



Contribution of the European Sea Ports Organisation (ESPO)

to the Consultation on the proposed prolongation of the Consortia Block Exemption Regulation

The European Sea ports Organisation welcomes the opportunity to contribute to the consultation on the Roadmap “Prolongation of the Consortia Block Exemption Regulation” and the Draft Regulation prolonging the Consortia BER (the “Consortia Regulation”, Regulation 906/2009).

1. ESPO recognises that cooperation agreements are current and common practice in liner shipping and are an essential tool for shipping companies to optimise utilisation of vessels and to increase the competitiveness of the sector.
2. ESPO acknowledges the high level of concentration in the shipping sector and deems that alliances are to be considered as a preferred alternative to further consolidation in the sector.
3. ESPO estimates that the current alliances fall to a large extent under the scope of the Consortia Regulation, but that there are currently also alliances operational, exceeding the 30% threshold market share, and thus operating outside the scope of the Consortia Agreement.
4. ESPO understands that the Consortia Regulation is giving the carriers in the consortia legal certainty on what is lawful and what is not and also guides other stakeholders. ESPO believes that such conditions and interpretation given to article 101, as in the Consortia Regulation should also serve as guidance for the alliances that are not falling under the scope of the current Consortia Regulation.
5. ESPO realises that both the alliances under the Consortia Regulation and outside the Consortia Regulation can be lawful on the basis of article 101, paragraph 3 TFEU. The extension or expiration of the current Consortia Regulation will in that respect not dramatically change the current practice of concluding consortia agreements, but will oblige all shipping lines to comply with the self-assessment procedures that apply to agreements falling outside the scope of the current Consortia Regulation. Moreover, the absence of Consortia Regulation could mean the absence of guidance that is given in the current Consortia Regulation, guidance that is helpful for all members of alliances and also for the other stakeholders.

6. ESPO has therefore as such no observations to make on the extension or expiration of the current Consortia Regulation.
 7. ESPO however believes that conditions and guidance, as given in the Consortia Regulation should also serve as guidance for all consortia agreements and conditions could be further developed based on the experience under the current Consortia Regulation.
 8. ESPO stresses the need to ensure and monitor that the benefits of any shipping alliance are shared by all, end-consumers and stakeholders, in the logistics chain alike. These benefits should not only be considered in monetary terms, but also in the quality of the service.
 9. ESPO would moreover welcome more transparency on the current state of alliances and would encourage the Commission to keep a closer eye on the current situation and the rapidly changing market. ESPO understands that Europe's antitrust policy has changed in 2004 from an ex-ante notification system to a self-assessment system. This policy should not prevent the Commission to monitor the market very closely, consider the current cooperation agreements – both the ones falling under the BER and those falling outside the BER - ex officio, follow new developments and report on them. To this end, the Commission should foresee the staff needed to monitor and detect any disruptive behavior of current and future alliances. ESPO remains at the disposal of the Commission to provide information, if relevant and needed, for fulfilling its task.
 10. When monitoring the current practices and agreements in the market, the Commission should in particular:
 - Monitor if the impact of the negotiating power of the alliances towards the port authorities, when negotiating charging and/or services in the ports, is becoming excessive;
 - Monitor if the pressure on the ports investment policy is becoming excessive;
 - Consider both the horizontal and vertical alliances (landside, supply chain);
 - Not only monitor the traditional alliances between carriers but also look at the new players in the market;
 - Monitor not only the monetary benefits passed to the user, but also consider the benefits in terms of service quality.
 11. ESPO would encourage the consortia with a market share exceeding the scope of the consortia agreement to actively engage in a dialogue with the Commission when establishing agreements.
 12. Overall, European ports believe that it is extremely important for shipping lines, considering the high level of concentration and cooperation in the market, to consult in good time with the port authorities to aim at equivalent economies of scale on the land side and avoid inefficient (or stranded) asset investment.
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