December 14, 2018

European Commission

Directorate-General for Competition-Unit F.1

Antitrust: Transport, Post and other services

Reference: HT. 5252- Evaluation of the Consortia Block Exemption Regulation

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Dear Sirs,

COSCO Shipping Lines Co. Ltd ("COSCO") welcomes the opportunity to contribute its observations on the European Commission's review of the Consortia block exemption regulation, Commission Regulation 906/2009, (the "BER").

COSCO respectfully suggests that the current BER works well for both container operators and for transport users. COSCO therefore respectfully submits that the BER's validity should be extended for a further five years from April 2020 when the present BER is scheduled to expire.

In COSCO's view, the BER provides legal certainty and is an essential tool in the process of ensuring compliance with EU competition law. Consortia agreements enable carriers to achieve efficiencies and obtain the benefits of more efficient vessels. As a result, shippers and forwarders have access to a wider and more stable service coverage, while vigorous competition is maintained. Consortia also allow smaller carriers to participate and thus prevent the creation of barriers to market entry. In the absence of Consortia, the likely result would be further consolidation, a reduction of the diversity of carriers and a lessening of consumer choice.

COSCO's present situation and reliance on the BER

COSCO is a leading global supplier of containerised maritime transport services, servicing the key trades to and from the EU (such as Asia-North Europe or trans-Atlantic routes). It is a member of the Ocean Alliance, formed in 2016, an alliance comprising CMA-CGM, Evergreen Marine Corporation, Oriental Overseas International and COSCO. In addition, it is a member of several small Consortia operating on different trades.

In performing its self-assessment of compliance with EU rules of the consortia agreements to which it is a party, COSCO relies on the BER and the guidance it contains on the types of cooperation considered to be pro-competitive and productive of benefits to consumers.

Current situation of the Liner trades

The basic economic and commercial reality of liner shipping operations has not changed since the Commission's last BER review of 2014. The major trades to and from the EU (e.g. Asia-Europe) continue to involve:

- the transport of huge volumes of cargo of varied types and content
- the servicing of complex numbers of calls
- the planning of schedules covering a multiple number of destinations and customer preferences.

No individual Line has sufficient resources to offer a comprehensive service as a single operator. Consortia agreements between Liner operators are therefore a logical and necessary response to market demand. As the Commissioner for Competition remarked in a speech in 2015: "Consortia are a logical response to the difficulties that beset the industry and we know that they can create efficiencies. Both small and large carriers see benefits; for smaller carriers, consortia are often the only way to offer a regular service. More generally they lead to economies of scale and better capacity utilisation."[1] This statement was echoed by the Director of the Division responsible for maritime competition in a speech in 2016 when he stated that: "Alliances, or consortia in EU legal terminology, are a logical response to the difficulties faced by the industry. This is a type of cooperation which allows carriers to provide services together while keeping their independence from each other with respect to price setting. Consortia generally create efficiencies, in terms of economies of scale and better utilisation of space on ships. These efficiencies can be presumed to be passed on to customers, in terms of better services and higher coverage of ports, provided there is sufficient competitive pressure on the consortium."[2]

COSCO submits that the assessment of the rationale for Consortia and their benefits to the industry (both carrier and shipper) in the previous paragraph still applies. Consortia permit cooperation between Lines to achieve network coverage with sufficient capacity and regularity of services, while at the same time preserving the ability of Lines to compete against other carriers on price and service quality. From a regulatory standpoint, therefore, Consortia agreements achieve a balance between, on the one hand, creating a framework for operational cooperation leading to efficiency gains and consumer benefits and, on the other hand, maintaining a vigorously competitive environment. Consortia, ranging from global cooperation agreements to those covering smaller, even "thin" trades with low volumes, are likely to continue to be a vital form of cooperative agreement for the foreseeable future.

[1] Speech of Commissioner Vestager at the European Maritime Law Organisation Conference, Copenhagen, 5 October 2015
[2] Speech of Mr Henrik Mørch at the European Maritime Law Organisation Conference, London, 30 September 2016

Benefits of retaining the Consortia BER

The BER is a regulation that is particularly noteworthy for its simplicity of use, clarity of purpose and flexibility of application. It creates a simple and effective regulatory framework by helpfully listing a range of permitted cooperative activities (in Article 3(1)) and of permitted "ancillary restrictions" (in Article 3(4); it also contains helpful guidance on notice periods or initial "lock-in" periods (Article 6). When conducting compliance assessments of Consortia, the BER is therefore invaluable in providing clear parameters of permitted cooperation. The maritime sector undoubtedly benefits from this regulatory clarity and efficiency.

It is instructive to compare the regulatory situation of the liner sector with that of the aviation passenger services sector. There is no BER for aviation cooperation agreements, such as code sharing, but there is a significant amount of guidance available as a result of Commission decisions, publications of the Commission and decisions taken by courts of EU Member States.

In the case of the liner shipping sector, if the BER did not exist, there would be none of the wide range of precedents and guidance cited in the paragraph above. As a result, maritime consortia would be left in a situation of considerable regulatory uncertainty, leading to more complex (and expensive) self-assessment exercises; in addition, the uncertainty as to the range of permissible compliant cooperation might have a dissuasive effect on the willingness of Lines to create cooperative arrangements, to the detriment of service efficiency and consumers.

The Commission should be mindful of the costs to industry of compliance when conducting self-assessments in the absence of a BER, particularly in light of the lack of precedents and guidance in the liner sector highlighted in the previous section. In the absence of a BER or of precedents, COSCO submits that the complexity and cost of compliance would increase: particularly in the case of smaller Consortia (such as those covering "thin trades" with low volumes of cargo).

Conclusion

For the reasons set out in this submission, COSCO respectfully suggests that the BER should be renewed for a further five year period. The specificities of the liner shipping sector are unique to the industry and are addressed by the BER which is a clear and flexible regulatory instrument, balancing the need for legal certainty with the protection of competitive conditions.

In COSCO's view, for the reasons explained in this submission, the BER provides legal certainty and is a very useful tool in the process of ensuring compliance with EU competition law. In COSCO's respectful submission, the BER serves a useful purpose in encouraging pro-competitive Consortia agreements that enhance efficiencies of service and benefit transport users. The BER should therefore be preserved and its life extended by a further five years after its scheduled expiry date on the 25th April 2020.

COSCO trusts that this submission will be of assistance to the Commission in its BER review process.

Yours sincerely,

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