

**EUROPEAN COMMISSION EVALUATION OF
THE CONSORTIA BLOCK EXEMPTION REGULATION**

SUBMISSION

3 October 2022

BY



**World
Shipping
Council**



**International
Chamber of Shipping**

Shaping the Future of Shipping



ASA
Asian Shipowners' Association

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Annex Report by RBB Economics, 3 October 2022, *Response to the EC liner shipping CBER consultation, Prepared at the request of the World Shipping Council*

I. Introduction

1. This submission is made on behalf of the World Shipping Council (“**WSC**”), the International Chamber of Shipping (“**ICS**”), and the Asian Shipowners’ Association (“**ASA**”) (collectively, the “**Associations**”) in response to the European Commission’s “Call for Evidence”¹ regarding the evaluation of the Consortia Block Exemption Regulation (“**CBER**”)² (the “**Evaluation**”).
 - a. WSC is a trade association representing the global liner shipping industry.³ Its members operate 90% of the global liner shipping capacity and collectively transport approximately 60% of the value of global seaborne trade.
 - b. ICS is the global trade association for shipowners and operators, representing the world’s national shipowner associations and over 80 % of the world merchant fleet.⁴
 - c. The ASA consists of seven members from the shipowners’ associations of Asia Pacific nations: Australia, China, Hong Kong, Japan, Korea, Chinese Taipei and the Federation of ASEAN Shipowners’ Associations (“**FASA**”).⁵ ASA’s membership is estimated to control about 50% of the world merchant fleet.⁶
2. The Associations respectfully submit that the Commission should extend the period of application of the CBER⁷ without amending any other provisions of the CBER.
3. To accompany the present submission, the Associations have commissioned an expert economic report prepared by RBB Economics (“**RBB Report**”, attached as an **Annex** below). The RBB Report should be regarded as an integral part of the Associations’ feedback for the purpose of the Evaluation, and it will be referenced (as appropriate) throughout the present submission.

¹ Ref. Ares(2022)5649105.

² Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ (2009) L 256/31.

³ For more information about WSC, please visit <https://www.worldshipping.org/>

⁴ For more information about ICS, please visit <https://www.ics-shipping.org/>

⁵ FASA represents shipowners of Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. For more information about FASA, please visit <https://www.fasa.org.sg/>

⁶ For more information about ASA, please visit <https://asianshipowners.org/index.php>

⁷ By amending Article 7 of the CBER.

II. Executive summary

4. In a nutshell. The CBER is an essential regulatory tool that yields significant benefits to a variety of stakeholders, with no downside from a competition or consumer welfare perspective. It should therefore be extended for another term without amendment. Any argument to the contrary disregards the relevant empirical data and undermines the EU's decarbonisation objectives.
5. Context of the Evaluation. The Commission's evaluation of the CBER is taking place against the backdrop of an unprecedented global crisis. COVID-19 disrupted the end-to-end intermodal supply chain worldwide, creating substantial bottlenecks at marine terminals, inland warehouses and distribution centres, and in the truck, rail, and barge systems that connect ports with the hinterland. Those landside bottlenecks in turn caused back-ups of ships outside of ports, significantly reducing the effective vessel capacity even as ocean carriers deployed every available owned and chartered containership. The frustration that transport users – shippers – have understandably experienced from service delays and increased cost has been channelled towards carriers, their consortia arrangements, and the regulatory tools which facilitate such arrangements, including the CBER. And yet, the relevant data shows – and regulators (including the Commission) accept – that the problems in the sector were not attributable to carriers or consortia, but rather several other factors wholly outside the carriers' control. This fact must be taken as a baseline before any credible debate regarding the pros and (alleged) cons of the CBER can take place.
6. Pros of the CBER. Consortia are vessel sharing arrangements: carriers agree to share vessel space so that they can consolidate cargo volumes to achieve higher levels of utilisation of larger, more efficient ships than they could achieve operating alone, and offer a wider range of services and port calls at higher frequency than they could operating alone. The CBER facilitates the creation and operation of consortia by greatly reducing the compliance burden for carriers (including compliance costs) and by providing sector-specific legal certainty. There is no alternative source of EU guidance that could replace the CBER. Thus, if the Commission decides not to renew the CBER, it must be willing to accept the consequence that certain carriers might refrain from entering into new consortium agreements and might even withdraw from

existing consortia. Accordingly, the heart of the issue is rather simple: if consortia are worth keeping, the CBER is worth keeping.

7. Consortia are overwhelmingly beneficial. By optimising the use of vessel capacity, consortia generate economies of scale and cost savings for carriers, which are shared with consumers. Consortia also improve connectivity by allowing carriers to offer a higher frequency of sailings to a greater number and greater variety of ports.
8. Just as important as the economic efficiencies that consortia create is their environmental efficiency compared to service offerings that consortia members could otherwise offer on their own. The International Maritime Organisation (“**IMO**”) has compiled data which confirms that larger containerships result in vastly lower CO₂ emissions per container transported than smaller containerships. Since consortia enable carriers to operate larger ships than they could viably operate alone, they are indispensable to the EU’s fight against climate change. This efficiency of scale applies across all ship sizes; thus, although the largest vessels are the most efficient (and least polluting) on a per-cargo-unit basis, the emissions reductions available from using consortia to deploy more efficient vessels extend across all vessel sizes in the global fleet. Accordingly, any policy decision that would impede carriers’ ability to cooperate via consortia – for instance, by removing a compliance tool which has functioned well for decades – would directly undermine the EU’s overarching goal of reducing greenhouse gas emissions and the commitment to the achievement of these goals made by Executive Vice-President Vestager.⁸
9. Alleged cons of the CBER. Any argument that consortia dampen competition between carriers is at odds with commercial reality. Even whilst cooperating in a consortium, carriers compete vigorously with one another, especially with respect to price. Carriers also retain their individual contractual relationships with customers (thereby maintaining both the price and non-price components of their competitive offerings), and they continue to take their commercial decisions independently. This includes the freedom to offer their own services independently on the same leg of trade as the

⁸ Executive Vice-President Vestager’s keynote speech at the 25th IBA Competition Conference, delivered by Inge Bernaerts, Director, DG Competition, 10 September 2021, available at https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/competition-policy-support-green-deal_en

consortium. Whilst some opponents of the CBER allege that consortia facilitate a reduction of capacity, there is no evidence to support this theory. On the contrary, the relevant data shows that, during the COVID-19 crisis, carriers rapidly deployed all available capacity and invested in extra capacity in an attempt to meet increased demand. For these reasons, there is simply no credible argument against the CBER from a competition policy or consumer welfare perspective.

10. Conclusion. The EU needs consortia. Members of consortia need the CBER. There are no credible arguments weighing against a renewal of the CBER, yet there are many compelling arguments justifying such a renewal, including the need to urgently cut greenhouse gas emissions. The Commission should therefore extend the period of application of the CBER.

III. Context of the Evaluation

11. Whilst EU Block Exemption Regulations for consortia have been continuously in place since 1995, the Commission first adopted the CBER – in its current form – in 2009. It was adopted for a period of five years and, since then, it has been extended twice following Commission evaluations (first in 2014 and again in 2020).⁹ The CBER is due to expire on 25 April 2024 unless the present Evaluation results in a further extension.
12. The sections below discuss recent developments that are contextually relevant for the Evaluation, specifically: (i) the most recent evaluation of the CBER and the reasons why the Commission extended its application until 2024; (ii) the challenges experienced in the maritime supply chain since 2020 as a result of the COVID-19 crisis; (iii) the Commission’s fact-finding initiative at the end of 2021 to collect information on market changes that had occurred as a result of the COVID-19 crisis; (iv) the Call for Evidence, to which the present submission responds, and the closely-related questionnaires distributed to stakeholders in August 2022 (including WSC members);

⁹ See Commission press release IP/14/717 of 24 June 2014, “*After a public consultation, the Commission has concluded that the exemption has worked well, providing legal certainty to agreements which bring benefits to customers and do not unduly distort competition, and that current market circumstances warrant a prolongation*”, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_14_717, and Commission press release IP/20/518 of 24 March 2020, “*The evaluation has shown that despite evolutions in the market (increased consolidation, concentration, technological change, increasing size of vessels) the Consortia Block Exemption Regulation is still fit for purpose, in line with the Commission's "Better Regulation" approach to policy-making, and delivers on its objectives*”, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518.

and (v) regulatory initiatives in other jurisdictions concerning the competition law framework for consortia agreements.

A. 2020 extension

13. The Commission most recently evaluated the CBER in 2018-2019. Following a multi-step consultation process,¹⁰ involving the receipt and assessment of feedback from many different stakeholders, including the Associations, the Commission ultimately decided in 2020 to extend the CBER for a period of four years. The reasoning underlying this decision was explained in a Staff Working Document (“**2019 SWD**”)¹¹ and Executive Summary,¹² both published on 20 November 2019. To summarise at a high-level, the Commission concluded that the CBER:
- a. facilitates consortia by making Article 101 TFEU assessments easier and by providing higher legal certainty that decreases legal risk;¹³
 - b. reduces compliance costs for carriers;¹⁴
 - c. has not had a negative impact on competition between carriers;¹⁵
 - d. is merited as an exceptional sector-specific regulation due to the special features of the industry, which relies heavily on cooperation;¹⁶ and
 - e. offers guidance that is more appropriate to be provided at the EU level, rather than the Member State level (therefore providing “EU added value”).¹⁷
14. In summing up its findings, the Commission stated the following:

“[T]here is no reason to depart from the longstanding view that consortia are an efficient way for providing and improving liner shipping services that also benefits

¹⁰ The Commission first published, and collected feedback on an Evaluation Roadmap (Ref. Ares(2018)2422025 - 07/05/2018). It then opened a public consultation period (from 27 September 2018 to 20 December 2018) in addition to collecting stakeholder input via targeted questionnaires.

¹¹ Commission Staff Working Document, Evaluation of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD(2019) 411 final, available at https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_evaluation.pdf

¹² Commission Staff Working Document, Executive Summary of the Evaluation of the Commission Regulation (EC) No 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD (2019) 412 final, available at https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_resume_evaluation.pdf

¹³ See 2019 SWD, Section 5.1.

¹⁴ See 2019 SWD, Section 5.2.

¹⁵ See 2019 SWD, Section 5.3.

¹⁶ See 2019 SWD, Section 5.4.

¹⁷ See 2019 SWD, Section 5.5.

customers. A fair share of the benefits resulting from the efficiencies is passed on to transport users [...] [the CBER] provides clearer guidance and higher level of legal certainty to consortia than would have been the case in its absence. [It therefore] [...] helps carriers to save resources [...] the reliance on cooperation that allows to rationalise services and lower costs is made more pressing in view of the global economic challenges facing the container shipping industry. Therefore [...] the market conditions [...] necessitate the existence of a sector-specific BER.”¹⁸

15. Thus, in the Commission’s view, the CBER was – in 2019 – still an essential tool to maximise the efficiency of liner shipping for the benefit of customers. The Associations will demonstrate in the present submission that this conclusion still holds true today. Also, the Commission’s emphasis on the “*global economic challenges facing the container shipping industry*” as a justification for extending the CBER in 2020 applies with even greater force now, considering the severe challenges that the maritime transport industry faced – and in certain respects continues to face – as a result of the COVID-19 crisis (in addition to the immense task of combating climate change). For instance, the RBB Report demonstrates that: (i) there continues to be high levels of port congestion; and (ii) lockdowns continue to be a relevant concern (notably in Asia), impacting not only port/terminal capacity but also shipbuilding activities intended to alleviate capacity constraints.¹⁹

B. COVID-19 supply chain disruption

16. The global COVID-19 crisis severely impacted the maritime supply chain. Due to a confluence of factors related to the pandemic, the reliability of liner shipping services suffered and freight rates ultimately increased materially. In Section IV.B below, we will discuss these factors in detail and demonstrate that the challenges experienced in the sector since 2020 cannot be attributed to consortia, let alone the CBER.
17. Nonetheless, the disruption caused by the pandemic is pertinent when describing the context of the Evaluation. This is because certain stakeholders are frustrated by carrier performance indicators (as they have already expressed in numerous commercial and political fora). Indeed, several stakeholders regard the CBER as ‘part of the problem’, not ‘part of the solution’, and for that reason they called upon the Commission to urgently commence the Evaluation. The Associations presume that such calls have, at

¹⁸ 2019 SWD, Section 6, page 35 (emphasis added).

¹⁹ RBB Report, Section 4.2.1, page 26.

least to a preliminary degree, influenced the Commission’s approach to the Evaluation (and certainly its pre-cursor, the 2021 fact-finding discussed below).²⁰ The Associations also fully expect that the frustration referenced above will seep into, and potentially even dominate, the Evaluation feedback which the Commission will be required to assess. We would urge the Commission to treat these submissions judiciously. Whilst miscellaneous grievances against carriers are always regrettable, they must be disentangled from the genuine competition law arguments at issue in the Evaluation.

