

Public questionnaire for 2018 Evaluation of Consortia Block Exemption Regulation

Fields marked with * are mandatory.

Introduction

Background and aim of questionnaire

Consortia are agreements between liner shipping carriers for the joint operation of maritime transport service. The Consortia Block Exemption Regulation, Commission Regulation 906/2009 ("Consortia BER"), sets the specific conditions under which certain consortia agreements can benefit from exemption to Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") in accordance with Article 101(3) TFEU. These conditions aim at ensuring that consumers enjoy a fair share of the resulting benefits. The current Consortia BER will expire on 25 April 2020.

The current Consortia BER is based on the enabling Council Regulation 246/2009 which provides that, in accordance with the provisions of Article 101(3) TFEU, the Commission may, by way of Regulation, exempt consortia agreements from the application of Article 101(1) TFEU, for a period limited to five years but with the possibility of prolongation.

This public questionnaire represents one of the methods of information gathering in the evaluation of the Consortia BER, which started in May 2018. In order to assess the impact and relevance of Consortia BER, the specific purpose of this questionnaire is to collect views and evidence from the public and the stakeholders on the following criteria: Effectiveness, Efficiency, Relevance, Coherence and EU added value. The collected information will provide part of the evidence base for determining whether the Consortia BER should be left to expire or prolonged (and if so, under which conditions).

The responses from this consultation will be analysed and the summary of the main points and conclusions will be made public on the [consultation website](#).

Nothing in this questionnaire may be interpreted as stating an official position of the European Commission.

Submission of your contribution

You are invited to reply to this public consultation preferably by answering the questionnaire online. To facilitate the analysis of your replies we would kindly ask you to keep your answers concise and to the point. You may include documents and URLs for relevant online content in your replies.

Alternatively, you can send your contribution by email to the following functional mailbox: COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu.

For your information, you have the possibility to save your questionnaire as "draft" and continue replying later. In order to do this you have to click on "Save as Draft" and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access again and continue replying to your questionnaire.

Duration of the consultation

The consultation on this questionnaire will be open for 12 weeks from 27/09/2018 to 20/12/2018.

Privacy and Confidentiality

In the responses to this questionnaire the identity of the stakeholder should be clearly indicated in the section "Stakeholder's profile". If available, the ID number of the EU [Transparency Register](#) should also be provided.

* Publication Privacy Setting

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ☒ **Anonymous** - Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- ☐ **Public** - Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ * I agree with the [personal data protection provisions](#).

Stakeholder's profile

1. You are replying:

- ☐ As an individual in your personal capacity
- ☒ In your professional capacity on behalf of an organisation

4. a) Country of residence

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece

- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Other
- ☒ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom

5. Name of organization

6. a) Type of organization:

- ☐ Company
- ☐ Professional consultancy, law firm, self-employed lawyer/consultant
- ☐ Research and academia
- ☒ Nongovernmental organisation or association
- ☐ International, national, regional or local public authority
- ☐ Other

7. a) Type of company:

- ☐ Carrier
- ☐ Shipper
- ☐ Freight-forwarding company
- ☐ Logistics company
- ☐ Port authority or port services provider
- ☐ Other

8. Is your organisation included in the Transparency Register?

- ☐ Yes
- ☐ No

If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

9. Please describe the activities of your organisation.

250 character(s) maximum

Section 1: Effectiveness

Consortia are cooperation agreements between carriers and, where concluded between competitors, may potentially fall under Article 101 TFEU. Carriers are therefore required to assess whether their cooperation agreements are compliant with Article 101 TFEU. For that purpose the Consortia BER may provide guidance.

10. a) Do you consider that the Consortia BER provides high level of legal certainty?

☐ Yes

☒ No

10. b) Please explain.

1000 character(s) maximum

Container shipping alliances having far-reaching impact on the whole maritime transport system and its stakeholders – direct or indirect (ports, feeder operators, freight forwarders, hauliers). (...) is concerned that BER has not been closely adhered to in recent years in view of significant developments in the industry and the modes of cooperation among carriers. Both vertical and horizontal integration has impact on the market which no longer means port-to-port maritime transport service but more often door-to-door service. The joint operations and exchange of information on services relating to land side of the supply chain give alliances the opportunity to collude.

