

## COMMISSION DECISION

of 9 December 1998

relating to a proceeding pursuant to Article 85 of the EC Treaty

(IV/34466 — Greek Ferries)

*(notified under document number C(1998) 3792)*

(Only the Greek and Italian texts are authentic)

(Text with EEA relevance)

(1999/271/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport<sup>(1)</sup>, as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 11 and 19 thereof,

Having regard to the Commission decision of 21 February 1997 to open a proceeding in this case,

Having given the parties the opportunity to make known their views on the objections raised by the Commission in accordance with Article 23 of Regulation (EEC) No 4056/86, and with Commission Regulation (EEC) No 4260/88<sup>(2)</sup> on the communication, complaints and applications and the hearings provided for in Regulation (EEC) No 4056/86, as last amended by the Act of Accession of Austria, Finland and Sweden,

After consulting the Advisory Committee on Agreements and Dominant Positions in the field of Maritime Transport,

Whereas:

## PART I

## THE FACTS

## A. The background to this Decision

(1) This Decision arises from a complaint made to the Commission by a member of the public on

23 August 1992 that ferry prices were very similar on routes between Greece and Italy. The Commission, acting pursuant to Article 18(3) of Regulation (EEC) No 4056/86, carried out investigations at the offices of six ferry operators, five in Greece and one in Italy. During the investigations the Commission discovered documentary evidence showing that a number of ferry operators had been agreeing on prices for several years. Requests for information, pursuant to Article 16 of Regulation (EEC) No 4056/86 were sent later to Minoan Line, Strintzis Lines, and Anek asking for further details concerning the documents found during the investigations. The Commission opened formal proceedings on 21 February 1997 by sending a statement of objections to the seven addressees of this Decision as well as to Med Link and Hellenic Mediterranean Lines. An oral hearing was held on 13 and 14 May 1997.

## B. The undertakings

- (2) The undertakings involved in this procedure are roll-on roll-off ferry operators, who provide passenger and freight services on a number of routes between Greece and Italy, namely: Minoan Lines, of Iraklio, Crete, Greece (hereinafter referred to as 'Minoan') Strintzis Lines, of Piraeus, Greece (hereinafter 'Strintzis'), Anek Lines, of Hania, Crete, Greece (hereinafter 'Anek'), Marlines SA, of Piraeus, Greece (hereinafter 'Marlines'), Karageorgis Lines, of Piraeus, Greece (hereinafter 'Karageorgis'), Ventouris Group Enterprises SA, of Piraeus, Greece (hereinafter 'Ventouris Ferries'), and Adriatica di Navigazione SpA, of Venice, Italy (hereinafter 'Adriatica').

<sup>(1)</sup> OJ L 378, 31.12.1986, p. 4.

<sup>(2)</sup> OJ L 376, 31.12.1988, p. 1.

### C. The market

- (3) The relevant market is that for the provision of roll-on roll-off ferry services between Greece and Italy.
- (4) There are three major routes between Italy and Greece where regular services are offered for passengers, cars and trucks. These routes are the route between Ancona (Italy) and Patras (Greece), the route between Brindisi (Italy) and Patras (Greece) and the route between Bari (Italy) and Patras (Greece). In addition Trieste, and – more recently – Venice, are served from Patras.
- (5) It is clear that these routes are not operated in isolation as separate markets, and there is a degree of substitutability between them depending on the points of origin and destination of the traveller or goods, and preferences regarding journey time, etc. However, for the purposes of this procedure the Commission does not consider it necessary to examine in depth the degree of substitutability between these routes, since the practices at issue here covered all three main routes for at least part of the period in question.
- (6) On the Ancona-Patras route, during at least part of the time of the suspected infringement, there were five major operators – Minoan, Strintzis, Marlines and Karageorgis. Of these, Karageorgis ceased operating in 1993. At least one other operator – Superfast Ferries – has recently entered the market and is not implicated in the present procedure. On the routes between Patras and Bari and Brindisi there are a large number of regular operators (at least 11), and some seasonal operators. Minoan, Anek, Strintzis, Marlines and Karageorgis have between them had a share of traffic which was close to 100 % on the Patras-Ancona route during the period of the infringement. For 1993, Ventouris Ferries, Adriatica, Hellenic Mediterranean Lines and Marlines had a combined share of traffic of approximately 75 % for passengers and 60 % for freight on the Patras-Bari/Brindisi routes<sup>(1)</sup>.
- (7) Approximately 1 258 000 passengers and 229 000 freight vehicles were transported during 1996 from Greece to Italy, of which around 38 % and 46 % respectively was carried on the Patras-Ancona route. On the Patras-Brindisi

route the respective percentages were 35 % and 26 %, with 13 % and 16 % having been transported on the route Patras-Bari. For 1993, the figures were 1 316 003 passengers and 213 839 freight vehicles. From them, approximately 49 % and 38 % were transported through the Patras-Ancona route, 35 % and 38 % on the Patras-Brindisi one as well as 10 % and 19 % on the Patras-Bari route. A comparable number of passengers and vehicles is transported per year from Italy to Greece, too.

### D. Evidence

- (8) The main evidence on which this Decision is based includes:
- (a) messages sent, mostly by telex, between various operators relating to the introduction, and calculation, of prices;
- (b) admissions made by Anek and Strintzis in their replies to the Commission's request for information and in their replies to the Commission's statement of objections.

#### *Evidence for 1987/1988/1989*

- (9) From a telex sent by Minoan to Anek, dated 15 March 1989, provided by Anek upon request for information, it appears that consultations on prices took place in 1987 for the 1988 tariffs for the Patras-Ancona route. An agreement on prices was reached on 18 July 1987. Minoan reports in that telex that 'The pricing policy for 1988, as mutually established with the other interested parties, was decided on 18 July 1987. This has in fact been the usual practice.'
- (10) Anek began to operate ferries between Patras and Ancona for the first time in 1989. In 1989, consultations took place as to the tariffs they would apply. In the telex mentioned in paragraph 9, Minoan says 'We regret that your refusal fully to accept the proposals we put forward in our earlier [message] at least for the time being prevents the conclusion of a broader agreement which would be extremely advantageous to our companies ... We refer of course to your refusal of our proposals concerning the definition of a joint pricing policy for the Patras-Ancona route; and we ask you to understand the positions we set out below, which are intended as a response to your view that you cannot accept the 1989 tariff in

<sup>(1)</sup> Source: Cruise & Ferry Info.

force for goods vehicles and that the pricing policy for the forthcoming year 1990 cannot be defined immediately'.

- (11) Minoan then attempted to persuade Anek to join in the agreement on fares by informing it of how successfully it had been applied: 'in the last three months on the particular route two readjustments of the fares for goods vehicles have been agreed jointly by all the shipowners on the Patras-Ancona route, amounting to a total of 40 %, and have certainly caused no agitation or difficulties with our driver colleagues'.
- (12) Having failed, for the moment, to persuade Anek to join in the agreement, Minoan, Karageorgis, Marlines and Strintzis decided to charge collectively, from 26 June 1989, exactly the same goods vehicle tariffs as those applied by Anek. Very detailed tables were exchanged between the parties, and Anek was informed of the outcome both orally and in writing. Indeed, Minoan sent Anek a telex on 22 June 1989, announcing the four other companies' intention to apply Anek's tariffs as from 26 June 1989.

*Evidence for 1990*

- (13) The parties began to discuss passenger fares for 1990 in June 1989. On 20 June 1989, Minoan sent to Anek, Karageorgis, Strintzis and Marlines detailed proposals for a common price policy for 1990 for passengers, cars and truck vehicles. A telex sent by Anek to Minoan, Karageorgis, Marlines and Strintzis on 6 July 1989 says 'we agree to the establishment of a uniform tariff for passengers by all five companies on the Patras-Ancona ... we can discuss the subject of goods vehicles in October'.
- (14) Strintzis sent a message to Minoan, Karageorgis, Marlines and Anek on 12 June 1989 in which it states that 'the prices were calculated on the basis of the telexes recently exchanged, following the agreement of all our companies to stick to a common price policy'. This fax contains the prices and discounts for passengers and for vehicles, and the port taxes, in drachmas and in 10 foreign currencies.
- (15) Anek confirmed its agreement 'on the proposed tariffs for the Patras-Igoumenitsa-Corfu-Ancona route based on our decision concerning a common tariff policy', in a telex of 14 July 1989 addressed to the four other companies.

Consultations continued later on some minor points, e.g. the prices for jeeps were discussed in a telex from Strintzis to the other companies on 17 July 1989 and a telex from Anek to the other companies on 22 September 1989.

- (16) A fax sent by Strintzis on 8 December 1989 to Minoan, Anek, Karageorgis and Hellenic Mediterranean Lines<sup>(1)</sup> details the new prices, by category of truck, to be applied from 10 December 1989 for the Patras-Ancona route and the Patras-Bari and Brindisi routes. This fax also indicated that the photocopy was signed 'also by Ventouris Ferries', and the table of tariffs bears six signatures.
- (17) Another telex shows again the common price policy in force in 1990. This document, dated 11 April 1990, sent by Anek to Karageorgis, Minoan and Strintzis, refers to the 'telexes exchanged between the four companies regarding the price policy for the Patras-Ancona route' where Anek confirms that 'our agreement concerns the passenger, passenger cars and truck vehicles fares, but does not concern the agents' commission and the rebates for groups'.
- (18) Consultations took place again to increase commonly the truck fares during 1990. The companies exchanged a number of telexes during September and October and Strintzis organised a meeting at its premises. In a telex of 5 September 1990 addressed to Anek, Karageorgis and Minoan, Strintzis states that 'a condition for the application of the proposed increase is a proportional increase in fares for the Bari and Brindisi routes; nevertheless, it is necessary to reach an agreement in principle between our four companies'. In a telex sent to Anek, Minoan and Strintzis, Karageorgis states that 'following our common decision ... we are obliged to readjust prices for trucks as from 20 October 1990'. It follows a detailed list of prices. Karageorgis also states: 'Please send the above telex as it stands to your port agents and your clients as soon as possible'.

<sup>(1)</sup> Although there is evidence that Hellenic Mediterranean Lines participated in the infringement, the present Decision is not addressed to this undertaking because the Commission has been unable to send it the statement of objections.

(19) Agreement was reached and a fax was sent by Strintzis on 30 October 1990 to eight companies operating ferries between Greece and Italy (Adriatica, Anek, Hellenic Mediterranean Lines, Karageorgis, Minoan, Med Lines, Strintzis and Ventouris Ferries). This fax states: 'We communicate the final agreement for truck fares. Please acknowledge your agreement as to the contents and we suggest to announce the prices on 1 November and to put them into effect, as it has been agreed, from 5 November 1990.' A table follows with prices in drachmas and Italian lire for various categories of trucks for the routes Patras to Ancona, Bari and Brindisi.