C. 2021 fact-finding

18. In December 2021, the Commission issued “fact-finding” questionnaires to carriers. The purpose of those questionnaires was “*to collect information necessary to understand whether the circumstances with respect to any of the facts that were basic to the adoption of the CBER have changed. [Specifically,] the market changes that have occurred since the prolongation of CBER in 2020, notably as a result of the COVID crisis*”.²¹ The fact-finding questionnaires were primarily data-focussed and sought information, for the period 2020 and 2021 (estimated), on: (i) volume carried and capacity deployed (including market share information); (ii) freight rates and service quality; (iii) market circumstances; and (iv) the impact of consortia on other elements of the maritime supply chain. Several of the questions requested that data be split to distinguish services offered as part of a consortium from services offered independently.
19. Based on the Call for Evidence, the Associations understand that the submissions received by the Commission in response to its 2021 fact-finding will form part of the evidence that will be considered for the Evaluation.²²

²⁰ For instance, the Commission notes in its Call for Evidence (at page 3) that it has had “*regular exchanges with stakeholders (notably shippers, freight forwarders and carriers) as well as competition and regulatory authorities in Europe, the US and other jurisdictions, on the issues faced by the sector in the last 2 years and on the outlook for the sector*”.

²¹ Commission letter of 16 December 2021, *Subject: HT.5929 – Consortia Block Exemption Regulation Impact of COVID crisis on facts basic to CBER*.

²² The Commission notes in its Call for Evidence (at page 3) that “*Information treated by the Commission as part of its monitoring activities since 2020 will help assess the relevance of the Consortium Block Exemption Regulation.*”

D. 2022 Call for Evidence & questionnaires

20. On 9 August 2022, the Commission launched the Evaluation by issuing the Call for Evidence (to which the present submission responds) and circulating targeted questionnaires to carriers (the “**Questionnaires**”) and other stakeholders. The Call for Evidence and the Questionnaires address the following themes: (i) the impact of the COVID-19 crisis; (ii) the difference between services offered as part of a consortium and those offered independently, with respect to several parameters (capacity offered, ship utilisation rates, freight rates, reliability with respect to port calls, reliability with respect to delays, reliability with respect to the performance indicators relied upon by responding carriers, direct port connectivity); (iii) fleet management, vertical relationships, and joint activities; (iv) vertical integration; and (v) the CBER as a compliance tool.
21. With respect to the above themes, the Associations would note the following.
22. First, regarding the Questionnaire sections seeking to address the difference between services offered as part of a consortium and those offered independently, by the same carrier on the same trade, that set of questions misperceives the nature of carriers’ offerings to the shipping public. Individual carriers will likely address this point in their Questionnaire responses, but in general it is not the case that one can derive insight into the benefits of consortia by comparing consortia services from a given carrier in a given trade with non-consortia services offered by the same carrier on the same trade. The reason that such comparisons are not fruitful is that carriers using both consortia and non-consortia assets in a given trade do not typically market those services separately. Instead of being separate offerings to the public, the use of both consortia and non-consortia services represents the use of different types of capacity building blocks for what is in fact a unitary offering. In both cases (consortia and non-consortia-based services), the object is to match the most appropriate available vessels to any given set of port calls – in other words, to align as closely as possible the carriers’ offering to the customers’ demands and needs. Sometimes the optimal size and number of ships may be found through cooperation in a consortium, and other times that balance may be found by using ships that are all owned or chartered by a single carrier. The factors that inform those decisions are multi-faceted (involving the capacity demand on a given route, the ships available, the capacity of the ports called, *etc.*), but the

fundamental point remains that the differences in how ship capacity is allocated to a given service does not reflect some universally applicable truth about the relative merits or characteristics of consortia services and non-consortia services.

23. Second, regarding vertical integration, the Associations respectfully submit that this is not relevant to the Evaluation. The CBER concerns horizontal cooperation between carriers, including the joint use or purchase of certain downstream services covered by Article 3 of the CBER, but such activities are clearly distinct from investments that may be made by individual carriers to acquire (or partly acquire) elements of the maritime supply chain, which are clearly not covered by Article 3. To the extent that concerns exist regarding vertical integration (if any) by carriers that belong to consortia, the CBER is not a relevant instrument in the Commission's toolkit to address such concerns. The EU (and national) merger control regimes allow the applicable competition authorities to assess the potential for the creation of market power and the risk of foreclosure in the supply chain resulting from vertical integration; and the general competition rules (Articles 101 and 102 TFEU, and their national equivalents) apply to the potential abuse of such market power and restrictive arrangements with customers or suppliers; but such issues have no bearing on the evaluation of consortia or the utility of the CBER. Accordingly, issues related to vertical integration should not feature in the Commission's decision-making on whether to renew the CBER.
24. Third, certain questions in the Questionnaire have the potential to invite responses that might inadvertently lead carriers to waive legal professional privilege (*e.g.*, questions explicitly enquiring about competition law assessments or joint activities falling outside the scope of the CBER). Thus, it is foreseeable that carriers may choose not to provide comprehensive responses to such questions; this should not be construed by the Commission as a lack of cooperation weighing against renewal of the CBER, but merely a valid protection of carriers' legal interests.

E. Regulatory initiatives outside the EU

25. Given the global nature of the liner shipping industry, and its multiple competition law overseers, the Evaluation is only one of several reviews related to cooperation between carriers that is either forthcoming or that has taken place recently. It is critical that the Commission is aware of this broader context for two reasons.

26. First, many jurisdictions look to the Commission (both formally and informally) for leadership and best-practice guidance as to the appropriate treatment of consortia agreements under competition law. The stakes of the Evaluation are therefore exceedingly high: if the Commission opts for non-renewal of the CBER, other jurisdictions might follow suit in reviewing their own exemptions or antitrust immunities for consortia. Indeed, other jurisdictions might interpret the Commission’s decision not to renew – however motivated – as a signal that consortia should no longer be regarded as efficiency-enhancing and ultimately beneficial to consumer welfare (despite the evidence to the contrary). On this point, the Associations would emphasise that the competition law framework, and the approach to that framework, in the EU is markedly different from the framework and approach seen in some other jurisdictions:
- a. From an EU perspective, non-renewal of the CBER will not render consortia unlawful as a matter of EU law; instead, if carriers were to lose the safe harbour of the CBER, they would need to carry out a self-assessment (which, as discussed below,²³ entails additional complexity and cost, to the ultimate detriment of the consumer).
 - b. In other jurisdictions, however, the loss of a block exemption (or equivalent) for consortia agreements might have more dire consequences. This would be the case in jurisdictions that do not have an equivalent to the EU notion of self-assessment based on a balancing of the efficiency-enhancing benefits of the arrangement against its (putative) restrictions. In those jurisdictions, the absence of a block exemption, coupled with the absence of an established self-assessment framework, would create an untenable state of risk and legal uncertainty for carriers wishing to participate in consortia. In such circumstances, it is foreseeable that carriers would refrain from entering into new consortium agreements and even withdraw from existing consortia. Naturally, given the international nature of liner shipping and the concurrent application of different legal regimes to their operation, this could also negatively impact trade to and from the EU (regardless of the level of risk based on an EU competition law self-assessment).

²³ See Section VI.A.

27. Second, with respect to reviews recently carried out in other jurisdictions, the findings of other authorities could be helpful: (i) to supplement the Commission’s fact-finding (e.g., to fill-in missing information); and (ii) to stress-test arguments submitted by stakeholders, or even the Commission’s own tentative findings.
28. The following jurisdictions have recently extended their Block Exemption Orders (“**BEOs**”):
- a. **Singapore**. On 15 November 2021, the Competition and Consumer Commission of Singapore announced its decision to extend Singapore’s BEO for three years until 31 December 2024 (it was otherwise due to expire on 31 December 2021).
 - b. **Hong Kong**. On 7 July 2022, the Hong Kong Competition Commission announced its decision to renew Hong Kong’s BEO for four years until 8 August 2026 (it was otherwise due to expire on 8 August 2022).
 - c. **Israel**. On 18 September 2022, the Israeli Competition Authority announced its decision to extend Israel’s BEO for three years until 17 October 2025 (it was otherwise due to expire on 17 October 2022).
29. If the Commission decides not to extend the CBER, this would, of course, place the EU on a different footing than several other important jurisdictions, including those noted above. This divergence would likely compound the increased compliance burden for carriers in the event of non-renewal of the CBER (see, e.g., paras. 79 and 81 below).
30. Finally, in addition to the above extensions/renewals, the U.S. Federal Maritime Commission (“**FMC**”) recently completed its Fact Finding Investigation 29 (“**FF29**”) concerning the effects of the COVID-19 pandemic on the U.S. international ocean supply chain.²⁴ Where appropriate, we will refer in this submission to relevant findings of the FMC in FF29.

²⁴ FMC Fact Finding Investigation 29, Final Report, *Effects of the COVID-19 Pandemic on the U.S. International Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c)*, May 31, 2022, available at <https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf>

IV. Key facts and developments

31. Unlike matters of policy – where opponents and proponents of the CBER might disagree – certain facts that are relevant to the Evaluation must serve as a common foundation for the debate. In the sections below, we address two factual aspects that are critical to the Commission’s assessment: (i) the types of cooperation between carriers, and the degree to which carriers compete whilst operating in the same consortium, and (ii) the effects of the COVID-19 crisis on the maritime supply chain.

A. Cooperation between carriers

1. Types of cooperation

32. As noted in the 2019 SWD, due to the nature of the liner shipping industry (*i.e.*, a capital-intensive industry involving high fixed costs, low variable costs, and perishable services),²⁵ cooperation agreements between carriers are prevalent. This cooperation may take the form of: (i) slot charter agreements (“SCAs”);²⁶ or (ii) consortia agreements (also referred to as vessel sharing agreements “VSAs”). Consortia agreements can take different forms and can involve varying degrees of investment and integration. However, the key characteristic remains the same: two or more carriers agree to share vessel space so that they can consolidate cargo volumes; as part of this agreement, the carriers jointly decide on the ports that will be served and the sailing schedules. As described in further detail by the Commission:

*“Under a consortium, all parties provide one or more vessels and in exchange receive a number of slots across all vessels in the joint service. Each carrier's allocation of slots is determined by the total vessel capacity that they contributed. The costs of each vessel are borne by its respective owner, not the consortium. The parties to the consortium jointly decide the sailing timetable, but there is no price coordination, joint marketing, revenue sharing or, with some limited exceptions, joint purchasing”.*²⁷

²⁵ 2019 SWD, Section 2.2, page 6.

²⁶ The 2019 SWD, fn. 22, page 6, provides the following detailed explanation as to why an SCA, although a type of “cooperation agreement”, does not fall within the meaning of the term “consortia” under the CBER: *“Under a SCA a shipping company (“charterer”) “rents” a predetermined number of container slots on a vessel of another shipping company in exchange for cash (normal slot charter) or slots on its own vessels (slot exchange). SCAs do not normally involve joint decision making concerning marketing, ports of call, schedule or the use of the same port terminals [...] With SCAs carriers only buy or exchange capacity on existing services of other carriers and do not rationalize or improve the service. They therefore are not covered by Article 2(1) of the Consortia BER. A [vessel sharing agreement] VSA can include several SCAs between the parties to the agreement [...]”.*

²⁷ Case M.8594 – COSCO Shipping / OOIL, para. 28 (cited at 2019 SWD, page 7, fn. 26).

33. The three major “alliances” (2M, THE, One) are also forms of consortia. They are merely larger consortia which operate on more than one trade (as described by the Commission, the alliances involve a “*matrix of vessel sharing agreements*”).²⁸
34. For an overview of consortia and individual carriers active on trades to/from the EU (including their respective shares of capacity) and a summary of the services offered on these trades, please refer to the RBB Report.²⁹ The overview provided by RBB strongly indicates that a significant number of consortia operating on trades to/from the EU are likely to fall below the applicable 30% market share threshold specified in the CBER.

2. Competition between consortia members

35. As noted above, consortia agreements involve a certain degree of horizontal cooperation, as competing carriers agree to: (i) the capacity that will be offered by the consortium service; (ii) the schedule (timetable) of the service; and (iii) its ports of call. In Section V below, we will explain the efficiency-enhancing and pro-competitive rationale for this cooperation. For present purposes, we would merely emphasise that – as a factual matter – the existence of a consortium agreement does not negatively impact the following parameters of competition.
- a. **Price.** Consortia members compete with one another to sell their allocated capacity on the vessels that are used to operate the joint service. In that regard, each consortium member sets its own price, independent of the pricing strategies of other members (as the Commission has confirmed in its merger decisional practice).³⁰ As

²⁸ 2019 SWD, fn. 23, page 6.

