EMLO Consortia Block Exemption Review
– Background presentation and scene setting

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Driving progress
through partnership

Regulation 4056/86

Common or uniform rates and one of the following:

- The coordination of shipping timetables, sailing dates or dates of calls
- The determination of the frequency of sailings or calls
- The coordination or allocation of sailings or calls among members of the conference
- The regulation of the carrying capacity offered by each member
- The allocation of cargo or revenue among members
- Abolished 2006, effective 2008

UNCTAD Code

UNCTAD

- ❑ Signed on 6 April 1974 by 83 signatories including most European countries, USSR etc
- ❑ US, Israel, Australia, Canada, New Zealand not signatories to UNCTAD but special exemptions applied

❑ Why UNCTAD Code?

Developing countries were particularly in favour of:

- 40/40/20 – Rule (allocating cargo to national carriers)
- Shippers very concerned that there is no discrimination between shippers based on country of origin

Liner Shipping Companies Block Exemption (Consortia) Regulation

Brought into force originally in 1995 (Regulation 870/95) then became Regulation 823/2000

Article 3 exemption, provided under 35% of the market (if not in a conference), allows:

- pools of vessel sharing and/or port installations -

- use of one or more joint operations offices -

- provision of containers and other equipment -

- joint operation or use of port terminals (such as lighterage or stevedore services) -

- joint marketing structure and/or the issue of joint bills-

- participating in a cargo or a revenue pool -

- any other activity ancillary to the above -

Consortia Block Exemption 906/2009 (as amended) 30% Market Threshold

The joint operation of liner shipping services including any of the following activities:

- the coordination and/or joint fixing of sailing timetables and the determination of ports of call;
- the exchange, sale or cross-chartering of space or slots on vessels;
- the pooling of vessels and/or port installations;
- the use of one or more joint operations offices;
- the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;
- capacity adjustments in response to fluctuations in supply and demand;
- the joint operation or use of port terminals and related services (such as lighterage or stevedoring services); or
- any other activity ancillary to those referred to in points 1, 2 and 3 which is necessary for their implementation.

Renewal of Consortia Block Extension Regulation

What is Consortia Block Exemption Regulation (CBER)

- Only remaining maritime-specific competition measure
- Objective is to facilitate the creation and operation of consortia that meet certain conditions
- Achieved by providing consortia with clarity and legal certainty with respect to their compliance with EU competition rules
- Applies if combined market share below 30% (exempt from Article 101(1) TFEU)

Justification for Consortia BER

- Few big alliances but 61 consortia in the EU (conclusion of last review)
- Rationalisation and economies of scale
- Promote technical and economic progress
- Benefit to customers, efficiency-enhancing operational co-operation, productivity and quality (more direct ports and frequent sailings), environmental benefits

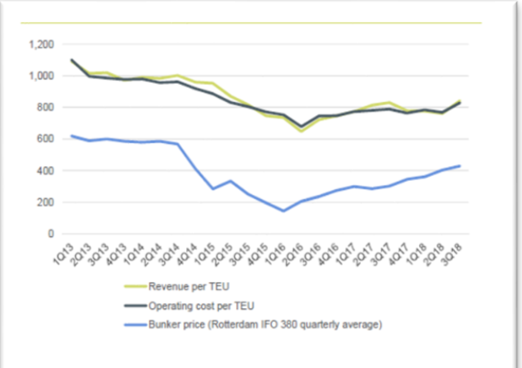
Current Status of Consortia BER

- Current Status of Consortia BER
- Up for renewal - Expires 25 April 2024
- Evaluation of Consortia BER
- DG Comp Call for evidence 9th August 2022
- UK reviewing 24th August 2022

Is the Consortia BER still valid in the current landscape?

Viewpoints and Data Analysed

Shippers & Ports Complaints	What does the data show?
Unreliable Services	
▪ Quality of liner shipping services has deteriorated in recent years ▪ High concentration levels in industry harms customers ▪ Period of underutilisation between Ultra Large Carrier Vessel (ULCV) arrivals	▪ Overall, the quality of services has not deteriorated but rather remained stable since 2014 ▪ Blank sailings have remained stable between 2014-2018, and overall the percentage of cancellations has decreased ▪ No clear evidence of a direct link between the Consortia BER and the ordering/use of ULCVs
Congestion and Delay	
▪ Deployment of ULCVs by the alliances raises challenges and disturbances to terminals in terms of infrastructure investment, congestion and delays ▪ When a ULCV arrives, it creates a peak period in activity that causes congestion, and delays that ultimately adversely affect customers ▪ Bargaining power of alliances allows negotiation of very low port charges	▪ No clear evidence of a direct link between the Consortia BER and the ordering/use of ULCVs ▪ Most carriers negotiate individually charges with terminals and not collectively with the other alliance or consortia members ▪ 61 consortia operate in the EU; the 2 biggest alliances (2M and Ocean Alliance) are outside the block exemption
Adverse Impact on Prices	
▪ Fuel surcharges to address rising fuel costs impact profitability and customers; "… an unwelcome legacy of the cartel era" ▪ Customers claim that competition has not functioned well in the market recently, compared to the past	▪ Undisputed that there is overcapacity in the market, low prices and low profitability ▪ Prices for customers of the liner shipping industry have in fact diminished in recent years alongside costs to carriers; nearly identical decrease of costs and prices, with low profitability of the carriers ▪ In any event, the Consortia BER does not include pricing



