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COMMON TRANSPORT POLICY FOLLOWING THE
COUNCIL RESOLUTION OF 20 OCTOBER 1966

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EXECUTIVE SECRETARIAT OF THE COMMISSION

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(Memorandum transmitted by the Commission to the Council on 10 February 1967)

I. INTRODUCTION

1. At its session on transport matters on 19 and 20 October 1966 the Council adopted a resolution which brings new factors to bear as regards the formulation of a common transport policy ⁽¹⁾.

In this resolution the Council calls for the speeding up of work in the matter of access to the market (access to the trade and capacity control), the application of competition rules to transport, the harmonization of competition conditions and the apportionment of infrastructure costs.

Differences of opinion occurred mainly on the means so far envisaged of avoiding developments liable to distort competition, namely abuse of dominant positions and more particularly uneconomic competition.

2. It now seems appropriate to take stock of the discussions so far in order to pinpoint the differences of opinion and to find solutions. If it is possible before the expiry of the periods stipulated in the agreement of 22 June 1965 on the organization of the transport market ⁽²⁾ to propose comprehen-

sive measures not restricted to tariff measures which can be effectively applied against the abuse of dominant positions and to uneconomic competition, there should be nothing to prevent the early implementation of the first important common rules for transport.

3. The need for rapid results is the greater since on 1 July 1968 the customs union and also the common agricultural market are to come into operation. The economic union, for which the achievement of customs union is the first step and in which the common transport policy will play an important part, must begin to operate. Article 75 of the Treaty moreover stipulates that during the transition period common rules for international transport are to be drawn up and the conditions for the admission of carriers to the trade within a Member State other than their own are to be laid down.

⁽¹⁾ Doc. R/1150/66 (TRANS 72) of 21.10.1966.

⁽²⁾ Bulletin of the European Economic Community No. 8-65, p. 86.

II. COMMON TRANSPORT POLICY DURING THE FIRST TWO STAGES OF THE TRANSITION PERIOD

4. The Memorandum on the general lines of a common transport policy of 10 April 1961 and the programme for the implementation of the common transport policy of 23 May 1962 were not formally approved by the Council ⁽³⁾. The ideas put forward by the Commission expressed in them can however be regarded as a blueprint for a common policy.

The underlying principle of this policy is that optimum distribution of traffic between modes of transport and between transport firms should be ensured by the free play of competition. Thus co-ordination measures, whether rate-fixing measures or other, are excluded from the outset.

This conception does not however entirely rule out intervention by the authorities in the

market. On the contrary, it necessitates certain interventions for three reasons:

a) To ensure the satisfactory operation of the market by placing modes of transport and transport firms on an equal footing through the harmonization of competition conditions and the suitable apportionment of infrastructure costs.

b) To prevent or rectify abuses which may arise from competition — abuse of dominant positions or uneconomic competition — by setting up permanent machinery for supervision and control of capacity and where necessary by temporary selective measures.

⁽³⁾ The draft resolution on this subject was not unanimously adopted by the Council but was sent to the Commission as an annex to the minutes of the 98th session of the Council of 8 March 1963.

c) To further the aims of regional or social policy where the free play of the market alone does not do so.

Because of differences in the policies of Member States, a joint organization of the transport market based on competition can only be set up gradually.

Moreover the measures to be taken should to some extent go hand in hand, their interdependence being borne in mind but without one measure being a precondition for another.

5. In the light of the discussions on the Memorandum and the Programme the Commission has submitted a body of proposals in the following fields:

- Harmonization of the conditions of competition,
- Access to the market (admission to the trade, control of capacity),
- Transport rates and conditions,
- Rules of competition,
- Co-ordination of investment,
- Infrastructure costs.

a) On the harmonization of competition conditions the Council has adopted an outline decision (4). The implementation measures for this to be fully effective are still to be taken. The Commission has submitted a number of proposals, namely on the elimination of double taxation (5), the duty-free entry of fuel in the tanks of commercial vehicles (6), aids to transport firms (7) and certain social measures in road transport (8).

b) As regards access to the market (admission to the trade, control of capacity) the Commission considered that the most urgent problem concerned road haulage between Member States. It submitted a proposal for the gradual replacement of bilateral quotas by a Community quota (9). Licences issued in connection with this Community quota would have to be valid for the whole Community area.

The Council did not however consider it feasible to go so far with the first measures, but it concurred with a draft regulation introducing a Community quota on an experimental basis. The bilateral quotas were nevertheless to be retained and gradually extended. After three years this arrangement could be confirmed, extended or modified. However, the Council made the final adoption of such a regulation conditional upon agreement regarding rate systems (10).

On 24 July 1962 the Council adopted a first directive concerning certain common rules for

international transport (road haulage for hire or reward) (11) liberalizing transport in frontier areas and certain special traffic. A directive for the standardization of certain rules governing the issue at road haulage licences (12) of 13 May 1965 improved and simplified the conditions for issuing licences.

In addition the Council adopted a first regulation on passenger transport by road (13).

The General programme for the removal of restrictions on establishment of 18 December 1961 (14) specifies the arrangements for transport in its third phase, i.e. the first two years of the third stage of the transition period (end of 1967). The programme also makes provision for measures on co-ordination of requirements concerning admission to the trade concurrently with the removal of restrictions. Measures concerning access to the market will enable this co-ordination to be achieved.

c) On transport rates and conditions certain problems were solved by applying Articles 79 (15) and 80 of the Treaty. The removal of discrimination and support rates met with no great difficulty (16). The Member States were even ready at the Commission's suggestion to go further than these requirements by way of concerted

(4) Council decision of 13 May 1965 for the standardization of certain rules governing the issue of road haulage licences (Official gazette No. 88, p. 1500/65).

(5) Proposal for a Council regulation on the elimination of double taxation on motor vehicles engaged in international traffic (Doc. COM(64) 81 final of 18 March 1964); opinion of the European Parliament of 18 January 1965 (Official gazette No. 20, p. 268/65); opinion of the Economic and Social Committee of 8/9 December 1964 (Official gazette No. 13, p. 147/65).

(6) Proposal for a Council directive on the harmonization of arrangements regarding the free entry of fuel in the tanks of commercial vehicles (Doc. COM(66) 278 final of 15 July 1966).

(7) Proposal for a Council regulation on aids to road, rail and inland water transport firms (Doc. COM(66) 266 final of 13 July 1966).

