

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

The Hellenic Competition Commission

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

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

The Hellenic Competition Commission is the authority responsible for the enforcement of Greek law 3959 /2011, "Protection of Free Competition", as well as of Articles 101 and 102 of the TFEU.

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

Consortia BER is a valid regulation on which liners' agreements are based such as alliances and consortia. Without the Consortia BER Regulation, such agreements should be illegal.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall compliance with competition law	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The right to withdraw and notice period for members' exit from consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

1000 character(s) maximum

Market: There is no reference to the geographic dimension of the relevant market. The precise definition of the geographic market of liners is complicated as it depends on the definition of the geographic market of container terminal services, e.g. the route N. Europe - N. America cannot be considered as a relevant market. The precise definition includes the trade between the specific rival terminals.

Share: The share calculation depends on the relevant market definition. A problematic market definition leads to a problematic market shares' calculation.

Information: Article 3(4a). The Regulation permits the use of a computerised data exchange system.

Adjustments: Article 3(2).

Highly integrated: p. 1(3).

Compliance: The threshold of 30% is bigger than the threshold of other horizontal affected markets (20%).

See case M. 7908 - CMA CGM/NOL p. 34.

Right to withdraw: There is a reference p. 2(11). Details are included in consortium's agreements.

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 type="radio"/>
Article 101 (3) TFEU Guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specialisation BER	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
EC decisional practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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

There are authors who argue that alliances and consortia have increased the delivery time of cargo due to the large size of ships (cf. Haralambides, 2017; ITF, 2018). Moreover, there is not any empirical evidence concerning the benefit of consumers (shippers).

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

Alliances and consortia not only may be a barrier to entry, but they also have the power to redefine upstream and downstream relevant markets. New bigger terminals are developed, while small are forced to change use or to close (e.g. ECT Home - City Terminal (Rotterdam), Amsterdam Container Terminal). Concerning the downstream market, a whole category of medium size ships remains obsolete, affecting mostly the owners who hire vessels to liner operators. There is no evidence that any efficiencies gained have passed to the shippers (directly or indirectly). On the contrary, shippers are always complaining about the liners' practices.

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

There isn't any empirical evidence, but the practices of the liners as described in case AT. 39850 (7.7.2016) show that competition does not work.

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

Not applied.

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

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

1) Concentration: Fewer and bigger liner companies and alliances in terms of capacity and throughput. Three alliances are operated by the eight largest container carriers of the world, represent 80% of throughput and 95% of the total ship capacity on East-West trade lanes, where the major containerized flows occur. The market share of the biggest carrier is 19% and the top four carriers accounted for 60% of the global container shipping market in 2018. On many trade lanes, market shares of carriers is even larger (ITF, 2018), 2) Bigger and high technology container terminals in terms of equipment and information technology, 3) Mega-ships of 20,000 TEUs capacity, 4) Horizontal mergers and equity vertical integration between liners, terminals and inland networks.

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of carriers operating outside consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of members in individual consortium	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capacity deployed by individual consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

19. b) Please explain.

1000 character(s) maximum

There is no specific research about consortia. Concerning the alliances, there is a significant decrease as only three alliances are operational since 2017: 2M (Maersk, MSC, Hyundai), Ocean Alliance (Cosco/OOCL /CSCL, CMA CGM/APL, Evergreen) and THE Alliance (Hapag-Lloyd/UASC, ONE (K Line, MOL, NYK), Yang Ming). Concerning the number of members in individual alliance, there is no significant change. The main change concerns the increase of liners' size, mainly via mergers, in absolute and relative terms of throughput and capacity. Such a concentration leads to the use of less container terminals by mega ships.

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 type="radio"/>	<input checked="" 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

Prices: Absence of a complete empirical research. Price for shipper = freight + THCs. Containerised freight rates have halved over the last two decades. In addition to basic freight, liners apply other surcharges, very often not transparent, such as fuel surcharges, congestion fees etc. In most markets, surcharges represent a very significant addition to base rates and sometimes even a higher proportion of total costs compared to base rates. In 2009, surcharges accounted for more than 50% of the total freight charged to customers (ITF, 2018). Additionally, THCs are increasing since October 2008 (Kollia and Pallis, 2018). Finally, shippers, which have seen their bargaining power to decrease, keep complaining about the practices of liners since 90s (see relevant EC cases and publications).

Choices and quality of services: See shippers' interviews (ITF, 2018).

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

1. The common entry of alliance partners in terminals' operation, e.g. Rotterdam World Gateway, Antwerp International Terminal.
2. The liners' practices as they described in case AT. 39850.

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

Concerning the cooperation in port services see the previous answer.
Concerning the cooperation in feeder transport see ITF (2018) p. 53.

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

Not applied.

23. b) Global or industry effects

1000 character(s) maximum

If the Consortia BER will not be prolonged, the market structure will be forced to conform to the new conditions. Big liner companies will be forced to operate separately and therefore to compete each other. Medium size ships will be on demand and mega ships will be obsolete. More terminals will be used. Shippers may be forced to have agreements with more liners, as liners' global character will be restricted. New entries may be occurred in individual trades.

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

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

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

Many mergers have taken place during the last period (e.g. M. 8120 HAPAG-LLOYD/UASC, M. 8330 - MAERSK LINE/HSDG, M.8594 - COSCO SHIPPING/OOIL) and only three alliances are operational since 2017.

References:

1. ITF, 2018, The Impact of Alliances in Container Shipping.
2. Haralambides, H. 2017, Globalization, public sector reform, and the role of ports in international supply chains. *Maritime Economics & Logistics* 19, 1-51.
3. Kollia S. and Pallis A., 2018, Vertical integration vs. notified vertical mergers in container terminals. The Jean Monnet symposium on the future of the European port policy, Chios, Greece

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

COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu
