

Commission services' document

TECHNICAL PAPER ON THE REVISION OF COMMISSION REGULATION
(EC) No 823/2000 ON THE APPLICATION OF ARTICLE 81 (3) OF THE TREATY
TO CERTAIN CATEGORIES OF AGREEMENTS, DECISIONS AND CONCERTED
PRACTICES BETWEEN LINER SHIPPING COMPANIES (CONSORTIA)
AS LAST AMENDED BY
COMMISSION REGULATION (EC) No 611/2005 OF 20 APRIL 2005

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TABLE OF CONTENTS

| | | |
|---------|---|----|
| 1. | INTRODUCTION..... | 4 |
| 2. | BACKGROUND..... | 5 |
| 2.1 | General description of Commission Regulation (EC) No 823/2000..... | 5 |
| 2.2 | The impact of the repeal of the liner conference block exemption Regulation (EEC) No 4056/86 | 6 |
| 2.3 | General policy consideration..... | 7 |
| 3. | LINER CONSORTIA TODAY | 9 |
| 3.1 | Market investigation..... | 9 |
| 3.2 | The agreements | 10 |
| 3.3 | Liner shipping markets today..... | 10 |
| 3.4 | The trades | 12 |
| 4. | MAIN ISSUES IN THE REVIEW OF REGULATION (EC) NO 823/2000..... | 15 |
| 4.1 | The scope of the Regulation | 15 |
| 4.1.1. | What constitutes an agreement under the block exemption..... | 15 |
| 4.2 | The exempted activities | 16 |
| 4.2.1 | Modifications linked to the repeal of the liner conference block exemption | 16 |
| 4.2.1.1 | Cargo, revenue or net revenue pools (Article 3 (2) (d)) | 16 |
| 4.2.1.2 | The joint exercise of voting rights held by the consortium in the conference (Article 3 (2) (e)) | 17 |
| 4.2.1.3 | Joint marketing structure and/or the issue of a joint bill of lading (Article 3 (2) (f)) | 17 |
| 4.2.2 | Capacity adjustments to respond to supply and demand fluctuations | 17 |
| 4.3 | Agreements not covered by the exemption..... | 18 |
| 4.3.1 | Non-utilisation of existing capacity | 18 |
| 4.3.2 | Price fixing | 19 |
| 4.3.3 | Market or customer allocation | 19 |
| 4.4 | Conditions and obligations | 19 |
| 4.4.1 | Basic conditions for the grant of exemption..... | 20 |
| 4.4.2 | Conditions relating to market share..... | 20 |
| 4.4.2.1 | Market share thresholds..... | 20 |
| 4.4.2.2 | Aggregation of market shares | 22 |

| | | |
|-------------|---|----|
| 4.4.3 | Other conditions | 23 |
| 4.4.4 | Obligation to consult with shippers | 23 |
| 4.4.5 | Other obligations attached to exemption | 24 |
| 4.4.6 | Exemption for agreements between transport users and consortia..... | 24 |
| 4.5 | Withdrawal in individual cases..... | 24 |
| 4.6 | Final provisions | 25 |
| ANNEX | | 26 |
| 1. | NORTH EUROPE – FAR EAST..... | 26 |
| 2. | MEDITERRANEAN – FAR EAST | 27 |
| 3. | NORTH EUROPE – NORTH AMERICA (TRANSATLANTIC)..... | 29 |
| 4. | MEDITERRANEAN – NORTH AMERICA | 30 |
| 5. | EUROPE – WEST AFRICA..... | 31 |
| 6. | EUROPE – SOUTH AFRICA | 31 |
| 7. | EUROPE – EAST COAST SOUTH AMERICA | 32 |
| 8. | EUROPE – WEST COAST SOUTH AMERICA | 33 |
| 9. | EUROPE – AUSTRALIA/ASIA | 33 |
| 10. | EUROPE – INDIAN SUB CONTINENT..... | 34 |

1. INTRODUCTION

1. Commission Regulation (EC) No 823/2000 of 25 April 2000 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)¹ (hereinafter referred to as "Regulation 823/2000") sets out the conditions and obligations that liner shipping companies need to fulfil to benefit automatically from an exemption from the prohibition set out in Article 81 (1) of the EC Treaty (hereinafter referred to as the "Treaty") .
2. If the conditions contained in Regulation 823/2000 are not fulfilled (for instance if the market share thresholds provided in Article 6 are exceeded), shipping lines that enter into operational co-operation, with a view to providing a joint service, do not benefit from the block exemption. However, such consortia are not automatically prohibited pursuant to Article 81, but the consortium members must self-assess to determine whether their agreements fall within the scope of Article 81(1) of the Treaty and in the affirmative, fulfil the four cumulative conditions of Article 81(3)². Agreements, decisions of associations of undertakings and concerted practices caught by Article 81(1) of the Treaty which satisfy the conditions of Article 81(3) are valid and enforceable, no prior decision to that effect being required.
3. This Technical Paper is published alongside a preliminary draft Regulation designed to replace Regulation 823/2000 after it lapses on 25 April 2010 (hereinafter referred to as "Draft Consortia BER"). Its purpose is (i) to identify the main issues considered in the European Commission's review process and (ii) to provide background to the proposed changes which are put forward in the light of two main objectives: First, to take account of the repeal of the liner conference block exemption and, secondly to ensure a greater convergence between Regulation 823/2000 and other block exemption regulations for horizontal cooperation currently in force whilst taking into account current market practices in the liner industry.
4. Liner carriers, transport users and all other interested stakeholders are invited to comment on the Draft Consortia BER providing the necessary supporting data.

¹ OJ L 100, 20.4.2000, p. 24, as last amended by Regulation (EC) No 611/2005 OJ L 101, 21.04.2005, p. 10.

² These four cumulative conditions are: (a) The agreement must contribute to improving the production or distribution of goods or contribute to promoting technical or economic progress, (b) Consumers must receive a fair share of the resulting benefits, (c) The restrictions must be indispensable to the attainment of these objectives, and finally (d) The agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. Guidance on how to carry out this assessment can be found in the Commission Guidelines on the application of Article 81 (3), OJ C 101, 27.4.2004, p. 97.

2. BACKGROUND

5. On 25 February 1992, the Council adopted Regulation (EEC) No 479/92 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)³. The purpose of that Regulation was to empower the Commission to apply Article 81 (3), by means of a block exemption, to co-operative agreements between liner shipping companies resulting in the provision of a joint liner service.
6. In the preparatory work to that Regulation, it was found that consortia had a different structure and objective from liner conferences as their primary goal was to rationalise the joint service by means of operational co-operation⁴. It was therefore necessary to provide for a specific regulation since the activities carried out by consortia were potentially restrictive of competition and did not benefit from the liner conference block exemption contained in Regulation (EEC) No 4056/86⁵. A variety of co-operative agreements were identified ranging from slot charter agreements to highly integrated joint ventures. The Council also set a period of validity of 5 years for the block exemption. After this period, the block exemption could be, if appropriate, renewed.
7. In 1995 the Commission made use of these delegated powers for the first time by adopting Commission Regulation (EC) No 870/95 of 20 April 1995⁶ and subsequently decided to renew the block exemption for a further period of five years through the adoption of Regulation (EC) No 823/2000 and Regulation (EC) No 611/2005 respectively⁷. Regulation (EC) No 823/2000 as last amended by Regulation (EC) No 611/2005 will expire on 25 April 2010.

2.1 General description of Commission Regulation (EC) No 823/2000

8. The objective of a consortium agreement between two or more vessel operating companies is to enter into operational and technical co-operation so as to provide a joint liner service. Consortium agreements generally help to improve the productivity and quality of available liner shipping services of member lines through the economies of scale they allow in the operation of vessels and utilisation of port facilities. Users of the shipping services provided by consortia generally obtain a fair share of the benefits resulting from the improvements in

³ Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) OJ No L 55, 29.2.1992, p. 3.

⁴ COM (90) 260 final of 18.6.1990.

⁵ OJ L 378, 31.12.1986 now repealed by Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services, OJ L 269, 28.9.2006, p. 1.

⁶ OJ L 89, 21.4.1995, p.7.

⁷ Commission Regulation (EC) No 463/2004 (OJ L 77, 13.3.2004, p. 23) introduced procedural adjustments to the Regulation (EC) No 823/2000 to bring it in line with Commission Regulation (EC) No 1/2003 and Commission Regulation (EC) No 611/2005 (OJ L 101, 21.4.2005, p. 10) introduced some minor amendments pending the outcome of the review of Council Regulation (EEC) No 4056/86 containing the liner conference block exemption, following which more substantial amendments would be made necessary.

productivity and service quality which they bring about, if there is sufficient competition in the trades in which the consortia operate.

9. The main provisions of Regulation 823/2000 are as follows:

- The definition of a consortium between liner shipping carriers with the exclusion of price fixing between the consortium members (Article 2),
- A list of consortium activities relating to the joint operation of the service to which the prohibition set out in Article 81(1) of the Treaty does not apply (Article 3),
- The prohibition to agree on the non-utilisation of existing capacity (Article 4),
- Conditions necessary to benefit from the block exemption, namely effective internal competition on price and service for consortium members operating within a conference and effective external competition to the consortium (Article 5),
- A market share threshold of 35% for consortia operating outside a conference and a 30% threshold for consortia operating within a conference (Article 6),
- A number of conditions attached to the exemption such as the freedom for consortium members to offer individual service arrangements, the right of withdrawal subject to a maximum notice period of generally 6 months, as well as the compliance with the non-discrimination obligation (Article 8),
- Obligations relating to consultations between the shipping lines and the transport users (Article 9),
- Possibility to withdraw the benefit of the block exemption in individual cases (Article 12).

2.2 The impact of the repeal of the liner conference block exemption Regulation (EEC) No 4056/86

10. On 13 September 2006, the Council unanimously repealed the liner conference block exemption. Article 1 of Regulation (EC) No 1419/2006⁸ establishes that the repeal will enter into force on 18 October 2008, after a two-year transitional period. As a result, after that date liner carriers operating services to and/or from one or more ports in the European Union/European Economic Area must cease all liner conference activity contrary to Article 81 of the Treaty or Article 53 of the EEA Agreement. This is the case regardless of whether other jurisdictions allow, explicitly or tacitly, rate fixing by liner conferences or discussion agreements. Moreover, conference members should ensure that any agreement taken under the conference system complies with Article 81 of the Treaty as of 18 October 2008.

⁸ See footnote 5 above.

11. In view of the end of the conference system the Council's enabling Regulation (EEC) No 479/92 is in the process of being codified in order to remove any reference to Regulation (EEC) No 4056/86⁹. In addition, all references to Regulation (EEC) No 4056/86 and the practices allowed under the conference system need to be deleted from Regulation 823/2000. On substance, there should not be a major impact of the repeal of Regulation (EEC) No 4056/86 on the way consortia operate as price fixing amongst consortium members was excluded from the outset from the scope of the block exemption by the Council's enabling Regulation¹⁰.

2.3 General policy consideration

12. Regulation 823/2000 is of particular significance from a trade perspective as containerised liner shipping accounts for approximately 20% of EU external trade in value terms. Due to the very high level of investment and the fixed schedules required to set up a service – it takes on average 6 similar sized container ships to set up a liner shipping service – a significant part of the liner container services is offered by groups of shipping lines organised in consortia. 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. Transport users recognised that these efficiencies are passed-on in terms of global coverage of the services offered.¹¹
13. Since Regulation 823/2000 was first adopted in 1995, both the procedural rules governing the application of Article 81 of the Treaty and the markets have changed significantly¹². Until 2004, consortium agreements that did not meet the market share thresholds or other conditions laid down in Regulation 823/2000 could be notified to the Commission for individual exemption. The Commission would then assess if the agreement fulfilled the four cumulative conditions of Article 81(3) of the Treaty.¹³ With the entry into force of the new procedural rules that notification procedure was abandoned. As a result, all undertakings in each and every economic sector have to self-assess their behaviour in the light of changing market conditions, to establish whether it falls under Article 81 (1) and in that case whether it fulfils the conditions of Article 81 (3) of the Treaty.

⁹ Proposal for a Council Regulation on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping lines (consortia) COM (2007) 753 of 27.11.2007.

¹⁰ Art 1(1) of Council Regulation (EEC) No 479/92, see Footnote 3 above.

¹¹ European Shippers' Council; "What Shippers Require From Liner Shipping in the Future and Why?" September 2004; http://ec.europa.eu/comm/competition/antitrust/others/esc_future_paper.pdf

¹² Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, p.1-25.

¹³ Liner shipping consortia with a market share of up to 50% could benefit from the opposition procedure laid down in Article 7 of Regulation 823/2000. Article 7 has been deleted by Regulation 463/2004, OJ L 77, 13.04.2004, p. 23.

14. In conducting self-assessment, undertakings can rely on several Commission notices providing guidance on how to carry out this assessment but do not generally benefit from block exemption regulations or guidance specific to their sector. The only other sectoral block exemption regulations in force are undergoing a review¹⁴ and the aviation block exemption regulation has recently been phased-out.¹⁵ Apart from maritime services, sectoral guidance is only provided to the postal sector¹⁶.
15. Regulation 823/2000 is the last existing block exemption regulation in the transport sector. Considering that there has been an important change in the organisation of the liner shipping markets with the abolition of price fixing conferences in October 2008 and given the economic efficiencies of consortia, there is a case to renew Regulation 823/2000 for a further five years to facilitate the transition to the standard competition regime applied to all other economic sectors. In addition, at this stage Regulation 823/2000 is found to work well for both carriers and transport users.

¹⁴ The insurance Block Exemption Regulation (EC) No 358/2003 and the Motor Vehicle Block Exemption Regulation (EC) No 1400/2002.

¹⁵ Commission Regulation (EC) No 1459/2006 of 28 September 2006 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports.

¹⁶ See Guidelines on the application of Article 81 of the EC Treaty to maritime transport services, OJ C 245, 26.9.2008, p. 2; Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services OJ C 39, 6.2.1998, p. 2 – 18.

3. LINER CONSORTIA TODAY

3.1 Market investigation

16. On 4 July 2007, DG Competition opened a market investigation with a view to obtaining factual information for the review of Regulation 823/2000. Questionnaires were sent to major liner shipping carriers and a number of shippers and freight forwarders.
17. Out of 30 carriers¹⁷ 20 responded and provided relevant information on a total of 92 agreements. Three carriers declared that they did not enter into agreements which in their view, would fall under the block exemption and/or under Article 81 of the Treaty. Overall responses were provided by 17 out of the top 25 liner carriers.
18. Carriers were asked to provide detailed information on all agreements they entered into with competitors which they consider constituting a consortium within the meaning of Regulation 823/2000. The objective was to identify which activities are currently being carried out jointly by consortia members and how these activities relate to the exempted activities as defined in Article 3 of Regulation 823/2000 and to Article 81 (3) of the Treaty in general.
19. On 20 November 2007, questionnaires were sent to a large number of individual transport users, i.e. shippers and freight forwarders, and to the five main transport users' associations. The questions focused on the extent to which transport users consider liner consortia beneficial for their businesses and on the consultation process with carriers. The answers received represent a good sample of the demand side. The two major associations, 13 freight forwarders and 13 shippers responded. These transport users are manufacturers of a large scale of goods including foodstuffs, rubber and synthetic yarn products, car components, polymers, and garments. Their goods are shipped world-wide.

¹⁷ The thirty carriers contacted are: ACL (Atlantic Container Line AB); APL (American President Lines); CSCL (China Shipping (Group) Company); CMA (CMA CGM); CCL (Costa Container Lines S.p.A.); CSAV (Compania Sud Americana de Vapores); COSCO (COSCO Container Lines Company Ltd.); DAL (Deutsche Afrika Linien GmbH & Co. KG); Evergreen Marine Corporation Ltd.; Europe West Indies Lines; HAMBURG (Hamburg Südamerikanische Dampfschiffahrtsgesellschaft KG); Hanjin (Hanjin Shipping co Ltd.); HAPAG (HAPAG-Lloyd AG); HMM (Hyundai Merchant Marine Co. Ltd.); K-Line (Kawasaki Kisen Kaisha Ltd.); LIBRA (Companhia Libra de Navegação); Maersk (Maersk Line and Safmarine); MISC (Malaysia International Shipping Corporation); MSC (Mediterranean Shipping Co. S.A.); Marfret (Marfret, Companie Maritime); Maruba SCA Impresa de Navigacion Marittima; Mitsui (Mitsui O.S.K. Lines Ltd.); NYK (Nippon Yusen Kaisha); OOCL (Orient Overseas Container Line Ltd.); OPDR (Oldenburg-Portugiesische-Danpfschiffahrts-Rhederei GmbH&Co KG); PIL (Pacific International Lines); SCI (The Shipping Corporation of India Ltd.); UASC (United Arab Shipping Company S.A.G.); Yang Ming (Yang Ming Marine Transport Corporation); ZIM (ZIM Integrated Shipping Services Ltd.).

3.2 The agreements

20. Liner shipping carriers enter into various forms of co-operative agreements. The market investigation identified the following broad categories:
- A **Vessel Sharing Agreement** is a contract between two or more vessel operators agreeing to provide a certain number of vessels for common use of all parties in order to set up a joint liner service.
 - A **Swap Agreement** is a reciprocal contract between two or more parties that agree to exchange space on the ships they operate.
 - A **Slot Charter Agreement** is a contract between two or more parties whereby the vessel-operating party sells slots on its vessels to the other party.
21. These categories of agreements are also often linked with one another, e.g. a vessel sharing agreement can also include several slot charter agreements between the parties to the agreement.

3.3 Liner shipping markets today

22. Industry frequently claims that liner shipping is not a concentrated industry on a global scale as today, the market leader holds only an 18% share of world-wide capacity. The second largest carrier accounts for 11%, while each of the remaining carriers hold less than 10% of world capacity. However, liner carriers do not compete on a global scale but on particular geographic routes generally known as trades¹⁸. The competitive situation however has to be examined on the relevant market. In most consortia cases the relevant market coincides with the trade but a case by case analysis must be carried out.
23. Competitive levels vary from trade to trade. The number of carriers active on a trade varies from 6 to 26. Some carriers are parties to various agreements on one and the same trade. Such cross-participations will have to be taken into account when analysing the competitive situation on the relevant market.
24. The table below provides an overview of the general market position of liner carriers today.

