

Summary report for the evaluation of the Consortia BER

I. Introduction

The purpose of this document is to publish factual information on the input received from stakeholders in the context of the evaluation of the Consortia Block Exemption Regulation (“Consortia BER”).¹ This document should be regarded solely as a summary of the contributions made by stakeholders and cannot in any circumstances be regarded as the official position of the Commission or its services.

II. Consultation activities and information sources

A. Public consultation

Following the publication of a Roadmap in May 2018, the Commission ran an online Public Consultation on Commissions’ website for legislative initiatives as well as on the designated website of DG COMP from 27 September to 20 December 2018. The launch of the consultation was accompanied with a press release.² In addition, informative emails were sent to several associations of carriers, shippers, and port operators, which had previously contacted the Commission and expressed interest in the evaluation, inviting them and their members to partake in the consultation.

The Commission received 32 responses to the public consultation, of which 5 were from carriers, 10 from their customers (6 from shippers, 2 from logistics companies, 1 from a freight-forwarding company), 4 from port authorities or port service providers and 13 who self-categorized themselves as none of the above.

B. Targeted consultation

In October 2018, the Commission prepared targeted questionnaires to the groups of most concerned stakeholders: the carriers, their customers and ports. The Commission sent 71 questionnaires in total (61 to shippers and freight-forwarders and their associations, 6 to carriers and their associations, and 4 to ports and their associations). The Commission received 14 responses from shippers, 3 from ports and 4 from carriers.

C. Other consultation activities

The Commission received 7 submissions in the form of position paper not responding specifically to a questionnaire.

¹ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256, 29.9.2009, p. 31–34.

With the Treaty of Lisbon (effective as of 1 December 2009) the Article 81 of the Treaty establishing the European Community (TEC) became Article 101 of the Treaty on the functioning of the European Union (TFEU); it will hereinafter be referred to as Article 101 TFEU.

² Link to the press release: http://europa.eu/rapid/press-release_IP-18-5921_en.htm (last accessed 3 December 2018).

Summary report for the evaluation of the Consortia BER

The Commission also participated in a number of stakeholder conferences and accepted all requests by stakeholders for meetings.

III. The results of the consultation activities

The views expressed in the responses to the consultation can be generally divided into two groups. The first group includes the views expressed by the shipping companies (“carriers”), the vessel owners and their associations. The second group includes the views expressed by customers of liner shipping services (shippers and freight forwarders) and their associations supported by ports (terminal operator and port authorities) and their associations.

The view of carriers, vessel owners and their associations

Carriers, vessel owners and their associations consider that the Consortia BER is still effective; it provides the necessary legal certainty that facilitate the formation of consortia, a type of cooperation that allows carriers to achieve economies of scale, cuts costs, rationalise and improve their services. They are of the view that consequently customer enjoy lower prices and better services.

They consider that the Consortia BER is an efficient measure as it helps reducing legal costs. It is still a relevant measure because there are dozens of consortia operating in the EU that benefit from it.

The Consortia BER is coherent with other instruments of competition law and policy and carries an important added value because it provides guidance that is specific to the liner shipping industry.

The carriers, vessel owners and their associations support the prolongation of the Consortia BER.

The views of customers, ports and their associations

Customers, ports and their associations are of the view that the Consortia BER is not effective; they consider that it does not provide them with legal certainty and that consortia, most notably the large global alliances, have an adverse effect on the quality of services to customers and the on operation of ports. Consequently, the Consortia BER is also not an efficient measure because it encourages consortia that through their adverse effect on services and the operation of ports, lead to increased cost for customers and ports.

They also do not consider the Consortia BER to be relevant anymore. Firstly, it is not relevant to the alliances whose market shares are above the ceiling set in the Consortia BER. Secondly, the industry has significantly changed since the Consortia BER was adopted with much higher level of concentration.

Summary report for the evaluation of the Consortia BER

They consider that the Consortia BER grants special treatment to the liner shipping industry although that industry does not present special features that would justify it and it is therefore incoherent with the general competition regime. The general competition regime provides carriers with sufficient guidance to organise their modes of cooperation and therefore the Consortia BER has no add value.

The Customers of liner shipping services, ports and their associations are of the view that the Consortia BER should be allowed to expire or prolonged with significant amendments.

IV. Next steps

The Commission is now assessing in detail the contributions to the public consultation and will publish its analysis in a Synopsis Report that will be made public in due course together with a staff working document on the results of the Commission's Evaluation of the Consortia BER.