II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2020/436

of 24 March 2020

amending Regulation (EC) No 906/2009 as regards its period of application

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 246/2009 of 26 February 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) ([1]), and in particular Article 1 thereof,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Commission Regulation (EC) No 906/2009 ([2]) grants a block exemption to liner shipping consortia from the prohibition contained in Article 101(1) of the Treaty, subject to certain conditions. That Regulation applies until 25 April 2020.

(2) Based on the Commission's evaluation of Regulation (EC) No 906/2009, following a public consultation, the Commission has gathered information and data showing with a sufficient degree of certainty that consortia meeting the conditions of Regulation (EC) No 906/2009 still satisfy all four conditions of Article 101(3) TFEU. Under current and expected market conditions, consortia reduce costs through economies of scale, rationalisation of services, and better vessel utilisation. For consortia agreements meeting the conditions of Regulation (EC) No 906/2009, a fair share of those cost reductions can be expected to flow to customers as a result of competition among members of the same consortium (internal competition), complemented by the 30 % market share threshold, which ensures that sufficient competition remains from outside each consortium (external competition). Consortia agreements meeting the conditions of Regulation (EC) No 906/2009 are indispensable to produce those efficiencies. There is no other less restrictive type of cooperation among container liner shipping operators that would produce the same benefits. Finally, consortia agreements meeting the conditions of Regulation (EC) No 906/2009 do not afford their members the possibility of eliminating competition in respect of a substantial part of liner shipping services in the respective relevant markets, because of both external competition and internal competition. Therefore, the reasons justifying a block exemption for consortia, which also facilitates the implementation of relevant consortia, are still valid.

(3) The conditions on the basis of which the scope and content of Regulation (EC) No 906/2009 were determined have remained sufficiently similar for the application of that Regulation to be extended.

(4) In order to allow the Commission to take into account possible changes in market circumstances and in line with the Commission's powers under Article 2, paragraphs 1 and 2 of Regulation (EC) No 246/2009, the period of application of Regulation (EC) No 906/2009 should be extended by four years.

([1]) OJ L 79, 25.3.2009, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become respectively Articles 101 and 102 TFEU.

([2]) Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (OJ L 256, 29.9.2009, p. 31).

(5) Regulation (EC) No 906/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 7 of Regulation (EC) No 906/2009, the second paragraph is replaced by the following:

'It shall apply until 25 April 2024'.

Article 2

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

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

Done at Brussels, 24 March 2020.

For the Commission

The President

Ursula VON DER LEYEN