¹⁸ For a definition of the product and geographic markets in liner shipping, see Commission Guidelines on the application of Article 81 of the EC Treaty to maritime transport services, OJ C 245, 26.9.2008, p. 2.

| Rank January 2008 | Main parent company | Operating capacity in 1000 TEU | Operating capacity share in top 50 | Number of vessels operated |
|-------------------------|------------------------|--------------------------------------|--|----------------------------------|
| 1 | Maersk Line | 1.879 | 18% | 523 |
| 2 | MSC | 1.214 | 11% | 368 |
| 3 | CMA CGM | 888 | 8% | 372 |
| 4 | Evergreen | 619 | 6% | 176 |
| 5 | Hapag-Lloyd | 495 | 5% | 142 |
| 6 | China Shipping | 432 | 4% | 139 |
| 7 | Coscon | 430 | 4% | 140 |
| 8 | APL | 402 | 4% | 122 |
| 9 | NYK | 376 | 4% | 117 |
| 10 | OOCL | 343 | 3% | 81 |
| 11 | Hanjin | 340 | 3% | 82 |
| 12 | MOL | 329 | 3% | 108 |
| 13 | "K" Line | 306 | 3% | 92 |
| 14 | ZIM | 277 | 3% | 110 |
| 15 | Hamburg Süd | 276 | 3% | 120 |
| 16 | Yang Ming | 273 | 3% | 82 |
| 17 | CSAV | 249 | 2% | 84 |
| 18 | Hyundai | 197 | 2% | 47 |
| 19 | PIL | 169 | 2% | 109 |
| 20 | Wan Hai | 138 | 1% | 82 |
| 21 | UASC | 96 | 1% | 39 |
| 22 | MISC | 83 | 1% | 28 |
| 23 | IRISL | 74 | 1% | 65 |
| 24 | Grimaldi N. | 53 | 0,5% | 57 |
| 25 | RCL | 49 | 0,5% | 39 |
| Total top 25 | | 9.987 | 93,6% | 3324 |

| | | |
|--------------|--------|--------|
| Total 26-50 | 688 | 6,4% |
| Total top 50 | 10.675 | 100,0% |

Source: Dynaliner 03/2008 and 04/2008

25. The market investigation provided information on 92 operational agreements.¹⁹ It revealed that both large and small carriers enter into operational agreements in order to provide a liner service jointly with other carriers. In general, there appears to be no clear link between the size of a carrier and the number of operational agreements it enters into. Consortia remain a common form of cooperation and some carriers enter into up to 40 operational agreements.
26. Vessel sharing agreements are generally made up of 2 to 6 carriers joining together to provide a scheduled service. The number of vessels provided by the parties to a consortium varies considerably. Among those examined, the typical consortium consists of 6 vessels.
27. A large number of leading carriers are also active in the market for container terminal services. Liner shipping consortia jointly use one container terminal in a given port which in many cases is controlled by one of the consortium's members. The joint use of container terminals by liner shipping consortia is another potential source of economies of scale, in particular when a consortium member owns the terminal. The terminal-owning carriers may therefore enter into operational agreements with other carriers to increase capacity utilisation of their (underemployed) terminals. Notwithstanding the benefits mentioned above, the joint use of a terminal owned by a consortium member with a strong market position in the market for container terminal services may give rise to foreclosure concerns²⁰.

3.4 The trades

28. In 2005, 3.718 million tonnes of goods were handled in the EU27 maritime ports. Liquid bulk products had, in 2005, the highest share (41%), followed by dry bulk (26%) and containers (16%). Container transport is most significant in Germany and Belgium with a 35% and 32% share of total goods handled respectively. Rotterdam, Antwerp and Hamburg are the largest EU container ports.²¹
29. World container trade continued to surge ahead during 2006 with a container handling activity growth of 10% which is the fifth consecutive year of double digit growth.

¹⁹ The Commission services do not take a position on whether the agreements received during the market investigation fall under Article 81 of the Treaty or benefit from the consortia block exemption regulation.

²⁰ The profitability of the foreclosure strategy and, hence the incentive for its adoption would depend, among other things, on the market position of the consortium in the relevant market for transport services.

²¹ Eurostat, Statistics in focus - Transport, Issue number 94/2007, Maritime Transport of goods and passengers 1997- 2005.

30. World container trade in 2006 is estimated at around 128 m TEU²². Europe's share is approximately 42,7 m TEU. The three most important European trades are Europe-Far East (16 m TEU lifted), Intra Europe²³ (9 m TEU lifted) and Transatlantic (6 m TEU lifted), followed by a number of significant North-South trades such as Europe to South America (3 m TEU lifted), Mid-East/India (2,8 m TEU lifted) and Africa (2,6 m TEU lifted).

| Estimated 2006 Europe container trade by route ('000 teu) | | | | | | |
|---|---------------|----------------|---------------|----------------|---------------|-------------------|
| East - West | Eastbound | | Westbound | | Total | |
| | absolute | % | absolute | % | absolute | % of Europe total |
| Transatlantic | 2.433 | 23,56% | 3.567 | 21,35% | 6.000 | 14,05% |
| Europe - Far East | 5.058 | 48,98% | 11.277 | 67,51% | 16.335 | 38,26% |
| Europe - Mid. East | 2.135 | 20,68% | 760 | 4,55% | 2.895 | 6,78% |
| Europe - S. Asia | 700 | 6,78% | 1.100 | 6,59% | 1.800 | 4,22% |
| Total East - West | 10.326 | 100,00% | 16.704 | 100,00% | 27.030 | 63,31% |
| North-South | Southbound | | Northbound | | Total | |
| | absolute | % | absolute | % | absolute | % of Europe total |
| Europe - Latin America | 1.200 | 35,82% | 1.750 | 61,71% | 2.950 | 6,91% |
| Europe - Africa | 1.700 | 50,75% | 900 | 31,73% | 2.600 | 6,09% |
| Europe - Australasia | 450 | 13,43% | 186 | 6,56% | 636 | 1,49% |
| Total North - South | 3.350 | 100,00% | 2.836 | 100,00% | 6.186 | 14,49% |
| Intra - Regional | Southbound | | Northbound | | Total | |
| | absolute | % | absolute | % | absolute | % of Europe total |
| Europe | 9.478 | 100,00% | | | 9.478 | 22,20% |
| Total Intra - Regional | 9.478 | 100,00% | | | 9.478 | 22,20% |
| Europe Total | 42.695 | | | | | 100,00% |

Source: Drewry Shipping Consultants Ltd.

Annual Container Market Review and Forecast - 2007/08 [Table 2.13]

²² The figure is based on container port through-put after elimination of transshipment and empty container volumes. Drewry's Annual Container Market Review 2007/08, p. 37-38.

²³ Most of the major liner shipping carriers do not operate individual services on the Intra Europe trade. This market mostly served by services from Europe to Far East, Mid East/India, South Asia and Australia. These services are usually calling at North Europe and Mediterranean ports and are therefore also present in the Intra Europe market. Thus consortium agreements that cover only the Intra EU market are rare and we decided not to analyse this market separately for the purpose of this technical paper.

31. Based on publicly available information, the annex to this paper provides an overview of the market players, both inside and outside of consortia, and the competitive situation in these trades today.
32. As the table below shows, the competitive situation varies from trade to trade.

| Overview | | | | | | | | |
|-----------------------------------|---------------------|-----------------------------------|---------------------------------|--------------------------|--------------------------------------|-----------------------|--|---|
| Europe Trades | Total No of Vessels | Average Capacity of Vessels (TEU) | Operational Capacity (1000 TEU) | Total number of Carriers | Carriers operating only individually | Carriers in consortia | Number of Consortia and other agreements | Cross Participation** in consortia and other agreements |
| North Europe - Far East | 290 | 6.358 | 11.810 | 21 | 5 | 16 | 6 | 3 |
| Mediterranean - Far East | 377 | 4.007 | 11.633 | 20 | 6 | 14 | 7 | 9 |
| North Europe - North America | 149 | 3.644 | 3 825 | 26 | 10 | 16 | 7 | 3 |
| Mediterranean - North America | 171 | 2.966 | 3 969 | 23 | 6 | 17 | 9 | 8 |
| Europe - East Coast South America | 75 | 2.725 | 2 047 | 14 | 3 | 11 | 5 | 2 |
| Europe - West Coast South America | 38 | 1.880 | 539 | 7 | 2 | 5 | 2 | 2 |
| Europe - South Africa | 33 | 2.149 | 653 | 7 | 4 | 3 | 1 | 0 |
| Europe - West Africa | 137 | 1.450 | 2.125 | 15 | 10 | 5 | 3 | 2 |
| Europe - Australasian Trade | 50 | 2.596 | 554 | 6 | 3 | 3 | 2 | 1 |
| Europe - Indian Sub Continent* | 37 | 3.860 | 591 | 11 | 3 | 8 | 2 | 0 |

Source: Drewry Shipping Consultant Ltd. [Annual Container Market Review and Forecast - 2007/08].

*Source: Dyaliner 05/2008

** Number of carriers acting individually AND in one or more consortia, or carriers acting in two or more consortia.

33. On each of the four large East-West trades, i.e. from North Europe or Mediterranean to the Far East or North America more than 20 carriers offer services. The number of consortia operating on these trades ranges from 6 to 9 and at least five carriers are operating individually on each trade. On the two Mediterranean trades a remarkably high number of carriers operate in one or more consortia. Some consortia members also offer their services individually on the same trade.
34. Fifteen or less carriers (10 on average) operate on each of the six thinner North-South trades²⁴. The number of consortia varies between 1 and 5. On average, only 3 carriers operate individually on each trade, with the exception of the Europe -West Africa trade, where this number is 10.