(20) Minoan sent on 2 November 1990 a document to its agent with the new prices, valid from 5 November 1990 where they clearly state that these prices were agreed by the companies on all the Greece-Italy routes.

#### *Evidence for 1991*

(21) That tariffs continued to be agreed for 1991 is evidenced by several documents. Karageorgis sent a letter on 10 August 1990 to Anek, Minoan and Strintzis concerning the 1991 list prices for the Patras-Ancona route. It states: 'Following the agreement by the four companies that there should be a 5 % increase on top of the first 5 %, please find attached the new price schedules with the final 10 %.'

(22) A telex was sent to Anek from Karageorgis, Minoan and Strintzis on 22 October 1991, in which it is stated that '... we note that you want to apply to the Patras-Trieste route the same fare that we have all agreed for the Patras-Ancona route. You will realise that the obscurity in the wording causes us great concern, because it raises the prospect of a collapse of the equilibrium in tariffs which we have succeeded, with considerable difficulty, in establishing for all the Italian ports. Let us remind you that by a joint effort - to which you yourselves contributed - we reorganised the tariffs as best we could and established differentials on the basis of the distances in nautical miles to the ports of Brindisi, Bari and Ancona ... We would accordingly entreat you to defend - as you ought to do - the agreement between the 11 companies and the 36 vessels on the Greece-Italy crossing because given the intense differences which are smouldering away

under the surface the existing agreement could well collapse. We would suggest to you that the tariff for the Patras-Trieste trip should be put at 20 % above that for the Patras-Ancona (as indeed was the case in the past), so as to harmonise fully with the differentials between Ancona and the more southerly ports ... our companies are obliged to notify you that if you insist on applying the same price from Trieste and Ancona for Greece, our agreement for a common price policy concerning the Ancona route will cease and each company will determine its own price policy'.

(23) The reply of Anek to this telex, dated 18 November 1991, confirms the existence of an agreement: 'The threat to abandon the common prices on the Ancona route cannot be based, from our point of view, on the non-application by Anek of this illogical and inadmissible increase of 20 %. We will accordingly ask you not to persist in your position, in order to avoid disturbing the climate of cooperation between the four companies, which would have destructive consequences for all of us. To conclude, we would assure you that if in the future Anek should decide to schedule a vessel on the Patras-Trieste route without including Ancona, the tariff will of course be higher than that for the Patras-Ancona route, but not by 20 %, which on any impartial judgement is at least unrealistic.'

#### *Evidence for 1992*

(24) The collusion continued during 1992. On 22 July 1991 Strintzis sent a highly detailed schedule of passenger fares to Anek, Karageorgis and Minoan saying 'We attach the 1992 schedule as agreed at our meeting of (illegible) July. Please confirm if you agree'. A number of telexes were subsequently exchanged in which ways were discussed of dealing with the depreciation of the drachma.

(25) After a meeting held on 7 October 1991 between Strintzis, Anek, Karageorgis and Minoan, Strintzis sent the list prices 'as agreed' for 1992 (Patras-Igoumenitsa-Corfou-Ancona route) to the three other companies requesting

their agreement. This list contained the prices for passengers, detailed by high or low season and cabin categories, and for all the vehicle categories. The parties had also agreed the periods of high and low season, and the prices of meals. Anek sent its agreement by telex on 16 October 1991. This reply was forwarded to Karageorgis and Minoan.

Moreover, a letter, dated 18 October 1991, was found at the premises of Strintzis, sent by Anek to port agents saying 'We enclose for you the drachma tariffs for 1992 for the Patras-Ancona route as agreed with the Strintzis, Minoan Lines and Karageorgis companies'. A similar letter was sent by Strintzis.

- (26) The four companies also agreed on the validity period of their commonly agreed tariffs for the transitional year-end period. A telex sent by Anek to Karageorgis, Minoan and Strintzis states that '... we agree with the extension of the 1992 prices for the Patras-Ancona route until 10 January 1992'. Anek informed its port agents by telex on 21 October 1991 that '... following agreement with our competitors the 1991 prices for the Patras-Ancona-Patras route are valid until 10 January 1992'.
- (27) A telex dated 7 January 1992, found at the premises of Minoan, from Minoan to Anek, Strintzis and Karageorgis, warns them that several importers of motor vehicles are 'endeavouring to lure our companies into tariff competition ... we propose to you that we should stick to a common policy which will keep us off the slippery slope'. It proposes a price to be quoted by all the companies and requests agreement 'in order to reply to the Calberson company which, as you know, has been in contact with all of the companies'. Strintzis agreed to adhere to a common policy and proposed a common price for all unaccompanied cars. Anek also agreed with Strintzis.
- (28) A document dated 25 February 1992, found at the premises of Minoan, indicates that the agreement to maintain differentials between the tariffs applied on the various Greece-Italy routes

continued during 1992. In this document European Trust Agencies (hereinafter 'ETA') reports to the head office of Minoan on 'the latest development concerning the Italy routes'. After mentioning new ships introduced, and the problems that the extra tonnage is likely to cause, it is stated: 'we are concentrating our efforts on the tariff policy to be implemented by the Ventouris company on the Otranto route. We have already commenced discussions on the matter. To make things clearer we give you present fares for Bari, Otranto and Ancona and our own proposed Otranto fares.' A table of fares for different sized goods vehicles follows.

- (29) Furthermore, a telex dated 7 January 1993 from Minoan to Strintzis, Anek and Karageorgis, suggested an adjustment in tariffs for vehicles on the Greece-Italy-Greece routes. It says 'We point out that two years have passed since the vehicle tariff was last adjusted'.

#### *Evidence for 1993*

- (30) Consultations about the new tariff for 1993 took also place in 1992. ETA informed Minoan on 21 May 1992 that a 'conference of representatives of the Patras-Ancona route shipping companies is to be convened to discuss the drafting of the new tariff for 1993'. This document contained also the agenda of this meeting. A telex from ETA to the head office of Minoan, dated 27 May 1992, says 'we inform you concerning the proposals that we put to the meeting of the four shipping companies and which, with minor differentiations for the Karageorgis and Strintzis companies, were accepted. Anek is reserving its position and will reply in 10 days time'. A series of specific price increases for various types of traffic followed.
- (31) Discussions continued later. A letter from ETA to the head office of Minoan dated 30 July 1992, stated that a meeting would take place of representatives of the four 'collaborating companies on the Greece-Italy route' on 4 August 1992, at which 'all relevant matters will be discussed'.

- (32) Strintzis sent to Anek, Karageorgis and Minoan a telefax message on 6 August 1992 announcing that prices in European currencies would be drafted on the basis of the drachma tariff and specifying the currency rate in German marks. It proposed also to not divulge the drachma tariff before 30 September 1992. Anek agreed by telex on 7 August 1992. This reply was also sent to Strintzis, Karageorgis and Minoan.
- (33) Minoan sent a letter on 29 September 1992, to Anek, Karageorgis and Strintzis, in which it expressed concern about the fluctuations of foreign currencies in relation to the drachma, and asked the others to reply as to whether they should adapt the prices, otherwise the list prices in German marks, Italian lire and drachmas would diverge widely. Minoan sent to Anek, Karageorgis and Strintzis on 12 October 1992 several proposals which had already been discussed orally or by telex exchanges. A telex dated 15 October 1992 from Minoan to Anek, Strintzis and Karageorgis says 'further to our conversation concerning the final arrangement of tariffs in DEM, ITL and GRD, we add our decisions'. An increase of 5 % in the Italian lire tariff was suggested. Anek replied by telex on 16 October 1992 that it agreed as regards the prices in German marks and Italian lire. Strintzis also agreed on 16 October 1992. Karageorgis replied by telex on 26 October 1992 indicating its agreement and adding 'we insist, further, on an increase in the vehicle rates and await your decision'. Anek replied by telex on 6 November 1992 indicating its agreement.
- (34) In November 1992, having received a request for information from the Commission concerning prices on Greece-Italy routes, Minoan sent a telex to Anek, Karageorgis and Strintzis stating: 'Because of the sensitive situation brought about by the Commission's question concerning our price schedules on the Greece-Italy route and after the verbal exchange of views, we propose the following: Of the 17 categories in our schedule, "deck" should be disregarded, since this is where none of us wants anyone to be cheaper; as for the remaining 16, each company should take four categories each (to be chosen by Mr Sakellis) (Strintzis) and reduce its schedule by 1 %.' Minoan sent also to Anek a copy of its reply to the abovementioned request for information.
- (35) A telex dated 9 December 1992 from Strintzis to Anek, Minoan and Karageorgis, says 'regarding the 1992 fares we remind you that it was agreed that these should apply from 11 January 1993'.
- (36) A telex dated 7 January 1993 (mentioned in paragraph 29) from Minoan to Strintzis, Anek and Karageorgis, suggested an adjustment in tariffs for vehicles on the Greece - Italy routes. It says 'our decision to proceed to an agreement with you on the readjustment without first consulting with the companies on the other Italian routes is motivated by a desire to avoid the interminable discussions that would ensue if we were to embark on that consultation. We believe that this joint agreement will be looked upon positively by those companies ... We await your agreement'. A table of proposed tariffs was attached. Karageorgis replied by telex of 8 January 1993 stating 'we agree totally'. Minoan sent another telex to Anek, Karageorgis and Strintzis on 14 January 1993 which suggested that Anek should apply an increase of 15 % to its goods vehicle tariff on the Trieste route. Strintzis agreed with Minoan on both issues, on 15 January 1993. Anek replied on 15 January 1993 agreeing with the proposals regarding the Patras-Ancona route, but saying it had already publicised an increase of 8 % on the Trieste route from 1 February 1993 and would find it difficult to retract this.
- (37) On 24 November 1993 a meeting was held which was attended by 14 companies. The purpose of this meeting was to readjust the prices on the routes Patras to Ancona, Brindisi and Bari for 1994. A telex from ETA to the head office of Minoan, dated 24 November 1993, says 'We are pleased to inform you that at today's meeting we achieved agreement on a readjustment of the vehicle tariff by approximately 15 % ... to be given immediate effect from 16 December 1993. We are very pleased because we began with the problem of the collapse of the previous agreement'. This last sentence implies that an agreement was in place concerning the differentiation between Ancona, Bari and Brindisi earlier in the year.

