

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case 39.416 — Ship classification

(Text with EEA relevance)

(2009/C 131/13)

1. INTRODUCTION

- (1) According to Article 9 of the Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

- (2) In May 2009, the Commission opened proceedings, and addressed a preliminary assessment to the International Association of Classification Societies and to International Association of Classification Societies Limited (hereinafter jointly referred to as 'IACS'). This concerned IACS' decisions: (i) on the criteria and procedures ruling membership of IACS and the suspension or withdrawal of membership, and on the way that these criteria and procedures were applied, and (ii) on the elaboration and accessibility of IACS' resolutions and technical background documents relating to these resolutions. It expressed the preliminary view that these decisions by IACS may have resulted in a restriction of competition in ship classification services. Given the Commission's preliminary view that the 10 members of IACS have a strong position on the market and that classification societies which are not a member of IACS may face significant competitive disadvantages, the Commission's preliminary assessment was that these decisions therefore raised concerns as to their compatibility with Article 81(1) EC Treaty and Article 53(1) EEA Agreement. Moreover, the Commission's

preliminary view was that these decisions did not appear to fulfil the cumulative requirements for exemption under Article 81(3) EC Treaty and Article 53(3) EEA Agreement.

- (3) In particular, the preliminary assessment expressed the concern that IACS may have failed to:
- (a) enact requirements that are objective and sufficiently determinate so as to enable them to be applied uniformly and in a non-discriminatory manner concerning admission to, as well as suspension and withdrawal of, membership of IACS;
 - (b) apply these requirements in an appropriate, reasonable and non-discriminatory way (including the establishment of sufficient safeguards to ensure such kind of application through an independent appeal/review mechanism);
 - (c) provide an adequate system for including non-IACS members in the process of elaboration of IACS' technical standards (i.e. IACS' resolutions), (including the establishment of independent complaint/grievance and appeal/review mechanisms ensuring access to IACS' technical working groups);
 - (d) provide for proper dissemination to non-IACS members of technical background documents relating to IACS' resolutions ⁽²⁾ (including the establishment of an independent appeal/review mechanism ensuring the access to these technical background documents).

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽²⁾ During the Commission's competition investigation IACS improved the accessibility of its technical information, which is now published on their website. The Commission however considers it appropriate to ensure that this issue is also addressed in formal commitments.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

(4) The parties subject to the proceedings do not agree with the Commission's preliminary assessment. They have nevertheless offered commitments under Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns.

(5) The commitments are briefly summarised below and published in full in English on the website of the Commission's Directorate-General for Competition at:

http://ec.europa.eu/competition/antitrust/cases/index/by_nr_78.html#i39_416

(6) IACS proposes that these commitments shall remain in force for a period of five years as of their effective date, i.e. the date of notification of the decision under Article 9 of Regulation (EC) No 1/2003 by which the Commission makes the commitments binding on IACS. The key elements of the commitments are as follows:

3.1. Membership criteria

(7) IACS will establish a single class of membership of IACS.

(8) IACS will adopt, in accordance with published guidelines and procedures, the following objective, transparent, and non-discriminatory qualitative membership criteria applicable and designed to be applied uniformly to applications for membership and to continued membership of IACS:

(a) Demonstrated ability to develop, apply, maintain, regularly up-date and publish its own set of classification rules in the English language covering all aspects of the ship classification process (design appraisal, construction survey, and ships-in-service periodical survey);

(b) Demonstrated ability to provide surveys of ships under construction in accordance with the Classification Societies' (hereinafter referred to as 'CS') rules and periodic surveys of ships in service, including statutory surveys in accordance with IMO and Flag State requirements;

(c) Sufficient international coverage by exclusive surveyors relative to the size of the CS's construction programme and classed fleet in service;

(d) Extensive documented experience in assessing the design and construction of ships;

(e) Significant in-house managerial, technical, support and research staff commensurate with the size of the CS's classed fleet and its involvement in the classification of ships under construction;

(f) Technical ability to contribute with its own staff to the work of IACS in developing minimum rules and requirements for the enhancement of maritime safety;

(g) Contribution on an ongoing basis with its own staff to the work of IACS as described in (f) above;

(h) Maintaining in electronic form and updating at least annually a register of classed ships in the English language;

(i) Independence from ship-owning, ship-building and other commercial interests which could undermine the CS's impartiality;

(j) Compliance with IACS' Quality System Certification Scheme (QSCS).