²⁹ Specifically, Annexes A and B to the RBB Report, pages 37-48.

³⁰ See, e.g., Case M.7268 – CSAV/ HGV/ KÜHNE MARITIME/ HAPAG-LLOYD AG, paras. 65-66: “A majority of respondents to the market test have indicated that price competition does exist, and not only among consortia, but also among consortium members. Customers stated that they often invite shipping companies belonging to the same consortium to negotiate or bid for their business, because even though they belong to the same consortium they charge different rates [...] Moreover, customers [...] confirmed that they often source their requirements for container liner shipping services from multiple shipping companies (often more than four different shipping companies), irrespective of their consortia membership, thus benefitting from price competition within one and the same consortium (emphasis added). See also Case M.8120 – Hapag-Lloyd /United Arab Shipping Company, para 42: “the results of market investigation show that there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members. Shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service. Moreover, most customers who responded to the market investigation submit that membership in consortia/alliances does not count among the most important criteria in the choice of supplier of container liner shipping services. Most customers who responded to the market investigation claim that they often or even always invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract on that leg of trade” (emphasis added).

discussed in the RBB Report, members are not compensated for unused capacity on the consortium vessels; therefore, they have a strong incentive to compete on price to maximise their capacity utilisation³¹ (see also the enhanced price competition explained at para. 74 below).

- b. **Customer relationships.** The nature of consortia is such that a customer's cargo might be transported on a vessel owned and operated by a carrier other than the carrier with whom the customer has contracted. This does not mean, however, that there is a change in the contractual or service relationship from the customer's perspective. Customers continue to deal with the carrier with whom they have contracted, irrespective of the logistics of how the cargo travels from A to B. Carriers therefore have strong incentives to compete on the non-price components of their offerings, for instance, customer service, administrative convenience, payment arrangements, *etc.*
- c. **Independent service offerings.** The fact that a consortium agreement exists between carriers for a particular service does not preclude those carriers from offering their own services independently on the same leg of trade. Indeed, as noted at para. 20 above, competition between consortia offerings and independent offerings on the same leg of trade is a theme of the Questionnaires.

36. In summary, with the exception of certain limited parameters of competition, consortia members continue to compete vigorously in all respects and take their commercial decisions independently. Furthermore, consortia actually increase competition between carriers. This is because, by lowering barriers to entry and increasing the number, range and frequency of services they can offer, consortia allow more carriers (whatever their size) to compete on more legs of trade than would be the case in the absence of consortia.

B. Effects of COVID-19 on the maritime supply chain

37. In response to questions from Members of the European Parliament (“MEPs”) concerning maritime supply chain disruption, the Commission has already confirmed

³¹ RBB Report, Section 2, page 5, and Section 3.2, page 14.

that the problems in the sector are not attributable to carriers or consortia, but rather several other factors, such as congestion and imbalances between supply and demand:

“The monitoring of the sector has not identified any anti-competitive behaviour from alliances aimed at increasing freight rates. This view was shared also by the United States and China regulatory authorities at the Maritime Summit of September 2021. In this context, it does not seem that regulatory intervention could substitute market mechanisms in sorting out the current congestion problems in logistic chains and imbalances between demand and supply in the maritime transport sector.”³²

“The Commission has been closely monitoring the container shipping industry [...] No anti-competitive behaviour from alliances has been identified at this stage. Causes of price increases and services issues are multi-faceted, and not similar across the world. Changing consumption patterns, port congestion, asymmetric recoveries of world economies and unavailability of workers, threw out of balance a delicately optimised business, with little margin to absorb shocks. Russia’s invasion of Ukraine may add new challenges ahead. Regulatory intervention would not appear to be able to substitute market mechanisms in resolving current issues in logistic chains.”³³

38. The above responses from the Commission are consistent with the findings of the FMC in FF29. The FMC found that price increases were *“exacerbated by the pandemic, an unexpected and unprecedented surge in consumer spending, particularly in the United States, and supply chain congestion, and are the product of the market forces of supply and demand”*.³⁴ The FMC explained the situation as follows:

“As people stayed home and governments imposed lockdowns and restrictions, consumer spending on goods, particularly through e-commerce, rather than services, surged in the fall of 2020. This increased demand overwhelmed limited supply, which was further affected by other COVID-19 impacts, such as government restrictions and decreased workforces because of illness. Supply chain congestion globally further decreased the available supply of ship capacity and container availability for exporters and importers.

Even as COVID-19 cases dropped, vaccines became available, and the impact of the pandemic was less pronounced at ports and with supply chain actors, the supply remained outmatched by the demand.”³⁵

³² Answer given by Executive Vice-President Vestager on behalf of the European Commission to Parliamentary question - E-000184/2022(ASW), 22 March 2022 (emphasis added).

³³ Answer given by Executive Vice-President Vestager on behalf of the European Commission to Parliamentary question - P-001454/2022(ASW), 23 May 2022 (emphasis added).

³⁴ See FF29, page 6 (emphasis added).

³⁵ FF29, pages 41-42 (emphasis added).

39. The findings of the Commission and the FMC referenced above undermine any suggestion that consortia, or the competition law regulatory framework for consortia (e.g., the CBER), were to blame (or even partly to blame) for the increased prices and service deterioration witnessed during the pandemic. On this point, the Associations would note that the International Transport Forum (“ITF”) published a report in July 2022, titled “*Performance of Maritime Logistics*” (“ITF Report”),³⁶ which contained certain misguided and inaccurate claims. Specifically, the ITF Report claimed that “*a supportive legal framework*” for cooperation agreements between carriers “*facilitated the rise of ocean freight rates*” by allowing carriers to withdraw vessel capacity.³⁷ This claim is directly contradicted by: (i) the available evidence, in particular relevant data from Sea Intelligence presented in the RBB Report;³⁸ and (ii) the FMC’s findings that “*individual ocean carriers within each alliance continue to compete on pricing and marketing independently and vigorously*”³⁹ and “*reduced service by ocean carriers was driven by port congestion rather than a desire to reduce capacity*”.⁴⁰ The inconsistencies between the above claims in the ITF Report and the findings of the FMC are particularly important, considering that the ITF Report acknowledges that the FMC is one of the most rigorous overseers of cooperation between carriers (the ITF Report notes that the FMC has “*extensive responsibilities for the review and monitoring of shipping rates, including confidential service contracts, rates and rules of government-owned or controlled carriers, and agreements between carriers and terminal operators*”).⁴¹
40. Despite the findings and evidence noted above (i.e., that the problems experienced during the pandemic were not attributable to carriers or consortia), the RBB Report further examines these issues in detail.⁴² Specifically, the RBB Report: (i) explores the various ways in which COVID-19 impacted the liner shipping industry, ultimately resulting in significant logistical delays and rising prices; and (ii) demonstrates that

³⁶ Available at <https://www.itf-oecd.org/performance-maritime-logistics>

³⁷ ITF Report, page 44.

³⁸ See RBB Report, Section 4.2.1, pages 24-25, Figure 3: *Absorption of global fleet due to delays, April 2011 to April 2022*, based on data from Sea Intelligence.

³⁹ FF29, page 44.

⁴⁰ FF29, page 43.

⁴¹ ITF Report, page 45. This is consistent with the FMC’s comments at FF29, page 43: “*Agreements that may pose competitive concerns are subject to continuous monitoring by Commission staff*”.

⁴² This is because the Call for Evidence references the “*challenges posed by the COVID-19 pandemic*” and, as noted, this topic is likely to feature in the feedback submitted to the Commission (see above at para. 17).

those adverse outcomes did not arise because, nor were they exacerbated by, the existence of consortia, let alone the CBER.⁴³ We briefly summarise RBB’s analysis below, but trust that the Commission will review the full analysis, which includes a presentation of the relevant underlying data, at Section 4 of the RBB Report.⁴⁴

41. **Supply side shocks.** COVID-19 caused labour shortages and led governments to impose lockdowns and other operational restrictions. This significantly impacted the port system, as: (i) many ports/terminals were closed, required to operate at reduced capacity, or were operating under strict limits as to the number of employees and volume of cargo; (ii) certain ports suffered COVID outbreaks amongst dockworkers, leading to lengthy increases in vessel waiting times; and (iii) port congestion was generally exacerbated by an insufficient number of truck drivers to move containers inland. As a result of these factors, a significant proportion of total shipping fleet capacity was “absorbed” (*i.e.*, effectively removed from the market) due to port delays and inland transportation delays.⁴⁵ These port and inland delays, which were external forces beyond the control of carriers, also impacted the availability of shipping containers, as many containers were simply “in the wrong place at the wrong time”, thus further worsening delays.⁴⁶
42. **Demand side shocks.** At the beginning of the pandemic, the demand for liner shipping services decreased due to a drop in consumer purchasing and a reduction in output by manufacturers. However, during the second half of 2020, demand surged due to a diversion of consumer spending away from the service industry (*e.g.*, hospitality and leisure, which were closed for extended periods) and towards manufactured goods, many categories of which are primarily produced in Asia (*e.g.*, games and sports equipment, electronics, *etc.*). This surge in demand (which exceeded pre-COVID

⁴³ See RBB Report, Section 4, pages 22-36.

⁴⁴ RBB Report, pages 22-36.

⁴⁵ See in particular RBB Report, Section 4.2.1, page 25, Figure 3: *Absorption of global fleet due to delays, April 2011 to April 2022*, based on data from Sea Intelligence.

⁴⁶ As described in a working paper published by the International Monetary Fund (IMF) in February 2022: “*The higher demand for transportation had to be accommodated with a mostly fixed stock of containers, ships, trucks, and storage facilities in the short run. In fact, though the number of containers in service has risen since late 2020, the effective supply of containers has been severely hampered by bouts of lockdowns and interrupted port operations, with many containers initially stranded off their usual routes. Industry experts estimate the effective stock of containers to be 10–15 percent below capacity (due to waiting times at ports)*”. IMF, *Supply Bottlenecks: Where, Why, How Much, and What Next?* WP/22/31, page 30, available at <https://www.imf.org/en/Publications/WP/Issues/2022/02/15/Supply-Bottlenecks-Where-Why-How-Much-and-What-Next-513188>

levels) was unexpected and the scope for an effective supply side response was limited due to the supply side shocks explained above.

43. **Supply side response.** RBB explains that, in response to the capacity absorption and increased demand, carriers made every possible effort to increase their capacity. The relevant data shows, for instance, that in July 2021, total capacity on the East Asia-Europe route was 20% higher than the same time in 2020 (while total capacity on the East Asia-North America route was 31% higher).⁴⁷ The data also shows: (i) a massive reduction in the number of idle vessels between 2020 and 2021; and (ii) that a number of carriers (that are consortium members) started to make significant investments in new (and large) vessels during the second half of 2020 (with such vessels expected to be delivered in 2023 and 2024).⁴⁸ In other words, in an attempt to meet the increased demand, carriers rapidly deployed all available capacity and invested in extra capacity.
44. **Impact of the supply and demand shocks on market trends.** The supply side shocks discussed above led to a reduction in available capacity and/or a direct increase in carriers' costs. This resulted in freight rates being driven upwards (as would be expected). The surge in demand similarly placed upward pressure on prices, at a time when a commensurate supply-side response (*i.e.*, an expansion in capacity) was impossible. In addition to the impact on prices, service quality also suffered in the sense that cargo was delayed and there was a reduction in frequency and reliability. As RBB explains, all of these developments are consistent with what would be expected in response to the supply and demand shocks discussed above.⁴⁹ As an ongoing contributing factor, RBB also notes the fallout of Russia's invasion of Ukraine, especially the resulting energy crisis (which has, for instance, doubled fuel costs for carriers) and the cost-of-living crisis (which has, for instance, resulted in strike action at certain ports).⁵⁰
45. **Role of consortia during the pandemic.** RBB's analysis demonstrates that: the role played by consortia throughout the period of supply and demand shocks discussed above was at worst neutral; and, in fact, consortia may have mitigated the effects of the

⁴⁷ See RBB Report, Section 4.3.2, page 32.

⁴⁸ See RBB Report, Section 4.3.2, pages 31-33, in particular Figure 9.

⁴⁹ RBB Report, Section 4.3.1, page 31.

⁵⁰ RBB Report, Section 4.2.3, pages 29-30.

market shocks. On the latter point, RBB confirms that there is no indication that the existence of consortia led to worse outcomes for customers than would have arisen in the absence of consortia;⁵¹ on the contrary, the efficiencies associated with consortia (discussed further below) likely enhanced their ability to cope with the disruptions to the industry.