*Evidence for 1994*

(38) On 24 November 1993 a meeting was held which was attended by 14 companies. The purpose of this meeting was to achieve agreement on prices on the routes Patras to Ancona, Brindisi and Bari. A telex from ETA to the head office of Minoan, dated 24 November 1993, says 'We are pleased to inform you that at today's meeting we achieved agreement on a readjustment of the vehicle tariff by approximately 15 % ... to be given immediate effect from 16 December 1993. We are very pleased because we began with the problem of the collapse of the previous agreement on account of the opposition of the companies of Kosma-Giannatou and Ventouris A., we repaired the situation bit by bit, overcoming the 5 % to 10 % (positions of Strintzis, Ventouris G. and Adriatica), and finally got to the percentage stated above. In addition we balanced out the various conflicts which, as you know, exist concerning the discrepancies from one port to another. Truly, we are very pleased, given that on 1993 throughput figures this will provide our company with an immediate yield of new net receipts in the order of GRD 600 000 000 annually'. Further on, the note mentions that 14 companies were present at the meeting.

(39) The 'Kosma-Giannatou' mentioned in paragraph 38 is interpreted by the Commission to be a reference to the company known as Med Lines, since both Mr Kosmas and Giannatos were members of its board. Ventouris G. is believed to be a reference to Ventouris Ferries, while Ventouris A. is taken to be a reference to AK Ventouris, a different company. The Commission has not included AK Ventouris in this Decision as it has no evidence other than the above note that this company actually infringed the competition rules. Moreover, the Commission has not been able to identify other small companies which eventually participated in this meeting.

(40) A telex from Minoan to Anek and Strintzis of 13 May 1994, mentions that a new type of trailer was becoming common on the Ancona route and it suggested a new category of fare and a common implementation date. This is

followed by further telexes of 25 May 1994 and 3 June 1994 on the same subject requesting agreement.

(41) A telex from ETA to the head office of Minoan dated 26 May 1994 says 'We have embarked on an initiative to get a new tariff implemented on the Italy routes with differing rates for cash payment and two-month cheques. The problem is that we have to get the agreement of 16 companies. Nevertheless, we are optimistic'.

(42) The Commission investigation took place in July 1994. There is no evidence that the companies continued their collusion after that date.

#### E. The arguments of the parties

##### *General arguments of the parties*

##### *Strintzis*

(43) According to Strintzis, the agreements on prices took place under the influence of the Greek legal and regulatory framework for coastal shipping, in particular Law 4195 of 11 to 13 July 1929, Strintzis argues that, owing to the following factors:

- the Greek regulatory framework,
- the practice and obligations imposed by the Greek Ministry for the Merchant Navy ('YEN'),
- the need for a regular schedule,
- the uncertain length of the tourist period,
- the danger of drastic changes in cost levels as a result of unexpected yearly devaluations of the drachma,
- the necessary disclosure of the business plans of Strintzis through the obligatory meetings for the domestic part of the line Greece-Italy,
- the need to adhere to the directive of the YEN that lays down that increases in freight rates for the international part of the Greece-Italy market must be within the limits of inflation,

it had to protect itself from unrestricted competition against which it would not have been able to react by suspending or reducing its activities.

- (44) In any case, all the abovementioned factors restricted the autonomy of the parties in defining their fares policy. According to Strintzis, YEN guidelines on the companies' pricing policy should be regarded as restrictive measures within the meaning of Greek Law 4195/29. Furthermore, the company was unaware that its activities constituted an infringement of Community competition law.
- (45) Strintzis contends that the agreements did not include obligations or negative clauses, that it effectively competed with the other companies by offering discounts, and that a significant part of its net profit derived from the on-board services that were not the subject of the agreements.
- (46) In the opinion of Strintzis, the YEN's actions defined all factors of competition except prices on the international part of the Greece-Italy routes. Consequently, residual competition was very limited or even unworkable. In fact, the agreement on prices was a government-led and supervised cartel and not a cartel of individuals operating with the intention of maximising the profit of the participants. On the contrary, prices on Greece-Italy routes were lower than those on other international routes within the Community. As regards the gravity of the infringement, Strintzis submits that the involvement of the Greek authorities created confusion among the parties as to the applicable legal framework, and the price levels would have been the same even without the alleged price arrangements.

*Ventouris Group Enterprises*

- (47) Ventouris Ferries argues that it determined independently its own commercial and price policy taking into account the market conditions, inflation and operating costs, and the policy of the YEN which imposed important public service obligations on the companies that operated in Greece. The company claims in effect that it determined its business behaviour and practice in accordance with the provisions

of national and Community law with due respect to the rules of competition law and to the Greek maritime legal framework. Also, Ventouris alleges that it operated only on the Patras-Ingoumenitsa-Corfu-Bari line where it faced not substantial competition and, therefore, it had no reason to form an agreement with companies that operated on different routes under different conditions and with different buyers. Ventouris argues that any kind of cooperation between the companies was limited to the operations on the Patras-Ancona route.

- (48) Finally, Ventouris Ferries draws attention to the policy of the YEN and to the Greek legal and regulatory framework as well as the particular situation in this market (transparency, competition on discounts, etc.) owing to which, even if there had been agreement, the situation in the market in relation to price competition would have been the same.

*Anek*

- (49) Anek acknowledges that from 1990 it participated in an agreement to establish common prices on certain routes, although at the time the agreement was entered into it was not aware that it violated any applicable law. Anek also suggests that the Commission should take into account, with respect to all operators, the domestic regulatory environment in which the companies operated, the involvement of the national authorities in setting the stage for the arrangements, and the limited effect on competition at issue. Furthermore, Anek suggests that the Commission should take into account Anek's participation, Anek's limited presence on the relevant market, and Anek's serious commitment to future compliance with the law.
- (50) Anek maintains that for all the shipping routes where cabotage applies, consultations among the operators on price and other issues have been mandatory for the domestic part of international shipping routes. Although the Ministry for the Merchant Navy has not required the ferry operators to agree on prices for the international part of the route to Italy, Anek claims that the

ferry operators perceived the ministry as having encouraged them to enter into discussions on this topic. Moreover, Anek emphasises that its participation was limited to the period 1990-1994.

- (51) Anek argues that it did not act as the instigator or play a leading role in the determination of prices and that sometimes it objected to certain acts proposed by others, notably when it considered proposed tariffs to be unfair or excessive. For example, in late 1991 Anek resisted attempts by other ferry operators to agree to apply a 20 % increase in fares for the Patras-Trieste route compared to the Patras-Ancona route.
- (52) As regards price, Anek argues that fares per mile between Greece and Italy remained at levels below other comparable international routes in Europe, and significantly below domestic fares. Moreover, Anek contends that the agreements on prices concerned only fares and did not extend to other areas, such as services on board, prices on board, advertisements, and agents' commissions. Also, Anek argues that it did not have a significant market share on the market between Patras and Brindisi and between Patras and Bari, and hence that its cooperation on those routes could not be considered to have had a major impact on competition.

#### *Minoan*

- (53) Minoan argues that the alleged agreements had no binding character but simply confirmed the existence of a general framework of business practice that was in any case predefined by the existing legislative framework for shipping and the policy of the Ministry for the Merchant Navy (YEN). From the YEN's correspondence with the Commission, Minoan concludes that fares for the international part of the Greece-Italy routes were influenced by the YEN's decisions regarding prices for the internal part as well as YEN's recommendations regarding international fares. In particular, Minoan refers to the YEN's policy as preventive measures within the meaning of Greek Law 4195/29. In the opinion of Minoan, the alleged agreements dealt only with the fares for the international lines that were publicly announced and did not include any other parameters regarding the business behaviour of the

companies, such as the organisation of the commercial network, the policy of discounts and advertising, the prices offered for on-board food and services and the policy of upgrading. Minoan asks the Commission to take into consideration the cumulative effect of all these factors in the economic and legal context in this case.

- (54) As to the implementation of the relevant agreements, Minoan maintains that these were never followed in practice. Furthermore, Minoan contends that ETA represented an independent company which acted as its agent. Therefore, Minoan challenges the legality of the investigation in the offices of ETA and of the documents that were collected by the Commission. The company draws attention to the letter of 14 September 1993 that was found during the investigation of 5 and 6 July. In the opinion of Minoan, this letter proves that many of the activities which are attributed to Minoan, and especially those related to the pricing policy, were ETA's initiatives and were implemented without Minoan's approval.
- (55) As to the gravity of the alleged infringement, Minoan states that the existence of agreements on prices would not in reality play an important role due to the transparency of the market. As regards the duration, Minoan submits that the alleged agreements were not applied.

#### *Adriatica*

- (56) Adriatica acknowledges its representative's participation in discussions with the companies operating on the routes between Greece and Italy. However, Adriatica argues that it determined independently its own commercial and price policy in the light of market conditions. Indeed, there was sufficient competition in the market since the operators were competing through rebates, commissions, supplementary charges for dangerous cargoes, etc., while market shares have never been the subject of negotiations. As a result, Adriatica's market share was declining from 1990.
- (57) Finally, Adriatica argues that it did not play any role in the determination of prices and that it never implemented any agreement on prices. These agreements were, according to Adriatica, negotiated between the Greek operators.

Consequently, if the Commission were to conclude that Adriatica participated in such agreements, its participation should be regarded as limited to 1991.

#### *Marlines*

- (58) Marlines states that it is not a shipowner but an agency company established in Liberia and described under the Greek Law 89/67 as an 'offshore' company. Marlines maintains that it always offered lower prices than its competitors according to the instructions of its principals, as can be concluded from its brochures of 1987, 1988 and 1989.

#### *Arguments of the parties relating to specific allegations*

1987, 1988, 1989

- (59) Strintzis accepts that in 1987, 1988 and 1989 it participated in consultations on prices. However, it argues that the meetings between the companies in 1987 related exclusively to the fares for 1988. As regards the fares for goods vehicles for 1989, Strintzis admits that it followed the fare of Anek, since the companies that operated on the Greece-Italy line occasionally followed the published prices of their competitors.
- (60) As regards the attempt to persuade Anek to join in the alleged agreement, Strintzis mentions that under the Greek regulatory framework, Anek could not charge prices that were significantly lower from those available at the port of Patras. Thus, the companies proposed a joint pricing policy to Anek so as to avoid significant price differences downwards and the intervention of the Greek authorities.
- (61) Strintzis maintains that the meetings for the fares of 1988 and 1989 did not lead to an agreement for a common tariff for passengers, since its published fares for passengers differed from those published by the other companies.

- (62) Minoan argues that the behaviour of the other companies towards Anek should be considered under the Greek legal and regulatory framework and the policy of the YEN. It also contends that any possible readjustment of the fares was not motivated by the desire to increase profits but by other factors, such as inflation, the increase in the prices of fuel and the relationship between the drachma and other currencies.

