



Evaluation of Consortia Block Exemption Regulation - *developments*

Janja ČEVRIZ
Case handler
COMP Unit F.1
15 March 2019



Competition



Short introduction



Prohibition of anticompetitive agreements

- Article 101(1) TFEU [*=the prohibition*]:
Agreements between undertakings that restrict competition are prohibited.
- Article 101(3) TFEU [*=the exemption*]:
This prohibition will not apply to certain agreements which improve production, distribution, technical or economic progress and allow consumers a fair share of the benefit.



Consortia Block Exemption Regulation (BER)

- Consortia BER:

In line with 101(3) TFEU, it declares that certain consortia agreements are exempt from the prohibition and specifies the conditions for the exemption.

- Current Consortia BER:

- was adopted in 2009,
- prolonged in 2015,
- **will expire on 25 April 2020** (*if not prolonged*).



The evaluation of Consortia BER

- May 2018: Publication of Roadmap and consultation
- September to December 2018: Public consultation on questionnaire
- Same period: Several targeted questionnaires sent
- April 2018 to February 2019: Several bilateral meetings
- February 2019: Multilateral conference in Paris
- Further discussions are still taking place with several stakeholders...



Results of the consultation



Feedback on consultation

- We received 60 replies to our consultations
 - 32 to the public questionnaire
 - 21 to the targeted questionnaire
 - 7 other (free) submissions
- In total, we have collected the views of 55 different stakeholders (not counting NCAs).
- The views received were very polarized.



Views expressed in the consultation

- In the next slides only views from stakeholders are summarized (no Commission's own views).
- They are presented according to the Commission's standard five evaluation criteria.



Criterion #1: Effectiveness

The main question is if consortia are pro-competitive, create benefits and pass them on to customers?

- Carriers' and vessels owners' views: consortia still offer a (much more) efficient service, of which customers also benefit.
- Most customers and ports had the view that services had deteriorated due to the development of major alliances. Negative externalities on other parts of the supply chain were also mentioned.



Criterion #2: Efficiency

The main question was about the costs (or savings) deriving from Consortia BER.

- The carriers' and vessels owners' view: it simplifies antitrust compliance analysis, saving legal costs.
- Customers and ports: since the level of services had deteriorated and since the ultra large vessels increasingly used by the major alliances meant they had to adapt port infrastructure - Consortia BER caused them costs.



Criterion #3: Relevance

The question was basically whether there is “demand” for the Consortia BER.

- The carriers and vessels owners: consortia remain the mainstay of the industry, and there are many outside the three major alliances that benefit from the Consortia BER.
- Customers and ports: the liner shipping industry has reached level of concentration not envisaged by the Consortia BER - therefore it is not relevant anymore.



Criterion #4: Coherence

The main question: is a sector-specific BER justified considering the general policy of phasing out sectorial BER?

- The carriers and vessels owners: the liner shipping industry presents special features that justify a sectorial BER.
- Other stakeholders: there is no justification for special arrangements for the liner shipping industry.



Criterion #5: EU added value

What is the added-value of the Consortia BER among several instruments that provide general guidance on the application of EU antitrust rules?

- The carriers and vessels owners: the Consortia BER provides valuable industry-specific guidance that is not provided by the general instruments.
- Other stakeholders were sceptical about it.



Next steps

- The Commission: analysing the feedback from consultation and making own assessment.
- The options: (i) expiry of Consortia BER, (ii) a simple prolongation or (iii) a prolongation with amendments.
- Publication of Summary Report of results, followed by publication of Staff Working Document.
- Decision is expected at this stage in second half of 2019.



Thank you for your attention!