

Public questionnaire for 2018 Evaluation of Consortia Block Exemption Regulation

Fields marked with * are mandatory.

Introduction

Background and aim of questionnaire

Consortia are agreements between liner shipping carriers for the joint operation of maritime transport service. The Consortia Block Exemption Regulation, Commission Regulation 906/2009 ("Consortia BER"), sets the specific conditions under which certain consortia agreements can benefit from exemption to Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") in accordance with Article 101(3) TFEU. These conditions aim at ensuring that consumers enjoy a fair share of the resulting benefits. The current Consortia BER will expire on 25 April 2020.

The current Consortia BER is based on the enabling Council Regulation 246/2009 which provides that, in accordance with the provisions of Article 101(3) TFEU, the Commission may, by way of Regulation, exempt consortia agreements from the application of Article 101(1) TFEU, for a period limited to five years but with the possibility of prolongation.

This public questionnaire represents one of the methods of information gathering in the evaluation of the Consortia BER, which started in May 2018. In order to assess the impact and relevance of Consortia BER, the specific purpose of this questionnaire is to collect views and evidence from the public and the stakeholders on the following criteria: Effectiveness, Efficiency, Relevance, Coherence and EU added value. The collected information will provide part of the evidence base for determining whether the Consortia BER should be left to expire or prolonged (and if so, under which conditions).

The responses from this consultation will be analysed and the summary of the main points and conclusions will be made public on the [consultation website](#).

Nothing in this questionnaire may be interpreted as stating an official position of the European Commission.

Submission of your contribution

You are invited to reply to this public consultation preferably by answering the questionnaire online. To facilitate the analysis of your replies we would kindly ask you to keep your answers concise and to the point. You may include documents and URLs for relevant online content in your replies.

Alternatively, you can send your contribution by email to the following functional mailbox: COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu.

For your information, you have the possibility to save your questionnaire as "draft" and continue replying later. In order to do this you have to click on "Save as Draft" and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access again and continue replying to your questionnaire.

Duration of the consultation

The consultation on this questionnaire will be open for 12 weeks from 27/09/2018 to 20/12/2018.

Privacy and Confidentiality

In the responses to this questionnaire the identity of the stakeholder should be clearly indicated in the section "Stakeholder's profile". If available, the ID number of the EU [Transparency Register](#) should also be provided.

* Publication Privacy Setting

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ☐ **Anonymous** - Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- ☒ **Public** - Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ * I agree with the [personal data protection provisions](#).

Stakeholder's profile

1. You are replying:

- ☐ As an individual in your personal capacity
- ☒ In your professional capacity on behalf of an organisation

4. a) Country of residence

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece

- ☐ Hungary
- ☐ Ireland
- ☒ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Other
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom

5. Name of organization

CONFETRA - CONFEDERAZIONE GENERALE ITALIANA DEI TRASPORTI E DELLA LOGISTICA

6. a) Type of organization:

- ☐ Company
- ☐ Professional consultancy, law firm, self-employed lawyer/consultant
- ☐ Research and academia
- ☒ Nongovernmental organisation or association
- ☐ International, national, regional or local public authority
- ☐ Other

7. a) Type of company:

- ☐ Carrier
- ☐ Shipper
- ☐ Freight-forwarding company
- ☐ Logistics company
- ☐ Port authority or port services provider
- ☒ Other

7. b) If Other, please specify which type of company:

CONFETRA is a national Confederation of national sector Federation and local Associations all related to the Logistic Chain whose contribution to National GDP is estimated around 8%. In particular Confetra associates 20 national sector Federations (such as Shipping Agencies, Forwarders, Warehousing and Logistic Operators, Couriers, Road Hauliers, Multimodal Transport Operator, Inland and Maritime Terminals, rail transport of goods, air cargo) and 64 local Associations, representing more than 60.000 companies and 500.000 workers. For further information please see also the website www.confetra.com

8. Is your organisation included in the Transparency Register?

☒ Yes

☐ No

If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

9. Please describe the activities of your organisation.

250 character(s) maximum

Founded in 1946 CONFETRA represents at political, economic, social and union level the entrepreneurial categories of the sectors of transport, freight forwarders, logistics and goods storage, as well as the connected and ancillary sectors (see response 7b)

Section 1: Effectiveness

Consortia are cooperation agreements between carriers and, where concluded between competitors, may potentially fall under Article 101 TFEU. Carriers are therefore required to assess whether their cooperation agreements are compliant with Article 101 TFEU. For that purpose the Consortia BER may provide guidance.