V. Benefits of consortia

46. As noted above at para. 14, it has been the Commission's "longstanding view that consortia are an efficient way for providing and improving liner shipping services that also benefits customers". This positive view of consortia is also reflected in the recitals of the CBER:

"Consortia [...] generally help to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They also help to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity."⁵²

47. The Associations will demonstrate in the present submission that the benefits, which have long been associated with consortia, are just as present today. In fact, in certain contexts, such as the fight against climate change, the advantages of consortia are more palpable and essential now than ever before. Accordingly, there is no reason for the Commission to depart from its longstanding and rightly favourable view of consortia or to withdraw its support for a legal framework (the CBER) that helps to optimise the efficient use of vessel capacity whilst ensuring compliance with EU competition law.
48. In this section, we discuss three specific (*i.e.*, non-comprehensive) benefits associated with consortia: (i) environmental efficiency; (ii) macroeconomic benefits; and (iii) consumer benefits. For each topic, we will first comment on the EU's policy objectives. We will then explain how consortia contribute, in a positive and meaningful way, to the achievement of those objectives.

⁵¹ RBB Report, Section 4.3.2, page 31.

⁵² CBER, recital 5 (emphasis added).

A. Environmental efficiency

1. EU policy objectives

49. The fight against climate change is one of, if not the, most pressing challenges facing the EU. The EU's general strategy to meet its climate ambitions is set out in the "European Green Deal", which confirms that "*[a]ll EU actions and policies will have to contribute to the European Green Deal objectives*".⁵³ This commitment is also reflected in the Commission's Better Regulation Toolbox (November 2021) ("**BRT**"),⁵⁴ Tool #36, which states that:

*"The 'better regulation' guidelines commit us [i.e., the Commission] to analysing the environmental impacts of all policies [...] EU actions and policies should pull together to help the EU achieve a successful and just transition towards a sustainable future, in line with the objectives of the European Green Deal".*⁵⁵

50. The Directorate-General (DG) for Competition must also play its part in achieving the European Green Deal objectives. This is clear from:

- a. statements made by Executive Vice-President Vestager ("*Green policies like regulations, taxes, and investment are the key to the Green Deal. But with so much to do in such a short time, all of us – including competition enforcers – also need to make sure that we're doing what we can to help*"),⁵⁶ and
- b. a Competition Policy Brief published by the Commission in September 2021 which states that "*In order to reach the goals set out in the European Green Deal, everyone, private and public, must play their part. This includes competition enforcers*"⁵⁷ and confirms that "*sustainability benefits can be assessed as*

⁵³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, 11 December 2019, COM(2019) 640 final ("**European Green Deal**"), page 3 (emphasis added), available at https://eurlex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF

⁵⁴ Available at https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

⁵⁵ BRT, Tool #36, page 312 (emphasis added).

⁵⁶ Cited above at fn. 8 (emphasis added).

⁵⁷ Competition policy brief. 2021-01, September 2021 ("**CPB**"), page 1 (emphasis added), available at <https://op.europa.eu/en/publication-detail/-/publication/63c4944f-1698-11ec-b4fe-01aa75ed71a1/language-en/format-PDF>

qualitative efficiencies, which form part of the assessment under Article 101(3) TFEU”.⁵⁸

51. In light of the above commitments, and the obligations laid down in the EU Treaties,⁵⁹ the Commission must be satisfied that any decision adopted in the context of the Evaluation furthers (or at a minimum does not undermine) the objectives expressed in the European Green Deal. Indeed, it seems that the Commission is already aware of this obligation, as it has specifically asked carriers in the Questionnaires to comment on whether “*consortia contribute to the achievement of the objectives of the European Green Deal*”.⁶⁰
52. The European Green Deal aims to transform the EU into a “*resource efficient and competitive economy*” (an aim that is also incorporated into the European Climate Law).⁶¹ Regarding the specific objectives for the transport sector, the Commission signalled in the European Green Deal that it would adopt “*a strategy for sustainable and smart mobility*” to tackle greenhouse gas emissions associated with “[r]oad, rail, aviation, and waterborne transport”.⁶² In December 2020, the Commission duly published its Sustainable and Smart Mobility Strategy⁶³ and an accompanying Staff Working Document (referred to collectively hereafter as the “SSMS”).⁶⁴
53. The SSMS lays down at least two objectives that are pertinent to the Evaluation:
 - a. **High load factors.** When discussing how to improve multimodal freight operations, the Commission explains that “[o]ne key aspect of the efficient use of

⁵⁸ CPB, page 5.

⁵⁹ See Article 3(3) of the Treaty on the EU, Articles 7 and 11 of the TFEU, and Article 37 of the Charter of Fundamental Rights of the EU.

⁶⁰ Questionnaire, Q.20.

⁶¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), OJ (2021) L 243/1, recital 2.

⁶² European Green Deal, Section 2.1.5, page 10 (emphasis added).

⁶³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, 9 December 2020, COM(2020) 789 final (“SSMS Communication”), available at https://eur-lex.europa.eu/resource.html?uri=cellar:5e601657-3b06-11eb-b27b-01aa75ed71a1.0001.02/DOC_1&format=PDF

⁶⁴ Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, 9 December 2020, SWD(2020) 331 final (“SSMS SWD”), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0331&from=EN>

transport is a high load factor".⁶⁵ In other words, maximising the utilisation of cargo capacity is key.

b. **Efficient capacity allocation.** The Commission considers that "*efficient capacity allocation*" is essential to reducing CO2 emissions.⁶⁶

54. These goals in the SSMS are consistent with certain calls made by MEPs for "*more efficient and cleaner maritime transport*".⁶⁷ For instance, MEPs have called, not only on shipowners and ship-operators – but also on the Commission – "*to ensure the implementation of all available operational and technical measures to achieve energy efficiency [...] vessel optimisation and better optimisation within the maritime logistics chain*".⁶⁸

2. Contribution of consortia to EU objectives

55. The Commission confirmed, in the 2019 SWD, that "*by facilitating certain consortia, the Consortia BER contributes to reducing the environmental impact of maritime transport*".⁶⁹ The reason for this finding – which remains as valid today as in 2019 – is simple: consortia entail carriers consolidating cargo and sharing the space on their ships to maximise operational efficiency through better fleet utilisation. As noted in the recitals to the CBER, consortia help by "*facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity*".⁷⁰ From an environmental perspective, the rationale for consortia is no different from the rationale for public transport systems and car-pooling schemes: they all seek to maximise efficiency, thereby reducing emissions, through the shared use of transport assets and infrastructure.

56. As a general principle, it is better for the environment if carriers utilise a smaller number of larger ships, rather than a larger number of smaller ships. This is because, for example, the fuel consumption and thus the emissions from one large ship carrying

⁶⁵ SSMS SWD, para. 492 (emphasis added).

⁶⁶ SSMS SWD, para. 624.

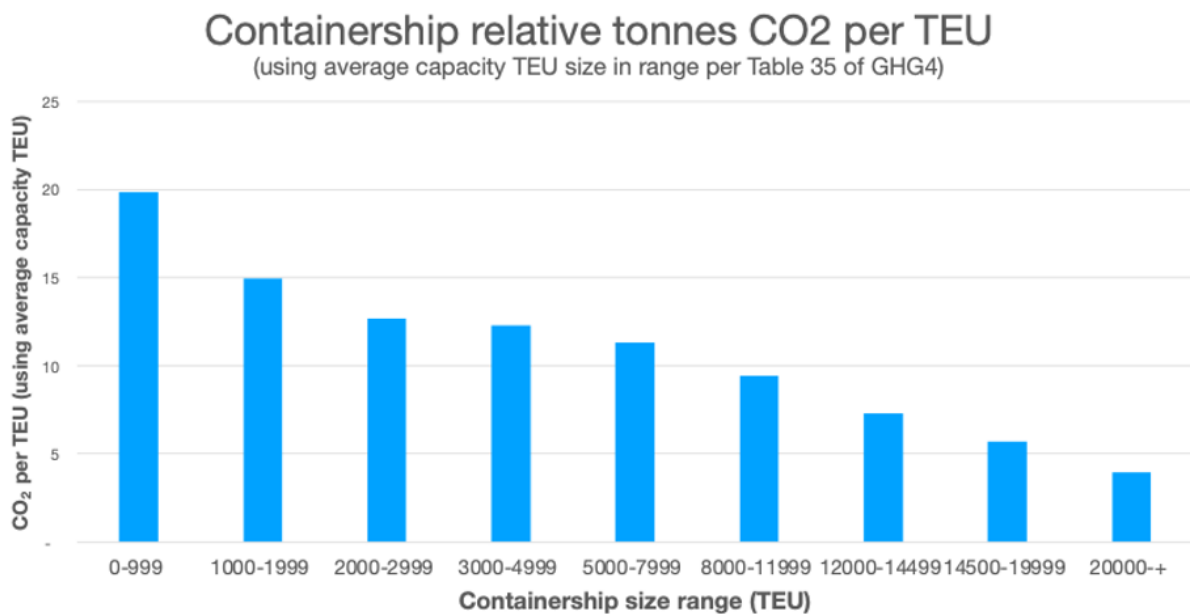
⁶⁷ European Parliament resolution of 27 April 2021 on technical and operational measures for more efficient and cleaner maritime transport (2019/2193(INI)) ("**EP Resolution**"), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0131_EN.pdf

⁶⁸ EP Resolution, para. 21 (emphasis added).

⁶⁹ 2019 SWD, Section 5.4, page 33.

⁷⁰ CBER, recital 5 (emphasis added).

15,000 container units (twenty-foot equivalent units, or “TEU”) are less than the emissions from three smaller ships carrying 5,000 TEU each. This general principle is borne out by empirical evidence, most notably the data compiled by the IMO for the “*Fourth IMO Greenhouse Gas Study*” (“**4th IMO GHG Study**”).⁷¹ The 4th IMO GHG Study includes a table which shows (among other data points) CO₂ emissions totals by containership size, reported in tonnes CO₂ by vessel TEU capacity.⁷² Based on that table, it is possible to take the average TEU for each size range and, accounting for the number of ships in each size range, calculate “typical” CO₂ emissions per TEU on a vessel capacity basis for each size range. We have presented the results of these calculations below, which demonstrate that larger containerships result in much lower CO₂ emissions per TEU (they can reduce by two-thirds or more the per-TEU GHGs emitted by smaller containerships).



⁷¹ IMO, Fourth Greenhouse Gas Study 2020, available at <https://www.imo.org/en/OurWork/Environment/Pages/Fourth-IMO-Greenhouse-Gas-Study-2020.aspx>

⁷² See 4th IMO GHG Study, Full Report, Table 35, page 99.

Container size range (TEU)	Average of size range	Number of vessels	Sum of Total CO ₂ (million tonnes)	tonnes CO ₂ per TEU (using median TEU size in range)
0-999	500	1027	10.2	20
1000-1999	1,500	1271	28.5	15
2000-2999	2,500	668	21.2	13
3000-4999	4,000	815	40.1	12
5000-7999	6,500	561	41.3	11
8000-11999	10,000	623	58.8	9
12000-14499	13,500	227	22.3	7
14500-19999	17,200	101	9.9	6
20000-+	20,000	44	3.5	4

57. The above conclusions are also supported by the 4th IMO GHG Study’s presentation – in Table 60 of the Report – of “carbon intensity per ship type and size category in year 2018”.⁷³ We have included below an extract from Table 60, which shows that the “Energy Efficiency Operating Index” for CO₂ gram per ton mile for vessels of 20,000+ TEU is less than half of that for vessels of 5-8000 TEU (which is likely to be the size of vessel that would be needed for a carrier to replace a consortia service with a standalone-service).

Ship type	Size category	Units	EEOI (gCO ₂ /t.nm)				
			mean	median	lower quartile	upper quartile	spread scale
Container	0-999	teu	35.3	36.7	29.7	48.5	0.52
	1000-1999	teu	26.9	27.4	23.7	31.9	0.30
	2000-2999	teu	19.9	19.5	17.3	22.4	0.26
	3000-4999	teu	17.1	17.1	14.8	19.2	0.26
	5000-7999	teu	16.3	16.3	14.5	18.1	0.22
	8000-11999	teu	13.4	13.6	12.0	15.2	0.24
	12000-14499	teu	10.8	10.7	9.7	12.2	0.23
	14500-19999	teu	8.1	8.5	6.8	8.9	0.25
	20000-+	teu	7.9	8.0	6.7	9.5	0.34

58. The correlation between vessel size and fuel efficiency is also explored in the RBB Report. RBB demonstrates that larger vessels use less fuel on a per TEU basis – which

⁷³ See 4th IMO GHG Study, Full Report, Table 60, page 181.

translates into less emissions of CO₂, SO₂ (Sulfur Dioxide) and NO_x (Nitrogen oxides) – than smaller vessels.⁷⁴

59. To operate regularly scheduled services with a high load factor and the most efficient-sized ships, carriers must be able to attract sufficient volumes of regular cargo. The likelihood of filling a large ship is higher in a consortium because the space on the ship is being sold by multiple carriers, rather than a single carrier. Indeed, consortia are the only means by which carriers can provide their customers with the number and frequency of services that they require whilst minimising fuel consumption and emissions.
60. For these reasons, it is beyond question that consortia contribute to the European Green Deal objectives referenced above at paras. 49-54. As discussed further below, the CBER facilitates and encourages consortia because it provides legal certainty to carriers that they are not violating EU competition law through their operational cooperation. The CBER is also therefore an essential tool which must be maintained if the EU is to achieve its environmental objectives. Indeed, given the growing threat posed by the climate emergency, the need for the CBER has never been greater.