(8) Proposal for a Council regulation on certain social provisions in road transport (Doc. COM(66) 270 final of 22 June 1966).

(9) Proposal for a Council directive on the institution of a Community quota for the transport of goods by road within the Community and its application procedure (Doc. COM(63) 169 of 10 May 1963); opinion of the European Parliament of 18 June 1964 (Official gazette No. 109, p. 1694/64); opinion of the Economic and Social Committee of 30 January 1964 (Official gazette No. 168, p. 2647/65).

(10) Proposal for a Council regulation on the institution of a Community quota and the adjustment of bilateral quotas for road haulage between Member States (Doc. R/533/65 (TRANS 34) of 24 May 1965).

(11) Official gazette No. 70, p. 2005/62.

(12) Ibid. No. 88, p. 1469/65.

(13) Ibid. No. 147, p. 2688/66.

(14) Ibid. No. 2, p. 36/62.

(15) Council Regulation No. 11 of 27 June 1960, on the abolition of discrimination in transport rates and conditions pursuant to Article 79(3) of the Treaty (Official gazette No. 52, p. 1121/60).

(16) Support rates were abolished in 622 cases and modified in 322 others.

action, pending new regulations for which the Commission had submitted a proposal ⁽²⁷⁾.

The general system of goods transport rates and conditions nevertheless remains the most serious problem to be solved. In 1963 the Commission submitted a proposal for the introduction of a rate-bracket system for all modes of transport within the Community ⁽¹⁸⁾. As no unanimous agreement could be reached on this proposal, in December 1964 the Council and the Commission were obliged to seek new ways of solving the problem.

d) Regarding the application of competition rules to transport, the Commission has submitted a draft regulation to the Council. According to this the general rules are to be applied to transport undertakings with certain adjustments to allow for the special features of the sector ⁽¹⁹⁾.

e) On 28 February 1966 the Council adopted a decision on procedure for prior investigation and consultation ⁽²⁰⁾ as a first step to co-ordination of investments.

f) The Council has adopted two decisions on infrastructure costs in transport which include a programme for surveys and studies, the results of which are to provide the necessary basis for a common financial system relating to the use of infrastructure ⁽²¹⁾.

The Commission for its part has adopted two decisions in pursuance of the first Council decision ⁽²²⁾.

6. The Commission proposal of May 1963 on rate brackets met with opposition from one Member State, chiefly concerning the application of the system to Rhine shipping.

In order to overcome these difficulties a new system was worked out and agreed to on 22 June 1965; this combined the system of compulsory rates with provisions for a system of reference rates. This rate system is to be accompanied by measures to bring into line the operating conditions of the markets: regulations for admission to the trade of carrier, rules on vertical and horizontal agreements, joint solutions of any problems arising from certain kinds of non-governmental intervention, joint solution of problems in the apportionment of infrastructure costs, financial soundness of the railways.

A new feature in the agreement of 22 June 1965 is a timetable for the implementation of these transport policy measures, to run concurrently with the rate system. They are to be implemented within three years of the coming into force of the new rate system, except for the financial soundness of railway undertakings, which will not apply until 31 December 1972.

In order to give effect to the rate system contained in the agreement of 22 June 1965, the Commission submitted an amended proposal ⁽²³⁾ on 27 October 1965.

⁽¹⁷⁾ Proposal for a Council regulation on the abolition of discrimination in transport rates and conditions (Doc. COM(65) 355 final of 6 October 1965).

⁽¹⁸⁾ Proposal for a Council regulation establishing a rate-bracket system for goods transport by rail, road and inland waterway (Doc. COM(63) 168 of 10 May 1963); opinion of the European Parliament of 18 June 1964 (Official gazette No. 109, p. 1687/64); opinion of the Economic and Social Committee of 30 January 1964 (Official gazette No. 168, p. 2656/64).

⁽¹⁹⁾ Proposal for a Council regulation making the rules of competition applicable to transport by rail, road and inland waterway (Doc. COM(64) 184 final of 4 June 1964); opinion of the European Parliament of 23 November 1964 (Official gazette No. 205, p. 3505/64); opinion of the Economic and Social Committee of 27 April 1965 (Official gazette No. 103, p. 1792/65). This proposal was made in pursuance of Council Regulation No. 141 of 26 November 1962 on the non-application of Council Regulation No. 17 to transport (Official gazette No. 124, p. 2751/62) and Council Regulation No. 165 of 9 December 1965 extending the period for non-application of Council Regulation No. 17 to rail, road and inland water transport (Official gazette No. 210, p. 3141/65). The new period was to end on 31 December 1967.

⁽²⁰⁾ Council Decision of 28 February 1966 establishing a procedure for consultation concerning investment in transport infrastructure (Official gazette No. 42, p. 583/66).

⁽²¹⁾ Council Decision of 22 June 1964 on a survey of infrastructure costs in rail, road and inland water transport (Official gazette No. 102, p. 1598/64). Council Decision of 13 May 1965 pursuant to Article 4 of Council Decision No. 64/389/EEC of 22 June 1964 concerning a survey of infrastructure costs in rail, road and inland water transport (Official gazette No. 88, p. 1473/65).

⁽²²⁾ Commission Decision of 10 July 1964 on a road traffic census in 1965 in pursuance of Council Decision of 22 June 1964 on a survey of infrastructure costs in rail, road and inland water transport (Official gazette No. 123, p. 2084/64). Commission Decision of 27 April 1965 on a traffic census and sample survey on the use of transport infrastructure to be carried out in 1966 (Official gazette No. 82, p. 1405/65).

⁽²³⁾ Doc. COM(65) 415 of 27 October 1965; opinion of the European Parliament of 19 January 1966 (Official gazette No. 23, p. 361/66) and of 27 June 1966 (Official gazette No. 130, p. 2429/66); opinion of the Economic and Social Committee of 29 September 1966 (Doc. CES 70/66).

III. DIFFERENCES OF OPINION AND MEANS OF RESOLVING THEM

7. The discussion of the amended proposal on rates revealed further differences of opinion on the interpretation and application

of certain points. These differences were noted by the Council in its resolution of 20 October 1966.