Source: WSC based on Drewry Maritime Research

The CBER

Environmental benefits of the CBER

- CBER allows for co-operation and provision of joint services via consortia between liner shipping companies. Such cooperation may include vessel sharing agreements, or joint operation or use of port terminals.

Vessel sharing agreements

- Vessel sharing agreements lead to environmental benefits through reduced consumption and lowering of vessel emissions (see para 5.4 on pages 32-33 of the European Commission Staff working Document: Evaluation of the CBER, 2019).
- As vessel sharing maximises efficiency of the existing ships, it can lead to reduction of fuel burn and of associated emissions, namely sulphur oxide (“SOx”) and greenhouse gas (“GHG”) emissions (see paras 4.22-4.26 on pages 38-40 of the Response to the Commission Consultation on CBER prepared by the World Shipping Council, the European Community Shipowners’ Associations, the International Chamber of Shipping and the Asian Shipowners´ Association, 2018).

Environmental impacts are to be considered by the European Commission within their assessment

- See Commissioner Vestager’s speech on competition policy in support of the EU Green Deal (10 September 2021, see here)

What has changed? Pandemic

July 2022 report by the International Transport Forum (ITF, linked to OECD) – Key takeaways:

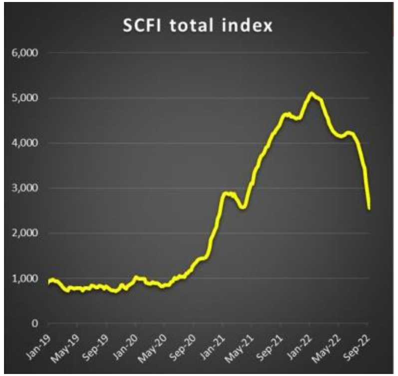
- ❑ Multiplication by 6 on average of "spot" freight rates and by 2.9 of long-term contracts (even before the imposition of surcharges)
- ❑ Accumulation of delays. The reliability of the schedules of ships fell from 65% to 34%. This means that two out of three ships arrive at the port at least one day late
- ❑ Low financial contribution of maritime carriers to port infrastructure: only 4%

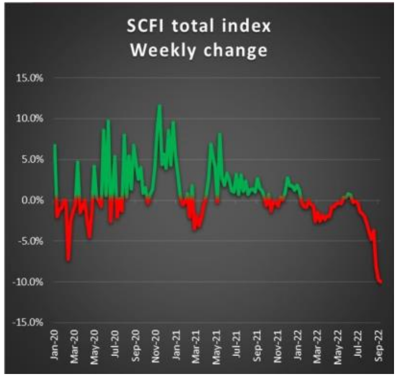
Information that there has been record surge in freight rates since 2020, and the quality of service is very poor.

- ❑ Cf. Concrete example of an importer of food products from the Americas to Europe:
  - USD 10k against USD 3.5k before for a container;
  - 90 days against 30 days before for a Los Angeles to Le Havre route.

Container Spot Rate Changes

- The SCFI Index
  - The SCFI Index is 215% higher than the average levels before the COVID-19 pandemic.
  - However, the SCFI Index declined 10% in the first week of September and 9.6% the last week of August 2022.
- The CCFI Index
  - The CCFI Index is 230% higher than the average levels before the COVID-19 pandemic.
  - However, the CCFI Index declined 3.8% in the first week of September.
- The downwards trend of spot rates is accelerating
  - Therefore, if the increase of the spot rates was caused by the COVID-19 pandemic, the prices should return to pre-2020 levels.





Source: Lars Jensen LinkedIn

Some examples of how other jurisdictions deal with consortia

US

- Have Federal Maritime Commission (FMC) which monitors service

Israel, Singapore and Malaysia

- Have block exemptions

Several countries including Korea, Japan and China

- Filings are required

Conclusion

Cooperation by carriers allowed globally due to economies of scale

With ship size getting bigger, unit (TEU/slot) costs go down

Also increased frequency of services

Nothing has changed since the last review except:

- Environment has gone up the agenda
- Covid-19

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