B. Macroeconomic benefits

1. EU policy objectives

61. The Commission has signalled in the Questionnaires that the Evaluation will consider whether consortia contribute to broader EU objectives such as “*an economy that works for people*”⁷⁵ and “*a stronger Europe in the world*”.⁷⁶ Below, we briefly discuss these policy initiatives and identify the specific objectives that are likely to be most pertinent to the Evaluation.
- a. **An economy that works for people.** At a high-level, this initiative aims to ensure that the EU maintains a thriving economy, but in a way that treats EU citizens with fairness and equality. Under this initiative, the most relevant policy objective, for the purpose of the Evaluation, is likely the aim to boost investment and create jobs.

⁷⁴ See RBB Report, Section 3.2, pages 11-12, in particular, Tables 4 and 5.

⁷⁵ See https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people_en

⁷⁶ See https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world_en

b. **A stronger Europe in the world.** The EU strives to be a leader on the global stage and to have “[a] strong, fair and open trade agenda”.⁷⁷ Under this initiative, the most relevant policy objective, for the purpose of the Evaluation, is likely the aim to enhance relations with third countries by ensuring trading opportunities, especially with emerging economies.

62. In the section that follows, we explain how consortia contribute to the achievement of the objectives noted above.

2. Contribution of consortia to EU objectives

63. **Investment and job creation.** In its 2009 Regulation empowering the Commission to adopt the CBER (“**Empowering Regulation**”),⁷⁸ the Council of the EU (the “**Council**”) noted that, “to compete successfully on the world liner shipping market”, the shipping industry in the EU “should attain the necessary economies of scale” and that the “*legalisation of [consortia] agreements is a measure which can make a positive contribution to improving the competitiveness of shipping in the [EU]*”.⁷⁹ In the 2019 SWD, the Commission affirmed that consortia “can lead to economies of scale”⁸⁰ and it referenced the importance of the industry being competitive; the Commission found that “*the objective of the [CBER] and its actual contribution to the (global) competitiveness of the Union’s shipping sector are aligned with the Commission priority on jobs, growth and investment*”.⁸¹ Elsewhere in the 2019 SWD, the Commission noted that the consolidation of cargo “*facilitates investment in more modern (normally larger) cost-efficient vessels because it is easier to fill and operate them profitably*”.⁸²

64. Based on the above statements, it appears that both the Council (at least in 2009) and the Commission (at least in 2019) consider that:

⁷⁷ See https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world_en#policy-areas

⁷⁸ Council Regulation (EC) No 246/2009 of 26 February 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ (2009) L 79/1.

⁷⁹ Empowering Regulation, recitals 4 and 6 (emphasis added).

⁸⁰ 2019 SWD, Section 2.2, page 7.

⁸¹ 2019 SWD, Section 5.4, page 33 (emphasis added).

⁸² 2019 SWD, Section 5.3.4, page 28 (emphasis added).

- a. the ability to consolidate cargo, by cooperating with other carriers in a consortium, allows carriers to achieve economies of scale;
 - b. economies of scale improve the competitiveness of the liner shipping industry; and
 - c. a competitive industry will create jobs and make investments.
65. There is no reason why these economic advantages associated with consortia would not continue to exist in 2022. Accordingly, consortia contribute to the objectives noted above at para. 61.a. Also, because the CBER facilitates and encourages consortia, it too is an essential tool to help the EU achieve these objectives.
66. **Ensuring trading opportunities.** In the 2019 SWD, the Commission noted that consortia “*can lead to [...] better coverage of ports (improvement in the frequency of sailings and port calls)*”.⁸³ This finding corresponds to statements made in the recitals to the CBER,⁸⁴ and also to findings made by the Commission in its merger control decisional practice. For instance, in *CMA CGM / NOL*, the Commission stated that “*the cooperation of consortia members [enables the] offering [of] greater frequencies [and] port calls*”.⁸⁵ Similarly, when discussing alliances in its *COSCO SHIPPING / OOIL* decision, the Commission stated that “*the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location*”.⁸⁶
67. Based on the above, it is well established that one of the benefits of consortia is that they allow carriers to reach a greater number, and greater variety, of ports than would be possible in the absence of consortia. The reasons for this, from an economic perspective, are explained in the RBB Report.⁸⁷ With respect to trades to/from the EU, this expanded port coverage naturally creates additional trading opportunities that would not exist, but for consortia (this includes with emerging economies). Therefore, consortia undoubtedly help the EU to achieve its objective of being a global leader in world trade. Also, because the CBER facilitates and encourages consortia, it too is an essential tool to help the EU achieve this objective.

⁸³ 2019 SWD, Section 2.2, page 7 (emphasis added).

⁸⁴ CBER, recital 6.

⁸⁵ Case M.7908 – *CMA CGM / NOL*, para. 26 (emphasis added).

⁸⁶ Case M.8594 – *COSCO Shipping / OOIL*, para. 29 (emphasis added).

⁸⁷ RBB Report, Section 3.2, page 13.

C. Consumer benefits

1. EU policy objectives

68. The Associations recognise that consumer welfare goes to the very heart of EU competition law and, thus, the Evaluation. In the Call for Evidence, for instance, the Commission: (i) notes that the rationale for the CBER is (in part) linked to “*better quality of service for consumers*”;⁸⁸ and (ii) explains that the replies to the Questionnaires “*will test [among other aspects] the ability of consortia to bring consumer benefits, compared to independent operators, in stressed market conditions*”.⁸⁹ These sentiments are consistent with the recitals to the CBER and the Empowering Regulation (both of which refer to “*a fair share of the benefits*” of the efficiencies resulting from consortia “*being passed on to*” “*shippers*” / “*transport users*”).⁹⁰

2. Contribution of consortia to EU objectives

69. The RBB Report explores in detail the various ways in which consumers benefit from consortia. We briefly summarise RBB’s analysis below (supplementing with our own comments, as appropriate), but trust that the Commission will review the full analysis at Section 3.2 of the RBB Report.⁹¹

70. **Lower costs.** Consortia allow carriers to operate larger vessels than they could efficiently operate alone. This enables carriers to provide shipping services at lower costs, because operating costs per unit decrease (*i.e.*, the costs associated with sailing, docking and handling are allocated over a higher number of containers). Also, whilst vessel charter rates increase according to the capacity of the vessel, they do not do so proportionally (*e.g.*, the fact that one vessel has twice the capacity of another does not mean that the former costs twice as much as the latter). Thus, consortia generate cost savings for carriers, which can be passed on to consumers in the form of lower prices.

71. Opponents of the CBER will likely argue that the rate increases witnessed during the pandemic disprove the notion of cost savings being passed on to consumers. This is

⁸⁸ Call for Evidence, page 1.

⁸⁹ Call for Evidence, pages 3-4.

⁹⁰ See CBER, recital 6 and Empowering Regulation, recital 10.

⁹¹ RBB Report, pages 7-14.

simply not true. As explained above in Section IV.B (and further examined in the RBB Report), COVID-19 unleashed macroeconomic forces that were unprecedented and anomalous. Rate increases during such exceptional times can simply not be used as evidence that costs savings are not passed on to consumers by consortia members. An exceptional set of circumstances created by a “*once-in-a-lifetime pandemic*” (to quote the United Nations Secretary General)⁹² cannot be invoked to disregard basic economic theory which has held true for decades. The Associations respectfully urge the Commission to assess this issue from an economic perspective and to consider, in particular, the relevant counterfactual: in the hypothetical absence of consortia – that is, a situation where carriers would not benefit from cost-saving efficiencies associated with consortia agreements – how would shipping rates have likely evolved during the pandemic?

72. **Higher frequencies.** Consortia agreements allow carriers to offer a higher frequency of sailings compared to independent service offerings.⁹³ This is: (i) explained at para. 59 above; (ii) illustrated by example in the RBB Report;⁹⁴ and (iii) borne out by empirical data.⁹⁵ On this point, there can be no doubt that the efficiency benefits of consortia are shared with consumers because they have a greater choice as to the departure date for their cargo.
73. **Better port coverage.** As noted above at paras. 66-67, consortia enable carriers to reach a greater number, and greater variety, of ports than would be possible in the

⁹² See <https://www.un.org/en/un-coronavirus-communications-team/all-hands-deck-fight-once-lifetime-pandemic> (emphasis added).

⁹³ See, e.g., Case M.8330 – *MAERSK LINE / HSDG*, para. 55: “*the cooperation of consortium members in jointly operating container liner shipping services [...] enables achieving certain efficiencies, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress*” (emphasis added).

⁹⁴ RBB Report, Section 3.2, page 12.

⁹⁵ See, for instance, “*Greenland climbs high on UN list of port connectivity*”, Shipping Watch, 27 September 2022: “*Greenland has stormed up the United Nations Conference on Trade and Development’s (UNCTAD) list of connectivity, meaning that Greenlandic ports are now significantly better connected to the rest of the world than before [...] The big increase is due to a co-sailing agreement [between Royal Arctic Line (RAL) and] Icelandic carrier Eimskip. The deal was signed in 2020 and ensured RAL weekly sailings throughout the year, unlike in the past, when the company only had departures twice every three weeks. Destinations were also expanded from two to four countries – Denmark, Sweden, the Faroe Islands and Iceland – and RAL gained access to larger ships of 2,150 teu instead of 700 teu*”, available at https://shippingwatch.com/Ports/article14440978.ece?utm_campaign=ShippingWatch%20Newsletter&utm_content=2022-09-27&utm_medium=email&utm_source=shippingwatch_com

absence of consortia. This is illustrated by example in the RBB Report.⁹⁶ Thus, the efficiency benefits are clearly shared with consumers because they have a greater choice as to: (i) the ports from which they can ship their cargo, and (ii) the ports to which they can ship their cargo.

74. **Price competition.** The final benefit discussed in the RBB Report is direct price competition between carriers within a consortium. RBB explains (and illustrates by example) that carriers operating within a consortium have limited scope to differentiate their services within a consortium based on, for instance, sailing date or ports called.⁹⁷ The carriers are therefore likely to compete more fiercely on price. Any reduction in price resulting from this competition is clearly a benefit that consumers enjoy due to the consortium.

75. As a final comment regarding the consumer benefits of consortia, the Associations would note that, excluding the extraordinary impacts of the COVID-19 crisis, there is decades-long evidence that reduced costs arising from consortia *are* passed on to consumers through lower prices (as the Commission has acknowledged in previous evaluations of the CBER).⁹⁸

VI. Importance of the CBER

76. As the Commission explained in the 2019 SWD, block exemption regulations (“**BERs**”), such as the CBER, “*contribute to [...] legal clarity and certainty*”.⁹⁹ They contribute to legal clarity by “*providing more specific and concrete guidance than general instruments of competition law [...] as to the way those rules would apply in a specific industry and to specific contracts*”.¹⁰⁰ They contribute to legal certainty and raise levels of compliance by leaving “*less space for misinterpretation of the rules*”.¹⁰¹ As noted above at para. 14, with respect to the CBER, the Commission found that it “*provides clearer guidance and higher level of legal certainty [...] facilitates the assessment of consortia’s compliance with competition rules [...] helps carriers to save*

⁹⁶ RBB Report, Section 3.2, page 13.

⁹⁷ RBB Report, Section 3.2, page 14.

⁹⁸ See, e.g., 2019 SWD, Section 5.3.5.1, pages 28-29.

⁹⁹ 2019 SWD, page 5.

¹⁰⁰ 2019 SWD, page 5.

¹⁰¹ 2019 SWD, page 5.