8. The most important differences concerned the reference rate system. The Commission was of the opinion that certain safeguards would be necessary, though without compromising the free price formation which characterizes this system under the agreement of 22 June 1965, to prevent this freedom from having undesirable effects. It had therefore proposed, first, that the rates applied in transport under the reference rate system should fulfil certain conditions with regard to the covering of costs. Secondly it had proposed that the authorities apply minimum and maximum rates for limited periods in the event of abuse of dominant positions or uneconomic competition. The main reason for these proposals was that effective means had to be found to combat distortions of competition.

One Member State rejected these measures because in its view they ran counter to the agreement of 22 June 1965 and price forming under the reference rate system had to be completely free.

9. The other differences of opinion were mainly of a technical nature; the two most important concerned the system for individual contracts and the publishing of rates.

The Commission had proposed that special contracts under the compulsory rate system should be justified *post facto*, i.e. immediately after conclusion of the transport contract. Transport firms would however be able to apply for prior approval. One Member State was of the opinion that such contracts should be subject to prior approval by the authorities, at least when it was a matter of long-term contracts.

For the publishing of rates outside the brackets of both compulsory and reference rates, the Commission proposed a more or less general publication system in which the parties to the contract were not named. But the Member State in question considered that the smooth functioning of the market required much more detailed publicity. In particular it considered that to give the name of the carrier was important to ensure that the transport user was adequately aware of the market situation.

10. The solution of the differences of opinion will depend on the structure of the reference rate system. There are also varying opinions on the kind of public intervention needed to combat where appropriate the abuse of dominant positions and uneconomic competition.

The existence of these two dangers was not disputed by any member of the Council. The Council resolution of 20 October 1966 stated expressly that the need to prevent the abuse

of dominant positions or uneconomic competition from causing serious disturbance of the transport market was unanimously recognized.

Suitable means to obviate these risks must be found. In particular it must be decided whether this can be done otherwise than by acting on rates, as the Council suggests in its resolution.

11. The problem of abuse of dominant positions no longer has any special significance in transport because dominant positions only occur in relations between modes of transport or within one mode of transport when there is no effective competition. This happens only rarely however and can easily be prevented.

The railways still have a monopoly on certain routes with limited traffic. The intensification of competition from other modes of transport, in particular road transport, will make the possibility of abuse of market power even slighter. Should it still occur, maximum rates would be the best weapon against it. Such measures should be used only temporarily and in cases reported to the competent authorities.

In road and inland water transport dominant positions can only occur through the formation of cartels. The application of the Treaty competition rules by appropriate procedures can prevent such practices from having undesirable effects.

12. Uneconomic competition on the other hand is a particularly complex problem requiring more delicate handling. In this case it is necessary to consider separately the railways on the one hand and road and inland water transport on the other.

13. Thanks to internal adjustment, which is feasible because of the wide area over which they operate, the railways, can in certain cases charge exceptionally low rates. The dangers inherent in this facility are particularly great when the railways do not have to budget strictly, the government making good any deficit, more particularly when competitors can be completely excluded by exceptionally low rates, assuming that there are severe restrictions on the access of other modes of transport to the market.

With these points in mind we can suggest the measures to be adopted to prevent uneconomic competition on the railways, for which there can be no capacity control.

On the one hand it is essential to accelerate harmonization measures for the railways and more particularly measures to make them financially autonomous and run on sound business principles.

On the other hand economically undesirable restrictions on access to the transport market which still exist in some cases must be removed. A suitable degree of opening of the market would frustrate any attempt by the railways to exclude competition by exceptionally low rates. Until these various measures, some of which can only be introduced gradually, bring about the desired result, it may be necessary to introduce minimum rates, again according to circumstances and on a temporary basis as with maximum rates.

14. In road and inland water transport a distinction must be made between two different types of uneconomic competition.

Uneconomic competition is attributable either to excess capacity or to uneconomic behaviour on the part of the transport firm.

In the first case the situation is capable of objective determination. It can fairly easily be kept within bounds. The second case is on the other hand considerably more difficult to circumscribe. It may occur at any time unheralded by objectively recognizable symptoms. In both cases seasonal and economic fluctuations may increase the risks of uneconomic competition.

Thus action against uneconomic competition calls for very different methods depending on its causes.

If uneconomic competition results from excess capacity, the method is simple in principle if not in its application. It is sufficient to see that excess capacity is not created. It is therefore appropriate to make provision for different methods for road and inland water transport. These methods may also differ according to the economic features of the different types of transport.

Particularly for such time as capacity control has not come fully into effect, uneconomic competition may be caused by excess capacity. Consequently the whole system must allow of recourse, exceptionally and for limited periods, to selective measures of a different type, including measures on rates, i.e. minimum rates.

If uneconomic competition is caused by uneconomic behaviour on the part of a transport firm, the principal weapon is the elimination of factors making such behaviour possible. There are two ways of improving the position here:

- i) Careful choice of candidates for the trade of carrier;
- ii) Fuller information for carriers so that they make judicious decisions as regards their investments and the rates they charge.

Appropriate regulations on personal qualification for admission to the trade, and market transparency thanks to the publicity measures envisaged, are particularly important in this connection.

It is moreover important to see that regulations on social matters, in particular working conditions, are strictly observed to prevent uneconomic competition from uneconomic behaviour of the transport firm.

The risks of such behaviour are particularly great during the period when quantitative restrictions are being relaxed.

15. In cases where differences of opinion have occurred in the Council on individual contracts or publishing of rates, and are mainly of a technical nature, reasonable compromises should not be difficult to find. The proposals which the Commission intends to submit in this connection are discussed below.

16. From the foregoing considerations two important conclusions can be drawn.

First, the abuse of dominant positions is already a rare thing. It will become rarer still as a competitive transport market is gradually created. There is no special difficulty in combating such abuse. For railways the solution may consist in measures concerning rates, for road and inland water transport in a proper application of the Treaty rules on competition.

Secondly, uneconomic competition is a much more complex problem and one which may have numerous causes. The real remedies for abuses of this kind consist in the situation in each mode of transport. Recourse to measures on rates and the imposition of minimum rates can be reserved for residual cases. It can be assumed that such cases will be few, occurring mainly during the alignment period when other measures will not yet have had their full effect.

As the Council resolution of 20 October 1966 suggests, differences of opinion can be resolved only by interconnected measures in the various fields. Up to the present all progress with the common transport policy has been dependent on agreement concerning rate systems. In future the connections between the various areas of this policy will have to be looked into again and rate provisions will have to be laid down in the light of the other regulations, particularly those on access to the market.