10. a) Do you consider that the Consortia BER provides high level of legal certainty?

☐ Yes

☒ No

10. b) Please explain.

1000 character(s) maximum

In its current version, the Consortia BER doesn't provide sufficient legal certainty for some actors of the logistic chain. Since the renewal of the Consortia BER in 2009, many market developments have occurred and have led to important consolidation within the liner shipping industry. Moreover, the increased use of data by shipping lines to propose door to door services is leading to a situation where shipping lines are actually competing with other actors who do not benefit from exemption. Last, vertical integration of terminals by carriers is increasing and somehow distorting the competition between shipping lines offering carrier haulage and door to door services (i.e. relying on dedicated terminals) and other actors offering merchant haulage and using all types of terminals. Legal certainty can be improved also by clarifying that exchange of information beyond the shipping leg is excluded from the scope of the exemption.

11. a) Please estimate the level of legal certainty provided by the Consortia BER on the following issues:

	Very high	High	Intermediate	Low	Very low	I don't know
Market definition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Exchange of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capacity adjustments in response to fluctuations in supply and demand	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The concept of highly integrated consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall compliance with competition law	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The right to withdraw and notice period for members' exit from consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

1000 character(s) maximum

We believe that is a need to provide an updated definition of what is the market as the level of consolidation which characterizes the liner shipping industry as well its complex structure shows that the 30% threshold is not anymore valid. Besides, shipping lines are active in several markets both horizontally and vertically and compete with other actors of the logistics chain beyond the shipping leg.

12. a) Based on your experience, to what extent does self-assessment of a consortium's compliance with EU competition law rely on instruments other than Consortia BER that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

	Very high	High	Intermediate	Low	Very low	I don't know
Horizontal Guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Article 101 (3) TFEU Guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Specialisation BER	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EC decisional practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

1000 character(s) maximum

13. a) Does the Consortia BER encourage types of cooperation that are not efficient or do not benefit customers?

- ☒ Yes
☐ No

13. b) Please provide examples and explain how prevalent they are.

1000 character(s) maximum

There is a very large number of Consortia agreements as the Regulation allows their conclusion quite easily. Whether the (alleged) benefits derived by Alliances system and related BER are transmitted to the logistic chain operators should to be defined in detail. As an example, what can be noted that is that the impact on ports and port service providers which has unfortunately not been taken into account in previous reviews of Consortia Regulation is quite significant. Particularly when cumulating with the increase in size of ships reaching now 24.000 teus and the effect of M&A in the Liner industry. Blank sailing, delays, peaks in port operations, less calls in ports, increased market power for liner shipping to the detriment of their service providers as well as under utilisation of port capacities (often or always developed through public money) due to less calls in some ports, congestions in inland networks are among the recent developments which must be taken into account.

14. a) Conversely, does the Consortia BER discourage any practices that would be efficient and benefit customers?

☐ Yes

☒ No

14. b) Please provide examples and explain how prevalent such types of cooperation could be.

1000 character(s) maximum

Consortia might be useful from the perspective of the lines.

15. a) In your experience, do members of the same consortium compete between themselves in terms of prices or certain types of services?

☐ Yes

☐ No

15. b) Please explain.

1000 character(s) maximum

We do not know. This is a good question to be raised to lines which are vertically integrated to terminals (and not only) and which have consortia agreements.

Section 2: Efficiency

16. Does the compliance with Consortia BER generate costs? Would you be able to quantify them (in absolute value as well as relative value, i.e. percentage of your annual turnover)? Please explain.

1000 character(s) maximum

We do not know.

17. a) In your view, if the Consortia BER were not prolonged and self-assessment would rely on other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101 (3) Guidelines, the Specialisation BER and EC decisional practice) would the costs of compliance increase?

☐ Yes

☐ No

17. b) Please explain and provide estimate of the change in compliance costs.

1000 character(s) maximum

We do not know.

Section 3: Relevance

18. What were the major trends and changes in the liner shipping industry in the past 5 years?

1000 character(s) maximum

The top 4 carriers accounted for 60% of the global container shipping market in 2018. Market share of the biggest carrier 19% is larger than the market share of any global liner alliance before 2012, which shows the level of consolidation of the industry. More important concentration ports networks, bigger cargo shifts from a port to another when liners forming alliances change port networks and underutilisation of infrastructures. Within ports, as a result of consolidation and the use of Consortia agreements, the buying power of the carriers has become huge thus leading to destructive competition between terminal operators. This lowers the rates of ROI for port operators and in many peaks of activities followed by period of unemployment for port workers, it also results in decline of smaller container terminals and the disappearance of small independent terminal operators. High load peaks also imply congestion in inland network systems, with higher costs in term of transport costs and pollution.

