



World Shipping Council – Comments on Report prepared by Mr. Olaf Merk

On 19 March 2019, the International Transport Forum (“ITF”) published on its website a report, authored by Mr. Olaf Merk, titled “*Container Shipping in Europe: Data for the Evaluation of the EU Consortia Block Exemption*” (the “Report”).¹ At the outset, the World Shipping Council (“WSC”) notes that, while the Report’s title references the evaluation of the Consortia Block Exemption Regulation (“BER”) (“Evaluation”), WSC is not aware of the Report ever being submitted to the Commission in that context. At least as of the date of the present submission, the Report is not referenced or published amongst the stakeholder feedback disclosed on the Commission’s dedicated webpage.² The same is true of the first report produced by the ITF dated 2 November 2018.

Nonetheless, to avoid any risk of the Report influencing the Commission’s Evaluation, WSC highlights below the key failings of the Report which strip it of any utility that it might otherwise have offered.

Fundamental lack of reliability. The Report has not been endorsed by the ITF but merely reflects the subjective views of a single individual: Mr. Olaf Merk. A disclaimer to this effect appears prominently at the beginning of the Report: “*This report was written by Olaf Merk*”; “*Any findings, interpretations and conclusions expressed herein are those of the authors*”.³ Moreover, none of the parties ostensibly associated with the Report are willing to accept any responsibility for its content: “*Neither the OECD, ITF nor the authors guarantee the accuracy of any data or other information contained in this publication and accept no responsibility*

¹ <https://www.itf-oecd.org/container-shipping-europe-data-evaluation-eu-consortia-block-exemption-regulation>

² http://ec.europa.eu/competition/consultations/2018_consortia/index_en.html

³ Report, pages 3 and 2 respectively.

whatsoever for any consequence of their use".⁴ Based on this sweeping disclaimer alone, the Commission should disregard the Report – in its entirety – for the purpose of the Evaluation.

Impossibility to understand – let alone verify – the data presented. The presentation of data is meaningless unless the intended audience can understand, and verify as needed, the data that is being presented. Yet, the Report does not allow for this. For instance, the first section of the Report, concerning market shares, draws conclusions based on data presented – in fourteen different tables – in Annex 1. Under each table, the following note appears: "*Source: based on WSC et al. (2018) and Sea Intelligence*".⁵ Thus, it is clear that Mr. Merk has combined two data different sources. What is not clear, however, is how those data sources have been combined. This is extremely troubling because combining data sources is an inherently problematic exercise; if attempted, it must always be accompanied by transparent explanations. There is no such transparency in Annex 1. In particular, it is unclear how capacities have been calculated and attributed to different trades. Accordingly, all the conclusions drawn in the first section of the Report are unsound.

Manifest deficiencies. Even without the ability to understand and verify the data presented in the Report, it is obvious that the analysis is deficient. For instance, many of the tables included in Annex 1 to the Report provide a market share range, rather than estimating a specific market share. Some of these ranges are so large that they become meaningless, *e.g.*, 7%-86%⁶ and 6%-81%⁷, and the use of these ranges results in total market shares that in many cases far exceed 100%. For example, the total of the upper ranges in Table 9 (Market share Europe-Middle East) adds up to 425%.⁸ No reliable conclusions can be drawn from data this far removed from reality.

Nor is it explained how the market share data in Annex 1 relate to Tables 2 and 3, which provide the basis for the statements that "*Out of the 27 consortia identified (excluding alliances), only four fell with certainty below a market share of 30%. Seven exceeded the threshold with certainty*" and "*contrary to what stakeholders and regulators seem to believe, the majority of*

⁴ Report, page 2.

⁵ WSC et al. (2018) refers to the joint submission made to the Commission on 20 December 2018 by WSC, the European Community Shipowners' Associations, the International Chamber of Shipping, and the Asian Shipowners' Association.

⁶ Table 9 at page 44 of the Report, "Combined market share (%)" for CMA CGM/Hapag Lloyd/MSL.

⁷ Table 10 at page 44 of the Report, "Combined market share (%)" for CMA CGM/MSL/Hapag Lloyd.

⁸ Table 9 at page 44 of the Report.

