

EVALUATION ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE EVALUATION/FC	Evaluation of Consortia Block Exemption Regulation
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	COMP – F1 – HT.5252
INDICATIVE PLANNING (PLANNED START DATE AND COMPLETION DATE)	<i>Start date:</i> Q2 2018 <i>End date:</i> Q4 2018
ADDITIONAL INFORMATION	http://ec.europa.eu/competition/sectors/transport/legislation_maritime.html

The Roadmap is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the document, including its timing, are subject to change.

A. Context, Purpose and Scope of the evaluation

Context

Liner shipping services consist of the provision of regular, scheduled maritime cargo transport on a specific route. They require significant levels of investment and therefore are regularly provided by several shipping companies ("carriers") cooperating in "consortia" agreements. Consortia can lead to economies of scale and better utilisation of the space of the vessels. A fair share of the benefits resulting from these efficiencies can be passed on to users of the shipping services in terms of better coverage of ports (improvement in the frequency of sailings and port calls) and better services (an improvement in scheduling, better or personalised services through the use of more modern vessels, equipment and port facilities).

Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") prohibits agreements between undertakings that restrict competition. However, Article 101(3) TFEU allows declaring such agreements compatible with the internal market provided they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits. The Commission has been granted by Enabling Regulations of the Council the power to make such declarations with respect to certain types of agreements. Such declarations are made by the Commission through measures known as Block Exemption Regulations ("BERs").

The first Consortia Block Exemption Regulation ("Consortia BER"), Commission Regulation 870/95, was adopted in 1995 (on the basis of the then enabling Council Regulation 479/92) and has since been prolonged and amended 4 times. The current enabling Council Regulation 246/2009 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 with the possibility of prolongation. Accordingly, the Commission has adopted the current Consortia BER, Commission Regulation 906/2009, which sets the specific conditions for the Article 101(3) exemption of consortia agreements. These conditions aim at ensuring that consumers enjoy a fair share of the resulting benefits. The Consortia BER will expire on 25 April 2020, and the proposed evaluation is scheduled to be finalized before the expiry date.

In the years since the introduction of the first Consortia BER, the Commission has progressively repealed all maritime-specific competition legislation and guidelines as part of the general policy of harmonising competition rules and replacing sector-specific rules with measures (BERs or guidelines) providing general guidance on the application of Article 101 TFEU. Today the Consortia BER is the only remaining maritime-specific competition measure. Furthermore, in recent years, given the challenging economic context, the liner shipping industry has been undergoing a significant process of

consolidation. Some carriers exited the market, merged or cooperate in increasingly larger consortia and some continue to cooperate in smaller consortia. Under such circumstances, the question arises of the continued relevance of the Regulation.

Purpose and Scope

The purpose of this evaluation is to assess whether in view of the general policy of harmonising competition rules and considering the major developments in the liner shipping industry in recent years, the Consortia BER is still relevant and delivering on its objectives, and whether it is doing so in a coherent, effective and efficient manner, creating EU added value. This evaluation will inform the decision of whether to let it expire or prolong it and if so, under which conditions. Allowing the Consortia BER to expire would not mean that consortia agreements would become unlawful, but that they would be examined under the general rules on competition just as cooperation agreements in other sectors.

The criteria that the Commission will apply in its evaluation of the current Consortia Block Exemption Regulation are:

Effectiveness: considering the major developments in the industry, does the Consortia BER still facilitate economically efficient cooperation that also benefits consumers?

Efficiency: what is the effect of the Consortia BER on costs? Does it help undertakings to cut costs or conversely does it increase compliance costs? Which policy option would cause less burden or complexity?

Relevance: is the Consortia BER still relevant considering the major developments in the industry and the modes of cooperation between carriers?

Coherence: Is the Consortia BER coherent with the general policy of harmonising competition rules and replacing sector-specific rules with measures (BERs or guidelines) providing general guidance on the application of Article 101 TFEU?

EU added value: what is the added value of the Consortia BER considering the Commission's measures of providing general guidance on the application of Article 101 TFEU?

B. Better Regulation

Consultation strategy

The Commission will collect evidence and views from stakeholders in order to assess whether the Consortia BER is effective, efficient, coherent with other competition policy measures, still relevant and creating EU added value.

The main stakeholders identified are the carriers, their clients (shippers and freight forwarders) and their associations. Other interested parties whose input will be of value are industry analysts, academics, and law firms specialising in competition law and the maritime sector. The views of the competition authorities of the Member States will also be sought.

In this respect, a 12 weeks public consultation will be launched in Q3 2018 on the Commission's central [public consultations page](#) and a dedicated webpage on the website of the Directorate General for competition. The questions will be published in the three working languages of the Commission (French, German and English) while replies will be welcome in any of the 23 official EU languages. The contributions made to the public consultation will be published on the consultation webpage in the languages they were submitted.

In addition, targeted questionnaires will be sent to the major stakeholders.

Furthermore, a meeting with the competition authorities of the Member States will take place.

A synopsis report summarising all consultation activities' results will be published on the consultation pages once all consultation activities are closed.

An evaluation Staff Working Document will be published in Q4 2018.

Data collection and methodology

The evaluation of the effectiveness, efficiency and relevance of the Consortia BER requires an examination of the state of the industry and modes of cooperation between carriers. The Commission had already gathered significant information on the liner shipping industry in the previous review of the Consortia BER in 2013/14. Up-to-date information on the industry can be found in industry specialised publications. Additional information will be collected from stakeholders in the public consultation and through targeted questionnaires. Specifically, stakeholders will be asked to estimate the costs associated with the Consortia BER as opposed to a baseline without it.

The assessment of the coherence and EU added value of the Consortia BER requires the examination of its relationship with measures (Block Exemption Regulations or guidelines) providing general guidance on the application of Article 101 TFEU such as the [Horizontal guidelines](#), the [Article 101\(3\) guidelines](#), [Specialisation Block Exemption Regulation](#).