

Institute of International Container Lessors's (IICL) Supporting Document to the Commission's public questionnaire for the evaluation of EC 906/2009 Consortia Block Exemption Regulation

This is a supporting document to the IICL's responses to the 2018 public questionnaire for the evaluation of the Consortia Block Exemption Regulation ("Questionnaire"). Responses to the questions below are intended to be read in conjunction with the IICL's consultation responses in the main Questionnaire form.

Commission's Questionnaire Question	IICL response (continued from Questionnaire form)
<p>21(a) Are you aware of types of cooperation between carriers that are not covered by the Consortia BER?</p> <p>21(b) If yes, please describe them and assess how prevalent they are.</p>	<p>In the EC-US liner trades slot charter, vessel sharing, and slot exchange agreements are filed with the US Federal Maritime Commission and are made publicly available for viewing. The following 6 agreements, and potentially more, are currently in effect, totalling a maximum of more than 500,000 slots annually which provide additional carrier service options beyond individual global alliances to which the carriers belong.</p> <ul style="list-style-type: none"> • Hapag Lloyd AG-CMA CGM Slot Agreement 012483 • THE-Zim Slot Exchange West Med/US East Coast Agreement 012447 • Hapag Lloyd AG-Streamline Slot Agreement 201246 • Hapag Lloyd AG-Maersk VSA US West Coast/West Med Agreement 012146 • THE-CMA CGM Agreement 012462 • CMA CGM-Hapag Lloyd AG Slot Agreement 012477
<p>22(b) If yes, is such cooperation prevalent? Please explain</p>	<p>IICL members' main concern is the cascading of joint procurement of intermodal equipment by ocean carriers. IICL is unaware of any specific procurement activities to date. However, efforts were undertaken by two of the global alliances, Ocean Alliance, and THE Alliance, which participate in the EU/US trades, in their original alliance agreement filings with the U.S. Federal Maritime Commission (FMC), to include joint procurement of intermodal equipment. While the language was removed prior to the agreement's effective date, potential remains for ocean carriers to propose amendments to add the language back to the agreements in the future.</p>

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	<p>The potential risk to IICL members is loss of business or reduction in revenue due to monopsonic purchasing pressure from its key customers which are the major participants in the liner consortia through concerted or individual actions by consortia members. Containers are generally leased for 3-8 years so IICL is also concerned about the potential longer-term impact on its members of any such joint procurements. Also, containers and chassis are not normally procured for a specific consortia or service so that ocean carriers can retain global fluidity of equipment.</p>
<p>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?</p> <p>24(b) Please explain.</p>	<p>It is recognized that while the current Block Exemption allows ocean carriers to collaborate on vessel fleet deployment and capacity sharing which provides efficiencies that enhance services, it excludes the joint procurement of ships. In the US trades the joint procurement of containers and chassis are excluded.</p> <p>IICL's members lease containers and chassis to ocean carriers and other organisations. As noted above, IICL members have concern where consortia members engage in joint leasing or purchasing of containers and chassis due to their exertion of collective buyer power.</p> <p>IICL members are not opposed to the 30% market share exemption threshold per se, provided that it excludes containers and chassis procurement for the reasons identified above. IICL members note that recital (10) to the Consortia BER provides that the market share calculation should consider the overall volumes of each member carried within and outside the consortium, including in relation to any service provided individually by the member, be it on its own vessels or on third party vessels pursuant to contractual arrangements such as slot charters. IICL members consider that this wording should be expressly included within Article 5 of the Consortia BER, as one of the conditions relating to market share (rather than appearing only within the recitals). This is because ocean carriers regularly provide services outside of their consortia, often in collaboration with members of other consortia in the relevant market.</p>
<p>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</p>	<p>We understand that the Consortia BER is the only remaining maritime-specific competition measure within the EU. IICL considers that the Consortia BER is in some respects not coherent with other instruments that provide guidance on the application of Article 101(1).</p> <p>For example, the section on joint purchasing within the Commission's Horizontal Guidelines refers to a combined market share of less than 15% as the ballpark figure for which the conditions of Article 101(3) are likely to be fulfilled in respect of a potential joint purchasing arrangement. While it is acknowledged that the 15% is not intended to act as an absolute threshold under the Horizontal Guidelines, the fact that the market share test under the Consortia BER (which also covers joint purchasing) is much higher at 30% gives rise to a degree of incoherence.</p>

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BER and EC decisional practice)?	<p>In addition, IICL considers that the Consortia BER is not coherent with the approaches taken in other jurisdictions.</p> <p>For example, our understanding is that the liner shipping exemption in Malaysia does not permit container leasing or purchasing. The US provides antitrust immunity under Federal and Maritime Commission oversight for shipping company consortia activities. However, there is no stated safe harbour market share amount and the agreement activities are evaluated individually for potential adverse impact on the trade. The Peoples Republic of China provides antitrust immunity under the Ministry of Transport oversight for shipping company consortia activities. However, there is no stated safe harbour market share amount and the agreement activities are evaluated individually for potential adverse impact on the trade.</p>
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?	<p>IICL considers that the Consortia BER adds value in assessing the compatibility of consortia under Article 101(1) TFEU as it provides a platform for more efficient vessel operations and ample availability of individual carrier services while remaining within the current BER guidelines.</p> <p>In relation to the exemption for joint purchasing or leasing of containers or chassis, to IICL's knowledge there have been no examples of this being put into practice so it cannot be said to offer added value.</p> <p>IICL considers that, owing to the potential restrictive effects that joint purchasing could give rise to on the upstream purchasing/leasing market(s) for containers and chassis and due to the fact that such joint purchasing/leasing has to IICL's knowledge not yet been deployed by liner shipping consortia, the exemption under Article 3(1)(e) relating to joint purchasing or leasing should be removed.</p> <p>Removing this from the scope of the exemption will mean that any potential agreements by liners for joint purchasing or leasing would need to be examined under the general rules on competition in the same way that other types of cooperation agreements are examined in other sectors.</p>