IV. MEASURES TO BE TAKEN

17. In the light of the foregoing considerations the measures to be introduced in the various fields can be outlined, as also the ways by which they can be interlinked in order to resolve the differences of opinion on the rate system.

The Commission is of the opinion that the main causes of uneconomic competition can be removed principally by means unconnected with rates. Measures on rates are to be reserved for residual cases, which will probably be rare, in which signs of abuse of market power or uneconomic competition still occur.

A. Measures unconnected with rates

18. Measures to remove the causes of practices which distort competition are to be introduced in the following fields: harmonization of conditions of competition, apportionment of infrastructure costs, application of competition rules adapted to transport and access to the market.

a) Harmonization of conditions of competition

19. Application of the decision of 13 May 1965 is to be regarded as an important task for the Community institutions as regards ensuring the proper functioning of a competitive transport market. The decision is to be applied in conjunction with liberalization.

It must be realized however that there are serious difficulties in the way of meeting any final date set by the Council. These result from the complex and fundamental differences of opinion between the Member States which have come to light while the practical arrangements were being worked out.

The achievement of financial stability for the railways, which depends on sound business management and especially on efforts to achieve optimum size of these undertakings, must be given high priority. Another matter of priority is the adoption and application of social measures. Harmonization of taxation should also have high priority, particularly vehicle taxation.

b) Apportionment of infrastructure costs

20. The apportionment of infrastructure costs, for which the Council emphasized the need in its resolution of 20 October 1966, is a corollary to the harmonization of conditions

of competition. It is, however, an independent measure.

A complete solution of this problem in the form of a common financial system for the use of infrastructure can only be reached when the surveys and studies which the Member States and the Commission are currently carrying out are complete. The Commission however considers that it will shortly be possible to introduce partial measures on the basis of the first results, which will permit action to be taken in this field without prejudging the ultimate solution.

The Commission's ideas on this matter and its programme are given in the annex to this memorandum. A first series of measures concerns the harmonization of motor vehicle taxes, a survey of the situation as regards the covering of infrastructure costs in inland water transport and provisional standardization of accounts of transport infrastructure expenditure. These measures would need to be followed by harmonization of the rates of motor vehicle taxes and supplemented by a review of the purposes of specific taxation in transport and, where appropriate, common rules on the use made of the proceeds of such taxation.

c) Rules on competition

21. The Commission proposal of 4 June 1964⁽²⁸⁾ makes rail, road and inland water transport in principle subject to the rules of Regulation No. 17 pursuant to Articles 85 and 86 of the Treaty. But in view of the special features of the transport sector it exempts certain classes of agreements. The Commission did not consider this first list of exemptions as exhaustive. It recommended an enquiry into the situation regarding transport cartels with a view to supplementing the list as necessary and to the requisite adjustment of competition rules to the needs of common transport policy.

The Member States felt that such an enquiry was superfluous. They had sufficient information to be able to discuss the whole problem. In these circumstances, and as an enquiry would be a lengthy matter — though this was acceptable at the time when the proposal was submitted — the Commission considers that the examination of the proposal should be continued without delay and in particular that the list of exemptions should be supplemented as necessary on the basis of information supplied by the Member States.

⁽²⁸⁾ See footnote No. 17.

The proposed measures would help appreciably to eliminate the possibility of abuse of dominant positions. Naturally the list of exemptions must not be lengthened so far as to defeat the purpose of the proposal.

d) Access to the market

22. The measures on access to the market in road and inland water transport have two features:

- 1) Control of capacity;
- 2) Conditions for admission to the trade of carrier.

It has been seen from comments in the preceding section that supervision of capacity is vitally important for the proper functioning of the market in general and for the elimination of the causes of uneconomic competition in particular.

The general scheme for capacity control must be in keeping with the spirit of the common transport policy, which is designed to create a transport market governed by competition. Capacity control must not consist of a set of rules intended to replace the play of competition and to bring about an arbitrary distribution of traffic between the modes of transport. It should on the contrary be used to allow market forces to bring about the economically desired effects. Capacity control should therefore create conditions which enable an acceptable balance between supply and demand to be ensured. Hence it should prevent the occurrence both of excess capacity and of deficiency.

This objective can be achieved by the introduction of a system of licences which should not be economically restrictive. The details of such a system must be adapted to the special features of road and inland water transport.

23. For goods traffic by inland waterway the Commission will submit a proposal to the Council on the basis of its memorandum of 22 June 1966⁽²⁴⁾ taking into account the studies made in accordance with the Council resolution of 20 October 1966. This proposal will concern both inland and international transport.

24. For goods traffic by road the Commission will also submit a proposal to the Council as soon as possible. This proposal will concern inland transport. It will supplement the draft regulation on the establishment of a Community quota which the Council has already approved⁽²⁵⁾.

25. The Commission considers that the future Community system of capacity control can be introduced only gradually in view of the present fundamental differences between the national regulations. In this way it is hoped to avoid disturbances and allow transport firms time to adjust themselves to the new situation. This is particularly true in all cases when prevailing regulations are applied restrictively.

26. It is inadvisable however for the Council to wait until it has approved capacity control for inland road haulage before bringing into force the regulation establishing a Community quota for goods traffic by road between the Member States. In this way the problem of capacity control will be solved for international transport. This should help towards the solution of rate problems in this type of transport.

27. The Commission will submit, concurrently with its proposals for capacity control, proposals concerning conditions for admission to the trade of carrier.

In order to make these measures as effective as possible (since their purpose is to ensure the suitable selection of candidates for the trade of carrier) efforts should also be made in vocational training. In addition it will be necessary to promote the rationalization of management methods, notably by standardizing accounting systems.

Finally, the concentration and co-operation of firms should be promoted by suitable measures, in particular the elimination of tax obstacles. In this way they will be made more competitive and their position in the market will be more stable.

As the national situations differ in these matters, Community solutions can only be introduced gradually.

28. According to Article 75(1 b) of the Treaty the Council must lay down the conditions for admission of non-resident carriers to the trade before the end of the transition period.

In the proposals which the Commission is to submit to the Council to regulate access to road and inland water transport this requirement will be taken into account. The introduction of Community regulations for access to the market in its various forms will assuredly facilitate the solution of this problem.

⁽²⁴⁾ Doc. SEC(66) 1983.