²⁴ From Europe to East or West Coast South America, South or West Africa, Australasia, and Indian Sub Continent.

4. MAIN ISSUES IN THE REVIEW OF REGULATION (EC) NO 823/2000

4.1 The scope of the Regulation

35. Regulation 823/2000 applies to international liner shipping services for the carriage of cargo, chiefly by container (Article 2(1)). As set out in Article 1 of Regulation 823/2000, this includes services to and from a port in the European Union but excludes services within the same Member State, i.e. maritime cabotage.
36. The requirement that the service involves the carriage of cargo chiefly by container, as set out in the aforementioned Article, excludes the application of Regulation 823/2000 to passenger and to tramp vessel services. However the Regulation is not limited to services operating fully cellular container vessels as it also applies to consortia operating ro-ro and semi-container vessels. The market investigation showed that today the majority of consortia carry containerized cargo. Marginally they carry other non containerized cargo²⁵.
37. During the review leading to the repeal of Regulation (EEC) No 4056/86, some parties raised the issue of the inclusion of tramp vessel services and in particular specialised services such as car carriage within the scope of the consortia block exemption. This suggestion has not been taken up in the Draft Consortia BER. The Commission and Member States competition authorities lack experience in applying Article 81 to such services. It would therefore be difficult to identify those agreements that can be assumed with sufficient certainty to satisfy the conditions of Article 81 (3).
38. With regard to the geographic scope, the definition in Article 2(1) refers to a consortium operating on one or more trades. A consortium can therefore operate a joint service on a single or several different trades (e.g. a global alliance). It should be noted however that a trade may encompass more than one relevant market. Hence, a multi-trade consortium must be assessed on each relevant market on which it operates on the basis of the guidance provided in the Commission's Notice on the definition of the relevant market²⁶. Conversely, a slot swap agreement on the basis of which one party is active on one relevant market, (e.g. North Europe to North America), and swaps capacities with the vessels operated by a different carrier in another market, (e.g. Mediterranean to Middle East) would not fall under the definition of a consortium because no joint service is provided.

4.1.1. What constitutes an agreement under the block exemption

39. A consortium is a joint service provided by two or more shipping lines. Its main features are sharing of space and the determination of port calls and schedules. There is a great variety of different consortium agreements operating in the market. For the purposes of the Draft Consortia BER a consortium agreement can be made of one or a set of separate but interrelated agreements such as reciprocal slot charters, under which the parties operate the joint service. The

²⁵ 3, 1% roll on-roll off, 1, 6% vehicles, 0, 8% other cargo.

²⁶ OJ C 372, 3.12.97, p. 9.

legal form of the arrangements is considered less important than the underlying economic reality that the parties provide a joint service.

40. Conversely a simple, non reciprocal slot charter agreement is in general not considered to be a consortium within the scope of Regulation 823/2000, if there is no other form of co-operation between the parties such as equipment interchange. This type of arrangement does not serve to rationalise or improve the joint service. Whether this type of arrangement falls under the scope of Article 81 (1) must be assessed on a case by case basis. Should these agreements fall under Article 81 (1), they may be considered ancillary to the consortium and fall under the Article 3 (2) (d) of the Draft Consortia BER. There are however some instances where the market share of a slot charter is taken into account when establishing the market share of the consortium. These are discussed in detail below in paragraph 73.
41. Regulation 823/2000 applies only to agreements concluded between the members of a consortium. The same will apply also for the Draft Consortia BER. Therefore, the Draft Consortia BER shall not cover restrictive agreements concluded between, on the one hand, consortia or one or more of their members, and, on the other hand, other shipping companies. Nor does it apply to restrictive agreements between different consortia operating in the same trade or between the members of such consortia.

4.2 The exempted activities

42. A list of activities exempted from the prohibition set out in Article 81 (1) is contained in Article 3 (2) of Regulation 823/2000. This list needs to be revised for two reasons: on the one hand, several of the exempted activities are intrinsically linked to activities of a consortium operating within a conference and can thus no longer be maintained. On the other hand, adaptations seem to be appropriate to better reflect the current market practice as confirmed by the market investigation. Some of the activities listed in Article 3(2) of Regulation 823/2000 are in practice not performed by the parties currently engaged in consortium agreements.

4.2.1 Modifications linked to the repeal of the liner conference block exemption

4.2.1.1 Cargo, revenue or net revenue pools (Article 3 (2) (d))

43. Revenue, net revenue and cargo pools imply a key to distribute the revenue amongst the consortium members. This system inevitably leads to the transparency of (average) prices amongst its members. It is currently not being used by any of the operational agreements available to DG Competition. Cargo, revenue or net revenue pools are restrictive of competition and do not appear to fulfil the four cumulative conditions of Article 81 (3) of the Treaty as they are not indispensable for the operation of a joint service. This provision is deleted in the Draft Consortia BER.

4.2.1.2 The joint exercise of voting rights held by the consortium in the conference (Article 3 (2) (e))

44. This provision will be meaningless in view of the end of the block exemption for liner conferences as from 18 October 2008 and should therefore be repealed.

4.2.1.3 Joint marketing structure and/or the issue of a joint bill of lading (Article 3 (2) (f))

45. The issue of a joint bill of lading implies exchanges of commercially sensitive data such as the name of the shipper, the volumes transported, the price of the service, and possibly also a joint tariff. As joint fixing of tariffs has never been covered by Regulation 823/2000, this provision has been deleted in the Draft Consortia BER. The impact of this change should not be very significant as none of responding carriers issues joint bills of lading with other carriers.
46. On the basis of the above, the operation of a joint marketing structure is deleted from the list of exempted activities. However joint marketing activities of consortium members continue to be covered by Article 3 (2) (d) of the Draft Consortia BER, provided that they are ancillary to the provision of a joint service and do not involve price fixing. The concept of ancillary restraints covers any alleged restriction of competition that is directly related and necessary to the implementation of a main non-restrictive or exempted transaction or activity and proportionate to it.²⁷

4.2.2 Capacity adjustments to respond to supply and demand fluctuations

47. Temporary capacity adjustments permitted by Article 3 (2) (b) are an essential feature of consortia – as recognised by recital 7 – and contribute to improved vessel use and rationalisation of the service. It is recognised that the changing demand for capacity on the market has to be addressed by consortia with capacity adjustments so as to ensure that vessels are run in a cost efficient way and that shippers receive the best value for money.
48. The market investigation shows that half of the operational agreements reviewed contain provisions regarding capacity adjustments and that capacity has actually been adjusted in about 40% of the cases in the last three years.
49. Liner shipping markets appear to be capacity driven rather than price driven. Therefore current and future capacity allocations are likely to be the main drivers of price levels in the market since the repeal of Regulation (EEC) No 4056/86. Hence it is important that exempted capacity adjustments within consortia are limited to what is indispensable to respond to fluctuations in demand and supply for the running of the joint service. These adjustments may occur either as a reaction to an imbalance of supply and demand or on account of unavoidable operational reasons. Such operational reasons are mostly the replacement of old vessels with newer vessels which may not have exactly the same size, delays due to safety reasons such as the need of ice breaking on certain trades, the need of cyclical dry docking of vessels or the unexpected loss

²⁷ See Commission Notice, Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08), OJ C 101, 27.4.2004, p. 97, paras. 29 - 31.

of vessels. Conversely capacity adjustments may not concern reductions or capacity freezes which have the specific aim of increasing prices.

50. Therefore the Draft Consortia BER aims to clarify the wording of Article 3 (2) (b) by deleting the reference to "temporary" and introducing a reference to the purpose for which the adjustment is carried out, namely to respond to changing conditions of supply and demand.

4.3 Agreements not covered by the exemption

51. Article 4 of Regulation 823/2000 currently provides that the block exemption shall not apply to a consortium which includes agreements on the non-utilisation of existing capacity. In order to bring Regulation 823/2000 in line with the provisions of other block exemption regulations for horizontal cooperation agreements currently in force²⁸, Article 4 of the Regulation was revised to clarify which restrictions are not considered to be indispensable to attain the efficiencies generated by the joint service.
52. Article 4 of the Draft Consortia BER explicitly provides for the non application of the block exemption to the fixing of prices charged to third parties, the limitation of capacity and sales and the allocation of markets or customers. These restrictions are considered to be the most severe anti-competitive restraints in horizontal cooperation agreements and are thus excluded from the benefit of the block exemption irrespective of the consortium's market share. Whenever any such restriction is present in an agreement or its implementation, the consortium can no longer benefit from the block exemption and the block exemption as a whole shall not apply to the consortium in question.

4.3.1 Non-utilisation of existing capacity

53. Article 4 of Regulation 823/2000 prohibits consortium members to carry out or include provisions in their agreements relating to the non-utilisation of existing capacity, notably by refraining from using a certain percentage of the capacity of vessels operated within the framework of the consortium.
54. The prohibition refers to an output restriction for the purpose of raising prices, a serious violation of competition rules sanctioned by Article 81 (1) (b) of the Treaty, which prohibits agreements, decisions or concerted practices which have as their object or effect to limit or control production, markets, technical development or investment.

²⁸ Cf. notably Commission Regulation (EC) No 772/2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements, OJ L 123, 27.4.2004, p. 11; Commission Regulation (EC) No 2658/2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements, OJ L 304, 5.12.2000, page 3; Commission Regulation (EC) No 2659/2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements, OJ L 304, 5.12.2000, p. 7; See also in this respect Commission notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*), OJ C 268, 22.12.2001, p. 13.