1990

- (63) Strintzis accepts that it agreed common prices for passengers and goods vehicles for 1990 with Minoan, Anek, Karageorgis and Marlines. However, it argues that the relevant agreements were never followed, since Strintzis applied autonomously its own pricing policy.
- (64) In particular, as regards the telex of 6 July 1989, Strintzis draws attention to Anek's explanation that each company could freely apply its own group policy. Anek regarded as 'group' every group of at least 24 people travelling with the same ticket. On the contrary, Strintzis did not impose such a limitation but it freely offered group discounts to its customers, irrespective of the number of persons. Strintzis claims that its discounts policy and the other fidelity rebates were never revealed to its competitors and, therefore, that it did not implement the agreement on prices for 1990.
- (65) As regards the fax of 12 June 1989, Strintzis argues that the exchange of information was necessary because the YEN advised the five companies to keep the price increases within the limits of inflation for every currency in which tickets were issued. It also mentions that it was responsible for the readjustment of the fares within the limits of inflation for every currency, because it had better infrastructure and logistical methods.
- (66) In relation to the fax of 8 December 1989, Strintzis maintains that these signatures had no obligatory force other than that the signatories were informed of the proposed prices. According to Minoan, the signatures on the fax of 8 December 1989 did not imply that there was a typical written agreement. The signature is attributed to the fact that the relevant

- documents, which expressed the logical deviations between the prices for Ancona and Bari or Brindisi, were also taken into account by Ventouris which operated on the southern lines. According to Minoan, the proposed prices for the various categories of trucks provided an 'ideal' model for the calculation of the price differences that depended on the distance in miles, and there was not intention to fix a particular price for every line and every category of trucks. In support of this argument, Minoan claims that it did not strictly follow the relevant prices on the line to Ancona but it followed its own policy of discounts.
- (67) Ventouris argues in relation to the fax of 8 December 1989, that it had already determined its pricing policy for 1990 and that the signatures below the prices did not imply that there was an agreement since the price list was not legally binding. Indeed, this list contained Ventouris Ferries' suggestion of general indicative prices. Nevertheless, the company had already notified this list to its agents on 4 December 1989.
- (68) Moreover, as regards the telex of 11 April 1990, Strintzis argues that this proves, on the one hand, the existence of an agreement on prices, and, on the other hand, the freedom of the participating parties to determine independently their policy of discounts and commission to their agents.
- (69) According to Minoan, the telex of 11 April 1990 refers to an agreement on some parameters of the pricing policy that could nevertheless easily become known to the competitors.
- (70) In relation to the telex of 6 September 1990, Strintzis states that the readjustment of the fares can be attributed to inelastic factors, such as the fluctuation in the prices of fuel, and to other objective factors that relate to the policy of the Greek Government, such as the increase in the transport of heavy goods by road, due to the problems in Yugoslavia, the decision of the Ministry of Transport in relation to the export of goods and the need to increase the fares so as to enable the companies to operate in the Greece-Italy market during the winter.
- (71) In the opinion of Strintzis, Minoan had confirmed by fax of 13 September 1990 that the increase in the fares was made on the basis of an analysis of the economic data that make up the operational costs of the ships. The companies knew in detail the relevant economic components, owing to the publication of their operational licences and the necessary meetings for the domestic lines in which they participated under the aegis of the YEN, Strintzis argues that the parties were forced to discuss these economic elements in order to remain in the Greece-Italy market during the winter period.
- (72) As regards the telex of 5 September 1990 and the telex of 10 October 1990, Minoan argues that owing to the increase in the price of fuel, the problems in Yugoslavia and the need to continue to operate during the winter period, the four companies had been forced to consider a readjustment of the fares for the Corfu-Ancona part in order to reduce the negative effects of the costs of transport.
- (73) In relation to the fax of 30 October 1990, Strintzis accepts that it applied the agreed prices for trucks. However, it argues that the relevant prices were based on the real expenditure of the itineraries between Greece and Italy, namely the increase in the cost of fuel and the need to rationalise the difference between the domestic and international fares per mile and per metre of transported truck.
- (74) In relation to the fax of 30 October 1990, Ventouris Ferries claims that it never received it, and that its truck fares were included in the list by the other companies which has probably received them from an agent of Ventouris Ferries.
- (75) Adriatica admits that it took part in a meeting on 25 October 1990 dealing with truck fares, although it had already decided its fares for 1991 before this meeting. In fact, Adriatica's purpose was to monitor its competitor's policy, taking into account that the Greek operators had already reached an agreement one year earlier, on 10 December 1989. Adriatica also argues that it did not follow the fares agreed in the meeting, as can be shown from the fares it actually charged at the end of 1990.

1991

(76) Strintzis argues that the 'climate of cooperation' to which it refers in the telex of 18 November 1991, and the 'pricing stability' that is mentioned by Karageorgis, Minoan and Strintzis in the telex of 22 October 1991, concern the general framework of compulsory meetings between the companies and the exchange of confidential information for the formation of a framework agreement on prices for the next period. Also, Strintzis claims that Anek's wish to set up for the first time a route on the Patras-Trieste line, offering fares of exactly the same amount as those for the route Patras-Ancona even though the distance from Trieste is about 20 % longer, was treated by Karageorgis, Minoan and Strintzis as attracting a risk of intervention by the Greek Government.

(77) Strintzis draws attention to the telex of 18 November 1991 which, in its opinion, indicates that the amount of the fares must be relevant to the distance of every journey, a principle that was adopted by YEN for the calculation of the domestic fares. According to the view of Strintzis, the prevention of painful competition 'with the known effects', which is referred to at the end of the relevant fax, concerns the prevention of a commercial war in the Greece-Italy market and the consequent intervention of the Greek Government. Finally, Strintzis alleges that Anek did not apply an increase of 20 % to its prices for the Patras-Brindisi route. It is claimed that according to the Greek regulatory framework for shipping, especially Law 4195/29, the policy of extremely cheap prices disproportionate to the services offered in a given international line might lead to the imposition of fines on the contraveners.

(78) Finally, Strintzis contends that the above framework agreement on prices for 1991 had not been followed in practice, since Strintzis had followed its own independent discount policy.

(79) Minoan alleges that in the relevant period the increase of 10 % was dictated by the increase in inflation. It also claims that under the influence of the YEN and on the basis of the distance in miles, the prices for Trieste were 20 % higher than the price for Ancona. According to Minoan, the correspondence between the parties related to Anek's decision to fix the fares for Patras-Trieste at the same level as the fares for Patras-Ancona and it was therefore intended to ensure an appropriate differential and to avoid unfair competition. Minoan also argues that it followed its own policy of discounts.

(80) Adriatica states that during 1991 it had had no contact with the other companies and continued to set its fares according to market conditions. Moreover, Adriatica submits that during 1991, its market share had declined owing to the intense competition from the Greek operators in the form of discounts, rebates, etc.

1992

(81) As regards the fax of 22 July 1991, and the correspondence that is mentioned at points 26 to 32 of the statement of objections, Strintzis claims that the relevant exchange of information took place within the framework of the compulsory meetings for the prices of 1992.

(82) In relation to the telex of 7 January 1992, Strintzis argues that despite the initial agreement with Minoan not to offer the Calberson company the requested discount, this agreement was not followed in practice, since Strintzis finally offered a higher discount. Strintzis contends that the relevant agreement was made orally and that the largest number of the relevant vehicles was transported by Marlines. In the opinion of Strintzis, the above proves that there was price competition between the participating companies at the level of discounts. Again, Strintzis claims that the above agreement on prices for 1992 was not followed in practice, since Strintzis followed its own independent discount policy.

(83) Minoan contends in relation to the similarity in the prices for passengers and passenger vehicles that this can be attributed to their publication in the companies' brochures. Also it claims that the oligopolistic nature of the market and the policy of the YEN led to homogeneous prices. It is the view of Minoan that competition took place not through the published prices but through the policy of discounts, the offers and the other incentives provided by the company.

- (84) In relation to Calberson, Minoan argues that it was logical for the companies to react and to try to ascertain whether their competitors had offered such excessive discounts. As regards the document of 25 February 1992, Minoan alleges that it is not proof of an agreement and that the relevant prices were not applied in practice. Also, according to Minoan, ETA's suggested price list for Ortona was intended to secure the approval of Minoan, in case the latter company decided to operate a ship on the Ancona route.
- (85) As regards the telex of 7 January 1993, Minoan claims that it related to the price balancing between drachmas and Italian lire and not to any price increase in either currency.
- (86) Finally, Minoan claims that there is no proof of an agreement between itself and Ventouris, Hellenic Mediterranean Lines and Med Link for 1992.
- (87) Adriatica claims that in 1992 it had no contact with the other companies and continued to set its fares according to market conditions, as could be shown from the fares it actually applied. According to Adriatica, the ETA document of 25 February 1992 shows that consultations took place between the Greek operators but not with Adriatica. Furthermore, Adriatica submits that during 1992, its market share declined due to the lower prices charged by the Greek companies.
- (88) For 1992, Ventouris argues that there is no specific evidence of its participation in price agreements.
- (89) As regards the meetings with the companies operating on the other lines of the Greek-Italian market, Strintzis accepts that there was an attempt to agree prices on the basis of the principles for the determination of domestic fares. However, Strintzis does not know whether the companies of the other lines applied such fares or not.
- (90) As for the telex of 6 November 1992, Strintzis maintains that the proposal of Minoan was not followed in practice, since the differences in the fares of the companies were not based on the proposal of Minoan but on their autonomous discount policies.
- (91) Minoan admits that there were discussions between the companies. As regards the telex of 6 November 1992, Minoan claims that it was sent by ETA without the knowledge or approval of Minoan. Furthermore, in relation to the meeting of 24 November 1993, Minoan claims that the alleged 'previous agreement' was a non-binding declaration by various companies that there should be a differential between the distance in miles and the applied fares and that they should avoid unfair competition by any devaluation. However, it is alleged that the above declaration was not followed in practice.
- (92) As regards 1993, Adriatica states that it continued its independent policy, readjusting its truck fares by 4,03 % in relation to 1992 fares owing to exchange rates fluctuations. From 1 January 1993, Adriatica was also obliged, unlike the Greek operators, to introduce the VAT pursuant to the relevant Community regulation. Nevertheless, Adriatica admits that it was represented in the meeting of 24 November 1993 between the ferry operators but argues that it decided not to enter the proposed agreement on tariffs in view of the possible infringement of Community competition rules.
- (93) As for 1992, Ventouris Ferries argues that there is no specific evidence of its participation in price agreements in 1993. Nevertheless, in relation to the fax of 24 November 1993, Ventouris Ferries concedes that it participated in the relevant meeting, but claims that it had already determined its pricing policy for that year.

1993

- (89) As regards the meetings with the companies operating on the other lines of the Greek-Italian market, Strintzis accepts that there was an attempt to agree prices on the basis of the principles for the determination of domestic fares. However, Strintzis does not know whether the companies of the other lines applied such fares or not.

