

# 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

2. First name

3. Last name

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

## Section 1: Effectiveness

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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 provides high level of legal certainty which helps carriers, even the alliances established by major carriers which own dominant power to decide the market and have high market shares, to have ground for requesting legal certainty to protect them against block exemption.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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"/>

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

*1000 character(s) maximum*

Consortia BER is a basis for carriers to ask for protection to their joint actions. Even the mega alliance, like 2M, or major carriers, like Hapag Lloyd in EU-South America trades, can obtain a ground for ask legal certainty for protect their anti-competition actions.

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

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

*1000 character(s) maximum*

self-assessment can help carriers to evaluate their position and arrangement upon EU Competition Law regime.

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*

BER is originally to design for helping the medium and small size carriers to join the industry. upon BER, the medium and small size carriers can obtain legal certainty to cooperate with other medium and small size carriers without possibility to violate EU Competition Law. But which also push the negative competition, especially the abuse of BER by mega carriers. Now the bigger two alliance, 2M and Oceans, have big market shares exceeding 30% in EU-ASIA trades. The EU-South American trades are almost controlled, over 80% of market shares, by the Top 4 EU-based carriers, Maersk & Hamburg Sud, MSC, CMA CGM, and Hapag Lloyd & CSAV, and the consortia established by them. Also, the EU-North American trades are majorly controlled, over 60% market shares, by Top Two Alliance and Top 4 EU-based carriers and consortia established by them. BER have help majors 5 carriers to cooperate, and merger, with their competitors to raise the barrier for defending small competitors and new comers.

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*

as mentioned in 13, major 5 carriers and 2 alliance have establish a barrier to defending small competitors and new comers upon BER. BER also provide legal certainty to their cooperation which encourage the major carriers and alliances to build mega vessels to enhance their competition power to against small carriers which have no dominant trades to make money but also need to build mega vessels to defend the mega carriers. Finally, the market became imbalanced and small competitors became bankruptcy and leave the market or shrink back to regional market. Customers have fewer and fewer choice in the market now.

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*

even in the same consortium, the mega carriers also have competitive power to ask small ones to obey their request. 2M may sometimes compete inside, but in Oceans and THE, smaller ones, such as EMC and Yang Ming, have less power to decide the design of trades and services. Bigger ones also push the smaller ones to build bigger vessels which deeper their economic pressure. When the market turn down, the smaller one will have no choice and need to face the bed decision made under pressure from bigger ones. It may cause an unfair competition.

## 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*

Yes. Compliance with BER does generate cost. But the cost of self-assessment will be higher than compliance with BER. To the medium and small carriers, it will be material costs to do the self-assessment for the small consortia.

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*

Yes, the costs will definitely increase. But which may only to the medium and small carriers. Because the mega carriers shall have capability to independently operate round-the-world trades without consortium. Medium and small carriers can't operate round-the-world trades without consortium and therefore need to do the self-assessment. To repeal BER without supporting policies to medium and small carriers will increase the power gap between mega carriers and medium and small carriers accordingly.

## 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*

highly concentrated market which encourage and increase the merge of carriers and dismiss the competitive power of medium and small carriers. finally, bigger will be bigger. smaller will face the reality of unfair competition and choice to withdraw from specific, or even the whole, market.

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

19. b) Please explain.

1000 character(s) maximum

as mentioned, M&A and unfair competition decrease the amount of carriers and make the market more concentrated. it not only decrease the amount of carriers, Hanjin disappear, OOCL obtained by COSCON, and 3J become ONE, and enhance the power of mega 2 alliances, 2M and OCEANS.

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

20. b) Please explain.

1000 character(s) maximum

because the unfair competition, the mega carriers have resources and incentive to reduce the price for snatching customer and sweeping the competitors outside the market. therefore, the competitor can only follow the unreasonable price and merge with other competitors to enhance their power. therefore, the amount of carriers and alliance are decreased and so does the choice of services of costumers.

21. a) Are you aware of types of cooperation between carriers that are not covered by the Consortia BER?

- ☐ Yes  
☒ No

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

not quite sure.



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*

as a member of small carrier, we will face the higher costs for self-assessment and may not join any consortia, or less, unless necessary. it will absolutely decrease our quality and ability for providing good service to customer.

23. b) Global or industry effects

*1000 character(s) maximum*

bigger carriers will have bigger power and right to determinate the market. there will be only mega carriers who can provide round-the-world services and products.

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*

since the container shipping industry is costly and necessary for global economics, it will be necessary to have BER but only the lower the risks and barriers for medium and small carriers.

## 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*

during the past decades, BER has provide good guidance to interpret the Art. 101 TFEU.

## 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*

BER absolutely give more clear and definite guidance in the assessment of the compatibility of consortia with Article 101 TFEU.

## 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*

as mentioned, BER is valuable and necessary to container shipping industry and helpful to assist medium and small size carriers to join the market and create value and good service for the customers. but, in the other hands, BER has also been abused by mega carriers to protect their market power and concentrating actions during the past decades. BER is a good arrangement if it can help who needs it, but also bad if it is abused. to see the unhealthy container shipping market, especially in these few years, we know the market shall be changed for preventing the coming over-concentrated, imbalance and unreasonable market. a good and competitive market shall be booming and filled with competition, not a bigger-first market. to see the history, all monopoly industries were begun from such kind of market. if the competitors are all kicked out and the barriers built, there will be no return point to a healthy market.

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

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