55. Moreover, the wording of Article 4 of Regulation 823/2000 at present reflects past conference practices. In October 1994, the Commission adopted the Trans-Atlantic Agreement decision (TAA) prohibiting capacity non-utilisation agreements²⁹. The decision was upheld by the Court of First Instance in February 2002³⁰. As presently worded, the Article may lead to confusion as it refers to a "certain percentage of capacity" whereas any capacity freeze is potentially likely to lead to a price increase. Therefore the Draft Consortia BER revises the provisions on capacity limitations currently contained in Article 4 in order to better reflect the approach followed in other horizontal block exemption regulations whereby any severe restriction of competition such as an output limitation in any form is explicitly prohibited. Capacity adjustments in response to supply and demand fluctuations pursuant to Article 3 (2) (b) of the Draft Consortia BER will however remain exempted activities.

4.3.2 Price fixing

56. As indicated above, Regulation 823/2000 does not exempt joint price fixing amongst consortium members. This is explicitly stated in recital 9 and in Article 2 (1) of Regulation 823/2000. Indeed, price fixing is currently excluded from the very definition of consortia. In line with the wording of other block exemption regulations for horizontal cooperation, the new wording of the Draft Consortia BER in Article 4 aims to clarify this. As a consequence the reference to the prohibition of price fixing in Article 2(1) of Regulation 823/2000 becomes redundant and has been deleted in the Draft Consortia BER.

4.3.3 Market or customer allocation

57. The allocation of markets or customers is considered to be one of the hard core restrictions in horizontal agreements and prohibited pursuant to Article 81 (1) (c) of the Treaty. For the sake of clarification and in line with the approach taken in other block exemption regulations for horizontal cooperation agreements, Article 4 of the Draft Consortia BER includes market and customer allocation in the list of prohibited activities. If consortium members engage in market or customer allocation, the consortium will not benefit from the block exemption regulation.

4.4 Conditions and obligations

58. The members of a consortium can only benefit from Regulation 823/2000 if they fulfil a set of conditions and obligations attached to the block exemption pursuant to Articles 5 to 9 of Regulation 823/2000. These conditions and obligations aim to make sure that the consortium agreement satisfies the conditions of Article 81(3) of the Treaty with sufficient certainty³¹.

²⁹ Trans-Atlantic Agreement, Case IV/34.446, Commission Decision of 19.10.1994, OJ L 376, 31.12.1994, para 359-370.

³⁰ Case T-395/94, Atlantic Container Line and Others v Commission of European Communities, ECR 2002 II-00875.

³¹ If conditions are not satisfied, the consortium members can not benefit from the block exemption at all. Conversely, if the obligations are not fulfilled, the Commission may withdraw the benefit of the block exemption.

4.4.1 Basic conditions for the grant of exemption

59. Article 5 of Regulation 823/2000 lays down the three basic and non-cumulative conditions for the exemption so that a consortium agreement can benefit from the block exemption:

(a) The existence of effective price competition between the members of the conference within which the consortium operates; or

(b) The existence of a sufficient degree of effective service competition between the consortia members operating within a conference; or

(c) The consortium members are subject to effective competition, actual or potential, from carriers which are not members of that consortium.

60. Following the repeal of the Regulation (EEC) No 4056/86, references to liner shipping conferences have to be deleted. Therefore Article 5 (a) and (b) of Regulation 823/2000 have to be deleted.

61. Finally the third condition pursuant to Article 5 (c) of Regulation 823/2000 relating to competition external to the consortium as such is not directly affected by the abolition of liner conferences since it does not refer to conferences. In general, block exemptions do not contain conditions for exemption relating to external competition as market share thresholds incorporated in the block exemptions, if met, normally ensure that the exempted agreements are subject to external competition. The condition was originally introduced because Regulation (EEC) No 4056/86 did not contain a market share threshold. It was therefore not guaranteed that a consortium meeting the market share threshold of Regulation 823/2000 would be subject to external competition, in cases where for instance all carriers operating on a relevant market were also members of a price fixing liner conference. After the repeal of Regulation (EEC) No 4056/86 this situation can no longer arise and the condition can hence be deleted.

62. As a consequence the current Article 5 of Regulation 823/2000 can be deleted in its entirety.

4.4.2 Conditions relating to market share

4.4.2.1 Market share thresholds

63. Article 6 of Regulation 823/2000 currently defines two market share thresholds for the application of the block exemption: a market share threshold of 35% for consortia operating outside a liner conference and 30% for those operating within a conference.

64. Market shares are calculated on the basis of the volume of goods carried (freight tonnes or 20-foot equivalent units, TEU) in the relevant market, i.e. between ranges of ports at each end of the service, determined by ports' overlapping catchment areas, and in each trade direction³².

³² Commission Guidelines on the application of Article 81 of the Treaty to maritime transport services, OJ C 245, 26.9.2008, p. 2.

65. Three amendments to Article 6 of Regulation 823/2000 have been introduced:
- 1) The market share threshold relating to liner conferences (30%) has been deleted following the repeal of Regulation (EEC) No 4056/86.
 - 2) The market share threshold for all consortia has been reduced from 35% to 30%.
 - 3) The criteria clarifying when it is appropriate to aggregate market shares of carriers operating in the same relevant market with those of the consortium have been spelled out.
66. The reason for the reduction of the market share threshold is threefold. First, it brings Regulation 823/2000 closer to the general market share threshold for horizontal cooperation³³ and therefore is consistent with the general policy of the Commission to move towards applying the same rules that apply to other sectors also to the transport sector. As elaborated in more detail in Section 2.3 above, maritime transport still benefits from a preferential sectoral treatment compared to other industry sectors.
67. Secondly, the reduction provides a safeguard against the possibility that consortia give rise to vertical restraints such as those identified in paragraph 27. Finally, in view of the deletion of current Article 5 of Regulation 823/2000 on basic conditions for the grant of the exemption and notably the condition of effective external competition, a lower market share threshold is necessary to safeguard that only consortia below a certain threshold of market power can benefit from the block exemption.
68. However, even if a consortium is above the 30% market share threshold, that does not automatically mean that such consortium is illegal, but that the member of the consortium need to self assess if their cooperation restricts competition and if so, satisfies the conditions of Article 81 (3) of the Treaty.
69. The exemption shall continue to apply if the market share threshold is exceeded during any period of two consecutive calendar years by not more than one tenth. This provision remains unchanged.
70. Finally the calculation of the market shares should be based on market reality, in particular taking into account whether the consortium is subject to effective (external) competition. Therefore even if the market share of the members of the consortium remains under the market share threshold of 30%, the Commission may withdraw the benefit of the block exemption pursuant to Article 10 of the Draft Consortia BER (see Section 4.5 below). For instance it might well be that in case members of consortia engage in long-term slot charter agreements to sell capacity to third parties, these third party liner shipping companies can not be considered to exert effective competition on the consortium.

³³ Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements, OJ L 304, 05.12.2000, p. 3; Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements; OJ L 123, 27.04.2004, p. 11.

4.4.2.2 Aggregation of market shares

71. The Commission's market investigation revealed that in the same relevant market liner shipping carriers are often members of several consortia and/or carriers offer services both individually and within a consortium. These practices may alter the competitive behaviour of the market participants (e.g. by way of information spill-over among members of several consortia on the same relevant market).
72. The calculation of the market shares should be based on market reality, in particular taking into account whether the consortium is subject to effective (external) competition. Liner shipping carriers should hence carefully consider the activities of a consortium and those of its individual members within and outside the consortium. It is necessary to establish which activities and agreements should be taken into account for the purpose of assessing the competitive impact of the consortium.
73. According to Article 6 (1) of Regulation 823/2000 market shares are calculated by reference to the volumes of goods carried. This includes TEU volumes lifted by the consortium members independently of whether these are carried on their own vessels or on chartered vessels from third parties (e.g. slot charters).
74. Further clarification of the criteria that liner shipping companies shall apply when assessing the market share thresholds were added in Article 5 (2) (a) and (b) of the Draft Consortia BER. Such parallel or interlinked activities have always been taken into account in the assessment of whether the consortium members are subject to effective external competition. In view of the deletion of current Article 5 of Regulation 823/2000 in the Draft Consortia BER, this safeguard is now integrated in the market share condition.
75. First, market shares of carriers that provide services both individually and within a consortium on the same relevant market have to be aggregated.³⁴
76. *Example:* Consortium agreement between carrier A and B. Carrier B operates a separate individual service on the same Mediterranean to Middle East trade. The market share of B's individual service should be added to the market share of the consortium.
77. Second, as explained above carriers can be parties to various agreements on the same relevant market thereby potentially interlinking these agreements. Such cross-participations have to be taken into account when analysing whether the consortium is subject to effective (external) competition on the relevant market.
78. A carrier that is a party to several consortium agreements on the same relevant market has the possibility to restrict competition by coordinating the commercial policy - such as capacity allocation, marketing activities, sailing schedules or

³⁴ For the purposes of Article 2(4) of the EC Merger Regulation: In case two or more parties retain to a significant extent activities in the same market as the joint venture, the parties have to notify to the Commission the market share of each parent. Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings; OJ L 133; p. 1; Annex I; Section 10.

port calls - amongst the various agreements. Therefore the market shares of carriers that are parties to the abovementioned agreements on the same relevant market have to be aggregated.

