

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

4. b) If Other, please specify which country:

China

5. Name of organization

Cosco Shipping Lines Co Ltd

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

Our company is mainly engaged in international and domestic maritime container shipping transportation and its affiliated business.

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

The Consortia BER contains clear and definitive rules, which provide crucial guidance and instruction to carriers participating in Consortia to follow in their operations. This greatly assists to ensure they can operate their activities in compliance with EU anti-trust rules.

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

	Very high	High	Intermediate	Low	Very low	I don't know
Market definition	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capacity adjustments in response to fluctuations in supply and demand	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
Overall compliance with competition law	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The right to withdraw and notice period for members' exit from consortia	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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11. b) Please explain the reasons for your rating.

1000 character(s) maximum

The BER sets out clear parameters of permitted joint consortia operations, for joint decisions on capacity adjustments and gives clear guidance on design of Consortia Agreements (e.g. notice periods etc.) However, it would be useful to have a clearer definition of "highly integrated" Consortia.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Article 101 (3) TFEU Guidelines	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specialisation BER	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
EC decisional practice	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

1000 character(s) maximum

Based on our experience, both the Horizontal and Art 101(3) guidelines are helpful for self-assessment, but they don't address the specific conditions of containerized liner shipping like BER. So COSCO rates their value as "Intermediate".

The Specialisation BER is not relevant as it does not apply to the joint supply of services and has a 20% market share threshold, a lower market share than many consortia. COSCO therefore rates it as of "Low Value".

The EU decisional practice rating is "very high" as the case law of the Commission decisions is crucial information for self-assessments.

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

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

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

Competition based on price and certain types of services is fierce even between members of the same consortium, because with almost similar route services in a same consortium and no storability for liner product, carriers have to offer competitive price to customers so to obtain an acceptable vessel utilization respectively.

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

Consortia must ensure compliance with EU competition rules both for their constitutive agreements and their market operations. This requires obtaining regular compliance advice to ensure the Consortium remains compliant, a process which creates the recurring cost of hiring professional advisers.

The BER lessens compliance costs because it provides legal certainty for a wide range of permitted Consortia activities, thus making self-assessment more efficient and less costly.

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

The Consortia BER sets out a wide range of permitted activities and, as a result, the process of self-assessment for Consortia is made easier and benefits from greater legal certainty. Retaining the BER would therefore be desirable for the sake of regulatory compliance and achieving straightforward and lowered costs of self-assessment. Adversely, it will increase the costs of compliance and also lead to a low operational efficiency.

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

Mergers and acquisitions among major shipping lines; Reshuffle of shipping alliances. Rapid growth of container shipping capacity, continuous upgrade of container vessels with more and more MEGA vessels delivery by different carriers. Imbalance of east-west trade maintained. Price rate/index on EU-Far East hit a historical lowest point in 2016 and kept comparably stable at a level below average in last few years.

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 checked="" type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capacity deployed by individual consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

19. b) Please explain.

1000 character(s) maximum

Please find the explanation in the Attachment.

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

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

20. b) Please explain.

1000 character(s) maximum

Basic tendency of price index in last few years is downward. Price index faced a historical lowest point in 2016, then rose in the middle of 2017, but swiftly down later, now both WB and EB price are comparably stable at a level below average in last few years.

In last 5 years, both main liners and smaller-size liners have improved service coverage and services lines. Members of the Consortium will provide alternative services through space exchange.

A consortium brings not only a wide service network, but also strengthens the quality of services in terms of punctual schedules, the supply of sufficient space, etc.

Each carrier has its own advantage on product setup, while a consortium brings together individual carriers by offering optimized product with lower costs but comprehensive coverage. As a result, competition on choice of services and quality of services keeps moderately increasing.

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

Without the BER, our Consortium cooperation would lose a “safe harbor” of permitted joint liner activities. Our costs of ensuring compliance would increase as self-assessment would become more complex and uncertain. It might even discourage certain pro-competitive and beneficial joint Consortia activities such as joint use of terminal facilities or joint decisions to adjust capacity to meet demand. This would be likely to lead to a decrease in our coverage and a deteriorated service offering to our customers. Global customers in particular would be harmed by this loss of efficient and wide range network coverage.