*the consortia (22 out of 27) on trades to and from Europe most likely exceed the combined market share threshold*⁹. It appears that these statements are based on the *higher end* of the market share ranges in Annex 1 and that the Report is aggregating market shares of consortia in a manner which is expressly excluded by Article 5 of the BER.¹⁰

For these reasons, no credibility can be given to these statements. For a reliable discussion of market shares, WSC respectfully refers the Commission to its submission of 20 December 2018¹¹ (in particular Annex 1 prepared by RBB Economics) which avoids the pitfalls evident in the Report by: relying on a single data source; providing complete overviews and transparent explanations; and ensuring that there is no double counting.

Flawed attempt to assess “customer satisfaction”. The Report references “*two studies carried out by the European Shippers Council (ESC) and Drewry in 2017 and 2018*” in an attempt to draw conclusions on customer satisfaction.¹² To the extent that this section of the Report might be relevant to the Evaluation, the Commission must recognise its fatal flaw: the customers were apparently never asked the most important questions of all – would their satisfaction be higher if the BER were not renewed or if there were no consortia? In addition to this fundamental failing, multiple other factors divest this section of the Report of any potential value. For instance, the number of customers sampled was tiny compared to the total number of shippers worldwide; and the Report provides no description of the methodology used in carrying out the studies.

Misunderstanding of performance indicators. The section of the Report related to performance indicators reveals a fundamental misunderstanding of the liner shipping industry from a customer perspective. First, the Report discusses “direct liner connectivity”, which it defines as “*the share of countries that can be reached without transshipment*”.¹³ Leaving aside that this term is unknown and not used in the industry, focussing on this isolated metric does not make any sense. It is not the share of countries that concerns customers; it is a country’s overall connectivity that is key. This is why WSC, in its submission to the Commission on 14

⁹ Report, page 13.

¹⁰ Article 5 provides that the market share of the member of a consortium shall include the volume of cargo “within another consortium to which the member is a party” but not the volumes carried by other members of that consortium.

¹¹ Joint submission of 20 December 2018 by WSC, ECSA, ICS, and ASA.

¹² Report, page 27.

¹³ Report, page 29.

March 2019, examined the UNCTAD connectivity index which shows that the overall connectivity provided by the industry has increased in the past 5 years. Second, the Report reviews “*direct port-to-port connections*”¹⁴ without offering any explanation as to why a direct port-to-port connection should be considered a relevant market. Third, even on the flawed basis adopted by the Report, virtually every country identified in Figures 19 and 20 and in Annex 2 shows either stable or improved connectivity in the period since the Commission’s last BER review.

As for other indicators of performance discussed in the Report, the following points can be made:

- The Report acknowledges that both reliability and the capacity subject to blank sailings have remained stable over the period examined in the Report, whilst the number of blankings is “considerably less” in 2018 than 2012.¹⁵
- Fleet utilisation: Figure 18 of the Report shows no discernible trend.¹⁶
- Port-to-port connections: the Report claims that “*The number of direct port-to-port connections on European trade lanes has declined since 2012*”¹⁷, but Figures 20 and 21 show that the decline largely occurred before the period relevant to the Evaluation. More importantly, the Report’s analysis is fundamentally flawed by the methodology adopted: footnote 10 of the Report states that “*If two carriers or alliances both offer a connection from port A to port B, this is only counted once, as the interest here is in distinct port pairs.*” In other words, if 3 members of the same consortium offer a service between ports A and B, this would count as one distinct port pair; and if three members of another consortium also offer a service between ports A and B, the Report would still count this as one distinct port pair, regardless of the competition between and within both consortia.
- Weekly service frequency: again, much of the supposed reduction in frequency on the Asia-Europe trades pre-dates the period relevant to the Evaluation (Figure 23), whilst

¹⁴ Report, pages 31-33.

¹⁵ Report, page 35.

¹⁶ Report, page 29.

¹⁷ Report, page 31.

the Transatlantic trade shows stable or improved weekly service frequency (Figure 24).¹⁸

In conclusion: given that the Report is riddled with fundamental flaws and that – in any event – it has not been formally submitted to the Commission, WSC submits that the Report should be disregarded in its entirety for the purpose of the Evaluation. Should the Commission disagree, then WSC submits that the Report should be given no more credence by the Commission than any of the other contributions received from private citizens, and certainly no more credence than its manifest flaws allow.

¹⁸ Report, pages 33 and 34.