79. *Example:* Consortium agreement 1 between carriers A and B and consortium agreement 2 between B and C on the same North Europe to North America trade. No contractual relation between carriers A and C. Market shares of A, B and C should be aggregated for the purposes of calculating the market share of consortium agreement 1 or 2.

4.4.3 Other conditions

80. Article 8 of Regulation 823/2000 lists other conditions subject to which a consortium agreement is eligible for exemption. Article 8 of Regulation 823/2000 remains largely unchanged with the exception of two amendments due to the review of the list of exempted activities pursuant to Article 3 of Regulation 823/2000 (See above Section 4.2): The reference to net revenue pools in Article 8 (b) of Regulation 823/2000 as well as Article 8 (c) of Regulation 823/2000 on consortia operating a joint marketing structure is deleted.

4.4.4 Obligation to consult with shippers

81. At present Article 9 of Regulation 823/2000 provides for mandatory consultations between transport users or their respective organisations and the consortium. These consultations are due to take place whenever requested by any of the parties for the purpose of seeking solutions on all important matters regarding the conditions and quality of the service provided by the consortium.
82. The market information reveals that at present such consultations are not taking place as shippers contact the individual members of the consortium directly.
83. Representatives of transport users also recognise that these consultations are not taking place but are divided on the approach that should be followed. One shippers' organisation considers the consultation procedure redundant. Firstly, because shippers' councils and their members rarely have the resources to enter in these consultations on any regular basis; secondly they are not equipped with the necessary trade data required to assess the consortia activities; thirdly because individual consultations are considered more appropriate.
84. Another organisation believes that if consortia are to continue to benefit from a block exemption regulation, the conditions for users' consultations should be tightened. In particular compulsory consultations should take place at least 3 months before any measure affecting the conditions and quality of consortia's services are implemented. This would safeguard the interests of the users and ensure that they continue to benefit from the efficiencies generated by the consortium.
85. The Commission services recognise that in a system where each consortium member markets its service independently, it is appropriate that consultations concerning the commercial terms of the service should take place on an individual basis. However, consultations concerning the general conditions of the service provided by the consortium that do not include commercially

sensitive data should take place whenever necessary with individual shippers or their associations as appropriate.

86. Considering the above, there is therefore no immediate need to change the provision set out in Article 9 of Regulation 823/2000.

4.4.5 Other obligations attached to exemption

87. Current Article 9 Regulation of 823/2000 on the obligations attached to the exemption relates to the consultations that must take place between carriers and transport users. Its paragraph (5) however contains an obligation for the consortium members to demonstrate upon request that the conditions and obligations of Regulation 823/2000 are met.
88. Considering that this obligation is not limited to the obligation to consult transport users but refers to all conditions and obligations in Regulation 823/2000, it is appropriate that this paragraph be made into a separate Article. The minimum period to provide the requested documentation has been extended from one to three months.

4.4.6 Exemption for agreements between transport users and consortia

89. To carry out this obligation to consult, Article 10 of Regulation 823/2000 currently block exempts agreements between transport users or their representative organisations and the consortium concerning the conditions and quality of liner shipping services. These discussions do not concern a horizontal cooperation between competitors, but rather a vertical relationship which shall be assessed in the framework of Regulation (EC) No 2790/1999³⁵. Therefore this provision is deleted in the Draft Consortia BER.

4.5 Withdrawal in individual cases

90. The application of Article 81(3) of the Treaty to categories of agreements by way of a block exemption regulation is based on the presumption that restrictive agreements that fall within its scope fulfil each of the four conditions laid down in Article 81(3) with sufficient certainty. Therefore the parties to an agreement covered by a block exemption are relieved of the burden under Article 2 of Regulation (EC) No 1/2003 of showing that their individual agreement satisfies each of the conditions of Article 81(3) of the Treaty.
91. If the agreement, decision of an association of undertakings or concerted practice within the scope of the block exemption regulation nevertheless has certain effects which are incompatible with Article 81(3), the Commission may withdraw the benefit of the block exemption.
92. The Draft Consortia BER amends partly the conditions for withdrawal set out in the current Article 12: the revised provision in Article 11 (a) allows the Commission to withdraw the block exemption in cases where in the relevant market within which a consortium operates there is no effective - actual or

³⁵ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999, p. 21; and Commission notice - Guidelines on Vertical Restraints, OJ C 291, 13.10.2000, p. 1.

potential - external competition. The Draft Consortia BER revises the wording in line with the external competition condition in current Article 5 (c) of Regulation 823/2000 and now focuses on external competition on "the relevant market" instead of previously on a "trade". The clarification that the relevant market - and not trades in general – is relevant for the competition assessment of consortia brings the provision in line with the market definition applied by Commission services in the liner industry³⁶. Although the market share threshold provided in Article 6 of Regulation 823/2000 should in general safeguard that the consortium is subject to external competition, this possibility of withdrawal still keeps its relevance in case such external competition is not effective.

93. The Draft Consortia BER also deletes current Article 12(c) of Regulation 823/2000 referring to effects incompatible with Article 81(3) that result from an arbitration award. It is a given that an arbitration award cannot order a prohibited conduct contrary to Regulation 823/2000 and no such possibility of withdrawal is provided for in other block exemption regulations for horizontal cooperation.

4.6 Final provisions

94. The Draft Consortia BER does not mention transitional provisions as they are not relevant in the present case. With regard to the entry into force, considering that the new Consortia BER may be published well ahead of the date of expiry of Regulation 823/2000, there is no need for a transitional period as (i) amendments are not substantial or not applied in practice, and (ii) industry will have sufficient time to review and amend their existing agreements before the expiry of Regulation 823/2000 on 25 April 2010. Finally the new Article 12 provides for a further five-year duration period. The future Consortia BER shall enter into force on 26 April 2010.

Annex – Trade Analysis

1. North Europe – Far East Trade
2. Mediterranean – Far East Trade
3. North Europe – North America (Transatlantic) Trade
4. Mediterranean – North America Trade
5. Europe – West Africa Trade
6. Europe – South Africa Trade
7. Europe – East Coast South America Trade
8. Europe – West Coast South America Trade
9. Europe – Australasian Trade
10. Europe – Indian Sub Continent Trade

³⁶ Commission Guidelines on the application of Article 81 of the Treaty to maritime transport services, OJ C 245, 26.9.2008, p. 2.

ANNEX

1. This annex provides an overview of the competitive situation in the main Europe concerned trades. The aim is to establish the market position of individual carriers and consortia taking into account any operational links, on the one hand, between individual carriers and consortia and, on the other, between different consortia.
2. The analysis is based on market information concerning the carriers active on each trade, both inside and outside consortia.³⁷ We present data on the number of vessels employed, the average vessel capacity and the operational capacity (in TEU) for each market participant (individual carrier or consortium) on each of the trades concerned. It has to be noted that the tables below provide publicly available market data and capacity shares, which we use as a proxy for the market shares of the carriers/ consortia, are calculated on the basis of operational capacity. However, as mentioned in paragraph 64 of the Technical Paper, for the purposes of assessing the threshold, market shares need to be calculated on the basis of the volume of goods carried (freight tonnes or TEU). Slot charter agreements are not taken into account.
3. The total number of carriers operating on a trade varies from 6 (Europe - Australasian trade) to 26 (Transatlantic trade). Each of the four important European trades (North Europe and Mediterranean to Far East and North America) is served by 20 or more carriers. Consortia and other forms of agreements are present in all trades (their number ranges from 1 to 9 per trade). On most trades, the number of carriers that rely on capacity co-operation is higher than the number of carriers that operate individually (Europe – South Africa, Europe - West Africa and Europe – Australasian trades being the exceptions). In addition, some carriers participate in more than one agreement. Finally, some of the carriers that run individual services may also offer joint services on the same trade.

1. NORTH EUROPE – FAR EAST

4. A total number of 21 operators³⁸ are active on largest European trade. Publicly available market information indicates, however, that only 5 carriers – Maersk, MSC, Evergreen, CSAV and United Arab - offer their services individually. The remaining carriers are grouping their services in the three alliances CKYH, New World and Grand Alliance as well as smaller consortia around CMA CGM and PIL. In terms of capacity none of these operational agreements has a share above 20% on this trade.
5. Three carriers (Hapag Lloyd, CMA CGM and China Shipping) participate in consortia or alliances in addition to their offering individual services. Hapag

³⁷ We use data from the Annual Container Market Review and Forecast -2007/08, Drewry Shipping Consultants Ltd, September 2007 and, for the Europe – Indian Sub Continent trade, from DynaLiners Newsletter, 05/2008.

³⁸ In all trades, subsidiaries or sister companies are not considered separately from their mother company.