19. a) Have you noticed any or more of the following changes to the consortia landscape in the past 5 years:

	Significant increase	Moderate Increase	Stable	Moderate decrease	Significant decrease	Don't know
Number of consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of carriers operating outside consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of members in individual consortium	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capacity deployed by individual consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

19. b) Please explain.

1000 character(s) maximum

It would be important that DG Competition gets the data about the reality of the respect of the thresholds by the carriers. Nobody is really monitoring the capacities or whether an alliance is actually exceeding the 30% threshold of the Consortia BER. This also true for the utilisation rates of the ships in different alliances. That said, although it would of course be better to have market shares based on actual transport volumes rather than capacity, that should not detract from the fact that liner shipping markets have become so concentrated that is difficult to know the actual market shares except for regulators.

20. a) What were the effects of the developments you identified in response to 3.1 and 3.2 on competition in the liner shipping sector on:

	Significant increase	Moderate Increase	Stable	Moderate decrease	Significant decrease	Don't know
Prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Choice of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20. b) Please explain.

1000 character(s) maximum

We do not know.

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

- ☒ Yes
☐ No

21. b) If yes, please describe them and assess how prevalent they are.

250 character(s) maximum

Bulk shipping pools: joint ventures between shipowners to pool vessel of similar types, with central administration, which are marketed as a single entity.

22. a) Do carriers cooperate in joint purchasing (e.g. port services, inland transport, feeder transport)?

☒ Yes

☐ No

22. b) If yes, is such cooperation prevalent? Please explain

1000 character(s) maximum

Today the reality of the discussion between the carriers (alliances) and their service providers is very unbalanced as there is a significant risk for port and logistic services who really want to negotiate with carriers their prices/services to loose all members of an Alliance as customers in case of disagreement.

23. What would you expect to be the effects in case the Consortia BER would not be prolonged? Please illustrate with concrete examples.

23. a) Effects on your organisation

1000 character(s) maximum

We do not know but we consider in principle that it should be better to have legal certainty. This could be achieved also through an enhanced BER taking into account all the effects that the Regulatory may have on the logistic chain.

23. b) Global or industry effects

1000 character(s) maximum

It is difficult to assess the effect of one Regulation and there are many alternative instruments such as Mergers and Acquisitions, JVs

24. a) BERs are exceptional instruments. Considering that only very few industries have a sector-specific BER applying to them, do you consider that liner shipping presents such unique characteristics that require a sector-specific BER?

☐ Yes

☐ No

24. b) Please explain.

1000 character(s) maximum

A comparison with other industries could be useful.

Section 4: Coherence

25. a) Based on your experience, is the Consortia BER coherent with other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

☐ Yes

☐ No

25. b) Please explain.

1000 character(s) maximum

We do not know

Section 5: EU added value

26. a) Does the Consortia BER have added value in the assessment of the compatibility of consortia with Article 101 TFEU compared to, in its absence, self-assessment based on other instruments that provide guidance on the interpretation of Article 101 TFEU?

☐ Yes

☐ No

26. b) Please explain.

1000 character(s) maximum

The Consortia BER has added value with respect to the clarifications of applicable rules to Liner shipping industry. The General Rule would be in fact too general and would not tackle the current fast development in the maritime sector.

Final comments and document upload

27. If there anything else you would like to say which may be relevant for the evaluation of the Consortia BER, feel free to do so.

1000 character(s) maximum

The review of the Consortia offers a good opportunity to assess its impact beyond the maritime leg as the shipping industry is not restricting its business to shipping market only but more and more competing with actors who offer door to door services or are active in different legs of the logistics network.

In a nutshell:

- a bare repeal of the BER without the contemporaneous approval of a set of updated guide lines or of a regulatory framework and their progressive homogenisation at world level, would let the logistic chain without legal certainty thus to be avoided;
- a possible renewal of the BER should include, among others, a clear limitation to maritime leg, the exclusion of joint procurement activities and joint data exchange management, the re-introduction of regulatory clauses that were included in 1995 BER edition and further deleted such as the duty of an open consultation and reporting and the reintroduction of a withdrawal provision.

28. If you wish to attach relevant supporting documents for any of your replies to the questions above, feel free to do so.

The maximum file size is 1 MB

Contact

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