*resources [and therefore] the liner shipping sector [requires] a sector-specific BER”.*¹⁰²

77. In this section, we will explain why the above findings still hold true today and why the benefits of consortia, explained in Section V above, can only be fully realised, and passed on to consumers, if the CBER is maintained. We will first explain how the CBER reduces compliance costs for carriers (in turn, allowing carriers to be more agile in response to market changes); we will then explain why it is essential for liner shipping consortia to have sector-specific guidance, even though the Commission generally regards sector-specific BERs as “*exceptional measures*”.¹⁰³

A. Reduced compliance costs and greater agility

78. As noted by the Commission in the 2019 SWD, competition law compliance costs “*exist on a continuous basis*” “*for all carriers involved in consortia*”.¹⁰⁴ This is due to the dynamic nature of consortia agreements and the fact that market conditions and market shares are continuously changing.¹⁰⁵ The Commission considered and compared the costs associated with a self-assessment under the CBER, on the one hand, to the cost of an assessment without the CBER. The Commission found that:

*“it is clear that [the cost of a compliance assessment] would increase in the absence of the Consortia BER. This increase could be principally significant for small and medium carriers, for which it is more difficult to operate in the sector that is characterised by a general low profitability”.*¹⁰⁶

79. The Commission also found that reliance on other sources of guidance on the application of Article 101 TFEU – such as the (then applicable) Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation Block Exemption Regulation (“**SBER**”), the Commission’s enforcement practice, and EU case-law – would not be an adequate substitute for the CBER because those sources:

“cannot provide the same level of legal certainty as the Consortia BER that was tailored specifically to consortia, and is also more complex, requiring higher degree of expertise in competition law. In turn, this may require carriers to seek the advice of external experts and may leave a degree of uncertainty given the need for

¹⁰² 2019 SWD, page 35.

¹⁰³ 2019 SWD, page 35.

¹⁰⁴ 2019 SWD, Section 5.2, page 18 (emphasis added).

¹⁰⁵ 2019 SWD, Section 5.2, page 18.

¹⁰⁶ 2019 SWD, Section 5.2, page 19.

legal interpretations. It therefore cannot be performed with the same facility as the application of the Consortia BER."¹⁰⁷

80. All of the arguments submitted by carriers in the previous evaluation, which led the Commission to the above conclusions, apply with equal force today. These arguments are briefly summarised below.
81. **Reduced need for external advice.** In-house legal and economic professionals working in the liner shipping industry understand how to apply the CBER in practice, without needing to consult external advisors (save for special cases). This not only saves time, but it also reduces costs significantly, especially for carriers that are members of multiple different consortia. These cost savings can be passed on to customers, consistent with the Commission's objectives explained at para. 68 above.
82. **Operational implementation.** Given its simplicity and specificity to the liner shipping sector, the CBER is understood by operational personnel who manage vessel deployments and network design, including through the use of consortia. This allows for the faster implementation of operational changes that are necessary to reflect new or amended consortia agreements. This is important, as the operational details of a consortium agreement can often be complex.
83. **Increased agility.** As noted by the Commission in the 2019 SWD, carriers "*are typically members of a large number of consortia agreements that are frequently replaced or amended*".¹⁰⁸ The CBER makes these frequent amendments possible due to its ease of application, which allows for a less time-consuming assessment, and the legal certainty it provides (paras. 81-82 above). Carriers are therefore more agile in responding to changing market conditions than would be the case absent the CBER. If the carriers were required to consult external advisors, and operational personnel needed to wait for the outcome of that advice, this would jeopardise carriers' ability to react and adapt to market forces in a timely manner. This type of agility is critical, especially during times of significant market disruption (*e.g.*, the COVID-19 crisis).
84. **Disproportionate burden for smaller carriers.** The costs of undertaking a self-assessment, rather than being able to rely on the CBER, are likely to be

¹⁰⁷ 2019 SWD, Section 5.1, page 18 (emphasis added).

¹⁰⁸ 2019 SWD, Section 5.1, page 17 (emphasis added).

disproportionately burdensome for small and medium sized carriers. This could deter such carriers from participating in consortia, especially considering the time commitment required for carrying out a self-assessment and the potentially indeterminate conclusion of the exercise (which, of course, is also a consideration for carriers of every size).

B. Need for a sector-specific BER

85. In the previous evaluation, the Commission assessed whether it was necessary to have sector-specific rules for consortia, considering the Commission’s general policy of reducing the number of sector-specific measures in favour of more general guidance on the application of Article 101 TFEU.¹⁰⁹ In addition to the findings reproduced above at para. 79 (*i.e.*, that other sources of available guidance, such as the Commission’s Horizontal Guidelines, were not an adequate substitute for the CBER), the Commission reached the following conclusions:

*“The Consortia BER is tailored to consortia agreements, referring to arrangements that are specific to consortia. It also employs industry-specific terminology that is easily understandable to industry participants”.*¹¹⁰

*“The Consortia BER uses industry-specific terminology, refers to arrangements that are very specific to consortia (that differ significantly to other sectors), and therefore offers more precise guidance than other instruments providing general guidance on the application of competition rules. By its very nature as a sector-specific instrument the Consortia BER provides higher legal certainty to consortia than would have been the case without it. Its application also saves to a certain extent resources dedicated to the assessment of compliance with competition rules”.*¹¹¹

*“The Consortia BER is a sector-specific measure referring directly to the special arrangements of this type of cooperation. Consequently it provides clearer guidance and higher level of legal certainty to consortia than would have been the case in its absence. The Consortia BER thus facilitates the assessment of consortia’s compliance with competition rules, and helps carriers to save resources”.*¹¹²

¹⁰⁹ See 2019 SWD, page 46: “the Commission asked whether the Consortia BER is coherent with the general policy of harmonising competition rules and replacing sector-specific rules with measures (BERs or guidelines) providing general guidance on the application of Article 101 TFEU.”

¹¹⁰ 2019 SWD, Section 5.1, page 17 (emphasis added).

¹¹¹ 2019 SWD, Section 5.5, page 34 (emphasis added).

¹¹² 2019 SWD, Section 6, page 35 (emphasis added).

86. Nothing has changed since 2019 that could lead the Commission to reach different conclusions than those reproduced above.

1. Other sources of guidance are not sufficient

(i) The Horizontal Guidelines are not sufficient

87. In the prior evaluation, the Associations explained why the Commission’s current Horizontal Guidelines¹¹³ (“**Current Guidelines**”) (which are due to expire on 31 December 2022) do not offer self-assessment guidance equivalent to the CBER. The Commission has since published draft revised Horizontal Guidelines (“**New Guidelines**”);¹¹⁴ for the purpose of our present comments, we assume that the New Guidelines will be adopted in their current form. Given the characteristics of consortia agreements and the scope of the CBER, there are only two chapters of the New Guidelines that could potentially offer relevant guidance for an EU competition law self-assessment of consortia agreements:¹¹⁵ the chapters related to “Production Agreements” and “Sustainability Agreements”. We address both chapters below and explain why the guidance provided therein is inadequate to serve as a replacement for the CBER.

88. **Production Agreements.** A significant portion of the guidance on “Production Agreements”¹¹⁶ concerns agreements that are covered by the draft revised SBER (“**New SBER**”).¹¹⁷ We address the New SBER separately below (paras. 98-103). Regarding agreements falling outside the scope of the New SBER, the New Guidelines contain an expanded discussion (compared to the Current Guidelines) of the Article 101(3) TFEU assessment, especially regarding efficiency gains (some of which are

¹¹³ Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ (2011) C 11/1.

¹¹⁴ Available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en

¹¹⁵ We do not consider it necessary to discuss in this context the following chapters of the New Guidelines, on the basis that they do not correspond to the characteristics of consortia agreements: research & development agreements (Chapter 2), purchasing agreements (Chapter 4), commercialisation agreements (Chapter 5), standardisation agreements (Chapter 7), and standard terms (Chapter 8). Regarding information exchange (Chapter 6), we also do not address this chapter, as the guidance provided therein could only relate to one aspect of consortia (*i.e.*, the limited exchange of information between consortia members which is required for the operation of the joint service, such as, capacity, port calls and sailing schedules) but not the other activities currently listed in Article 3 of the CBER.

¹¹⁶ New Guidelines, paras. 203-310.

¹¹⁷ The SBER is due to expire on 31 December 2022. The Commission has published a new draft SBER, available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en

pertinent to consortia).¹¹⁸ However, this expanded discussion of efficiency does not alter the conclusion that the guidance is insufficient to replace the CBER:

- a. the guidance is not tailored to the liner shipping industry, let alone consortia; as the Commission noted in the prior evaluation, the lack of guidance tailored to consortia “*may require carriers to seek the advice of external experts and may leave a degree of uncertainty given the need for legal interpretations*”;¹¹⁹ and
- b. the guidance does not indicate whether the specific exempted activities listed in Article 3 of the CBER, or the conditions attached to their exemption set out in Articles 5 and 6 of the CBER would pass the requirements of “indispensability” and “pass-on to consumers”, as articulated in the New Guidelines.¹²⁰

89. Furthermore, neither the specific guidance provided in Section 3.6 (“*mobile infrastructure sharing agreements*”), nor the five examples provided in Section 3.7 bear any relationship to the kinds of cooperation found in consortia. Those examples are essentially identical to the examples provided in the Current Guidelines;¹²¹ accordingly, there is no reason for the Commission to depart from its 2019 finding that this guidance would be inadequate to replace the CBER.¹²²

90. **Sustainability Agreements.** The New Guidelines contain a newly added chapter on “sustainability agreements”, a term which refers to “*any type of horizontal cooperation agreement that genuinely pursues one or more sustainability objectives, irrespective of the form of cooperation*”.¹²³ Given their environmental benefits (see Section V.A.2 above), consortia agreements might well be regarded as “sustainability agreements” under this definition. This does not mean, however, that the guidance in the New Guidelines is a substitute for the CBER.

91. First, the guidance regarding the four cumulative conditions of Article 101(3) TFEU (*i.e.*, efficiency gains, indispensability, pass-on to consumers, and no elimination of

¹¹⁸ See in particular New Guidelines, para. 288(h) (“*providing cost savings by means of economies of scope*”).

¹¹⁹ 2019 SWD, Section 5.1, page 18.

¹²⁰ New Guidelines, paras. 290-294.

¹²¹ Specifically, examples 1-5 in the New Guidelines (paras. 306-310) correspond to examples 1-4 and 7 in the Current Guidelines (paras. 187-190, 193).

¹²² 2019 SWD, Section 5.1, page 18.

¹²³ New Guidelines, para. 547.

competition) is not tailored to the liner shipping industry; we therefore refer to our comments above at para. 88.

92. Second, it is questionable to what extent this guidance may even be applied to consortia. For instance, the discussion of consumer benefits, which is framed under the headings of “*individual use value benefits*”, “*individual non-use value benefits*”, and “*collective benefits*”,¹²⁴ seems ill-suited to consortia, as it focusses primarily on business-to-consumer (B2C) sales, using examples such as organic vegetables,¹²⁵ liquid detergent,¹²⁶ washing liquid,¹²⁷ and fuel purchased by drivers.¹²⁸
93. Third, to the extent that the guidance might be applicable to consortia, it would create an undue compliance burden far beyond the current requirements under the CBER. Carriers would be required: (i) to “*substantiate*” in “*objective, concrete and verifiable*” terms, the efficiencies associated with the consortium agreement,¹²⁹ and (ii) to demonstrate “*that there are no other economically practicable and less restrictive means of achieving*” the benefits associated with the consortium agreement.¹³⁰ These issues have already been resolved by the CBER – but, in the absence of the CBER, carriers would need to assess them with the assistance of both lawyers and economists, and without the benefit of any decision of the EU Courts on the correctness or application of the Commission’s guidance on sustainability agreements.¹³¹ It is also noted that the Commission has chosen not to follow the approach of the Dutch competition authority, which has assured the parties to “good faith” efforts to achieve sustainability goals that they will not face fines if their cooperation is ultimately found to be unlawful.¹³²

¹²⁴ New Guidelines, Sections 9.4.3.1 – 9.4.3.3.

¹²⁵ New Guidelines, para. 591.

¹²⁶ New Guidelines, para. 593.

¹²⁷ New Guidelines, para. 595.

¹²⁸ New Guidelines, para. 604.

¹²⁹ New Guidelines, para. 579.

¹³⁰ New Guidelines, para. 581.

¹³¹ New Guidelines, para. 54 reads: “*These Guidelines are without prejudice to the interpretation the Court of Justice of the European Union may give to the application of Article 101 to horizontal cooperation agreements.*”

¹³² See second draft version of the Guidelines on Sustainability Agreements, published by the Authority for Consumers & Markets on 26 January 2021, para. 72, available at <https://www.acm.nl/en/publications/second-draft-version-guidelines-sustainability-agreements-opportunities-within-competition-law>

94. Finally, none of the specific examples provided at the end of the chapter bear any resemblance to consortia agreements.¹³³

(ii) The Article 101(3) Guidelines are not sufficient

95. By their very nature, the Article 101(3) Guidelines are only of general application. They must be applied “*reasonably and flexibly*” according to “*the circumstances specific to each case*”.¹³⁴ They cannot be considered equivalent to the CBER, which applies to the specific forms of cooperation unique to liner shipping. Indeed, the Article 101(3) Guidelines are even more general than the Horizontal Guidelines, which provide specific advice on certain types of horizontal agreements (albeit, not consortia).