⁽²⁵⁾ See footnote No. 9.

B. Measures concerning rates

29. By making it possible to eliminate the main causes of abuses of dominant positions and in particular uneconomic competition, the measures just mentioned considerably narrow the scope of the measures concerning rates which caused disagreement in the Council. This is true at least where these disagreements concerned the system of reference rates. For private contracts and the publishing of rates, on the other hand, appropriate solutions will have to be sought in the framework of the rates system itself.

a) Reference rates system

30. As regards the reference system it would be possible under the body of regulations envisaged to dispense with the general obligations provided for in Article 3(2) of the amended Commission proposal of 27 October 1965.

In the agreement of 22 June 1965 these obligations essentially concerned railways and were aimed at restraining them from indulging in practices which could lead to uneconomic competition. It would seem that this could be largely effected by the above-mentioned measures which do not concern rates. It may be thought that these measures can be applied, at least in part, between now and the time when reference rates are extended to this form of transport. The exceptional risks which might still arise then can be dealt with by selective and temporary measures.

As regards the other forms of transport, measures not relating to rates and, in particular, appropriate rules concerning access to the market, will largely suffice to prevent abuses.

31. Freedom to apply maximum and minimum rates exceptionally and temporarily should be maintained.

The possibility of imposing maximum rates would be limited to rail transport alone.

The abuse of dominant positions in road and inland water transport would be prevented by appropriate rules on competition.

The proposed widening of the range of means to combat uneconomic competition makes it possible considerably to reduce the scope of the imposition of minimum rates. In fact, up to the present, this means of intervention has been the only possible remedy against such competition. From now on it would need to be applied only exceptionally.

As regards the imposition of minimum rates we must distinguish two cases of uneconomic competition mentioned in the preceding section ⁽²⁶⁾:

Uneconomic competition arising from over-capacity;

Uneconomic competition resulting from uneconomic behaviour by transport enterprises.

In the case of uneconomic competition brought about by over-capacity, it should be open to the authorities temporarily to fix minimum rates for all or a part of the market where this occurs. But the exceptional nature of this measure requires that the authority competent to control capacity should formally state, giving its reasons, that the means of controlling capacity have been exhausted.

When transport firms act in an uneconomic manner, the authorities will intervene by imposing minimum rates after complaints have been received from competing firms in the country concerned or in other Community countries.

In order to check whether such a complaint is justified and to decide on the measures to be taken, the competent authorities will need to be empowered to examine the accounts of the firm complained of. Such an examination would be directed particularly to the relation between the rates applied by the firm and its real costs.

If it is found that the behaviour of the transport firm concerned has been uneconomic the authority will be able to fix minimum rates. In general cases these measures would cover all transport by the carrier concerned or a specific operation. In specific cases they could be replaced by the obligation to ensure a reasonable balance between rates and costs.

The imposition of minimum rates both in the case of uneconomic competition arising from over-capacity and in that of uneconomic competition arising from unbusinesslike behaviour on the part of carriers does not rule out prior or *post facto* authorization of private contracts where appropriate.

If they have a bearing on the Common Market the exceptional and temporary tariff measures must fit into a Community procedure similar to that laid down for safeguard measures ⁽²⁷⁾. In other cases notification to the Commission will suffice.

Selective and temporary action on rates may differ according to the mode of transport.

It should be noted that the need for such measures will diminish as arrangements outside the field of rates begin to produce their effects.

⁽²⁶⁾ See sec. 14.

⁽²⁷⁾ See secs. 35, 36.

The progressive introduction of these arrangements will modify factual situations on the transport market. It is with this in mind that the Commission has proposed that the regulations should be reviewed by the Council at regular intervals. The Council would be able to take account of lessons learned and of changes in the situation resulting from the introduction of permanent arrangements not concerned with rates.

These new arrangements would make it possible to drop Article 10 of the amended draft regulation on rates of 27 October 1965, which was one of the major points of disagreement in the Council.

32. From a more general angle it may be asked whether in order to maintain balance the abandonment of the obligations concerning price formation under the reference rates system, which in the first stage applies only to international waterway traffic, does not require relaxation of the system planned for the other forms of transport. Such relaxation could take the form of an earlier extension of reference rates to certain rail and road traffic.

For this purpose it would seem advisable that the Council should re-examine, at regular intervals and in the light of lessons learned during the preceding period, the situation of the categories of traffic which would continue to be subject to compulsory rates.

b) Special contracts

33. The divergences which appeared in the Council concerning the system for special contracts were largely of a technical nature. It will be possible to overcome them if agreement is reached on the central problems which have just been examined.

The Commission may adopt the opinion of the majority of Council members which leaves carriers the choice between prior approval and *post facto* justification of the contracts they have concluded. It considers that a liberal approach of this kind is necessary not only for practical reasons but also because it is fair. Care must be taken not to impose on carriers subject to compulsory rates an excessively rigorous system in comparison with reference rates.

c) Publishing of transport rates and conditions

34. The Commission has throughout stressed the importance it attaches to adequate publicity for transport rates and conditions. It considers this an essential element both in the general organization of the transport market and in the prevention of discriminatory practices.

The arrangements proposed by the Commission already aim at ensuring wide publication but it would seem advisable to strengthen them further. It becomes even more urgent to ensure satisfactory market transparency if obligations on rates are eased, as proposed above.

After the discussions which have taken place only one important point is still outstanding i.e. publishing the name of the carrier.

Taking into account the experience of ECSC in this field there is one approach which could lead to agreement. As regards inland transport, during the alignment phase at least, Member States could at their discretion make known or not make known the identity of the carrier. For transport between the Member States the carrier's name would not be published but merely communicated by the responsible authorities to interested parties at their request.

C. Safeguard measures

35. The above-mentioned measures to establish a common transport policy will create a Community market organization based on the principle of competition. This organization must include precautionary measures to meet residual risks which can distort competition, particularly during the phase of alignment of national policies. Furthermore, if the national authorities were to be competent to take such measures, Community criteria would have to be prescribed. But the exceptional and temporary measures would also be fitted into a Community procedure.

This system is based on the assumption of an expanding economy. It does not allow sufficiently for situations in which this condition would be lacking, and particularly for a general recession. Although it would be going too far to base all the regulations for the common transport system on the possibility of a recession, and thus to jeopardize the effectiveness of this system in a period of expansion, it would nevertheless be imprudent not to provide against such a situation. The Commission has therefore proposed that the Member States be empowered, by a safeguard clause, to take appropriate measures to meet such situations.