11. a) Please estimate the level of legal certainty provided by the Consortia BER on the following issues:

	Very high	High	Intermediate	Low	Very low	I don't know
Market definition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Capacity adjustments in response to fluctuations in supply and demand	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The concept of highly integrated consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall compliance with competition law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The right to withdraw and notice period for members' exit from consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

11. b) Please explain the reasons for your rating.

1000 character(s) maximum

Rating based on analysis of experts confirmed in every day practice by our members

12. a) Based on your experience, to what extent does self-assessment of a consortium's compliance with EU competition law rely on instruments other than Consortia BER that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

	Very high	High	Intermediate	Low	Very low	I don't know
Horizontal Guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Article 101 (3) TFEU Guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Specialisation BER	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EC decisional practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

12. b) Please explain the reasons for your rating.

1000 character(s) maximum

13. a) Does the Consortia BER encourage types of cooperation that are not efficient or do not benefit customers?

☒ Yes

☐ No

13. b) Please provide examples and explain how prevalent they are.

1000 character(s) maximum

New alliances contributed to: decrease of service frequency, less direct port calls, worsening schedule reliability, longer waiting times, less market choice, declining competition (fewer carriers using the same ships), declining visibility. General feeling of our members is that carriers taking advantage of their dominant position to undercut with success freight forwarders (often eliminating them) by for example charging demurrage to merchants who arrange transport as merchant haulage, offering preferential conditions - waiving demurrage charges - for clients when arranging transport as carriers haulage. Another example is that very often containers in merchant haulage are neglected in favour of shipping line dedicated containers as far as container terminals operations are concerned. In recent years free time periods have been reduced and tariffs for demurrage/detentions have increased considerably. In this context worth to mention FMC investigation

14. a) Conversely, does the Consortia BER discourage any practices that would be efficient and benefit customers?

- ☒ Yes
☐ No

14. b) Please provide examples and explain how prevalent such types of cooperation could be.

1000 character(s) maximum

Relatively limited competition on price among individual lines offering in fact the same undifferentiated service when using the same ships, ports of call, terminals. Comments on merchants haulage as per point 13.b) also applies.

15. a) In your experience, do members of the same consortium compete between themselves in terms of prices or certain types of services?

- ☒ Yes
☐ No

15. b) Please explain.

1000 character(s) maximum

As per 14.b. there is limited competition on price as a result of less differentiation in services . Basic freight rates are a relatively small part of the total cost of freight. There is overwhelming plethora of freight surcharges and fees which constitute big proportion of total costs of the freight. Many surcharges are not transparent and it is very difficult to link them with the actual costs borne by carriers. Some of them are charged for the services treated in the past as the standard (on-time delivery, guaranteed port calls). They can be considered as some kind of differentiation however the multitude of surcharges/fees makes very difficult for customers to be compared and assessed if users (finally customers) are benefitting from transport efficiency from alliances. The lack of transparency applies to recent surcharge mechanism as per IMO 2020 sulphur cap implemented by some lines well in advance i.e. already as from 1st Jan 2019.

Section 2: Efficiency

16. Does the compliance with Consortia BER generate costs? Would you be able to quantify them (in absolute value as well as relative value, i.e. percentage of your annual turnover)? Please explain.

1000 character(s) maximum

17. a) In your view, if the Consortia BER were not prolonged and self-assessment would rely on other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101 (3) Guidelines, the Specialisation BER and EC decisional practice) would the costs of compliance increase?

☒ Yes

☐ No

17. b) Please explain and provide estimate of the change in compliance costs.