(9) An Applicant that satisfies all Criteria save for (g) shall be admitted as an IACS member but shall have no voting rights in the IACS Council or in any other IACS body. Criterion (g) shall be assessed over the first 3 years of membership and upon satisfactory compliance with this requirement at the end of that period, the IACS member shall automatically enjoy full voting rights.

(10) IACS will conduct periodical assessments of IACS members to verify their compliance with the membership criteria. IACS will suspend or withdraw membership of IACS, as appropriate, of CSs which fail to satisfy the requisite membership criteria.

(11) All decisions regarding accession to, suspension or withdrawal of membership of IACS will be subject to the right of appeal to the Independent Appeal Board.

3.2. QSCS independence and availability to non-IACS CS

(12) IACS will introduce a system whereby audits and assessment of compliance with its QSCS shall be carried out by independent external Accredited Certification Bodies (ACBs). Moreover, IACS will modify QSCS so that the requirements contained therein can be applied equally to IACS members and to non-members (including non-applicants) by independent ACBs, without any involvement of IACS' Council.

3.3. Participation by non-members of IACS in IACS' technical work

- (13) IACS will set up and maintain a subscription-based, online Technical Contributions Forum ('IACS' TC Forum') on IACS' website providing any interested CSs with a platform to publish comments and discussions with other CSs (including both IACS members and non-IACS CSs) relating to IACS' technical work programmes. IACS will introduce an appeal mechanism to the Independent Appeal Board for interested parties that are denied access to IACS' TC Forum on the basis that they are not CSs.
- (14) Any CS not member of IACS which is registered on the IACS TC Forum can participate with its own employees in IACS' working groups (WG). A non-member of IACS which participates in a WG shall have full access to the same information, the same opportunities to state its views and to contribute to the discussions within the WG as any IACS member in that WG on a non-discriminatory basis but will have no voting rights. IACS will introduce a grievance mechanism and an appeal mechanism to the Independent Appeal Board for any CS which considers that it has been denied the exercise of its rights of information and participation in an IACS WG. The Chairman of a WG shall summarise all the views expressed by the WG's participants in the technical recommendation which the IACS members within the WG may decide to put to IACS' General Policy Group (GPG)/IACS' Council for adoption by IACS.

3.4. Access by non-members of IACS to IACS' resolutions and technical background documents

- (15) IACS will place in the public domain, at the same time and in the same way as they are made available to IACS members, all current and future versions of IACS resolutions, as well as a history file containing the main points of discussion and any technical background document.
- (16) IACS will include a statement on its website that non-IACS CSs are free to use such material, royalty free and without licence, by embedding it in their own classification rules, notwithstanding any intellectual property rights that may be held by IACS members.
- (17) IACS shall place no restriction on the individual freedom of its members to enter into any agreement with any CS in

relation to the provision of further information or assistance with regard to the application of IACS' resolutions.

- (18) A decision (whether explicit or implicit) not to publish an IACS resolution or a technical background document which is available to IACS members shall be appealable to the Independent Appeal Board.
- (19) IACS will release to the public, free of charge, a Common Structural Rules (CSR) Tracking Database to provide users with a searchable database on CSR revision history with supporting materials.

4. INVITATION TO MAKE COMMENTS

- (20) The Commission intends, subject to the results of this market test, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the commitments summarised above and which are published on the Internet (on the website of the Commission's Directorate-General for Competition, see above).
- (21) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'. Legitimated requests will be respected.
- (22) Observations can be sent to the Commission under reference number Case 39.416 — Ship classification, either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 2 2950128) or by post, to the following address:

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Antitrust Registry
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