The Commission believes that these measures should be based on the same principles as those proposed for the organization of the market and for exceptional action against residual risks. The criteria and the procedure would be of a Community nature.

36. The safeguard clause has two objects:

- a) To remedy serious disturbances resulting from the general economic trend;
- b) To ward off grave disturbances which the application of the Community transport market arrangements might entail.

The situations which must be faced are thus of the same nature as those referred to in Article 226 of the Treaty. In defining both the content and the procedure of this safeguard clause the best approach would therefore be to follow the provisions of the said Article.

As the problem of a safeguard clause arises for both the rate systems and for the regulations on access to the market and, where applicable, to other fields, it would seem advisable to incorporate in each of these regulations the same model clause, which could be drawn up when the rates systems are being discussed.

The wording of Article 25 of the amended proposal for a regulation on rates should therefore be reviewed in the light of the above considerations.

D. Market supervision

37. The proposed Transport Market Supervision Committee may be thought of either

as a body with general competence or as a specialized body for rate systems whose role would be progressively expanded. It seems unlikely that the disagreement which emerged on this point will prove intractable.

The concept of such a body, which was envisaged in the first proposal for a regulation on rates submitted by the Commission in 1963, was developed in the agreement of 22 June 1965 as one of the elements of the new rates system. This is why the Commission, in its amended proposal of 27 October 1965, provided for the setting up of a Market Supervision Committee empowered exclusively to deal with rates, although it was not ruled out *a priori* that the Committee's competence might not later be extended to other fields.

Since it is now envisaged to put into effect certain co-ordinated measures in the different fields of common transport policy, the Commission can indicate its preference for the immediate establishment of a Market Supervision Committee with general powers. This Committee will be able to assist the Commission in its task of supervising the transport market, observing the effects of the various measures and making suggestions for their application in the different fields.

As provided for in the agreement of 23 June 1965 and again in Article 19 of the Commission proposal of 27 October 1965, this Committee will have an advisory role.

V. PROGRAMME

38. We have seen from the foregoing considerations that neither the general aims and guidelines of the common transport policy nor the few measures already taken to establish it are called in question. The same is true in principle of the Council agreement of 22 June 1965, which must however be applied in a new perspective. So far the development of the common transport policy has been subordinated to an agreement on rate systems. From now on measures unconnected with rates will determine the scope and content of the rules relating to transport rates and conditions.

With this new approach it is possible to lay down a practical programme focused on a twofold priority. Priority is given to the rules applicable to transport between the Member States, on the one hand, and to measures intended to normalize market conditions i.e. harmonization of the conditions of competition and regulations on access, on the other.

39. The priority given to rules on transport between the Member States must not be interpreted as meaning that the common transport policy could be limited merely to a system governing such traffic and that this is all that would be necessary to ensure the proper functioning of the industrial and agricultural common market. On the contrary, the establishment both of the common transport market and of the common industrial and agricultural market requires the application of common rules covering the whole transport sector. This priority is however justified by the fact that Article 75 of the Treaty lays down that the common rules for international transport shall be adopted before the end of the transition period. As far as transport is concerned the Treaty fixes time-limits only for these measures and for the admission of non-resident carriers to the trade.

The discussions to which the Commission proposals gave rise showed that broad agree-

ment already existed in this respect in the Council. From the angle of the overall solution set out above, and without waiting for all the measures to be decided on in every detail, there should be no reason for the Council not to put into force in the near future the main regulations on transport between Member States both as regards rates and access to the market. Moreover the essential measures concerning commercial traffic between the Member States must come into force on 1 July 1968 at the same time as the customs union and the agricultural common market. This is in keeping with the idea of gradual implementation characteristic of Community action in other fields.

40. But there are other sectors in which measures concerning transport between Member States and within individual Member States must be introduced shortly. Some of these measures have to be adopted and applied without delay. Others should be agreed to immediately but may be implemented later.

The decision of 13 May 1965 already provides for harmonization of the chief arrangements affecting competition and lays down the timetable for them.

Partial solutions are envisaged as regards infrastructure costs.

As to application of the rules on competition, it should be possible to reach agreement rapidly on the Commission's proposal and in harmony with the considerations set out above.

The Commission will submit proposals on capacity control and conditions of admission to the trade as regards goods transport both by road and inland waterway.

41. In the light of these considerations the Commission submits to the Council the following programme, which has two phases:

A. First phase

42. The first phase should be implemented immediately and not extend beyond 31 December 1969 (the end of the transition period). However, in this initial phase certain measures which are essential for transport between Member States will have to be taken in good time to come into force by 1 July 1968 (date of the establishment of customs union and of the common agricultural market).

a) Harmonization of conditions of competition

i) Adoption and putting into effect of proposals already submitted to the Council in pursuance of the decision of 13 May 1965;

ii) Adoption of proposals for the further application of this decision with the exception of the arrangements set out in sec. 44 below.

b) Apportionment of infrastructure costs

Adoption of proposals for transitional measures (harmonization of the structures of taxes on commercial vehicles and first alignment of taxes on vehicles and fuel; examination of the contribution of inland water transport firms to infrastructure costs; provisional normalization of the accounting of infrastructure costs).

c) Rules on competition

Adoption and putting into effect of the proposed regulation of 4 June 1964 if necessary after completing the list of exceptions.

d) Access to the market

Road transport

i) Final adoption by the Council and putting into effect on 1 January 1968 of the draft regulation on a Community quota and the adjustment of bilateral quotas;

ii) Adoption of a draft regulation (to be submitted shortly by the Commission) concerning access to the transport market and laying down:

a) Goods transport capacity control measures at national level;

b) Conditions for admission to the trade;

c) Conditions for the admission of non-resident carriers to the transport market in a Member State.

iii) Adoption of draft directives on the removal of restrictions on establishment.