1994

- (94) Strintzis does not know whether the relevant fares were followed by the companies. As regards the Patras-Ancona route, Strintzis admits that the framework agreement on prices

was applied. However, it claims that the relevant agreement was not followed in practice, since Strintzis followed its own autonomous discount policy.

- (95) Again, Minoan denies the existence of an agreement on prices. In relation to the telex of 13 May 1994 which refers to the new category of 12-14 metres for trailers, Minoan argues that, as is evident from the telex of 23 June 1994, it had modified the relevant category of trailers from 12-14 metres to 12,5-14 metres. In its opinion, this indicates that the trailers of 12,5 metres represented a different category of lower fares. Finally, as regards the telex of 26 May 1994, Minoan claims that it did not approve the alleged 'initiative' of ETA and that it had applied a different policy as is shown by other documents available to the Commission.
- (96) Adriatica argues that it did not increase its prices during 1994, although it had readjusted the rate between US dollars and Italian lire by 1,22 %.

#### F. The Commission's assessment of the evidence and the parties' arguments

##### *Conclusion*

- (97) The Commission concludes that ferry companies operating the Ancona/Bari/Brindisi-Greece routes participated in a price fixing cartel for several years. This was an ongoing agreement described by the companies as 'the usual practice' (telex of Minoan dated 15 March 1989). There is strong evidence to suggest a broad agreement including a large number of companies (such as Minoan's document of 2 November 1990 stating that prices were agreed by the companies on all the Greece-Italy routes, the telex sent to Anek on 22 October 1991 stating 'the agreement between 11 companies and 36 vessels', the ETA telex of 24 November 1993 referring to 14 companies, the ETA telex dated 26 May 1994 referring to 'the agreement of 16 companies'). The Commission has been able to prove that certain companies operating on the Ancona-Greece route participated in the price-fixing cartel regarding fares for passengers and vehicles from 18 July 1987 the latest. Although consultations took place before that date, there is no indication of the exact date on which price-fixing negotiations were initiated. Moreover, the Commission proved that certain

ferry operators in Bari/Brindisi-Greece routes participated in the cartel at the latest from 8 December 1989, at least as regards the level of fares for trucks. The collusion lasted from 8 December 1989, at least as regards the level of fares for trucks. The collusion lasted at least until July 1994. The cartel operated in the form of regular meetings and exchange of correspondence in order to readjust collectively prices for passengers and vehicles. The Commission has been able to identify seven companies that participated in the cartel: Minoan, Karageorgis, Marlines, Strintzis, Anek, Ventouris Ferries and Adriatica. The involvement and the duration of the participation for each of these companies are discussed at paragraphs 111 to 139.

#### *Assessment to the general arguments of the parties*

##### *Involvement of the Greek authorities*

- (98) In their answers to the requests for information addressed to them by the Commission, Minoan, Strintzis and Anek, on 9 and 10 February 1995, stated, *inter alia*, that the tariff agreement in question had been concluded within the applicable legislative framework under the aegis of the Ministry for the Merchant Navy (YEN).
- (99) In support of this argument, the three companies produced a copy of the text of Law 4195/29, relating to unfair competition, as well as a series of decisions and recommendations of the YEN concerning the Greece-Italy maritime lines; these related to the public-service obligations in this sector and, in particular, the connection frequency, the priority, according to the seasons, to be granted to the transport of fresh agricultural products, the minimum number of ships to be maintained in operation as well as the starting schedules of the ships.

- (100) In a letter of 28 October 1994, the Commission asked the Greek Ministry for the Merchant Navy to provide certain statistics relating to traffic on the Greece-Italy routes as well as to clarify whether the Ministry had ever threatened to withdraw operating licences for domestic routes if companies failed to agree prices on international routes.
- (101) On 23 December 1994, the Ministry replied to the Commission that the sea corridor between Greece and Italy should be regarded as being of paramount national and Community importance, while tariff rates should be competitive but at the same time at a level where transportation costs would be kept low. Nevertheless, the Ministry denied any connection between the revocation of operating licences and the companies' price agreements on international routes.
- (102) On 13 January 1995, the Commission addressed to the Greek Permanent Representation to the European Union a copy of the information forwarded by the companies, asking for the comments of the Greek Government on its possible involvement in agreements on the maritime lines between Greece and Italy and, in particular, tariff fixing on these same lines.
- (103) On 17 March 1995, the Greek Permanent Representation replied to the Commission that the Greek Government considered services provided on the route in question to be services of public interest and that consequently, the government's primary concern was the viability of the route and the avoidance of any possible 'price war' which could possibly hinder the smooth promotion of export and import trade or the transport of vehicles and passengers. However, the involvement of the YEN in tariff fixing concerned only internal routes (cabotage). In the case of the maritime lines between Greece and Italy, which include a national part (for example Patras-Corfu-Ancona), only the national part (Patras-Corfu) is covered by the tariff policy of the YEN. For the international part of the maritime lines, the YEN does not intervene in any way, and prices are fixed freely by the companies concerned, account being taken of the fact that the fare fixed by the State for the domestic part of the route has an indirect and partial impact on the total fare to and from Italy. Moreover, the Permanent Representation stressed that the YEN encourages the companies, informally, to maintain the tariffs at low levels and the annual increases within the limits of inflation. Lastly, the freedom of the companies to set their prices is restricted by Law 4195/29 where it leads to unfair competition. Article 2 of that Law prohibits any devaluation of fares for passengers and goods in the external (international) routes to a level which would be derisory and disproportionate to the level of service provided, with the object of unfair competition. According to Article 4, if the freedom in fixing fares on these routes degenerates into unfair competition, the Ministry for the Merchant Navy is entitled to impose upper and lower levels of fares.
- (104) Consequently, the Commission rejects the argument of some of the Greek companies that they did not act autonomously in the field of tariff policy owing to the relevant regulatory arrangements in Greece.
- (105) In this case, it is clear that Greek companies operating on the Greece-Italy routes are subject to a rigid legal and regulatory framework concerning the domestic part of the routes, in particular as regards the grant of operating licences and the fixing of fares by the Ministry for the Merchant Navy. This, however, has no direct effect, as the Greek authorities confirmed, on the tariff policy of the companies concerning the international part of the routes. Moreover, the Greek authorities have strongly denied that, through their administrative practice in relation to the application of these rules, they obliged the Greek companies to enter into price agreements for international fares. In his reply of 23 December 1994 to a Commission letter, Director Manos of the Ministry for the Merchant Navy stated: '... there is no involvement of the Ministry in the rate-fixing policy which is followed by the companies in the international routes. Our involvement is strictly confined in the fixing of prices in domestic routes only ... It is unthinkable and it is out of question that the Ministry threatens to withdraw operating licences for domestic routes if companies fail to agree prices on international routes.'

(106) It is also clear that Law 4195/29 does not eliminate price competition. On the contrary, it presupposes that price competition exists and that companies are free to set their prices. It is only when this freedom is used for unfair competition purposes that Article 4 of the Law entitles the Ministry for the Merchant Navy to intervene. Even in this case, the Ministry may only define upper and lower prices and not impose a specific level of fares. Moreover, it is to be noted that this Law has never been applied.

(107) The Commission considers it significant that, although the parties argue that many of their discussions were motivated by a desire to satisfy the requirements of the YEN and to avoid unfair competition (as with the discussions with Anek when it opened the Trieste route for example), not one of the contemporary documents quoted in evidence by the Commission makes any mention whatsoever of the YEN or of Law 4195/29. Consequently, the argument that the Greek companies were obliged by the Ministry's preventive measures to enter into collusive practices owing to the fear that Article 4 of the Law might be applied, is rejected.

(108) It is also difficult to accept that the Ministry's recommendations to the companies relating to the fare increases within the limits of inflation had any relation whatsoever with the abovementioned law. It is clear from Article 2 of the Law that it applies only when fares are derisory but not when fares are high. As the Ministry explained, its recommendations were based on other considerations relating to Greece's international trade patterns. In conclusion, the Greek maritime transport companies, carrying out activities on the Adriatic, must be regarded, in the field of tariff policy, as having acted autonomously.

*Assessment of other general arguments of the parties*

(109) It is also ingenious for certain of the parties to contend that the companies' price initiatives were the result not of collusion but of natural market forces (for instance the impact of fuel costs) or other specific events like the war in the former Yugoslavia or sudden fluctuations of foreign currencies. This assertion is wholly against the weight of documentary evidence of price fixing collusion. The argument of certain

parties that they were merely following price increases of which they had knowledge through their agents' network can similarly be rejected. It is clear that almost all the 'price increase' correspondence was obtained by direct exchanges between competitors and not from agents.

*Assessment of the arguments relating to the duration of the infringement*

(110) As regards the duration of the infringement, most of the companies on the Patras-Ancona route argued that although a price-fixing agreement was reached during 1987, it exclusively concerned fares for 1988. Similarly, Anek argues that it entered into the agreements in 1989 but in relation to fares for 1990. The Commission rejects this argument, since entering into price-fixing agreements is in itself an infringement of Article 85 of the EC Treaty.

*Assessment of the arguments relating to specific allegations*

*The involvement of individual companies*

(111) It is necessary to establish in respect of each addressee of this Decision that it participated in the infringement. This does not, however, as some undertakings have argued, require direct proof that every alleged participant expressly gave its consent to, or committed some overt act of support for, each and every individual aspect of the price arrangements throughout their duration. The whole gravamen of the infringement lies in the association of the companies, over several years, in a joint unlawful enterprise pursuant to a common design.

(112) The proper approach in a case such as this one is to demonstrate the existence, the operation and the salient features of the collusion in question and then to determine: (a) whether there is credible and persuasive proof to link

each individual company to the common scheme; and (b) for what period each company participated<sup>(1)</sup>.

