



## **World Shipping Council and European Community Shipowners' Associations – Briefing Paper**

### **Evaluation of EU Consortia Block Exemption Regulation**

**April 2019**

The Commission is currently evaluating the EU Consortia Block Exemption Regulation (“BER”) and weighing stakeholder feedback on whether the BER should be renewed for a further five years (“Evaluation”). The World Shipping Council (“WSC”) and European Community Shipowners’ Associations (“ECSA”) have closely engaged with the Commission’s services throughout the Evaluation and have made several submissions in favour of renewal. The WSC represents the interests of the world’s leading liner shipping companies.<sup>1</sup> ECSCA represents the national shipowners’ associations of the EU and Norway.<sup>2</sup>

This briefing paper summarises the position of WSC and ECSCA.

#### **I. Background**

The BER – and its predecessors – have since 1995 provided legal certainty that has allowed liner shipping companies to increase their service offerings and maximize their efficiency by sharing vessels through operational arrangements known as consortia. Those service improvements have been passed on to shipping line customers through the development of transportation networks that have continuously expanded to accommodate growing international trade, all while reducing shipping rates by half over the past twenty years and reducing fuel consumption and carbon emissions.

Consortia can take many forms, but all are variations on a simple idea. By sharing space on their ships, more carriers can offer scheduled services to more ports, with greater frequency and at lower cost than they could offer individually. These arrangements are operational only; they do not involve the setting of rates or charges.

#### **II. Case for Renewal of the BER**

Consortia are the life-blood of international trade. More than half the capacity serving in all European liner trades, including intra-Europe, is operated by consortia, with estimates by trade ranging from 52-88%; WSC and ECSCA estimate that there are over 60 consortia operating on trades to and from Europe.<sup>3</sup>

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<sup>1</sup> Further information about WSC can be found at [www.worldshipping.org](http://www.worldshipping.org)

<sup>2</sup> Further information about ECSCA can be found at <https://www.ecsa.eu/>

<sup>3</sup> See the submission by WSC to the Commission’s consultation, dated 20 December 2018, and Annex 1 thereto, containing a report by RBB Economics. All three WSC submissions to the European

The original rationale for the BER – namely, the promotion of efficiency-enhancing operational cooperation – is as relevant today as ever. It is just as important to smaller and medium sized shipping companies and their numerous consortia as it is to the three consortia operating on the main Asia-Europe and Transatlantic trades (2M, OCEAN Alliance, and THE Alliance). Furthermore, despite consolidation in the industry in recent years, no single carrier has reached a sufficient size to operate a global network on its own.

There are three primary reasons why the BER should be renewed: first, it promotes and facilitates efficiencies that are passed-on to consumers; second, it is essential to international legal certainty and the international standing of EU competition law; and third, it furthers the EU’s environmental and climate change policies.

#### **A. The BER generates efficiencies that are passed-on to consumers**

The BER promotes and facilitates economically efficient cooperation, to the benefit of consumers:

- **Consortia enable carriers to provide higher service quality at lower cost than they could individually.** If there were no consortia, shippers would experience a significant decrease in service quality because carriers would need to reduce service frequencies in order to maintain utilisation, which is necessary in order to keep costs to a minimum. A study by RBB Economics<sup>4</sup> shows that the absence of consortia on the Asia-Europe trade would significantly reduce service quality compared to current levels: carriers would either have to reduce the number or frequency of their services (thus reducing choice and increasing transit times), or they could reduce the size of their ships (thus increasing cost and emissions), or they would have to merge (thus reducing competition). If carriers operated independently, they would not be able to maintain the same quality of service at the same low cost and with the same degree of competition as customers currently enjoy.
- **Connectivity has increased.** Based on the UNCTAD liner shipping connectivity index,<sup>5</sup> the vast majority of EU Member States covered by that index have experienced increased connectivity during the last 5 years. Also, during the same period, the industry has increased capacity and has retained or expanded service coverage between countries in Asia and countries in the EU. For example, in 2013, the services on the Asia-North Europe trade lane provided direct calls to 20 unique ports in 12 EU countries; by 2018, this had increased to 24 unique ports in 14 EU countries.
- **The industry remains fiercely competitive.** While the shipping industry has seen consolidation and adjustment of carrier alliances since the Commission last reviewed the BER, the industry remains unconcentrated by any standard measure, and there is fierce competition among carriers, whether they share space on their ships or not. The

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Commission on the BER Evaluation may be found on the right side of WSC’s home page at [www.worldshipping.org](http://www.worldshipping.org)

<sup>4</sup> Demonstrated in the RBB report of 14 March 2019.

