of objections must set forth clearly all the essential facts upon which the Commission is relying at that stage of the procedure. The essential procedural safeguard which the statement of objections constitutes is an application of the fundamental principle of [Union] law which requires the right to a fair hearing to be observed in all proceedings (Joined Cases 100/80 to 103/80 *Musique Diffusion Française and Others v Commission* [1983] ECR 1825, paragraphs 10 and 14).

143. It follows that the Commission is required to specify unequivocally, in the statement of objections, the persons on whom fines may be imposed.

144. It is clear that a statement of objections which merely identifies as the perpetrator of an infringement a collective entity, such as Cewal, does not make the companies forming that entity sufficiently aware that fines will be imposed on them individually if the infringement is made out. Contrary to what the [General Court] held, the fact that Cewal does not have legal personality is not relevant in this regard.

145. Similarly, a statement of objections in those terms is not sufficient to warn the companies concerned that the amount of the fines imposed will be fixed in accordance with an assessment of the participation of each company in the conduct constituting the alleged infringement.

146. It follows that the [General Court] erred in law when it confirmed that the Commission was entitled to impose on members of Cewal individual fines, fixed in accordance with an assessment of their participation in the conduct in question, when the statement of objections was addressed only to Cewal.

147. In the light of the foregoing, this last plea must be declared well founded and, consequently, the contested judgment upholding the contested decision must be set aside in so far as it concerns the fines imposed on the appellants.

148. Pursuant to the first paragraph of Article 54 of the E[U] Statute of the Court of Justice, if the appeal is well founded, the Court of Justice is to quash the decision of the [General Court]. It may then itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the [General Court] for judgment. Since there is sufficient information before the

Court to enable the Court of Justice itself to give final judgment, it is not necessary to refer the case back to the [General Court].

149. It follows that Articles 6 and 7 of the contested decision must be annulled as regards the fines imposed on the appellants.

150. It is therefore not necessary to examine the other grounds of appeal put forward by the appellants in support of this plea.

**Costs**

151. Pursuant to the first paragraph of Article 122 of the Rules of Procedure, where an appeal is well founded and the Court itself gives final judgment in the case, it is to give a decision on the costs. Under Article 69(3) of the Rules of Procedure, which is applicable to appeals by virtue of Article 118 thereof, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

152. Since the appeal is well founded only in respect of the plea relating to the fines, CMB, CMBT and Dafra must be ordered to bear their own costs, and to pay three quarters of those of the Commission and all those of G & C.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

**1. Sets aside the judgment of the [General Court] of 8 October 1996 in Joined Cases T-24/93 to T-26/93 and T-28/93 *Compagnie Maritime Belge Transports and Others v Commission* to the extent that it upheld the fines imposed on Compagnie Maritime Belge Transport SA, Compagnie Maritime Belge SA and Dafra-Lines A/S;**

**2. Annuls Articles 6 and 7 of Commission Decision 93/82/EEC of 23 December 1992 relating to a proceeding pursuant to [Articles 101] (IV/32.448 and IV/32.450: Cewal, Cowac and Ukwal) and [102] (IV/32.448 and IV/32.450: Cewal) of the [FEU] Treaty as regards Compagnie Maritime Belge Transport SA, Compagnie Maritime Belge SA and Dafra-Lines A/S;**

**3. Dismisses the remainder of the appeal;**

**4. Orders Compagnie Maritime Belge Transport SA, Compagnie Maritime Belge SA and Dafra-Lines A/S to bear their own costs, and to pay three quarters of those of the Commission of the European [Union] and all those of Grimaldi and Cobelfret.**

Edward

Moitinho de Almeida

Sevón

Gulmann Jann

Delivered in open court in Luxembourg on 16 March 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber