

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.

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

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.

250 character(s) maximum

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

no visible evidence to the contrary

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

Relatively small number of participants and high visibility of their actions if not their decision making processes and practice.

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

Unable to comment

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

Ever greater collaboration / consolidation of services for example the reduction to three consortia in 2017 and further collaboration between consortia on trades such as transatlantic. The result of which reduces customer choice and inadvertently reduces price competition as their cost bases become shared and more equalized.

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

May influence a reduction in merger and acquisition activity that could have strengthened the financial position of some carriers. Could also be being used as least worst option to maintain the status quo rather than addressing the systemic problems within the industry. For example pricing volatility (boom and bust / race to the bottom) and commoditisation rather than as a value add service led industry.

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

Yes but not on main service (mother vessel call) strings, differentiators tend to be on coastal and out-port feederage. There is price competition (please refer to Q13) but this tends to be driven as much by market conditions as carrier service and price strategy.

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

No not directly. Unable to comment on how the cost of compliance to the consortia may or not influence their pricing strategy.

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

Do not know.

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

Reduction in the number of operating carriers (liquidation and M&A activity). Reduction in choice of services. Slower steaming and lower levels of schedule reliability (being addressed by further slow steaming and removal of direct port calls which further impact supply chain lead times). Deployment and cascading effect of ever larger vessels which has multiple consequences: fewer weekly sailings, longer berthing, less capacity flexibility (adjusting for trade seasonalities), pressure on port and supporting transport services infrastructure to manage operational peaks and troughs.

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

As Q18, 2016 / 2017 saw a significant consolidation of the industry, if one ignores what are in effect now just sub brands this is even more marked. There has been a growth in services however the way these are served is with less choice, often longer transits, and more disruption prone as the consortia chop and change schedules, port rotations to manage capacity and schedule integrity.

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

20. b) Please explain.

1000 character(s) maximum

Prices in real terms have fallen however it would be a false assumption to link this to the changing shape of the consortia or BER. The pricing dynamics of individual trades are far more complex. Whereas some trades such as Asia-Europe have reduced, transpacific have risen as have most reefer trade prices. Prices are not based on a 'normal' cost plus margin but what a particular market / trade will stand for a period of time (days to months). Detail market analysis is available from organisations such as Seaintel and Alphaliner.

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

Difficult to assess so I am speculating to a degree but areas such as port operations (a number of carriers are also port operators) and indirect co-operation with third party suppliers where there is a common interest e.g. coastal feeding.

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

I do not believe so but could not categorically say '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

This is rather speculative as carriers strategy will be motivated by many factors not just BER. If we follow recent trends then a further consolidation to two consortia could not be ruled out. This may be driven by financial weakness, M&A, ability to invest etc. Impacts on us could be a further reductions in service choice and price variation.

23. b) Global or industry effects

1000 character(s) maximum

More of the same behaviors. There has been a longstanding disconnect between the wants and needs of shippers and carriers strategies. The carriers pursue slot cost reduction through ever larger vessel size deployment the costs of which drive M&A and contraction of the consortia protected by the BER. The industry has probably gone too far to reverse these trends. An end point could be a global 'grey vessel' fleet the services for which would be sold by a number of carrier brands. If prolonged I suspect we would see a continuation of industry behaviors as in recent years.

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

The industry is fairly unique in terms of its significance to global trade and economic growth. This should be rationale enough for a sector specific BER. My concern is that it also shelters the industry from taking the difficult structural decisions it needs to so it can better align with shippers current and future requirements.

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

I am not familiar enough with the instruments to comment

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

Unable to comment

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

I can see benefits in the removal of the consortia BER but also a case for prolonging. Structural reform of the industry is needed. The removal of the Far East Freight Conference was beneficial in terms of price manipulation but has possibly had the unforeseen consequences of driving some of the changes to the industry we have experienced particularly in the last ten years. On balance an extension of the BER is favorable if only to ensure the industry is not de-stabilised. I do think that if this were the decision it should be heavily caveat-ed with clear, measurable and time limited goals for the industry to achieve that will address the boom and bust pricing and instability in service proposition.

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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