<sup>5</sup> The United Nations Conference on Trade and Development (UNCTAD), liner shipping connectivity index (LCSI) is an indicator of a country’s position within the global liner shipping networks. It is calculated from data on the world’s container ship deployment: the number of ships, their container carrying capacity, the number of services and companies, and the size of the largest ship.

industry has continuously invested to provide adequate capacity and it continues to innovate and pass the benefits of that innovation on to its customers.

- **Shipping rates have decreased.** From 2013 to 2018, carriers' costs per twenty-foot equivalent unit (TEU) decreased substantially and shipping rates decreased in similar proportions. The close correlation and small difference between rates and costs shows that shippers benefit from reductions in operating costs in the form of lower prices (freight rates and surcharges). Data from the US Federal Maritime Commission and the China Containerized Freight Index also evidences the significant fall in shipping rates – all of which corroborates the strength of competition in the market.

In summary, the evidence demonstrates that consortia are beneficial, and customers share in those benefits.

### **B. The BER is essential to international legal certainty**

The BER is clear, well-understood and fit for purpose.

Within the EU legal framework, the BER is the only guidance that the liner industry has that speaks with any specificity to the well-known and ubiquitous vessel sharing structure. The legal certainty provided by the BER is integral to the agility and flexibility of the liner shipping industry, especially when faced with demand shocks. Absent the BER, carriers would be deterred from (or at a minimum, intolerably delayed in) creating and amending consortia agreements in response to changing market conditions. The BER also enhances efficiency and minimises compliance costs because it is well understood and less complex (and less costly) to apply in practice than self-assessment.

The BER also enhances legal certainty and the standing of EU competition law internationally.

Most major maritime trading nations around the world provide legal certainty for vessel sharing arrangements but that legal certainty takes different forms in different countries. Some countries have adopted maritime regulatory regimes; but those which have adopted block exemption-type exceptions to their antitrust laws have in many cases informed their legal understanding and modelled their structures for the treatment of consortia on the experience and leadership of the EU in its adoption and re-adoption of the BER. Over the past quarter century, the BER has become an integral part of the international legal framework facilitating the development of liner shipping and international trade. It creates a regulatory level-playing field between the EU and other major trading blocs by enshrining a common understanding of what consortia are and how they should be assessed.

Moreover, in certain jurisdictions, domestic competition laws do not recognize efficiency-enhancing cooperation outside of a specific block exemption or forbearance. Thus, if a decision by the Commission not to renew the BER were to be followed by other jurisdictions, this could have grave consequences for legal certainty, the international legal order and international trade.

### **C. The BER furthers EU environmental and climate change policies**

Consortia are a vital tool for reducing air emissions from ships because they enhance operational efficiency through better fleet utilization.

Two types of air emissions are particularly relevant: sulphur oxide (“SOx”) emissions and greenhouse gas emissions (“GHGs”).

- **SOx.** SOx emissions have come under stricter regulation at both the EU level and at the level of the International Maritime Organization (“IMO”). Beginning on 1 January 2020, the global marine fuel sulphur cap will drop from 3.5% to 0.5%. Low-end estimates suggest fuel cost increases for the liner shipping sector alone in excess of USD 10 billion per year over current levels until and unless the price differential between lower sulphur fuel and current fuels moderates.
- **GHGs.** The IMO Marine Environment Protection Committee – with the vocal support of EU Member States – has set a target of reducing GHG emissions from international shipping by 50% in 2050 compared to 2008.

These ambitious SOx and GHGs targets will inevitably increase costs for carriers. To maintain adequate service levels and minimize the impact of these additional costs, carriers will need to rely on all available tools to move cargo in the most efficient way possible so as to reduce fuel consumption; the BER is one such tool because it encourages and facilitates consortia which are essential to maximise efficiency.

Considering that the EU has been a primary driver of targets for reduced air emissions, the Commission should not remove tools, such as the BER, that will help carriers meet those targets. Otherwise, the EU risks undermining its own environmental and climate change policies.

### **III. Conclusion**

The BER provides vital legal certainty for an industry on which international trade depends. Renewal of the BER will yield significant benefits on multiple fronts, notably for consumers and the environment. By contrast, non-renewal would deter efficiency-enhancing cooperation, contrary to consumer welfare and the EU’s environmental and climate change policies, and would undermine the influence and standing of EU competition law on the global stage.

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