- (113) There is ample direct evidence to prove the adherence of every addressee of this Decision to the infringement. The 'core' documents which prove the existence of the overall cooperation or individual manifestations thereof usually identify participants by name.
- (114) Evidence of the participation of each undertaking in the infringement is provided by: (a) explicit references to that undertaking in the correspondence exchanged between the parties; (b) its participation in meetings and subsequent concerted price initiatives; and (c) the internal documentation of that undertaking, or another undertaking, linking it to the collusion. In no significant respect was any of that evidence contradicted or shown to be anything but reliable during the administrative procedure.
- (115) Several documents (in particular, Minoan's fax of 15 March 1989, Strintzis' fax of 12 July 1989, fax sent to Anek on 22 October 1991, Anek's reply of 18 November 1991, Minoan's letter to its agents of 2 November 1990, Anek's letter to its agents of 21 October 1991, Minoan's telex of 7 January 1993, ETA's telex of 24 November 1993) demonstrate that consultations and agreements on prices were continuously taking place, for several years, between all the addressees of this Decision.
- (116) Minoan, Strintzis and Anek admit their participation in the alleged collusion while Karageorgis did not submit any arguments in its defence.
- (117) As regards the Bari/Brindisi operators, Adriatica and Ventouris Ferries admit their participation in meetings where fares have been discussed and agreed between competing ferry operators. Moreover, certain documents (Strintzis' faxes of 8 December 1989, 5 September 1990 and 30

October 1990, Minoan's letter of 2 November 1990, the fax sent to Anek on 22 October 1991, Minoan's document of 25 February 1992, Minoan's telex of 7 January 1993, ETA's telex of 24 November 1993) indicate ongoing negotiations and agreements between the Ancona and the Bari/Brindisi operators. Only Minoan's telex of 7 January 1993 refers to an agreement between the Ancona operators, expressly stating that other companies were not, at that time, aware of it. However, even this document refers to discussions involving the Bari/Brindisi companies which, as the document indicates, were to be consulted subsequently by the Ancona operators. The Commission has not been able to identify other companies operating in the Bari/Brindisi lines which eventually participated in the collusion. In particular, this Decision is not addressed to AK Ventouris and Hellenic Mediterranean Lines because there is not sufficient evidence that they actually infringed the competition rules (both companies are mentioned only once in other companies' documents).

#### *Marlines*

- (118) Marlines' participation in the collusion from 1987 until 1989 is proved by eight documents (referred to in sections relating to the agreements for 1988 and 1989) received by Marlines or indicating Marlines as party to the relevant agreements. The Commission concludes from the above that Marlines negotiated and agreed every year with Strintzis, Minoan and Karageorgis common prices for passengers and goods vehicles on the route Patras-Ancona as early as 18 July 1987 and for 1988 and 1989. The last occasion on which Marlines is mentioned in the documentary evidence is in a telex sent by Anek to Marlines on 22 September 1989. There is no evidence that Marlines took part in any further consultations with other companies nor is there conclusive evidence of its subsequent involvement in the cartel. The Commission concludes that Marlines participated in the infringement, at most, from 18 July 1987 to 8 December 1989, when the other companies agreed to readjust their prices.

<sup>(1)</sup> Judgment of the Court of First Instance in Case T-1/89, Rhône-Poulenc v. Commission [1991] ECR II-867, at paragraph 126.

(119) The argument of Marlines that it is an offshore company under Greek law must be rejected. The Commission never alleged that the infringement was limited only to Greek companies.

#### *Med Link*

(120) Med Link argues that it has no relationship whatsoever with the companies mentioned in the statement of objections addressed to Med Link Lines by the Commission as Mediterranean Lines Inc. or Med Line. Moreover, Med Link also claims that it did not participate in any of the alleged infringements. In particular, the representative of Med Link, Mr Giannatos, whose name is mentioned in the telex of 24 November 1993 from ETA to the head office of Minoan, states that he did not take part in the meeting referred to in that telex. He states that Med Link was established in Liberia on 15 July 1993 and established its headquarters in Greece after 31 December 1993.

(121) The Commission accepts that there is no clear evidence of an organic link between Med Link and Mediterranean Line. In particular, Med Link cannot be regarded as the successor to Mediterranean Line in its activities in the relevant market. Consequently, this Decision is not addressed to Med Link.

#### *Adriatica*

(122) Adriatica admits its participation in price-fixing consultations with its competitors in Greece-Italy routes. In particular, Adriatica concedes that it participated in two meetings, on 25 October 1990 and 24 November 1993 respectively, where prices were agreed between ferry operators. Nevertheless, Adriatica denies that it had other contacts with its competitors in the Italy - Greece routes.

(123) As regards the meeting of 25 October 1990 and Strintzis' fax of 30 October 1990, Adriatica claims that did not follow the fares discussed in the meeting and listed in Strintzis' fax, even though Strintzis' fax included Adriatica's truck fares for the Brindisi-Greece route. Furthermore,

Adriatica submits that its fares were approximately 10 % lower than the Greek companies' fares on the same route.

(124) Upon the Commission's request, Adriatica submitted on 27 October 1992 two lists of its truck fares for 1991. In the first list, categories of vehicles are indeed different from those used in Strintzis' fax. However, the second list is identical to the one included in that fax. Moreover, differences between Adriatica's and the Greek operators' fares in the same route are evidenced in Strintzis' fax, too. Consequently, the Commission rejects Adriatica's arguments that only Greek operators were involved in the preparation of truck fares for 1991 and that Adriatica did not follow the agreed fares.

(125) As regards the meeting of 24 November 1993, Adriatica acknowledges its participation but argues that it subsequently instructed its representative to avoid any collusive practice since this could be considered by the Commission as a cartel arrangement. However, an internal note is not sufficient evidence to allow Adriatica to escape liability for the remaining period of the infringement<sup>(1)</sup>. Nevertheless, the Commission takes into account the evidence provided by Adriatica that it did not in practice follow the agreed readjustment of 15 % for 1994.

(126) According to the Commission, strong evidence indicates an ongoing agreement between the Ancona and the Bari/Brindisi operators. There is direct evidence that Adriatica joined the cartel from 30 October 1990 at the latest, by agreeing to readjust its truck fares for 1991. There is also sufficient direct evidence of its involvement for 1993. On 24 November 1993, Adriatica negotiated and agreed with its competitors the readjustment of its truck fares as from December 1993. As regards, the periods between 30 October 1990 and 24 November 1993, there is evidence of the Bari/Brindisi

<sup>(1)</sup> See judgment of the Court of First Instance in Case T-141/89, Trefileurope v. Commission [1995] ECR II-791, at paragraph 85.

operators' participation in the ongoing collusion and there is no evidence that Adriatica, having joined the cartel, left it during this period. The telex sent to Anek on 22 October 1991 refers to the collusion between 'the 11 companies and the 36 vessels on the Greece-Italy crossing'. Consequently, the Commission concludes that Adriatica participated in the infringement until July 1994.

#### *Hellenic Mediterranean Lines*

- (127) Hellenic Mediterranean Lines is mentioned once in a Strintzis' telex dated 30 October 1990. As no other evidence of its participation in the collusion exists, this Decision is not addressed to Hellenic Mediterranean Lines.

#### *Ventouris Group Enterprises*

- (128) There is evidence of Ventouris Ferries' participation in the collusion from 8 December 1989 until July 1994. The Commission rejects Ventouris Ferries' arguments that it did not receive the relevant documents or that it had already decided on its pricing policy before taking part in the consultations in question (see paragraphs 47 and 48).

- (129) In relation to its second argument, Ventouris Ferries submitted a telex sent to one of its agents on 4 December 1989 including the prices listed in Strintzis' fax of 8 December 1989 for the Bari-Greece route. Ventouris Ferries claims that Strintzis' fax simply reproduced Ventouris' fares established before 8 December 1989. However, it is undeniable that Strintzis' fax simply related to an agreement between several companies, including Ventouris. It is thus clear that Ventouris Ferries participated in price fixing. It is to be noted that the two documents not only contain the same list of fares but both explicitly mention that those fares were valid as from 10 December 1989.

- (130) Furthermore, Ventouris Ferries submitted letters addressed to its clients or agents dated 8

October 1990 and 11 October 1990 containing the truck fares listed in Strintzis' fax of 30 October 1990. However, these letters confirm the evidence contained in Strintzis' fax. Strintzis refers to 'a final agreement for truck fares' and proposed to 'announce the prices on 1 November and put them into effect, as it has been agreed, from 5 November 1990'. In its letters Ventouris Ferries stated that those fares were 'indicative' and that Ventouris intended to put them into effect 'from end of October/beginning of November 1990'. Indeed, the letters confirm that the infringement was an ongoing agreement and that Ventouris participated in it.

- (131) There is strong evidence to indicate an ongoing agreement between the Ancona and the Bari/Brindisi operators. Even for 1992, for which Ventouris Ferries argues that there is no evidence against it, ETA's document dated 25 February 1992 demonstrates that Ventouris participated in the collusion, discussing fares for the Otrando route, too. As regards 1991, the telex sent to Anek on 22 October 1991 refers to the collusion between 'the 11 companies and the 36 vessels on the Greece-Italy crossing'. The Commission concludes that Ventouris Ferries continued to participate in the collusion during 1991, as there is sufficient direct evidence of Ventouris' involvement for the remaining years of the infringement, namely the telex of Strintzis dated 8 December 1989, the telefax from Strintzis dated 30 October 1990, ETA's document dated 25 February 1992, telex from ETA to the head office of Minoan dated 24 November 1993, and there is no evidence that Ventouris Ferries dissociated itself from the agreement in 1991.

#### *Strintzis*

- (132) Strintzis did not contest its participation in the alleged collusion. Its arguments refer to the involvement of Greek authorities and to the non-binding character of the agreements. The Commission concludes that Strintzis participated in the alleged price-fixing collusion from, at the latest, 18 July 1987 up to July 1994.

*Anek*

- (133) Anek did not contest its participation in the alleged collusion. Its arguments refer to the involvement of Greek authorities and to the non-binding character of the agreements. The Commission concludes that Anek participated in the alleged price-fixing collusion from 6 July 1989 to July 1994.

*Karageorgis*

- (134) Karageorgis did not submit any arguments in its defence. The Commission concludes that Karageorgis participated in the alleged price-fixing collusion from, at latest from 18 July 1987 until 27 December 1992 when Karageorgis definitively withdrew its vessels from the Greece-Italy routes.

*Minoan*

- (135) Minoan did not contest its participation in the alleged collusion. Its arguments refer to the involvement of Greek authorities, the market conditions and the non-binding character of the agreements. The Commission concludes that Minoan participated in the alleged price-fixing collusion from, at latest, 18 July 1987 until July 1994.
- (136) Minoan refers to its contractual relationship with ETA, its exclusive managing agent for all Minoan ships operating on international routes. Minoan argues that several of the activities referred to in this Decision were ETA's own initiatives, not approved by Minoan, sometimes outside the scope of the ETA-Minoan contracts, and that Minoan should not be regarded as responsible for them. The Commission does not accept this argument. As regards the relationship between ETA and Minoan, it is clear from all the contracts between the two parties available to the Commission that ETA is the exclusive central managing agent for Minoan which operates under Minoan's instructions and supervision. Under all these contracts ETA represents Minoan before all national and

international authorities and organises the local and port agents' network of Minoan. If Minoan so requests, ETA must use all its endeavours to ensure Minoan's cooperation with other companies. Commissions payable to ETA by Minoan and to other Minoan or tourist agents by ETA precisely (in percentage terms or in fixed amounts) defined by several provisions.