Inland water transport

i) Adoption and putting into effect of a regulation (shortly to be submitted by the Commission) concerning access to the transport market and laying down:

a) Capacity control measures for goods;

b) Conditions for admission to the trade;

c) Conditions for the admission of non-resident carriers to the transport market in a Member State.

ii) Adoption and putting into effect of directives concerning the removal of restrictions on establishment.

e) Rate systems

Adoption and implementation on 1 January 1968 of the measures laid down for the first stage by the agreement of 22 June 1965 for transport between Member States incorporating the changes proposed in the present memorandum, in particular:

a) Abolition of any limitation in the reference rates (abandonment of Article 3, sec. 2 (2 and 3) and of Article 10 of the amended proposal of 27 October 1965);

b) Introduction of provisions to allow exceptional and temporary arrangements on rates ⁽²⁸⁾;

c) Widening of the system governing publication to allow the name of the carrier to be communicated (change in Article 15 of the amended proposal of 27 October 1965);

d) Adjustment of the general safeguard clause ⁽²⁹⁾ (Article 25 of the amended proposal of 27 October 1965).

f) Market supervision

Adoption and putting into effect of a regulation (shortly to be proposed by the Commission) providing for the establishment of a supervisory Committee competent for the application of all regulations to be drawn up in connection with the implementation of the common transport policy.

43. The execution of the programme proposed for the first phase would make it possible to define the main lines of the common transport policy and to apply important measures either to the whole transport sector (harmonization, apportionment of infrastructure costs, rules of competition) or to traffic between Member States only (rules on rates and on road capacity). As regards regulations on access to the market, if these were also adopted during this first phase they would nevertheless not come into force until the second phase. This would be done jointly with the development of the rate system in

transport between Member States and its extension to inland transport, the content of which it largely determines.

B. Second phase

44. In this phase, which will begin on 1 January 1970 and last for three years, the rate system will be completed by the implementation of common rules on inland transport and by the development of those applicable to transport between the Member States. Furthermore the regulations on access to the market adopted during the first stage would be implemented, and harmonization of the conditions of competition and the definition of the common financial system for the use of infrastructure would be completed.

a) Rate system

Implementation of the arrangements laid down for the second stage by the agreement of 22 June 1965 taking into account the proposals in the present memorandum concerning the reference rates system and in particular the exceptional and temporary intervention measures ⁽²⁸⁾.

b) Access to the market

Implementation of the regulations on access to the market in inland road and water transport.

c) Harmonization of conditions of competition

Implementation of the remaining provisions of the decision of 13 May 1965, i.e.:

Harmonization of the rules governing financial relations between railway undertakings and the States;

Social provisions applicable to railways.

d) Apportionment of infrastructure costs

Definition of the common financial system applicable to the use of infrastructures (in this context final harmonization of taxes on vehicles and fuels).

⁽²⁸⁾ See sec. 31.

⁽²⁹⁾ See sec. 35.

ANNEX

PROGRESS OF INFRASTRUCTURE COST STUDIES

1. At its session of 28 July 1966 on transport questions, the Council was informed by the Commission that the pilot study would be delayed about a year and a half. The Commission added that this delay was due both to the complexity of the subject, the full scope of which could not be foreseen, and to the circumstance that the French Government, whose help with the pilot study the Commission had requested as early as 1 June 1965 had not been able to give its assent until 6 April 1966.

It will be even less possible to make up the lost time as it became apparent immediately after the decision of 13 May 1965 that the schedule laid down by the decision of 22 June 1964 was too tight.

2. The most important consequence of the delay in carrying out the pilot study is that the report on the general results of the enquiry and the study on the way costs are to be met, which the Commission was to submit to the Council before 30 June 1968, and the discussion of which should have made it possible to decide the principles and details of the future financial system for the use of infrastructures, cannot be drawn up before the end of 1969.

Faced with this situation, and being anxious to mitigate as far as possible the negative effects of the postponement of a final solution to a too remote date, the Commission had already informed the Council on 28 July 1966 that it was studying the possibility of intermediate solutions which would make some headway with the apportionment of infrastructure costs without waiting until all the results of the different surveys were available.

The statements of certain Council members at the session of 28 July 1966 confirmed the Commission in its resolve to endeavour to seek new approaches for the solution of the infrastructure costs problem and thus to effect a better balance between measures in the various areas of common transport policy. This point of view was further corroborated by the general trend of the discussions in the Council session of 19-20 October 1966 and by the resolution adopted on their conclusion.

3. After obtaining the opinion of the Committee of government experts assisting it in studies of transport costs, the Commission concluded that the negative effects of the delay in various infrastructure costs studies could

in fact be attenuated to some extent by adopting partial measures.

Although the financial system for the use of infrastructures can only be fully defined on the basis of all the studies called for by earlier Council decisions, i.e. the record of expenditures for 1966, the pilot study and the studies on special cases, it would appear that the material which will be made available by the studies actually in progress — the record of expenditures and the pilot study — will suffice for partial but significant measures to be worked out.

4. Such measures must satisfy the following conditions:

In the first place, saving exceptions, they must be based on the results of the studies in hand. They cannot therefore be formally proposed by the Commission and agreed to by the Council until the results of these studies, which are due to be concluded by 31 December 1967, are available.

In the second place, they must fit into the future financial system governing the use of infrastructure.

Thirdly, they must as far as possible not prejudice this system i.e. they must leave open the choice between the solutions defined by the Council in Annex 3 to its decision of 13 May 1965.

Fourthly, the measures in question must contribute towards aligning the conditions of competition between the three types of transport and within each type.

On the basis of these criteria the Commission informs the Council of its intention to continue study of the possibility of partial measures in certain fields where it is urgent to clear up a confused situation and to adopt equitable and economically sound solutions.

5. Before going on to examine possible measures a few further remarks should be made to define the scope of this study.

Obviously there can be no question of defining forthwith and in every detail how the measures in question will be applied. Such detailed procedures can only be laid down in the light of the studies at present going on. Any other approach would be likely to lead to solutions without any

solid foundation and whose practical effects it would be impossible to appraise.

Thus, until such time as the indispensable figures are available, the examination which the Commission can carry out at the present stage can only deal with the general lines of approach and with the principles which may be adopted later.

6. One final point of a general nature is worth fuller discussion.

There is no common solution to the problem of apportioning infrastructure costs which can be put into effect at a stroke of the pen. Present situations are so far removed from the final objectives in this field that they call for a long transition stage during which the situations both as between the different modes of transport and the different countries should be gradually brought into line.

It is this need which explains the gradualness of the action described in detail in the following paragraphs. This approach can best be illustrated by the example of road transport but it also applies *mutatis mutandis* to inland waterways.