96. Under the Article 101(3) Guidelines, self-assessment of cost efficiencies requires the undertakings to “*calculate or estimate the value of the efficiencies and describe in detail how the amount has been computed*”.¹³⁵ This rigorous self-assessment by every member of every consortium would be unduly burdensome (especially considering the efficiency-enhancing benefits that the Commission has long associated with consortia) and would dramatically increase compliance costs.

97. Similarly, the Article 101(3) Guidelines state that market shares are not considered sufficient to prove that competition has not been eliminated. The assessment must also include consideration of the capacity of actual competitors to compete and their incentive to do so.¹³⁶ Again, this cannot be considered equivalent to the clarity provided by the bright line rules in the CBER and would lead to a disproportionate increase in compliance costs.

(iii) The SBER is not sufficient

98. In the prior evaluation, the Associations explained why the Commission’s current Specialisation Block Exemption Regulation¹³⁷ (“**Current SBER**”) (which is due to

¹³³ New Guidelines, paras. 617-621.

¹³⁴ Communication from the Commission, Notice, Guidelines on the application of Article [101(3)] of the Treaty, OJ (2004) C 101/97 (“**Article 101(3) Guidelines**”), para. 6.

¹³⁵ Article 101(3) Guidelines, para. 56.

¹³⁶ Article 101(3) Guidelines, para. 109.

¹³⁷ Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ (2010) L 335/43.

expire on 31 December 2022)¹³⁸ does not offer self-assessment guidance equivalent to the CBER. The Commission has since published a draft revised Specialisation Block Exemption Regulation¹³⁹ (“**New SBER**”); for the purpose of our present comments, we assume that the New SBER will be adopted in its current form. The New SBER cannot serve as an adequate substitute for the CBER for the following reasons.

99. First, whilst both the Current SBER and the New SBER distinguish between the “provision of services” and the “preparation of services” (defined as “*activities upstream of the provision of services to customers*”),¹⁴⁰ the New SBER now also includes the following statement:

*“The provision of services falls outside the scope of this Regulation, except in the context of distribution in which the parties provide the services prepared and the products manufactured under the specialisation agreement”.*¹⁴¹

100. Considering that consortia involve the provision of a “*joint service*” (in the Commission’s own words),¹⁴² it is unclear whether there is any scope for carriers to rely on the New SBER in relation to their consortia. Regarding the distinction between the “*preparation of services*” and the “*provision of services*”, the available guidance is minimal. For instance, both the New SBER and the New Guidelines give the following high-level example: “*a specialisation agreement for the creation of a platform through which a service will be provided could be considered an agreement concerning the preparation of services*”.¹⁴³ Whilst the New Guidelines do provide a further illustration of a specialisation agreement involving the “preparation of services”, it concerns a sector-specific arrangement which bears no relationship to liner shipping, let alone consortia (*i.e.*, “*mobile infrastructure sharing agreements*”).

101. Second, even if the New SBER might be applicable to consortia agreements, it would not block exempt many arrangements to which the CBER currently applies or provide the same level of specificity, and thus legal certainty, as the CBER. Unlike the New SBER, the CBER specifically defines the forms of cooperation between liner shipping

¹³⁸ See Current SBER, Article 7.

¹³⁹ Available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en

¹⁴⁰ Current SBER, Article 1(g); New SBER, Article 1(e).

¹⁴¹ New SBER, recital 9. See also New Guidelines, para. 270.

¹⁴² 2019 SWD, Section 2.2, page 7.

¹⁴³ New SBER, recital 9 and New Guidelines, para. 269.

companies that benefit from the BER and itemises the range of cooperative activities, the ancillary restrictions, and the maximum notice periods which are compatible with Article 101(3) TFEU. This provides guidance and legal certainty which is wholly absent in the New SBER.

102. Third, the market share threshold in the New SBER is markedly lower than that in the CBER: 20% and 30%, respectively.¹⁴⁴ The lower 20% threshold is particularly problematic because a consortium's market share is determined by combining the market share of all the consortium's members inside and outside the consortium in the relevant market.¹⁴⁵ Reducing the threshold to 20% could be expected to reduce the number of consortia that could benefit from the block exemption, making it less relevant than the CBER and increasing the number of consortia that would require self-assessment.
103. Accordingly, the New SBER does not provide an equivalent degree of guidance, protection or legal certainty as the CBER.

(iv) Capacity adjustments and other conditions

104. The list of exempted activities specified in Article 3 of the CBER, in particular the right to adjust capacity in response to fluctuations in supply and demand, is especially valuable to carriers. It is an important efficiency-enhancing tool that would be put in jeopardy in the absence of the CBER. This is because none of the sources of guidance referenced above would provide comfort to carriers that such capacity adjustments were compliant with EU competition law.
105. Additionally, as noted above (at para. 88.b), Article 6 of the CBER specifies “other conditions” to qualify for the Article 3 exemption. These conditions provide valuable consortia-specific guidance and protection to carriers regarding the right to withdraw and maximum notice periods that would be lost in the absence of the CBER.

2. Regulation provides greater legal certainty

106. With respect to the Commission guidelines referenced above (*i.e.*, the Horizontal Guidelines and Article 101(3) Guidelines), even if those instruments were to contain

¹⁴⁴ See New SBER, Article 3.

¹⁴⁵ CBER, Article 5(2).

informative and industry-specific guidance (*quod non*), this would not remove the need for the CBER. Regulations such as the CBER are directly effective and binding on (i) the national courts of the Member States and the EU Courts; and (ii) the national competition authorities of the Member States and the Commission. By contrast, the EU Courts have confirmed that Commission notices and guidelines are not binding on Member States,¹⁴⁶ nor the EU Courts.¹⁴⁷ Therefore, even if the carriers were to incur the expense, complexity and duration of a self-assessment based on the guidelines referenced above, they would not have the same degree of legal certainty that they currently enjoy under the CBER (that certainty being crucial to facilitate the creation and operation of consortia).

VII. The Commission's Evaluation Criteria

107. The Call for Evidence confirms that the Evaluation will assess the five criteria set out in the BRT:¹⁴⁸ effectiveness, efficiency, coherence, relevance and EU added value (the “**Criteria**”). We briefly address each of the Criteria below by reference to the arguments that we have presented above.

A. Effectiveness

108. According to the BRT, the criterion of effectiveness “*considers how successful EU action has been in achieving or progressing towards its objectives*”.¹⁴⁹ In the specific context of the CBER, the Commission has explained that this criterion considers whether the CBER “*still facilitates the creation and operation of consortia that meet certain conditions (by providing legal certainty)*”¹⁵⁰ or “*still facilitates economically efficient cooperation that also benefits consumers*”.¹⁵¹ Irrespective of the precise formulation applied in the present Evaluation, the Associations have demonstrated that the CBER is “effective”.

¹⁴⁶ See *Pfleiderer AG v Bundeskartellamt*, Case C-360/09, EU:C:2011:389, paras. 21 and 23.

¹⁴⁷ *Italy v Commission*, Case C-310/99, EU:C:2002:143, para. 52. See also *Konkurrensverket v TeliaSonera Sverige AB*, Case C-52/09, EU:C:2010:483, Opinion of AG Mazák, fn. 21; and *JCB Service v Commission of the European Communities*, Case C-167/04 P, EU:C:2005:776, Opinion of AG Jacobs, para. 141.

¹⁴⁸ Cited above at para. 49.

¹⁴⁹ BRT, Chapter 6, Tool #47, page 403.

¹⁵⁰ 2019 SWD, Section 5.1, page 17 (emphasis added).

¹⁵¹ 2019 SWD, Annex I, page 39 (emphasis added).

109. **Legal certainty.** In Section VI above, we explained that the legal certainty provided by the CBER facilitates both the creation and operation of consortia.
- a. *Creation of consortia.* Because it reduces the time needed for legal assessments (see para. 81) and provides industry-specific guidance (see para. 85), the CBER gives carriers the surety they need, from a risk assessment perspective, to quickly create new consortia agreements which are compliant with EU competition law.
 - b. *Operation of consortia.* As the CBER is understood by operational personnel (see para. 82) and helps carriers to respond quickly to market changes (see para. 83), there is no doubt that the CBER also facilitates the operation, not only the creation, of consortia.
110. **Economically efficient cooperation that benefits consumers.** In Section V.C.2 above, we explained that consortia enhance efficiencies by allowing carriers to provide shipping services at lower costs, offer higher frequencies to their customers, and offer better port coverage (see paras. 70-73). We also explained: (i) that direct price competition remains vigorous, and consortia in fact stimulate price competition, between carriers within a consortium (see paras. 35.a and 74); and (ii) that consortia increase competition between carriers by allowing more carriers to compete on more legs of trade than would be the case in the absence of consortia (see para. 36). The CBER is integral to the realisation of these efficiencies and consumer benefits for all of the reasons explained in Section VI above.
111. The CBER therefore continues to satisfy the BRT criterion of “effectiveness”.

B. Efficiency

112. According to the BRT, the criterion of “efficiency” considers: “*the resources used by an intervention for the given changes [...] look[s] at the costs of the EU intervention as they accrue to different stakeholders [...] [and] compare[s] the identified costs with the benefits that were identified under the effectiveness criterion. As a rule, the benefits of EU interventions are expected to exceed the costs they generate.*”¹⁵² In the specific context of the CBER, the Commission has explained that this criterion assesses whether

¹⁵² BRT, Chapter 6, Tool #47, pages 404-405 (emphasis added).

the CBER “helps undertakings to reduce costs or conversely whether it increases compliance costs for carriers”.¹⁵³

113. Based on the above descriptions of “efficiency”, the Associations have demonstrated that the CBER satisfies this criterion. The CBER reduces compliance costs for carriers by providing a clear assessment framework that is both readily understandable and legally binding (see para. 106), thus minimising the need to consult external legal and economic advisors (see para. 81). Under no characterisation of the facts could the CBER be regarded as *increasing* compliance costs for carriers.

C. Coherence

114. According to the BRT, the criterion of “coherence” considers: “*how well (or not) different interventions, EU/international policies or national/regional/local policy elements work together [...] [it should assess] ‘internal’ coherence [which] means looking at how the various components of the same EU intervention operate together to achieve its objectives [and] ‘external’ coherence [which] means similar checks [...] in relation to other (‘external’) interventions, at different levels: for example, between EU interventions within the same policy field [...] or in areas which may have to work together*”.¹⁵⁴ Importantly, and consistent with our comments at para. 49 above, the BRT also signals that the coherence analysis should check “*whether interventions are in line with the objectives of the European Green Deal, or whether the intervention is consistent with the overarching environmental goals (such as the Climate Law) or other policies targeting the environment*”.¹⁵⁵

115. In the specific context of the CBER, the Commission has explained that the “coherence” criterion assesses whether the CBER is: “*coherent with the general competition policy and, in particular, instruments (BERs or guidelines) providing general guidance on the application of Article 101 TFEU [and] with other sector-specific rules or EU policies.*”¹⁵⁶

116. For the reasons set out below, the CBER continues to satisfy the coherence criterion.

¹⁵³ 2019 SWD, Annex 1, page 41 and Section 5.2, page 18.

¹⁵⁴ BRT, Chapter 6, Tool #47, page 408 (emphasis added).

¹⁵⁵ BRT, Chapter 6, Tool #47, page 408 (emphasis added).

¹⁵⁶ 2019 SWD, Section 5.4, page 32.

117. **Internal coherence.** The assessment of internal coherence merely requires that the provisions within the CBER operate harmoniously to achieve its objectives. For the reasons explained throughout this submission, the CBER is operating effectively and is not vitiated by any internal inconsistencies that would compromise the attainment of its objectives. This is also evident in the fact that the Commission has seen fit to repeatedly renew the CBER in its current form on the basis of the Empowering Regulation. If any internal incoherence existed, it would have been identified and remedied prior to the current Evaluation. Accordingly, the criterion of internal coherence is satisfied.
118. **External coherence.** When assessing external coherence, the Commission should consider whether the CBER is consistent, not only with (i) general EU competition law policies, but also – at a minimum – (ii) maritime transport and (iii) environmental policy objectives. We consider each of these points briefly below.
- a. **EU competition law.** Based on the 2019 SWD, it seems uncontroversial to conclude that the CBER is coherent with EU competition law policy. Indeed, the Commission noted that “[o]ther stakeholders [i.e., those opposed to a renewal of the CBER] do not question the coherence of the [CBER] with the general competition policy, other instruments related to Article 101 and other policies of the EU”.¹⁵⁷ Nothing has changed since the previous evaluation that would call this conclusion into question.¹⁵⁸ For completeness, the Associations would merely add that the CBER lays out clear rules (that are well understood throughout the liner shipping industry) as to the activities that are and are not covered under the CBER safe harbour. It therefore facilitates and promotes compliance with the prohibition in Article 101(1) TFEU (i.e., “self-policing”). On that basis, the CBER assists not only the carriers (by easing their compliance burden) but also the Commission itself; by minimising the compliance grey areas that might exist in the absence of the CBER (e.g., a variety of different decisions based on self-assessments and risk appetites), the CBER likely reduces the Commission’s own burden of safeguarding effective competition and compliance with EU competition law.¹⁵⁹

¹⁵⁷ 2019 SWD, Section 5.4, page 33 (emphasis added).

