

# 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](mailto: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

4. b) If Other, please specify which country:

United States of America

5. Name of organization

The Institute of International Container Lessors

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

6. b) If Other, please specify type of your organization:

Trade association

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

IICL is the leading trade association of the container and chassis leasing industry. IICL's members lease marine cargo containers and chassis to vessel operators and other organizations on an international basis.

## 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

Currently no as it pertains to intermodal equipment procurement.  
Concerned that joint procurement of intermodal equipment could limit equipment availability to customers.

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Market share calculation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Exchange of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capacity adjustments in response to fluctuations in supply and demand	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The concept of highly integrated consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Overall compliance with competition law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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

Legal certainty for intermodal equipment procurement is unclear as the same equipment is regularly utilized by individual carriers in both EC and other trades.

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*

Self-assessment as it pertains to intermodal equipment procurement is unclear as the same equipment is regularly utilized by individual carriers in both EC and other trades.

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*

Current BER regulations, with current BER market share thresholds, do not encourage cooperation that would have an adverse impact on customers or adverse impact of cost efficiencies on BER consortia members.

Intermodal equipment is currently acquired through purchase or long-term leases, usually 3 to 8 years in length, by individual BER participants for customer use in the carrier's worldwide services and is not restricted to BER services. Therefore, current BER regulations have not had an adverse impact on equipment availability to customers.

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*

Current BER regulations allow intermodal equipment to be acquired through purchase or long-term lease by individual BER participants for customer use in the carrier's worldwide services and is not restricted to BER services. Therefore, current BER regulations have not had an adverse impact on equipment availability to customers.

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*

In IICL member experiences, BER members of the same consortium compete between themselves on transportation prices and certain other services including intermodal equipment availability. The availability of individual BER consortium members' intermodal equipment in varying types and sizes is a competitive service feature unique to each carrier and their customers.

## 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*

N/A

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*

Administrative monitoring costs could increase.

## 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*

The liner shipping industry has gone through dramatic changes during the last 5 years, including the demise of Hanjin Lines, a major liner carrier, the consolidation of liner carriers due to mergers/acquisitions, and the evolution from 4 vessel sharing agreements into 3 Global Alliances with cross/slot charter arrangements among members of different alliance members.

The combination of the above changes has resulted in more efficient operations and ample availability of individual carrier services, including intermodal equipment, while remaining within the current BER guidelines.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capacity deployed by individual consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



19. b) Please explain.

1000 character(s) maximum

The consolidation of liner carriers, the evolution of 4 vessel sharing agreements into 3 Global Alliances and the cross/slot charter arrangements among/between competing BER consortia members as well as outside carriers of different alliance members has increased the concentration of the liner trades.

The near-term impact from the combination of the above changes is more efficient vessel operations and ample availability of individual carrier services, including intermodal equipment, while remaining within the current BER guidelines.

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 type="radio"/>	<input checked="" type="radio"/>
Quality of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

20. b) Please explain.

1000 character(s) maximum

Effects from consolidation for intermodal equipment procurement is unclear as individual liner carriers utilize the same equipment in both EC and other trades.

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

Response provided in IICL's Supporting Document (due to character limit)

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*

Response provided in IICL's Supporting Document (due to character limit)

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*

N/A

23. b) Global or industry effects

*1000 character(s) maximum*

It is expected that if the BER would not be prolonged, the potential monopsonic impact on intermodal equipment providers by individual ocean carriers would grow due to structural consolidation in the EC trades and other subsequent world trade lanes. It is further expected that if the BER would not be prolonged, a dramatic cascading effect would occur in global the container liner trades as a structural consolidation comprised of joint ventures, carrier consolidations and dissolutions would likely occur on a worldwide basis. Individual carrier identities and service offering would be curtailed.

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*

Response provided in IICL's Supporting Document (due to character limit)

## 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*

Response provided in IICL's Supporting Document (due to character limit)

## 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*

Response provided in IICL's Supporting Document (due to character limit)

## 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*

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

**f305b47a-be87-48de-b635-819dd052d70d/EC\_9062009\_Consortia\_BER\_IICL\_Consultation\_Response\_-\_Supporting\_Document.pdf**

## Contact

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

---