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Consortia and the EU review

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Context of the current EU review

- EU block exemption regulation ("BER") since 1995 (based on Council empowering regulation of 1992)
- Renewed 4 times for 5 year periods, without altering the fundamental basis for the exemption
- *"On the basis of the Commission's experience in applying the block exemption, it appears that the justifications for a block exemption for consortia are still valid and that the conditions on the basis of which the scope and content of Regulation (EC) No 906/2009 were determined have not substantially changed.*
(Regulation 697/2014)
- Current version of the BER expires in April 2020

The Commission's current review

- May 2018: Commission evaluation roadmap
- 27.9.18: launch of consultation
 - Public questionnaire, deadline 20.12.18
 - Targeted questionnaires, deadline 20.12.18
- Meeting with competition authorities of Member States
- Q1 2019 Evaluation Staff Working Document
- End 2019 – conclusion?
- 25.4.20: expiry of current BER

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The Commission's evaluation criteria

"The purpose of this evaluation is to assess whether in view of the general policy of harmonising competition rules and considering the major developments in the liner shipping industry in recent years, the Consortia BER is still relevant and delivering on its objectives, and whether it is doing so in a coherent, effective and efficient manner, creating EU added value."

5 criteria:

- **Effectiveness:** considering the major developments in the industry, does the Consortia BER still facilitate economically efficient cooperation that also benefits consumers?
- **Efficiency:** what is the effect of the Consortia BER on costs? Does it help undertakings to cut costs or conversely does it increase compliance costs? Which policy option would cause less burden or complexity?
- **Relevance:** is the Consortia BER still relevant considering the major developments in the industry and the modes of cooperation between carriers?
- **Coherence:** Is the Consortia BER coherent with the general policy of harmonising competition rules and replacing sector-specific rules with measures (BERs or guidelines) providing general guidance on the application of Article 101 TFEU?
- **EU added value:** what is the added value of the Consortia BER considering the Commission's measures of providing general guidance on the application of Article 101 TFEU?

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Effectiveness

- The high number of consortia operating on EU trades suggests that the BER has been an effective tool in providing legal certainty for the creation and amendment of consortia
- For example, at the time of their merger, Hapag-Lloyd and UASC were members of 19 different consortia to and from the EU, which were active on 45 different trades (not including bi-directional trades)
- Without the BER, lines would have had to self-assess under Article 101

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Efficiency

- The BER is clear, simple and well-understood – and clearly reduces compliance costs
- Unlike the conference block exemption, there has never been a serious dispute between the Commission and a consortium about its scope or an investigation of any consortium by the EU Commission that has raised competition concerns
- Creates a regulatory level playing-field with the EU's other major trading blocs

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Relevance

- The BER remains as relevant as ever: consortia remain the most-favoured form of cooperation between carriers
- Consolidation through M&A and the re-formation of the three major East-West alliances has not made the BER irrelevant as most consortia – including those three alliances – satisfy the criteria of the BER on most trades

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Coherence

- The precedent of the Commission's review of the insurance block exemption review
 - the general policy of harmonising competition rules is only an appropriate justification for removing sector-specific block exemptions if there is already equivalent Commission guidance in place to self-assess the specific form of cooperation in the sector in question
 - removing a block exemption is not appropriate if it would lead to a disproportionately costly competition law assessment
- There is no equivalent guidance for consortia

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EU added value

- The BER provides a level of legal certainty that could not be provided by action at a national level
- The BER has a significant influence on non-EU member states when deciding how to regulate consortia

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Renewing the BER is good EU policy

- Expiry would
 - create legal uncertainty
 - deter pro-competitive cooperation
 - raise compliance costs
 - reduce the EU's influence on the international stage

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