

# Public questionnaire for 2018 Evaluation of Consortia Block Exemption Regulation

Fields marked with \* are mandatory.

## Introduction

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### 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

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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

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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

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

7. a) Type of company:

- ☒ Carrier
- ☐ Shipper
- ☐ Freight-forwarding company
- ☐ Logistics company
- ☐ Port authority or port services provider
- ☐ 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.

## 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

Under EU competition law concept, self-assessment is a key element to determine whether the requirements under Article 101(3) of the Treaty are fulfilled. For a huge scope consortia such as 2M alliance, OCEAN alliance or THE alliance, it takes long time to discuss the scope and therefore it will not be time intense to explain to DG Comp. about the detailed cooperation of the project.

For a consortia in particular trade, there will be significant number of cooperation between different carriers (particular small size or regional carriers) which requires said cooperation to be effective within limited time and get legal certainty. DG Comp. might not have sufficient man power to review/discuss self-assessment for said consortia. Meanwhile cost and time will be small consortia carriers' burden as well.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The concept of highly integrated consortia	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall compliance with competition law	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The right to withdraw and notice period for members' exit from consortia	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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11. b) Please explain the reasons for your rating.

1000 character(s) maximum

Within existing Consortia BER, it is clear what sort of information can be exchanged, market share threshold or market concentration and the right/condition to withdraw from the consortia.

In recent cases in various jurisdiction, liner shipping market will be divided into two different categorizes in normal dry container and reefer container as reefer container can't be replaced by a dry container.

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

Whether Horizontal Guidelines, Article 101(3) TFEU Guidelines or EC decisional practice, they all provide significant guidance on how to prepare a proper self-assessment to comply with EU competition law requirements. Although self-assessment is an important deed under EU competition law, there could still be some risks that cooperation might have improper interpretation to above mentioned guidance and mislead self-assessment to wrong conclusion.

It is very common in the market to joint operate maritime transportation services with competitors. As a carrier, (...) believe BER will be the best solution for all carriers who wish to cooperate with competitors for consortia, particularly a small or medium size carrier.

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



From (...) prospective, Consortia BER will less likely to encourage cooperation which is not efficient because said BER may set up certain conditions for consortia to qualify for exemption under EU competition law. If there is no efficient to service operation, we do not see the need to set up consortia.

If consortia aims not to benefit customers, we might interpret that it shall benefit to carriers or otherwise there is no need to form a consortia. Assuming there is benefit to carriers, carriers will adopt Article 101(3) of the Treaty to fight for their best interest even if there is no effective BER exists. Therefore we do not see BER will bring negative impact to encourage consortia which is not benefit 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*

(...) regard Consortia as a legal certainty under EU competition law.

Any exempted practice must have been reviewed and shall not bring negative impact to efficient and benefit to customers. Furthermore BER must have some conditions for consortia to fulfill in entertaining legal certainty.

With such legal certainty protection, carriers will not hesitate to form consortia to provide efficient maritime transportation operation.

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*

The answer is affirmative.

Consortia members always compete in the market, particularly in pricing. For example, (...) alliance members will offer same service rotation and transit time in the market. If members do not compete pricing in the market, why customers choose one carrier rather than others?

On top of that, consortia members only cooperate in vessel operation. To encourage customers to choose your service, consortia must also offer better commercial terms, e.g. extended free time, or differential service, e.g. e-commerce, to attract customers to work with you.

Therefore (...) do not see why consortia members shall not compete with each others since the service might almost be the same in the same consortia.

## Section 2: Efficiency

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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*

Certainly there will be costs whether to comply with BER or under self-assessment process since compliance always costs to make sure if consortia relevant activities falls within BER or self-assessment scope.

With consortia BER, carrier may simply follow the rules as long as market share falls below threshold and what (...) Compliance Team will only need to monitor consortia activities as per BER. Any cooperation beyond BER exemption requested by consortia members will be rejected without compromise.

It is relatively difficult to quantify them as we deploy many resources to ensure our compliance with various competition law regimes.

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*

The answer is affirmative.

If there is no BER, carriers will go for self-assessment. From time to time, consortia members might wish to cooperate closely and that they might be achieved their goal via enhanced self-assessment. From (...) experience, some aggressive members might strongly demand to fight for it if there is no BER as the red line can't be drawn by DG Comp.

Being prudent, carrier might also need to engage external council assist to review self-assessment and bring them to DG Comp. for further discussion. DG Comp. might need to deploy more man powers for the potential enquiry.