Lloyd (1%) is a member of the Grand Alliance (13,6%). China Shipping (3,9%) participates in a consortium with CMA CGM (CMA CGM/ CSCL; 4,2%), while CMA CGM (6,3%) is a member of another consortium, with DAL (0,9%).³⁹

| North Europe - Far East | | | | | |
|---|------------------|--|---------------------------------------|--|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| Maersk Line | 49 | 8.451 | 2.203 | | 18,7% |
| CKYH | 47 | 6.946 | 2.173 | COSCO, K-Line, Yang Ming, Hanjin, Senator | 18,4% |
| Grand Alliance | 35 | 7.689 | 1.604 | Hapag Lloyd, OOCL, MISC, NYK | 13,6% |
| New World Alliance | 31 | 6.129 | 1.278 | APL, HMM, MOL | 10,8% |
| MSC | 32 | 6.978 | 1.092 | | 9,2% |
| Evergreen | 16 | 7.505 | 783 | | 6,6% |
| CMA CGM | 16 | 7.595 | 743 | | 6,3% |
| CMA CGM / CSCL | 8 | 9.497 | 495 | CMA CMG, CSCL | 4,2% |
| China Shipping | 8 | 8.741 | 456 | | 3,9% |
| CSAV Norasia | 8 | 6.287 | 328 | | 2,8% |
| PIL / Wan Hai | 8 | 4.252 | 222 | PIL, Wan Hai | 1,9% |
| United Arab (UASC) | 10 | 3.876 | 202 | | 1,7% |
| Hapag Lloyd (Suez Pendulum) | 12 | 2.351 | 123 | | 1,0% |
| CMA CGM / DAL (NEMO) | 10 | 2.719 | 109 | CMA CGM, DAL | 0,9% |
| Total Top 14 Service Providers | 290 | 6.358 | 11.810 | | 100% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [From Table 5.13]

2. MEDITERRANEAN – FAR EAST

6. Out of the 20 carriers active on the trade only 6 carriers (Maersk, MSC, Evergreen, CSAV, IRISL and Rickmers) do not appear to rely on operational co-operation agreements with competitors. None of the operational agreements entered into by the other carriers seems to reach a capacity share of more than 10% on the trade.
7. This trade is characterized by extensive cross-participation⁴⁰ of carriers in different forms of co-operation agreements. Five carriers (CMA CGM, CSCL,

³⁹ The table below provides only data for the top 14 carriers which account for approx 99% of the total operational capacity on that trade.

⁴⁰ Cross-participation refers to situations where a carrier performs an individual service and participates in one or more consortia, or where a carrier participates in two or more consortia.

ZIM, UASC and Hapag Lloyd) participate in consortia or alliances in addition to their offering individual services. Specifically, CMA CGM (12,4% individual share) participates in one consortium with COSCO (1,6% joint share) and in a second one with DAL (0,9% joint share). CSCL (5,8% individual share) and ZIM (1,1% individual share) operate a joint service (1,5% joint share). Hapag Lloyd (1,1%) is a member of the Grand Alliance (8,9%). UASC (1,7%) participates in SINA (together with Yang Ming, K-Line and Hanjin; 1,7%), and in EMA (together with MOL, Hanjin-Senator; 1,3%).

| Mediterranean - Far East | | | | | |
|------------------------------|------------------|--|---------------------------------------|----------------------------------|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| Maersk Line | 64 | 6.801 | 2.355 | | 20,2% |
| MSC | 60 | 6.333 | 2.212 | | 19,0% |
| CMA CGM | 42 | 5.069 | 1.443 | | 12,4% |
| CKYH | 35 | 4.048 | 1.055 | COSCO, K-Line, Yang Ming, Hanjin | 9,1% |
| Evergreen | 35 | 5.862 | 1.223 | | 10,5% |
| Grand Alliance | 28 | 5.557 | 1.037 | Hapag Lloyd, OOCL, MISC, NYK | 8,9% |
| CSCL | 18 | 6.466 | 674 | | 5,8% |
| CSAV Norasia | 8 | 4.155 | 217 | | 1,9% |
| UASC (AEC) | 10 | 3.876 | 202 | | 1,7% |
| SINA | 8 | 3.683 | 192 | Yang Ming, K-Line, Hanjin, UASC | 1,7% |
| COSCO/CMA CGM (AMX/MEX2) | 7 | 3.647 | 190 | COSCO, CMA CGM | 1,6% |
| ZIM / CSCL (AMP/AMX2) | 13 | 3.367 | 176 | ZIM, CSCL | 1,5% |
| EMA (EMA/MEX) | 8 | 2.899 | 151 | UASC, MOL, Hanjin, Senator | 1,3% |
| IRISL (ECL) | 11 | 2.556 | 133 | | 1,1% |
| ZIM (FMX) | 8 | 2.138 | 127 | | 1,1% |
| Hapag L. (Suez Pendulum) | 12 | 2.351 | 123 | | 1,1% |
| CMA CGM / DAL | 10 | 2.719 | 109 | CMA CGM, DAL | 0,9% |
| Rickmers | | 600 | 14 | | 0,1% |
| Total | 377 | 4.007 | 11.633 | | 100% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [From Table 5.18]

8. In addition to the five abovementioned carriers, there are four carriers that do not offer services individually but participate in more than one consortium or alliance. These are K-Line, Yang Ming and Hanjin, which participate both in CKYH (together with COSCO; 9,1%) and in SINA, and COSCO, which participates in CKYH but also in an agreement with CMA CGM. In addition, Hanjin participates in a third agreement, EMA.

3. NORTH EUROPE – NORTH AMERICA (TRANSATLANTIC)

9. The Transatlantic trade sees 9 global liner shipping carriers offering major services and a large number of less important services provided by large carriers and small niche operators. Maersk Line, MSC, and eight other minor carriers offer individual services on the trade, while the remaining carriers rely on operational agreements. The trade appears to be competitive due to the large number of fringe competitors. The Grand Alliance and the New World Alliance account for a capacity share of 17,4 % and 6,1 % respectively.
10. Only Evergreen operates both individually and in co-operation with other carriers. Specifically, it has an agreement with ZIM and another one with CMA and CSCL. The latter two have also a separate agreement. In addition, CMA is a party to an agreement with Marfret.

| North Europe - North America (Transatlantic) | | | | | |
|--|------------------|--|---------------------------------------|--------------------------------|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| Grand Alliance | 27 | 3.346 | 666 | Hapag Lloyd, OOCL, MISC, NYK | 17,4% |
| MSC | 10 | 4.969 | 518 | | 13,5% |
| Maersk Line | 17 | 4.417 | 461 | | 12,0% |
| NWA | 12 | 4.508 | 235 | APL, HMM, MOL | 6,1% |
| Other* | 68 | 1.852 | 1.221 | | 31,9% |
| St. Lawrence Sector (Canada) | 15 | 2.773 | 723 | ** | 18,9% |
| Total | 149 | 3.644 | 3.825 | | 100% |

Source: Drewry Shipping Consultants Ltd.

Annual Container Market Review and Forecast - 2007/08 [From Table 5.23]

* Other: ACL, Atlanticargo, CMA/Marfret, CMA/CSCL, CMA/CSCL/Evergreen, Evergreen/Z M, CHKY, Evergreen, Hamburg Sud, ICL, EWL, H. Stinnes Lienen, Star Shipping, Eimskip.

** Carriers active in St. Lawrence Sector: Hapag Lloyd (together with OOCL), Maersk Line and MSC.

4. MEDITERRANEAN – NORTH AMERICA

11. The largest two carriers Maersk and MSC accounting for more than 40% of the capacity and another four niche players (3%) on the Mediterranean – North America trade are acting independently. The remaining 17 carriers entered into operational agreements with their competitors.

| Mediterranean - North America | | | | | |
|--|------------------|--|---------------------------------------|--|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| Maersk Line | 38 | 4.872 | 1.236 | | 31,1% |
| MSC | 11 | 3.461 | 361 | | 9,1% |
| Grand Alliance (AEX) | 9 | 5.626 | 293 | Hapag Lloyd, OOCL, MISC, NYK | 7,4% |
| ZIM (ZCS) | 14 | 4.892 | 255 | | 6,4% |
| Indamex | 7 | 4.303 | 224 | Hapag Lloyd, CMA CGM, APL | 5,7% |
| CSCL (AMAX) | 10 | 4.191 | 219 | | 5,5% |
| Hapag Lloyd | 11 | 2.869 | 210 | | 5,3% |
| SINA | 8 | 3.683 | 192 | Yang Ming, K-Line, Hanjin, UASC | 4,8% |
| ZIM /CSAV Nor/CSCL (AMP) | 13 | 3.367 | 176 | ZIM, CSAV Norasia, CSCL | 4,4% |
| Hapag Lloyd/Senator | 8 | 1.588 | 166 | Hapag Lloyd, Senator Lines | 4,2% |
| India North America Express | 8 | 2.930 | 153 | Gold Star-ZIM, Emirates, SCI, OOCL Italia Marittima | 3,8% |
| CMA/Evergreen/Gold Star (Amerigo Express/MUS) | 5 | 2.868 | 150 | CMA CGM, Evergreen, Gold Star | 3,8% |
| UASC/Hanjin (MIX) | 11 | 2.348 | 122 | UASC, Hanjin | 3,1% |
| COSCO/K-L/Hanjin (TAS3) | 4 | 1.622 | 85 | COSCO, K-Line, Hanjin | 2,1% |
| Costa Container Line (CCM) | 4 | 1.557 | 52 | | 1,3% |
| Melfi Lines | 3 | 1.414 | 48 | | 1,2% |
| Nordana | 4 | 703 | 14 | | 0,4% |
| NSCSA | 3 | 1.090 | 14 | | 0,4% |
| | | | | | |
| Total | 171 | 2.966 | 3.969 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [From Table 5.29]

12. Three carriers (CSCL, ZIM and Hapag Lloyd) participate in consortia or alliances in addition to their individual services. More specifically CSCL (5,5%) and ZIM (6,4%) are parties to an agreement with CSAV Norasia (4,4% joint share). In addition, ZIM and its subsidiary Gold Star participate in another agreement with Emirates, SCI, OOCL and Italia Marittima (India North America Express; 3,8%). Hapag Lloyd (5,3% individual share) offers a service with Senator Lines (4,2% joint share), participates in the Grand Alliance

(together with OOCL, MISC and NYK; 7,4%) and is a party to another agreement with CMA CGM and APL (Indamex; 5,7%).