23. b) Global or industry effects

1000 character(s) maximum

Without consortium cooperation, customers (e.g. global shippers) would be less likely to benefit from comprehensive coverage, because of reduced cooperation between carriers compared to optimized network planning within consortia.

Less optimally organised services would lead to higher operational costs which would be almost certainly passed on to customers.

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. 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 followed by decreased coverage and a deteriorated service offering. Global customers in particular would be harmed by this loss of efficient, wide-ranging network coverage and lessening of consumer choice.

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

Liner shipping has unique features. These include: it is a capital intensive industry, demand for service is seasonal, cyclical with changes in trading patterns and variations in the global economy, cargo volumes of trade are always unbalanced, ships sail whether they are empty or full, the products have no storability, etc. Carriers need Consortia co-operation to maximize the efficient use of vessels so to best match supply to demand, promote the vessel utilization and allow carriers to deploy bigger and more efficient vessels, this, in turn, leads to more efficient, cost saving and wider coverage of services to shippers.

The BER provides legal certainty for pro-competitive cooperation between Consortia members, such as the coordination of sailing schedules, cross-chartering and exchanges of capacity.

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

The Consortia BER is a useful tool in the process of ensuring compliance with EU competition law as it provides a list of exempted cooperative action between Lines.

The BER is also consistent with the Horizontal and Article 101(3) Guidelines, providing legal certainty for activities specific to the liner industry. The Horizontal and Article 101(3) Guidelines are general guidance to all industries: they are therefore, by their nature, not designed to address the needs of a specific industry like containerized liner shipping.

The BER is also consistent with the EU's decisional practice as its contents and scope reflect the accumulated experience of the Commission in dealing with Consortia agreements since 1995 when the original BER was adopted.

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.

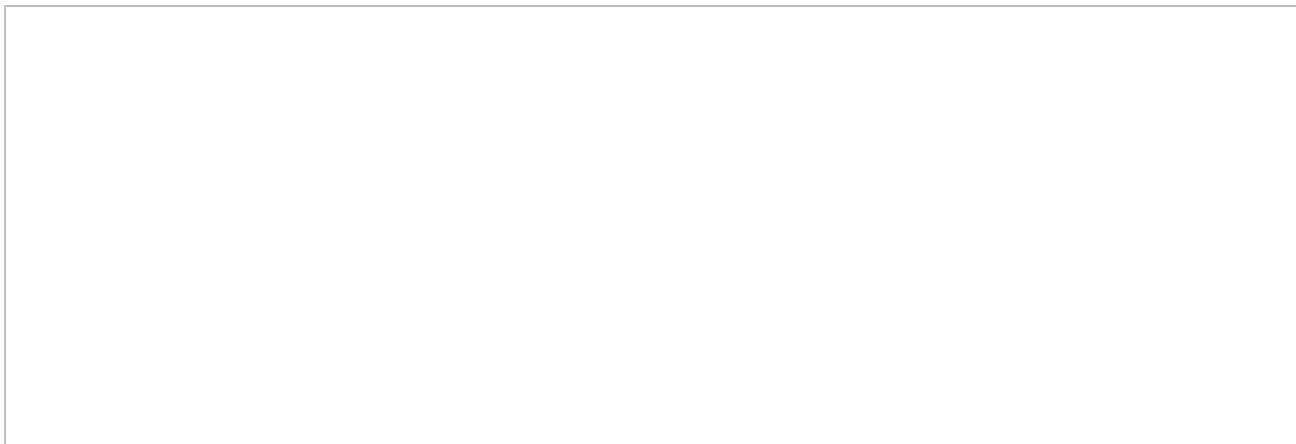
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The non-prolongation of the BER after April 2020 would make compliance a more uncertain and complex process. Having the Consortia BER for cooperation between shipping lines is very valuable and greatly assists in producing self-assessment reports.

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



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

5ae333a1-9408-41f4-9e6f-45e7c87dae5e/Explanation_for_19_b.docx

Contact

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