- (137) Consequently, ETA should be described as the *longa manus* of Minoan, operating as a representative of Minoan, as an intermediary who acts exclusively on behalf of Minoan and does not undertake business on its own account. In all the documentary evidence used in this Decision, Mr Sfinias, the legal representative and manager of ETA, represented Minoan (Athens), signing all relevant documents, even a reply dated 20 November 1992 to a request for information addressed to Minoan by the Commission. Indeed, Mr Sfinias acted as the representative of a functional unit inside Minoan. All other companies replying to fax or telex messages signed by Mr Sfinias addressed their replies to 'Minoan' or 'Minoan Athens' and never to ETA. In all these documents, Mr Sfinias referred to ETA only when addressing Minoan headquarters in Heraklion, Crete. Nevertheless, Minoan refers to the documentary evidence used in this Decision, arguing that only 6 out of 17 Minoan documents relate to ETA's informing Minoan of the arrangements in question and that in only two of them does ETA request Minoan's approval of its suggestions. However, the Commission rejects the argument that the documents do not allow ETA's anti-competitive actions to be imputed to Minoan. It is clear from the Minoan documents emanating from its headquarters in Heraklion as well as from Mr Sfinias' messages to Minoan Heraklion that Minoan was aware of the collusion and participated in it (such as ETA documents dated 25 February 1992, 21 May 1992, 30 July 1992 where ETA acts as Minoan's representative vis à vis the other companies).
- (138) In the Commission's view, Mr Sfinias' letters to Minoan Heraklion concerning their contractual relationship does not prove, as Minoan argued, that ETA acted autonomously in its own interest, outside the scope of ETA-Minoan

contracts. On the contrary, this correspondence, as well as Mr Sfinias' requests for Minoan's approval, proves that Minoan was always kept informed of the collusion and that it could in any case influence the conduct of its managing agent in a decisive manner. In conclusion, the Commission rejects the argument that ETA which was addressed as 'Minoan Athens' or simply as 'Minoan' in all relevant documentary evidence, enjoyed such a high degree of commercial autonomy that its conduct cannot be imputed to its principal<sup>(1)</sup>. For the purposes of this Decision, ETA and Minoan are considered to form a single legal and economic unit.

- (139) As a procedural point, Minoan contends that ETA is an independent company which acted as its agent. Accordingly, Minoan challenges the legality of the investigation in the offices of ETA and of the documents that were collected by the Commission. This argument cannot be accepted. The Commission considers that there is sufficient documentary evidence that ETA, whilst representing Minoan, described itself as 'Minoan Athens' or simply 'Minoan'. It is significant that in ETA's premises in Athens, ETA used Minoan's logo and trademarks. More importantly, before the investigation in question, Mr Sfinias replied to a Commission request for information, signing a document in the name of Minoan. At the top of the document, the ETA premises' address appears under the logo and trademark of Minoan, with no mention of ETA whatsoever. The Commission concludes that, independently of ETA's occupation and use of the premises in question, Minoan permitted ETA to use these premises as 'Minoan Athens' premises', too.

agreements between undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions.

- (141) It is not necessary, in order for a restriction to constitute an agreement within the meaning of Article 85(1) for the agreement to be intended to be legally binding on the parties. An agreement exists if the parties reach a consensus on a plan which limits their commercial freedom by determining the lines of their action in the market. No contractual sanctions or enforcement procedures are required. Nor is it necessary for such an agreement to be made in writing. It is clear from the evidence in this case that the parties engaged in regular, direct consultations aimed at fixing passenger fares and freight rates between Greece and Italy. Regular, detailed discussions took place each year to decide the tariff levels for the following year, and ad hoc consultations took place to decide how the parties should react to issues that arose during the year, such as currency devaluation or new categories of vehicles. It is also clear that these discussions took place at senior levels between the parties. There can be no doubt that this arrangement amounted to an agreement, the object of which was to fix selling prices and other trading conditions between the parties thereto.

## PART II

### LEGAL ASSESSMENT

#### Article 85

- (140) Article 85(1) of the EC Treaty prohibits as incompatible with the common market all

- (142) In order for Article 85 to apply, it is necessary that the agreement or concerted practice between the parties has the object or effect of restricting competition. The clear object of the agreement between the parties in this case was to bring about the imposition of common prices, thereby restricting their ability to act independently in the market. As the Court of Justice has consistently held, it is unnecessary to consider the actual effects of an agreement if it is apparent that it has the object of preventing,

<sup>(1)</sup> See judgment of the Court of Justice of 25 October 1983 in Case 107/82, AEG-Telefunken v. Commission [1983] ECR 3151, at paragraph 49; and the judgment of 14 July 1972 in Case 48/69, ICI v. Commission [1972] ECR 619, at paragraphs 132 and 133 as to the imputation of subsidiaries' conduct to their parent companies.

restricting or distorting competition<sup>(1)</sup>. Moreover, in this case, the agreement does not fall within any applicable block exemption and, furthermore, does not fulfil the conditions for individual exemption.

Greece. These should therefore not be regarded as separate infringements but as aspects of a single continuous infringement.

#### FINES

#### Effect on trade between Member States

(143) The services affected by the practices in issue in this procedure are the roll-on roll-off ferry services between Greece and Italy. The sea routes between Greece and Italy have assumed even more importance in 1992 when the beginning of the war in the former Yugoslavia effectively closed the overland routes for imports and exports between Greece and the rest of the European Union. In 1993, 1 316 003 passengers and 213 839 freight vehicles were transported in Greece-Italy routes. Of these, 49 % and 38 % were transported via the Patras-Ancona route, 35 % and 38 % on the Patras-Brindisi one, and 10 % and 19 % on the Patras-Bari route. Five of the undertakings covered by this procedure accounted for almost 100 % of traffic at one time or another on the Patras-Ancona route. Any agreement which affects demand for services between two Member States (such as an agreement fixing price levels between the major providers of that service) is likely to deflect demand both within the group of undertakings involved in the agreement, and those outside this group, and thus alter the pattern of trade in that service between Member States.

#### Conclusion

(144) On the basis of the above, the Commission considers that Minoan, Anek, Karageorgis, Marlines and Strintzis, participated in an agreement contrary to Article 85 by agreeing prices which would be applied to roll-on roll-off ferry services between Patras and Ancona. The Commission also considers that Minoan, Anek, Karageorgis, Strintzis, Ventouris Ferries and Adriatica agreed on the levels of fares for trucks to be applied on the Patras to Bari and Brindisi routes. These agreements formed part of a broader scheme of collusion in the setting of fares for the ferry services between Italy and

#### Article 19(2) of Regulation (EEC) No 4056/86

(145) Under Article 19(2) of Regulation (EEC) No 4056/86, the Commission may by decision impose on undertakings fines of from ECU 1 000 to ECU 1 000 000, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently they infringe Article 85(1) of the Treaty. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement. In this case, the infringement has been committed intentionally, which is to say that it was designed to restrict price competition. Direct documentary evidence indicates that the parties were aware that the collusion aimed to or at least was liable to eliminate price competition (for instance Minoan's telex of 15 March 1989, Strintzis' fax of 12 June 1989, Minoan's telex of 7 January 1992, Minoan's telex of 7 January 1993). The deliberate nature of the parties' practice can be seen further in the measures for monitoring the adjustments in tariffs (for instance, Minoan's telex of 22 June 1989, Karageorgis' telex of 10 October 1990, telex sent to Anek on 22 October 1991, Minoan's telex of November 1992).

#### Gravity

(146) In assessing the gravity of the infringement, account must be taken of its nature, its actual impact on the market, where this can be assessed, and the size of the relevant geographic market.

(147) An agreement by which the price of transporting passengers and freight by roll-on roll-off ferries was agreed by some of the most important ferry operators in the relevant market constitutes, by its nature, a very serious breach of Community law.

<sup>(1)</sup> See, for instance, the judgement of 11 January 1990 in Case C-277/97, Sandoz v. Commission [1990] ECR I-45, at paragraph 39.

(148) However, the infringement had a limited actual impact on the market. The Commission accepts that the parties did not apply in full all the specific price agreements and that they engaged, during the period of the infringement, in price competition through discounting. Moreover, the Greek Government, during the period of the infringement, encouraged the undertakings to keep fare increases within the inflation rates. Fares were kept at one of the lowest levels within the common market for maritime transport from one Member State to the other.

(149) Moreover, the infringement produced its effects within a limited part of the common market, namely three of the Adriatic Sea routes. Even if all Greece-Italy routes are taken into account, the market is still small compared to other markets within the Community. The following list shows the number of passengers, cars and trailers transported during 1996 in this market and along other Community routes<sup>(1)</sup>.

1996	Passengers	Cars	Trailers
Italy-Greece	1 258 000	245 983	229 000
France/ Belgium-UK	28 352 635	4 944 644	1 944 028
Denmark- Germany	9 698 357	1 363 940	279 274
Denmark- Sweden	23 132 174	2 628 311	498 916
Eurotunnel	8 399 463	2 076 954	519 003

(150) Consequently, the Commission concludes that the infringement is a serious breach of Community competition rules.

(151) In setting the level of fines, the Commission may take account of the effective capacity of offenders to cause significant damage and set the amount of fine at a level which ensures that it has a sufficiently deterrent effect. The Commission considers it appropriate that larger

fines be imposed on the larger undertakings than on the smaller because of the considerable disparity between their sizes<sup>(2)</sup>. Table 1 indicates the relative size of each of the undertakings concerned in 1993, the last full year of the infringement for all undertakings (except for Marlines and Karageorgis<sup>(3)</sup>), as compared to Minoan, the largest operator in the market. The comparison is made on the basis of 1993 turnover in respect of roll-on roll-off services in the Adriatic routes. This is the appropriate basis for the comparison of the relative size of the undertakings because it enables the Commission to assess the specific weight and importance of the undertakings in the relevant market and, therefore, to evaluate the real impact of the offending conduct of each undertaking on competition

Table 1

Large carriers	Minoan	1,00
	Anek	0,76
Medium carriers	Strintzis	0,45
	Adriatica	0,40
	Ventouris	0,30
	Karageorgis	0,26
Small carriers	Marlines	0,12

<sup>(2)</sup> It is to be noted that Marlines and probably Ventouris may be categorised as small and medium-sized enterprises according to the Commission's Recommendation 96/280/EC of 3 April 1996. According to the Commission notice on agreements of minor importance (OJ C 372, 9.12.1997, p. 13) agreements between SMEs are not, in general, caught by the prohibition in Article 85(1). However, in this case, only two of the parties, i.e. Marlines and Ventouris, can be described as SMEs. Moreover, it is certain that the agreement significantly impedes competition in a substantial part of the relevant market (see Part III of the notice on agreements of minor importance).

