

Consultation strategy for the evaluation of Consortia Block Exemption Regulation

1. Background information

Liner shipping services consists of the provision of regular, scheduled maritime cargo transport on a specific route. They require significant levels of investment and therefore are normally provided by several shipping companies ("carriers") cooperating in "consortia" agreements. Consortia generally lead to economies of scale and better utilisation of the space of the vessels. A fair share of the benefits resulting from these efficiencies should 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 CBER, 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.

2. Consultation scope and objectives

The purpose of the consultation is to assess the impact and relevance of Consortia BER in view of the general policy of harmonising competition rules and in view of the major developments in the liner shipping industry in recent years, and determine whether it should be left to expire or prolonged (and

if so, under which conditions). Allowing the Consortia BER to expire would not mean that consortia agreements become unlawful. It would only mean that they will be examined under the general rules on competition just as cooperation agreements are examined in other sectors.

The objective of the consultations is to obtain information on the following evaluation criteria and questions:

- **Effectiveness:** Does the Consortia BER provide legal certainty for economically efficient type of cooperation that also benefits consumers?
- **Efficiency:** what is the effect of the Consortia BER on costs and to what extent? Does it help undertakings to cut costs or conversely does it increase compliance costs? Is it causing more or less burden or complexity than other policy options?
- **Relevance:** is the Consortia BER still relevant considering the major developments in the industry and the modes of cooperation between carriers? Is the Consortia BER relevant compared to other instruments that provide guidance on the interpretation of Article 101 TFEU to cooperation agreements (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?
- **Coherence:** 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)?
- **EU added value:** 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?

3. Mapping of stakeholders

The purpose of the consultation is to collect evidence and views from stakeholders in order to assess the impact and relevance of Consortia BER and provide an evidence base for determining whether it should be left to expire or prolonged (and if so, under which conditions).

The main stakeholders are the carriers, their clients (shippers and freight forwarders), port operators and their respective associations. The highest level of interest can be identified with the carriers, who apply the Consortia BER, followed closely by the interest of their clients, who enjoy the passed-on benefits, but are also exposed to any potential competition law issues caused by consortia.

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.

4. Consultation activities, accessibility and indicative timing

A 12 weeks public consultation will be launched in Q3 2018 on the Commission's central [public consultations page](#) as well as on 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 language they were submitted.

In addition, restricted targeted questionnaires will be sent to the main stakeholders (including carriers, clients and their associations).

The criteria for the selection of the stakeholders as well as information on the selected stakeholders and the stakeholder groups they belong to will be published on the consultation page. Furthermore, a meeting with the competition authorities of the Member States will take place.

Once consultation activities are closed, a report of their results will be published on the consultation pages. An evaluation Staff Working Document will be published in first half of 2019.

5. Consultation webpage

For the consultation questionnaire and more information on the evaluation process can be found on the consultation webpage.