13. There are five carriers that do not offer services individually but participate in more than one consortium or alliance. These are OOCL, K-Line, Hanjin, CMA CGM and UASC. Specifically, OOCL is a member of the Grand Alliance and the India North America Express. K-Line participates in SINA (together with Yang Ming, UASC and Hanjin; 4,8%) but offers also another joint service with Hanjin and COSCO (2,1%). In addition, UASC and Hanjin have a separate agreement (3,1%). Finally, CMA CGM is a member of Indamex but is also a party to an agreement with Evergreen and Gold Star (3,8%).

5. EUROPE – WEST AFRICA

14. The West Africa trade is thin. Maersk is the leading player with a capacity share of above 50% followed by MSC (18%), Delmas/OTAL/MOL and Grimaldi Lines.
15. Only one carrier, Delmas, offers both individual and joint service (with OTAL and MOL)⁴¹. ZIM does not operate individually but participates in two agreements, one with CSCL and another, with COSCO.

| Europe - West Africa | | | | | |
|------------------------------|------------------|--|---------------------------------------|--------------------------------|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| Maersk Line/Safmarine | 54 | 1.858 | 1.163 | | 54,7% |
| MSC | 17 | 2.440 | 382 | | 18,0% |
| Delmas/OTAL/MOL | 8 | 1.818 | 142 | Delmas, OTAL, Mitsui | 6,7% |
| Delmas/OTAL | 13 | 1.018 | 109 | Delmas, OTAL | 5,1% |
| Grimaldi Lines | 16 | 687 | 83 | | 3,9% |
| Others* | 29 | 877 | 246 | | 11,6% |
| | | | | | |
| Total | 137 | 1.450 | 2.125 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.

Annual Container Market Review and Forecast - 2007/08 [From Table 5.44]

* Other: CSCL/ZIM, Delmas, COSCO/ZIM, Portline, Messina, Nile Dutch Africa Line, Hapag Lloyd, Traninsular, Baco Liner, SAILS

6. EUROPE – SOUTH AFRICA

16. The Europe-South Africa trade is thin. Only 7 carriers offer services on this trade of which 4 on an individual basis and the remaining carriers jointly in the framework of the SAECS consortium.

⁴¹ Both Delmas and OTAL belong to the CMA CGM group.

| Europe - South Africa | | | | | | | |
|------------------------------|-----------|-----------------|------------------|--|---------------------------------------|--------------------------------|-------------------|
| Line/Alliance/ Consortium | Sectors | Freq. (Days) | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| SAECS | | | 13 | 3.157 | 329 | Maersk, Safmarine, MOL, DAL | 50,4% |
| Loop A | N. Europe | 7 | 6 | 4.507 | 235 | | |
| Loop B | N. Europe | 7 | 7 | 1.806 | 94 | | |
| MSC | N. Europe | 7 | 7 | 4.833 | 252 | | 38,6% |
| MACS | N. Europe | 8-9 | 8 | 820 | 34 | | 5,2% |
| Messina | S. Europe | 14 | 4 | 1.291 | 34 | | 5,2% |
| SAILS | N. Europe | 60 | 1 | 645 | 4 | | 0,6% |
| Total | | | 33 | 2.149 | 653 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [Table 5.43]

7. EUROPE – EAST COAST SOUTH AMERICA

17. The East Coast of South America is served from Europe by 14 carriers. Only three carriers are independent. The remaining 11 carriers are providing services in five operational agreements.

| Europe - East Coast South America | | | | | |
|---|------------------|--|---------------------------------------|---|-------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| MSC | 19 | 3.604 | 564 | | 27,5% |
| Maersk Line/Safmarine | 16 | 3.221 | 504 | | 24,6% |
| HS/Al/CMA/Hapag | 11 | 4.023 | 420 | Hamburg Sud, Aliança, CMA CGM, Hapag Lloyd | 20,5% |
| New Sirius Service | 6 | 3.043 | 159 | Libra, Hamburg Sud, ZIM | 7,8% |
| CSCL/K-L/Evergreen | 6 | 2.660 | 139 | CSCL, K-Line, Evergreen | 6,8% |
| VSA 4 (main loop) | 5 | 2.528 | 132 | CSAV, Libra-Montemar, NYK | 6,4% |
| New Seagull Service | 6 | 1.929 | 101 | Costa Container Line, Maruba | 4,9% |
| Grimaldi Lines (Northern Express) | 6 | 792 | 30 | | 1,5% |
| Total | 75 | 2.725 | 2.047 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [Table 5.37]

18. Two carriers, Libra and Hamburg Sud, are parties to more than one agreement. The two carriers operate a joint service together with ZIM (New Sirius Service; 7,8%). In addition, Libra participates in a VSA with Montemar, CSAV (its mother company), and NYK (6,4%). Hamburg Sud co-operates with its subsidiary Aliança, CMA CGM and Hapag Lloyd (20,5%).

8. EUROPE – WEST COAST SOUTH AMERICA

19. The West South America trade is a very thin trade served by a low number of small-scale vessels. Only 38 vessels with an average vessel size of 1.880 TEUs are employed on this trade. In comparison, on the largest trade more than 300 vessels are employed. Seven carriers are offering services of which two individually and four jointly and one carrier inside and outside a consortium.
20. CCNI (8% individual share) is the only carrier that operates individually but also in co-operation with CSAV (10,9%). CSAV participates also in another agreement (with Hapag Lloyd, Hamburg Sud and CMA; 48,6%).

| Europe - West Coast South America | | | | | |
|-------------------------------------|------------------|--|---------------------------------------|--|---------------------------------------|
| Line/Alliance/ Consortium | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share on Total WCSA |
| Euro Andes | 16 | 2.511 | 262 | Hapag Lloyd, Hamburg Sud, CSAV, CMA CGM | 48,6% |
| Maersk Line (Andean Service) | 6 | 2.927 | 153 | | 28,3% |
| Med Andes | 6 | 1.761 | 58 | CCNI, CSAV | 10,9% |
| CCNI (Condor Express) | 5 | 1.768 | 43 | CCNI | 8,0% |
| Ecuadorian Line | 5 | 434 | 23 | | 4,2% |
| Total | 38 | 1.880 | 539 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [Table 5.42]

9. EUROPE – AUSTRALIA/ASIA

21. The Australia trade is served by six carriers: the independent lines MSC, Hapag Lloyd and Hamburg Sud as well as CMA CGM, Marfret and DAL in consortia. MSC as the leading carrier controls 30% of the trade's capacity.
22. Only one carrier, CMA CGM, participates in two consortia, one with DAL (19,7%) and in another with Marfret (8,9%).

| Europe - Australasian Trade | | | | | | | |
|--------------------------------------|--------------|-----------------|------------------|--|---------------------------------------|--------------------------------|-------------------|
| Line/Alliance/ Consortium | Sectors | Freq. (Days) | No of vessels | Average capacity of vessels (TEU) | Operational Capacity (1000 TEU) | Members of alliance/consortium | Capacity share |
| MSC | N./S. Europe | 7 | 13 | 3.162 | 165 | | 29,8% |
| Hapag Lloyd (Suez Pendulum) | N./S. Europe | 7 | 12 | 2.351 | 123 | | 22,1% |
| CMA/DAL (Nemo Service) | N. Europe | 7 | 10 | 2.719 | 109 | CMA CGM, DAL | 19,7% |
| Hamburg Sud (Trident Service) | N. Europe | 7 | 10 | 2.486 | 108 | | 19,5% |
| CMA/Marfret (Panama Pendulum) | N. Europe | 14 | 5 | 2.263 | 49 | CMA CGM, Marfret | 8,9% |
| Total | | | 50 | 2.596 | 554 | | 100,00% |

Source: Drewry Shipping Consultants Ltd.
Annual Container Market Review and Forecast - 2007/08 [Table 5.34]

10. EUROPE – INDIAN SUB CONTINENT

23. There are six roundtrip cellular container services provided by 11 lines in the North Europe-Indian Sub Continent trade, only one sling more than four years ago. Overall annualised capacity now stands at 590.000 TEU, a significant 69% growth over the same period, among others to be attributed to an increase of average ship size to 3.800 TEU. The EPIC consortium holds one third of the trade capacity followed by Maersk and MSC and the consortium ISES.

| Europe - Indian Sub Continent | | | | | | | |
|-------------------------------|--------------------|------------------|---|---|---|--|-------------------|
| Line/Alliance/ consortium | weekly sailings | No of vessels | Average capacity of vessels in TEU | Total capacity of vessels in 1000 TEU | Annual trade capacity in 1000 TEU | Members of alliance/consortium (number of vessels) | Capacity share |
| EPIC | 2 | 12 | 3600 | 43 | 195 | CMA (7), HAPAG (4), Hamburg (1) | 33% |
| Maersk Line | 1 | 6 | 6300 | 38 | 137 | | 23% |
| MSC | 1 | 6 | 3200 | 19 | 98 | | 17% |
| ISES | 1 | 7 | 3300 | 23 | 86 | K-Line (1), MISC (1), SCI (2), Yang Ming (1), ZIM (2) | 15% |
| CSAV Norasia | 1 | 6 | 2900 | 17 | 75 | | 13% |
| Total | 6 | 37 | 3860 | 140 | 591 | | 100% |

Source: Dynaliners 05/2008