## Section 3: Relevance

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18. What were the major trends and changes in the liner shipping industry in the past 5 years?

*1000 character(s) maximum*

(...) used to offer maritime transportation service alone in the market as we believe we may maintain our service quality well if we can control vessel operation by ourselves.

Things have changed since liner shipping market no.1 and no.2 team up as an alliance. In that case, size becomes an important factor to survive in the market and (...) has to join an alliance (...) to prevent from being knock out from the market.

Of course liner shipping alliance will reduce our operation costs but it is inevitable to reduce (...) service level in the market. For example, (...) fleets H&M insurance policy cover any General Average expenditure falls under (...) millions which is the highest in the world because we believe to declare GA will only cause unnecessary problems to our customers. After joining alliance, we find out no other carriers will have similar coverage like us because of different mentality. Therefore we did declare GA several times in the last few years.



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

19. b) Please explain.

1000 character(s) maximum

Due to liner shipping alliance, numbers of consortia reduced significantly because alliance members prefer to work with each other as they share same principles in vessel operation.

Only regional or feeder carriers will work outside of alliance but they might still work with individual alliance member for niche market or small feeder port service.

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

Liner shipping alliance will reduce operation costs significantly and expand service network with existing resources. Therefore pricing will significantly decrease unless demand is higher than demand in the market.

Most of global carriers have participated in 3 major alliances and organize service with major transit time or comprehensive service network. Nevertheless the vessel numbers do not reduce after all so the choice of services shall be stable to the end.

As explanation in 18, quality of service depends on how you original service quality is. If you are offering better service in the market and your consortia member offer worse service than yours, then your quality of services will be decreased. But if you were offering worse service than your consortia member, then your quality of services might increase. It depends.

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

To (...) best understanding, 2M alliance and OCEAN alliance are not covered by existing Consortia BER due to both alliances market share have exceeded 30%. Other than 2M alliance and OCEAN alliance, all consortia must be benefit from BER.

22. a) Do carriers cooperate in joint purchasing (e.g. port services, inland transport, feeder transport)?

☐ Yes

☒ No

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*

From (...) alliance prospective, (...) do not qualify for Consortia BER because of BER threshold. Scale-wise alliance members will certainly deploy sufficient resources to engage external council to prepare self-assessment and exchanges views with DG Comp.. Nevertheless BER represent a legal certainty to consortia /alliance if the threshold might increase to reflect the market trend.

Another benefit is BER may clearly identify what can't be done within liner shipping alliance.

Other than (...) alliance, (...) also works with some regional or feeder carriers as different consortia. Without effective Consortia BER, it will certainly increase costs to prepare self-assessment as well as legal uncertainty in said consortia.

23. b) Global or industry effects

*1000 character(s) maximum*

Competition authorities in many jurisdictions look after DG Comp. policy as their competition law enforcement consideration. However legal systems in different jurisdictions are varied from EU legal system, e.g. Merchant Shipping Law might allow Vessel Sharing Agreement and Competition Law, which is enforced later than Merchant Shipping Law, might have co-opetition.

From industry prospective, BER will allow small/medium size carriers to work with each other to compete with super-size carrier. More carriers exist in the market will only improve market competition. Anyhow there are less and less carriers trading in the market because of industry consolidation.

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*

Approximately 90% international cargo will be shipped via liner shipping, Whether major ports, e.g. Rotterdam, Antwerp or Hamburg, or niche ports e.g. Malta or Ghent, will have shipping demand. It is not feasible for carriers to offer direct services to niche ports. In some countries, governments might offer subvention to carriers to offer service the niche market. Regional or feeder carriers may only survive with partnership with major carriers. Without Consortia BER, it will be difficult for regional or feeder carriers to offer said service.

Without BER, regional carriers might be forced out of the market if there is no legal certainty protection for them to partnership with competitors.

## Section 4: Coherence

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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*

Yes.

## Section 5: EU added value

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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*

With Consortia BER, we may simply follow the conditions listed within BER and clearly draw a line for (...) staff to follow.

Without BER, we have to access all other instruments to prepare self-assessment and it takes time and costs to prepare for it. Furthermore we might need to engage external council to work out a proper self-assessment in order to protect our position.

## Final comments and document upload

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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*

Consortia doesn't equal to alliance to (...). Other than (...) alliance, we also have consortia with regional carrier, e.g. X-Press or Unifeeder. While considering if Consortia BEO shall be prolonged or not, regional carriers' position must be taken into consideration as well.

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

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