

# Public questionnaire for 2018 Evaluation of Consortia Block Exemption Regulation

Fields marked with \* are mandatory.

## Introduction

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### Background and aim of questionnaire

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

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

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

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

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

### Submission of your contribution

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

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

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

## Duration of the consultation

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

## Privacy and Confidentiality

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

### \* Publication Privacy Setting

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

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

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

## Stakeholder's profile

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1. You are replying:

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

4. a) Country of residence

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

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

5. Name of organization

6. a) Type of organization:

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

7. a) Type of company:

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

8. Is your organisation included in the Transparency Register?

- ☐ Yes
- ☐ No

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

9. Please describe the activities of your organisation.

250 character(s) maximum

## Section 1: Effectiveness

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

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

- ☐ Yes  
☒ No

10. b) Please explain.

1000 character(s) maximum

Since self assessments are not public, they do not provide certainty on how the market is going to evolve. Surcharges can appear, from the outside, to be coordinated across shipping lines (e.g. BAF and Sulphur Surcharges) but this is very difficult to prove. A better approach would be to apply general EU competition law to this sector which would allow a more transparent approach.

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

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

1000 character(s) maximum

This is a question that can only be truly answered those companies who operate under the BER. Container line customers are not able to assess this question. That is the explanation for the ratings provided.

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*

This question can only be answered by companies who undertake self-assessment of compliance; as representatives of container line customers we cannot answer this question.

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*

The BER has not resulted in a significant sharing of the benefits with the customers: the amount of direct port-calls has decreased; port congestions are worsening due to the mega-vessel and the extended call size at ports have increased; service quality has not improved.

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 have decreased the number of direct port-port connections and hence increased transit-times for destinations that are not served by the main hub-ports. The number of services per week has decreased even though capacity offered has even increased, due to the fact that the vessels used are larger. Also carriers in the same consortium that used to offer separate services now have combined many of the services, also leading to a decrease in the number of sailings offered per week. There is higher concentration of services and less "Voice of the Customer" service orientation, and fewer companies operating outside of Consortia providing direct competition.

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*

Our shipper members will respond to this question in more detail using the dedicated shipper questionnaire. We have no evidence that the base fares offered by individual carriers are affected by the fact they are part of a consortium

## Section 2: Efficiency

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

*1000 character(s) maximum*

This is a question for the shipping lines who are covered by the BER.

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*

Again this question can only be answered by shipping lines.

## Section 3: Relevance

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

*1000 character(s) maximum*

There have been trends towards consolidation into a relatively small number of major players, who cooperate with each other through Alliances. Another linked trend has been toward ever-larger vessels, and in turn fewer calling points, less reliability and pressure on ports and inland operations to move large numbers of containers in a short time. The key issue for UK shippers have been reliability and service quality which have not improved.

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

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



19. b) Please explain.

1000 character(s) maximum

All input is based on data that are publicly known and sourced from external and public consultancy

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

20. b) Please explain.

1000 character(s) maximum

As a trade association we are not in a position to comment on the prices paid for our members for container line services however in a general sense there has been significant volatility . However we have had consistent feedback that there is a limited choice of services due to high market concentration by a small number of large operators, which is exacerbated by the fact that they are involved in consortia. Service quality has decreased for many reasons including larger vessels putting pressure on ports and inland congestion; confusion over which carrier in the consortium is actually carrying the container; reduction in customer service provision.

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

- ☐ Yes  
☒ No

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

- ☐ Yes  
☒ No

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

23. a) Effects on your organisation

1000 character(s) maximum

As a trade association we will respond to 23 (b) only.

23. b) Global or industry effects

*1000 character(s) maximum*

Under competition law Alliances could continue provided they do not break competition rules. We would support a more competitive market based on general EU competition rules. The effect on shippers would be minimal at short and positive in the longer term as service levels would improve and there would be true competition in the marketplace.

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*

Our aim is to revoke and replace the current BER (please see final comment of this questionnaire).

## Section 4: Coherence

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

☐ Yes

☒ No

25. b) Please explain.

*1000 character(s) maximum*

It allows unjustified protection from competition regulation and creates conditions for poor service for EU customers.

## Section 5: EU added value

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

- ☐ Yes  
☒ No

26. b) Please explain.

*1000 character(s) maximum*

Following the general rules of Article 101 TFEU, consortia can still be formed and the consortia that exist today could in all likelihood continue to operate in one form or another. It would however allow a much better instrument for shippers to react if apparent breaches of competition law are noticed and enable additional competitors to enter the market.

## Final comments and document upload

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

*1000 character(s) maximum*

(...) supports the position of the European Shippers' Council which is to propose to revoke and replace the BER as it exists today. The new BER should apply under a lower than 30% market share and apply to consortia which do not exceed a certain size. For the others self-assessment of the benefits of the collaboration for the stakeholders should include criteria formulated in a SMART-way. Finally replacing BER shall provide for review by EC of the consequences on the market of Mergers and Acquisitions between members of different very large consortia. Also, to reach a well-functioning market despite its high level of concentration, other (legal) instruments shall be considered as part of a paradigm-shift, such as offering to smaller shippers some kind of protection against the conditions applied to them by the market. If all these conditions are not met, then the BER should be discontinued completely.

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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