For road transport the first measure would be harmonization of vehicle taxes. This would be a useful beginning to a common solution of the problem of apportioning infrastructure costs for this sector but it would have to be followed, at more or less close intervals, by other measures.

The second measure — which could usefully be preceded by a first alignment of rates — would be to unify the rates of tax on vehicles and fuels.

These two measures would need to be supplemented by a new definition of the role of specific taxation and, where appropriate, common rules on the purposes to which the proceeds of such taxation are applied.

We thus see that, beginning with the most urgent problems, we proceed gradually to the most complex questions of substance, and that the solutions found for each of these problems fit into a general concept and lead up to the definition of a coherent policy.

7. Following the general guidelines and in the framework thus defined, the Commission has put in hand a study of the following problems which could be covered by a first batch of measures.

a) *Harmonization of taxes on commercial vehicles*

It is noted that the present structures of these taxes vary greatly from one country to another. There can be no doubt that this state of

affairs is likely to distort conditions of competition.

Apart from being very different from country to country the present structures seem to take only very small account of the relationships between the costs occasioned by the various categories of vehicles, particularly heavy and very heavy lorries.

The pilot study will supply the necessary data for an appraisal of the factors to be taken into account in the wear and tear of road surfaces. In particular it will give precise information on the influence of axle loads in this respect. On the basis of this information it should be possible to fix a tax structure more in keeping with the relationship between the costs caused by vehicles of different categories and which will help towards greater neutrality of conditions of competition as between the different modes of transport.

Harmonization on these lines should take into account the incidence of fuel taxes. It is possible that by approaching the matter from this angle new prospects for a solution of the problem of weights and dimensions will be opened up and discussion of this question placed in a more clearly economic context.

It must be emphasized that the harmonization of structures cannot be separated from standardization of the bases of assessment of motor vehicle tax. According to Article 2 of the Council decision of 13 May 1965 on the harmonization of certain arrangements affecting competition in transport this must be done by 1 January 1968.

Harmonization of tax structures would only be a first stage on the way to complete harmonization of the systems of tax and specific dues in road transport as explained in paragraph 6. It must be supplemented by harmonization of the rates of vehicle and fuel taxes which also vary greatly from one country to another. Paragraph 8 below deals with this point.

b) *Review of the situation of inland waterways as regards the covering of infrastructure costs*

As things stand at present internal waterways seem to be the type of transport which makes the smallest contribution to bearing its infrastructure costs. This situation poses specially grave problems from the angle of competition between modes of transport, since the chief competitors of inland waterways, the railways, in principle bear all their infrastructure costs.

We may, of course, consider that things are different in practice, since the railways gener-

ally run at a loss and the State, which covers this loss by subsidies, thereby bears part of the infrastructure costs. At present it is difficult to decide this question clearly because the railways also bear public service and other obligations for which, according to the Council decision of 13 May 1965 on the harmonization of conditions of competition, they must be compensated by the public authorities.

Whatever our opinion on the present situation there is no gain-saying that implementation of the harmonization decision will gradually oblige the railways to bear all their infrastructure costs under the arrangements for the financial autonomy of this mode of transport. It therefore seems appropriate to tackle forthwith the problem of inland water transport by the same gradual process.

It should be stressed that great caution is called for in this field particularly. Any substantial increase of the proportion of infrastructure costs borne by inland water transport would be likely to cause considerable disturbances and thus raise more problems than it would solve. This is specially true of a large number of waterways on which traffic is very small.

The measures to be taken, whose principles and details must be carefully studied, will consequently have to allow both for the need for very gradual application enabling inland water transport to adapt itself to the new situation and for the divergent positions according to countries and also according to the technical features and traffic of the various waterways. The enquiry into expenditure in 1966 and into the proceeds of tolls will supply the necessary factors for this appraisal.

It is of course clear that these measures must include harmonization of ratios between the contributions of the different types of vessels.

It should finally be pointed out that the Commission considers the solution discussed here preferable to granting the railways compensation for the extra infrastructure charges they are assumed to bear in comparison with waterways. Apart from the disputes which such a solution would certainly provoke, particularly as regards calculation of compensation, its effect would be to make the State bear the same charge twice, once in the form of compensation to the railways, and the second time by meeting waterway infrastructure charges.

c) Provisional normalization of the accounting of infrastructure expenditure

Council decision No. 64/389/CEE requires the Commission to submit by 30 June 1968

proposals for the introduction of permanent and uniform arrangements in the accounting of infrastructure expenditure and receipts.

Although this time-limit is not affected by the delay in carrying out the pilot study, the Commission thinks it would be appropriate to stipulate that, beginning in 1968, there should be uniform accounting for infrastructure expenditure following a simplified plan. Such a measure would make reliable figures available in a short time, whereas the final accounting system could hardly be introduced before 1970 in view of the time required both for the Council decision and for preparations to give effect to it in the different countries.

The simplified scheme of presentation would, of course, accord with the structure of the final system which would merely be broken down into greater detail.

The early introduction of accounting arrangements is particularly advantageous in connection with the partial solutions shortly planned for various problems, in particular in inland water transport. It would make available basic data in relation to which the solutions chosen could be adapted or adjusted as might prove necessary.

8. The Commission considers that the measures outlined above would remedy certain particularly unsatisfactory situations and would help to prepare the general financial system to be applied to the use of infrastructures.

However, it would seem advisable not to stop at these initial measures and to put in hand forthwith a study of the measures to be taken at later stages, at least for road transport. In this way the Council will have a fuller picture of future action in this field and this may facilitate solution of the problem of rate systems and access to the market.

Action would then proceed gradually as follows:

a) In the first stage rates of taxes on vehicles and fuels would be finally harmonized.

The progress of studies on infrastructure costs will provide the necessary background for this measure;

b) In the following stages two problems of fundamental importance for policy regarding the financial system for the use of infrastructures will have to be solved.

First, the exact part played by the specific taxation of transport will need to be defined. Should taxation be simply an instrument for charging for the use of infrastructures or should it also serve other ends?

Secondly, the question should be examined whether and to what extent receipts of all kinds arising from charges for the users of roads and inland waterways should be employed to finance expenditure on upkeep, operation and investment. Such use of

funds, the principle of which seems to be logical in any rational concept of the financial system for infrastructure utilization, and which moreover would have considerable practical and psychological advantages, could be introduced gradually.

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