1000 character(s) maximum

Answer 17a based on the point of view of carriers

Section 3: Relevance

18. What were the major trends and changes in the liner shipping industry in the past 5 years?

1000 character(s) maximum

- strong market consolidation
- limiting potential choice for customers incl. disappearance of smaller carriers
- lack of competition in the aspect of price and rendered services
- despite overcapacity artificial limiting shipping possibilities in order to force the increase of freight rates
- unjustified freight surcharges (example – peak season surcharge/peak season recovery surcharge) – not connected with changes of costs – being in fact oblique/hidden form of the freight increase
- dominance of megaships (with all negative impact including congestion)
- unsatisfactory standard of service including schedule reliability
- strong reliance of carriers on IT (risk of cyberattacks and their consequences on counterparts)
- further vertical & horizontal integration and stronger attempts to eliminate freight forwarders (not only in handling FCL traffic but quite recently also LCL consignments)

19. a) Have you noticed any or more of the following changes to the consortia landscape in the past 5 years:

	Significant increase	Moderate Increase	Stable	Moderate decrease	Significant decrease	Don't know
Number of consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of carriers operating outside consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of members in individual consortium	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Capacity deployed by individual consortia	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

19. b) Please explain.

1000 character(s) maximum

Rating as above reflects general trend.

20. a) What were the effects of the developments you identified in response to 3.1 and 3.2 on competition in the liner shipping sector on:

	Significant increase	Moderate Increase	Stable	Moderate decrease	Significant decrease	Don't know
Prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Choice of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Quality of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

20. b) Please explain.

1000 character(s) maximum

Reflected in the report of ITF, Review of Maritime Transport 2018, different reports of experts, as well as individual opinions of our members.

21. a) Are you aware of types of cooperation between carriers that are not covered by the Consortia BER?

☒ Yes

☐ No

21. b) If yes, please describe them and assess how prevalent they are.

250 character(s) maximum

22. a) Do carriers cooperate in joint purchasing (e.g. port services, inland transport, feeder transport)?

☒ Yes

☐ No

22. b) If yes, is such cooperation prevalent? Please explain

1000 character(s) maximum

23. What would you expect to be the effects in case the Consortia BER would not be prolonged? Please illustrate with concrete examples.

23. a) Effects on your organisation

1000 character(s) maximum

23. b) Global or industry effects

1000 character(s) maximum

In case Consortia BER would not be prolonged does not mean the end of alliances. The problem remains regarding the exchange of data having an impact on competition - the extent to which carriers can exchange data have to be restricted. From our members point of view freight forwarding industry would benefit from improved services, more transparent freight costs mainly freight surcharges/fees being in a position to offer better standard of services to their customers.

24. a) BERs are exceptional instruments. Considering that only very few industries have a sector-specific BER applying to them, do you consider that liner shipping presents such unique characteristics that require a sector-specific BER?

☐ Yes

☒ No

24. b) Please explain.

1000 character(s) maximum

EC policy is aiming to phase out all sector-specific block exemptions. We can not see any justification to maintain BER for liner shipping which has to be subject to the same rules that apply to other sectors.

Section 4: Coherence

25. a) Based on your experience, is the Consortia BER coherent with other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

- ☐ Yes
☒ No

25. b) Please explain.

1000 character(s) maximum

BER as a exceptional instrument is sector specific – see comments point 24.b).

Section 5: EU added value

26. a) Does the Consortia BER have added value in the assessment of the compatibility of consortia with Article 101 TFEU compared to, in its absence, self-assessment based on other instruments that provide guidance on the interpretation of Article 101 TFEU?

- ☐ Yes
☒ No

26. b) Please explain.

1000 character(s) maximum

Final comments and document upload

27. If there anything else you would like to say which may be relevant for the evaluation of the Consortia BER, feel free to do so.

1000 character(s) maximum

Assumption that consortia guarantee benefits for their clients and final consumers have not been confirmed. In every day practice our members experience very progressive and deepening process of market imbalance carried out at the cost of shippers, freight forwarders and logistic operators. Our members raise concern re the way the carriers operate more and more often in direct competition to freight forwarders: taking the advantage of data that have to be provided in order to meet regulatory requirements to the great detriment of freight forwarders, - as the result of increased activity of the carriers in extending into freight forwarding sector (there is a suspicion that some with the subsidies from governments). If the block exemption is extended for the next 5 year period EC should gain more power over alliances in analogy to FMC decisions in order to regulate container shipping lines and protect other service providers from the greater power of alliances.

28. If you wish to attach relevant supporting documents for any of your replies to the questions above, feel free to do so.

The maximum file size is 1 MB

Contact

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