

Commission Evaluation Roadmap on Consortia Block Exemption Regulation

Comments submitted by:

Assarmatori (EU Transparency Register numbers, **223802233480-26**) the Italian shipowners' association that unites a large part of shipping companies – including liner shipping members - which maintain regular shipping services in Italy,

and

Federagenti, the Italian National Federation of maritime ship-agent which operates throughout the Country through 16 local associations that cover all 144 Italian ports.

Wishes to submit its feedback on the Consortia BER through its below comments:

1. Premises:

- The Consortia Block Exemption Regulation (hereinafter Consortia BER), as provided by Commission Regulation 906/2009, will expire on 25 April 2020.
- The Commission evaluating its impact and relevance in order to determine whether it should be prolonged and, if so, under which conditions.
- Stakeholders have been invited to submit feedbacks during a consultation period that ends on 20.20.18.

2. Consortia has helped the whole transportation industry to grow and to secure an efficient and sustainable service.

Via the Commission Regulation (EC) No 870/95, the Commission has firstly recognised the efficiencies created by consortia agreements and, subject to certain conditions, has block exempted them.

Consortia BER, promotes efficiency-enhancing operational cooperation between liner shipping companies by providing a clear, simple and flexible legal framework for the adoption and alteration of such arrangements with minimal compliance costs.

Consortia has addressed so far, a permanent and consistent capacity for a large part of maritime regular services despite economical disruptions and seasonal variation in merchandize size.

It has been clear that no liner will be able to be as big as to be able to sustain the massive request of capacity for each of its services. There being, Consortia BER has made it possible for carriers to align their services offering joint-services or making available extra capacity via vessel sharing agreement to customers.

The advantages of a Vessel sharing agreement (VSA) are widely regarded and it has been a matter of fact that they do not impact competition because players act via completely independent commercial and marketing efforts without coordinating or creating alignments on price. Small carriers survive the competition only because of these such agreements and this – once again – enhances the competition level in the market and not vice versa.

In turn, allowing carriers to reduce costs, has been made it possible for costumers to find a wider spectrum of services, services that would otherwise not have existed because of the average level of costs and reduced margins due to international competition on freight.

The very same wording of the current Consortia BER states that *“Consortia... generally help to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They also help to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity.*

In 2009 and 2014, the Commission clearly recognized that *“the justifications for a block exemption for consortia are still valid and the conditions on the basis of which the scope and content of Regulation (EC) No 906/2009 were determined have not substantially changed.*

It is worthy to recall that Council Regulation 246/2009 sets out the related aims to:

- (I) Achieve economies of scale,
- (II) Allow the EU shipping industry to be globally competitive,
- (III) Reduce costs and improve quality,
- (IV) Ease undertakings to cooperate in an economically desirable way while ensuring that customers receive a fair share of the benefits.

Assarmatori and Federagenti strongly believes that there is no viable and logical reason that should indicate to the Commission that a change in this solidly effective maritime policy is needed under the present and/or the expected market conditions.

3. The Commission criteria of the evaluation roadmap

The Commission asked stakeholders to have a say on the main question: is the Consortia BER still relevant and delivering its original objectives?

Assarmatori and Federagenti would like to briefly draw the Commission’s attention to the following issues:

- a) VSA and consortia would have been quite impossible if Consortia BER had not been renewed. It is true that, not extending the Consortia BER does not mean that VSA and Consortia became unlawful. They will need to be examined under the terms of the general rules. As we know, 101(3) of the Guidelines are generally applied. When applied to a certain circumstance or case at hand, the guidelines need to be applied with reasonableness and flexibility. As such, they should not be said to have the same status as the Consortia BER, which as we know, governs certain types of cooperation specific to liner shipping.
- b) In turning to Article 101(3) of the Guidelines, a self-assessment of cost efficiencies requires that undertakings “calculate or estimate the value of the efficiencies and describe in detail how the amount has been computed.” This is a thorough self-assessment required by every member of every consortium such that it must meticulously show the benefits to consumers and beneficial increases for any increases in compliance costs as alternatively anything showing less would be detrimental to efficiencies gained.
- c) VSA has eased and coordinated common policies among members with the benefit of customers around the globe. Compliance costs – particularly for small companies joining the Consortia or the VSA along with large liners – have maintained low costs which will increase dramatically if there is not a Consortia BER extension.
- d) VSA and Consortia have maintained the industry in a fragmented manner¹. Among the Assarmatori members, are operators with a limited number of vessels who clearly survive and (also) because some VSA or slot charter agreements are in place with other liners.
- e) Not extending the Consortia BER, would cause great disadvantage for the EU based companies when compared to other major jurisdictions².

¹ Large liners as MAERSK CMA CGM, COSCO, MSC and Hapag-Lloyd individually have a marginal part of the world's fleet capacity. Combined, they have around 60% of the world's fleet capacity leaving the other nearly 40% to small operators.

² Most jurisdictions, including the US and China, have regulatory systems in place to guarantee that certain VSAs will not be subject to ex-post antitrust

4. Counterfactual analysis

Despite the undisputed importance of ascertaining what would have occurred if Consortia BER would not have been implemented, the Commission merely focuses on the effectiveness. Assarmatori believes that the Commission, in its assessment, should pay particular attention to investigating a counterfactual analysis.

It is, in fact, self-evident, that if the block exemption had not been in place, a different and definitely worse scenario would have been common-place in today's liner maritime world.

5. Conclusion

Consortia BER ensures:

- (i) Effectiveness among members which clearly benefits consumers;
- (ii) Raised efficiency of the involved operators enabling them to work much more economically.
- (iii) Resounding relevance since the consolidation seen in recent years does not show that the model is surpassed, particularly for those small companies which compete with large liners.
- (iv) Taken together, Article 101 TFEU and the Specialisation Block exemption agreement, simply do not give the same level of clear guidance, legal protections or certainty as does the Consortia BER.
- (v) There is not an alternative form of cooperation that could achieve the same efficiencies of Consortia BER.

Assarmatori and Federagenti thereby, firmly believes and supports an extension of the Consortia BER for another five-year period, beyond its anticipated expiration date in 2020.

Assarmatori and its Members, in particular its Liner shipping Members, along with Federagenti, are both looking forward to having a meaningful dialogue with the EU Commission and all relevant stakeholders throughout this review process.

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