<sup>(3)</sup> Karageorgis' size is calculated on the basis of the information which Karageorgis provided as to the number of passengers and vehicles carried by its vessels during 1992, which according to Karageorgis was the last full year of its activities in Greece. For Marlines, this base is its total turnover for 1989. For the purposes of this comparison, it is of no consequence whether one considers Marline's turnover for 1989 or for 1993.

<sup>(1)</sup> Source: Cruise & Ferry Info.

- (152) Following this grouping, the medium carriers' fines relating to the gravity of the infringement will amount to 65 % of the large carriers' fines. For Marlines, the same percentage will be 20 %.

#### Duration

- (153) The Commission considers the agreement to date from, at latest, 18 July 1987 up to July 1994 (the date of the Commission investigations), in the case of Strintzis and Minoan, and for Anek from 6 July 1989 to July 1994. In the case of Marlines, its participation in the agreement is considered to have been from, at the latest, 18 July 1987 up to at least 8 December 1989. Karageorgis appears to have left the market during 1993. The duration of the infringement for that company is therefore considered to be from, at the latest, 18 July 1987 until 27 December 1992.
- (154) In respect of Ventouris Ferries, the Commission considers that as from 8 December 1989 it entered into the pricing-fixing cartel by agreeing, with four of the companies operating on the Patras-Ancona route, the level of fares for trucks to be applied on the Patras to Bari and Brindisi routes. Ventouris participated in the infringement until July 1994. Moreover, the Commission considers that Adriatica participated in the cartel referred to above as from 30 October 1990 at the latest until July 1994.

- (155) The Commission concludes that the infringement was of long duration for Minoan, Strintzis and Karageorgis, and of medium duration for the rest of the undertakings.

- (156) These considerations justify an increase of the fines by 10 % for every year of the infringement for Minoan and Strintzis, by 20 % for Marlines and by 35 % to 55 % for the other undertakings. Table 2 indicates the relevant adjustments per company.

Table 2

Large carriers	Minoan	+ 70 %
	Anek	+ 45 %
Medium carriers	Strintzis	+ 70 %
	Adriatica	+ 35 %
	Ventouris	+ 40 %
	Karageorgis	+ 55 %
Small carriers	Marlines	+ 20 %

#### Conclusion on the basic amount of fines

- (157) The Commission concludes that the parties committed a serious infringement of Article 85. Consequently, a fine has to be imposed which penalises this serious breach in an appropriate way and which, by its deterrent effect, prevents any repetitions.
- (158) Table 3 sets out the calculation of the level of fines taking into account the elements set out in paragraphs 146 to 156. Column 1 sets out the basic fine calculated on the basis of the gravity of the infringement. Column 2 sets out the basic fine per individual company taking into account the duration of the infringement.

Table 3

	Gravity (million ECU)	Duration (million ECU)
Minoan	2	3,4
Anek	2	2,9
Strintzis	1,3	2,21
Adriatica	1,3	1,75
Ventouris	1,3	1,82
Karageorgis	1,3	2,01
Marlines	0,4	0,48

**Aggravating circumstances**

(159) It is clear from the documentary evidence that Minoan acted as the instigator of the cartel. Minoan tried to persuade Anek to join the cartel (Minoan's telex of 15 March 1989), discussed with Ventouris the latter's tariff policy in the Otranto route (ETA's document of 25 February 1992) and organised and directed meetings with the companies involved in the infringement (ETA's telex of 21 May 1992, ETA's telex of 24 November 1993). This company not only monitored the cartel's operations but also tried to extend the scope of the companies' collaboration (telexes dated 15 March 1989, 7 January 1992, 25 February 1992, 7 January 1993, 24 September 1993, 26 May 1994). These considerations justify an increase of the fine by 25 % for Minoan.

(160) In November 1992, after the parties had received requests for information from the Commission, Minoan proposed that each company should differentiate its prices by 1 % for four cabin categories. Each company would differentiate four different categories of price.

(161) This fact not only demonstrates Minoan's role as the instigator of the cartel but also amounts to an attempt to obstruct the Commission in carrying out its investigation. These considerations justify an increase of the fine by 10 % for Minoan.

**Mitigating circumstances**

(162) The Commission accepts that the parties did not apply in full all the specific price agreements and that they engaged, during the period of the infringement, in price competition through discounting. However, these considerations have already been taken into account in assessing the gravity of the infringement.

(163) The usual practice – not directly imposed by the legal or regulatory framework – of fixing domestic fares in Greece through a consultation of all domestic operators (whereby they were expected to submit a common proposal) and the *ex post* decision of the Ministry for the Merchant Navy may have created some doubt among the Greek companies operating also on

domestic routes as to whether price fixing consultation for the international route did indeed constitute an infringement. These considerations justify a reduction of the fines by 15 % for all the undertakings.

(164) Marlines, Adriatica, Anek and Ventouris played an exclusively 'follow my leader' role in the infringement. These considerations justify a reduction of the fines by 15 % for those undertakings.

(165) Table 4 below sets out the amount of fines after the aforementioned adjustments.

*Table 4*

	Adjustment (%)	Fines after adjustment (million ECU)
Minoan	+ 20	4,08
Anek	- 30	2,03
Strintzis	- 15	1,87
Adriatica	- 30	1,22
Ventouris	- 30	1,27
Karageorgis	- 15	1,08
Marlines	- 30	0,33

(166) According to Article 19(2) of Regulation (EEC) No 4056/86, the Commission may not impose fines exceeding ECU 1 000 000 or 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement. For all undertakings except Karageorgis, the fines set out in the column headed 'Fines after adjustment' do not exceed 10 % of the turnover of the undertakings involved in the present infringement.

(167) Karageorgis ceased its operations in January 1993 and subsequently closed all its branches in Greece. The Commission has no information regarding Karageorgis' turnover for 1997. Under Article 19(2) of Regulation (EEC) No 4056/86, the Commission may by decision impose on undertakings fines of from ECU 1 000 to ECU 1 000 000 (or a sum in excess thereof but not

exceeding 10 % of the turnover in the preceding business year). Accordingly, the fine for Karageorgis is set at ECU 1 000 000.

(168) By virtue of the Commission notice on the non-imposition or reduction of fines in cartel cases<sup>(1)</sup>, fines imposed in cartel cases may be significantly reduced in several cases. Such cases include the following: (a) before a statement of objections is sent, an enterprise provides the Commission with information, documents or other evidence which materially contribute to establishing the existence of the infringement; (b) after receiving a statement of objections, an enterprise informs the Commission that it does not substantially contest the facts on which the Commission bases its allegations.

(169) In this case, the documents submitted by Anek before the Commission's issuance of the statement of objections have confirmed, to a significant extent, the existence of the infringement in question. Moreover, none of the companies contested the factual basis of the Commission's statement of objections. These considerations justify a reduction of the fines by 45 % for Anek and by 20 % for the other undertakings.

#### Conclusion: the final amount of fines

(170) Table 5 shows the final level of fines taking into account the elements set out in paragraphs 146 to 169.

Table 5

	Final amount of fines (million ECU)
Minoan	3,26
Anek	1,11
Strintzis	1,5
Adriatica	0,98
Ventouris	1,01
Karageorgis	1,00
Marlines	0,26

HAS ADOPTED THIS DECISION:

#### Article 1

1. Minoan Lines, Anek Lines, Karageorgis Lines, Marlines SA and Strintzis Lines have infringed Article 85(1) of the EC Treaty by agreeing prices to be applied to roll-on roll-off ferry services between Patras and Ancona.

The duration of these infringements is as follows:

- (a) in the case of Minoan Lines and Strintzis Lines, from 18 July 1987 until July 1994;
- (b) in the case of Karageorgis Lines, from 18 July 1987 until 27 December 1992;
- (c) in the case of Marlines SA, from 18 July 1987 until 8 December 1989;
- (d) in the case of Anek Lines, from 6 July 1989 until July 1994.

2. Minoan Lines, Anek Lines, Karageorgis Lines, Adriatica di Navigazione SpA, Ventouris Group Enterprises SA and Strintzis Lines have infringed Article 85(1) of the EC Treaty by agreeing on the levels of fares for trucks to be applied on the Patras to Bari and Brindisi routes.

The duration of these infringements is as follows:

- (a) in the case of Minoan Lines, Ventouris Group Enterprises SA and Strintzis Lines, from 8 December 1989 until July 1994;
- (b) in the case of Karageorgis Lines, from 8 December 1989 until 27 December 1992;
- (c) in the case of Anek Lines, from 8 December 1989 until July 1994;
- (d) in the case of Adriatica di Navigazione SpA, from 30 October 1990 until July 1994.

#### Article 2

The following fines are hereby imposed on the following undertakings in respect of the infringement found in Article 1:

<sup>(1)</sup> OJ C 207, 18.7.1996, p. 4.

- 
- |  |   |
|--|---|
| <p>— Minoan Lines, a fine of ECU 3,26 million,</p> <p>— Srintzis Lines, a fine of ECU 1,5 million,</p> <p>— Anek Lines, a fine of ECU 1,11 million,</p> <p>— Marlines SA, a fine of ECU 0,26 million,</p> <p>— Karageorgis Lines, a fine of ECU 1 million,</p> <p>— Ventouris Group Enterprises SA, a fine of ECU 1,01 million,</p> <p>— Adriatica di Navigazione SpA, a fine of ECU 0,98 million.</p> | <p>— Minoan Lines<br/>25<sup>th</sup> August 17<br/>GR-71202 Heraklion, Crete</p> <p>— Srintzis Lines<br/>26 Akti Possidonos<br/>GR-18531 Piraeus</p> <p>— Anek Lines<br/>Nikolaou Plastira &amp; Apokoronou<br/>GR-Hania, Crete</p> <p>— Marlines SA<br/>38 Akti Possidonos<br/>GR-18531 Piraeus</p> <p>— Karageorgis Lines<br/>Karageorgis Buildings<br/>Akti Kondyli 26—28<br/>GR-18503 Piraeus</p> <p>— Ventouris Group Enterprises SA<br/>91 Leoforos Pireos &amp; Kithiron 2<br/>GR-18541 Piraeus</p> <p>— Adriatica di Navigazione SpA<br/>Zattere 1411<br/>I-30123 Venice</p> |
|--|---|

*Article 3*

The fines shall be paid within three months of the date of notification of this Decision to the following account:

Account No 310-0933000-43.  
European Commission  
Banque Bruxelles-Lambert  
Agence Européenne  
Rond-Point Schuman/Schumanplein 5  
B-1040 Brussels.

After three months, interest shall automatically be payable at the rate charged by the European Central Bank on its ecu transactions on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, namely 7,5 %.

*Article 4*

This Decision is addressed to:

Done at Brussels, 9 December 1998.

*For the Commission*  
Karel VAN MIERT  
*Member of the Commission*

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