¹⁵⁸ For instance, this conclusion is not altered by the inclusion in the New Guidelines of a chapter on “sustainability agreements” (for the reasons explained above at paras. 90-94).

¹⁵⁹ Given the absence of relevant general guidance, the repeal of the CBER would likely entail multiple requests for informal guidance – thereby increasing the Commission’s workload – under the *Commission Notice on*

- b. **Maritime transport policy.** As noted above (at para. 52), the SSMS details the EU’s objectives for the transport sector, including waterborne transport; we have already explained how consortia (and in turn the CBER) contribute to the achievement of certain of those objectives. In addition, the SSMS states that “[t]he preservation of supply chains and a coordinated European approach to connectivity and transport activity are essential to overcome any crisis and strengthen the EU’s strategic autonomy and resilience”.¹⁶⁰ The CBER is certainly coherent with this objective, for the reasons explained above at paras. 66-67.
- c. **Environmental policy.** The Commission’s finding in 2019 that the CBER “contributes to reducing the environmental impact of maritime transport” and is therefore coherent with the EU’s broader policy objectives¹⁶¹ remains true today. On this point, we would refer the Commission to our comments in Section V.A above.

119. The CBER therefore continues to satisfy the BRT criterion of “coherence”.

D. Relevance

120. According to the BRT, the criterion of “relevance” considers: “*the relationship between the needs and problems at the time of introducing the intervention and during its implementation. Relevance should also look at the relationship between the current and future needs and problems in the EU and the objectives of the intervention*”.¹⁶² In the specific context of the CBER, the Commission has explained that the CBER “*remains relevant as long as consortia generate efficiency gains a fair share of which would benefit consumers*”.¹⁶³ The Associations have demonstrated that consortia enhance efficiencies in ways that benefit consumers (see para.110 above with reference to Section V.C.2).

informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters), 3 October 2022, C(2022) 6925 final, available at

https://competition-policy.ec.europa.eu/system/files/2022-10/coronavirus_informal_guidance_notice_antitrust_2022.pdf.

¹⁶⁰ SSMS Communication, para. 4.

¹⁶¹ 2019 SWD, Section 5.4, page 33.

¹⁶² BRT, Chapter 6, Tool #47, page 407.

¹⁶³ 2019 SWD, Section 5.3, page 19.

121. Furthermore, the CBER is still “relevant” in the sense that it is still needed, as a compliance tool, by carriers whose cooperation falls below the 30% market share threshold (as well as providing a valuable source of self-assessment guidance for consortia which exceed the 30% threshold). On this point, we would refer the Commission to the RBB Report (specifically Annex A thereto)¹⁶⁴ which provides an overview of consortia and individual carriers active on trades to/from the EU. Whilst the “*share[s] of weekly TEU*” presented in this overview do not reflect market shares for the purpose of a CBER assessment (for the reasons that RBB explains),¹⁶⁵ they do tend to strongly indicate that a significant number of consortia operating on trades to/from the EU are likely to fall below the applicable 30% market share threshold specified in the CBER.
122. The CBER therefore continues to satisfy the BRT criterion of “relevance”.

E. EU added value

123. According to the BRT, the criterion of ‘EU added value’ “*looks for changes that are due to the EU intervention, over and above what could reasonably have been expected from national actions by the Member States. In many ways, the evaluation of EU added value brings together the findings of the other criteria, presenting the arguments on causality and drawing conclusions, based on available evidence, about the performance of the EU intervention*”.¹⁶⁶ This criterion also involves “*consideration of performance against a projection of how the situation was expected to evolve without the EU intervention (a defined counterfactual, or some estimate of the cost of the Union not acting – ‘the cost of non-Europe’)*”.¹⁶⁷ The Associations understand that this current formulation of the ‘EU added value’ criterion differs in certain respects from the formulation that was applicable during the prior evaluation (meaning that, for the purpose of the present Evaluation, the findings in the 2019 SWD may be less relevant with respect to this particular criterion). In particular, we understand that the Commission may be considering in greater detail whether it can identify a counterfactual for comparison purposes.

¹⁶⁴ RBB Report, pages 37-47.

¹⁶⁵ RBB Report, page 37.

¹⁶⁶ BRT, Chapter 6, Tool #47, pages 409-410 (emphasis added).

¹⁶⁷ BRT, Chapter 6, Tool #47, page 410 (emphasis added).

124. For the reasons that follow, the Associations submit that the CBER satisfies the criterion of ‘EU added value’.
125. **Action at the Member State level.** The benefits that the CBER provides both to carriers and to customers simply could not be achieved by action at EU Member State level. First, consortia are by their very nature multi-national: a service offered as part of a consortium might cover multiple ports in multiple countries (*e.g.*, a consortium serving Northern Europe will typically call at ports in Germany, the Netherlands, Belgium and France, or some combination of these countries). This is also reflected in the Commission’s decisional practice related to liner shipping where the Commission refers to trades to/from the EU on a regional, rather than country-by-country, basis (*e.g.*, North America-Northern Europe; North America-Mediterranean, *etc.*). Thus, intervention at the Member State level would either be ineffective (*e.g.*, intervention by one Member State only would not adequately address the multi-national dimension of consortia) or inappropriate (*e.g.*, intervention by several Member States could result in a patchwork of different, and potentially inconsistent, regimes). Second, consortia are broadly homogeneous arrangements which do not display any specific national and regional features that would potentially warrant intervention by individual Member States. Third, as explained above, an integral aspect of the legal certainty provided by the CBER is its status as an EU Regulation. Whereas the EU institutions are empowered to adopt such legislation (under Article 103 TFEU), Member States are not. Thus, Member State intervention simply could not replicate the existing benefits of the CBER.
126. **The counterfactual.** In the present submission, the Associations have validated the Commission’s longstanding views that: (i) consortia are an efficiency-enhancing form of cooperation, which benefit customers; and (ii) the CBER is an indispensable compliance tool which enables carriers to form and operate consortia at lower costs and with greater legal certainty. The CBER (*i.e.*, the EU “intervention” at issue in the Evaluation) therefore brings multiple benefits, both to carriers and to customers. The absence of such benefits would inevitably be harmful to the shipping public and would diminish the range of transportation services available to support European international trade.

VIII. Conclusion

127. The Associations have demonstrated in the present submission that the CBER is essential and that its period of application should be extended:
- a. The CBER facilitates the creation and operation of consortia by providing sector-specific legal certainty, it allows carriers to respond with agility to changing market conditions, and it reduces compliance costs. There is no other source of EU guidance that could serve as an adequate substitute for the CBER.
 - b. Non-renewal of the CBER would result – at a minimum – in increased compliance costs and decreased agility for carriers looking to create or amend consortia agreements; it could also result in certain carriers refraining from entering into new consortium agreements or even withdrawing from existing consortia. This would be a severe blow to the EU considering the multitude of benefits associated with consortia, including:
 - i. environmental efficiency and an indispensable contribution to the EU’s fight against climate change;
 - ii. macroeconomic benefits related to investment and job creation and enhanced trading opportunities; and
 - iii. consumer benefits, including lower costs, higher frequencies, and better port coverage.
 - c. A decision to renew the CBER would satisfy the five evaluation criteria specified in the BRT: effectiveness, efficiency, coherence, relevance, and EU added value.
128. For all of the above reasons, and those presented in the RRB Report (which follows below as an Annex to the present submission), the Associations respectfully request that the Commission extend the period of application of the CBER without amending any other provisions of the CBER.
129. The Associations remain at the Commission’s disposal for any further dialogue related to the Evaluation and would be happy to answer any questions that the Commission might have on the present submission.

SCHEDULE OF ANNEXES

Annex Report by RBB Economics, 3 October 2022, *Response to the EC liner shipping CBER consultation, Prepared at the request of the World Shipping Council*

ANNEX

**Report by RBB Economics, 3 October 2022,
*Response to the EC liner shipping CBER consultation,
Prepared at the request of the World Shipping Council***

Response to the EC liner shipping CBER consultation

Prepared at the request of the World Shipping Council

RBB Economics, 3 October 2022

1 Introduction and Executive Summary

This report has been prepared by RBB Economics on behalf of the World Shipping Council (“WSC”), in the context of the evaluation by the European Commission (“EC”) of the Consortia Block Exemption Regulation (hereafter, the “BER”). The EC is evaluating whether the Consortia BER is still “*effective, efficient, coherent, relevant, and brings ‘EU added value’, considering developments on the market since it was last extended in 2020, particularly the challenges posed by the COVID-19 pandemic*”.¹ On the basis of this evaluation, the EC may decide to extend the period of application of the Consortia BER, or let it expire.

In this context, RBB Economics has been asked to undertake an economic assessment of the impact of the Consortia BER on competition between carriers in the liner shipping industry.

This report first provides an overview of consortia arrangements, focussing on how they operate in practice. This overview sets the scene for the economic assessment of the effect of the Consortia BER, and consortia arrangements more generally, on competition, by providing a clear description of what consortia are and what they are not, and what the Consortia BER allow members to do and what it does not. Specifically, the Consortia BER imposes conditions that limit the scope of any anticompetitive effects and ensures that the benefits from cooperation between carriers are passed-on to consumers.

¹ Call for evidence for an evaluation – Ares (2022)5649105, available at <https://ec.europa.eu/info/law/better-regulation/>.

We then provide an economic assessment of the likely impact of consortia arrangements on competition, in particular given the conditions set out in the Consortia BER, and whether the pro-competitive benefits that arise from them are likely to outweigh any adverse effects on competition that might theoretically arise. We show that the Consortia BER ensures that the net impact of consortia arrangements is likely to be overwhelmingly positive. In particular, we explain the following:

- Consortia arrangements give rise to a number of significant pro-competitive benefits. Specifically, and as noted by the EC following its past consultations, “*Consortia Block Exemption Regulation results in efficiencies for carriers that can better use vessels' capacity and offer more connections. The exemption only applies to consortia with a market share not exceeding 30% and whose members are free to price independently. In that context, those efficiencies result in lower prices and better quality of service for consumers*”.² Indeed, consortia are expected to lead to better vessel utilisation, investment in larger and more efficient vessels, increased frequency, and increased coverage of ports. Consortia are also likely to increase direct price competition between carriers which offer capacity on the same services, to the benefit of consumers.
- In contrast, the ways in which consortia arrangements permitted under the Consortia BER could, in theory, give rise to a restriction in competition are limited. Consortia members continue to price and sell their services independently and compete with one another within and outside of consortia. Further, the Consortia BER only exempts specific types of cooperation between liner shipping operators, which, in combination with the 30% market share cap, ensures competition remains effective. Indeed, it is clearly stated by the EC “*that the purpose of the 30% ceiling set in the Consortia BER is to ensure that the market exerts sufficient competition pressure on the consortia so that a fair share of their efficiency gains are passed on to consumers. [...] Moreover, in the Consortia BER context, the ceiling is also mitigated by the additional requirement of the Consortia BER that members of a consortium set their prices independently, adding additional competitive constraint of internal price competition between them*”.³
- This means that the pro-competitive benefits of consortia arrangements permitted under the Consortia BER are likely to strongly predominate. The existence of such arrangements is thus likely to give rise to substantially better outcomes for consumers than a situation in which the block exemption is not granted. This is particularly evident in light of the significant degree of competition that exists within the liner shipping industry, as is demonstrated by limited levels of concentration, recent entry, increasing levels of connectivity in international shipping networks and improved services.

Recent global developments in the form of the COVID-19 pandemic and its persistent effects provide an insightful case study into the likely beneficial effects of consortia arrangements. It has been well documented that the pandemic and the subsequent period gave rise to a

² EC press release, « Antitrust: Commission prolongs the validity of block exemption for liner shipping consortia », 24 March 2020, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518.

³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), footnote 123, p.32.

number of significant market shocks. For example, the demand for manufactured goods grew to all-time highs both in developed and emerging countries (as a result of shifts in consumer purchasing behaviour), whilst the availability of containers was limited, and port services were significantly adversely affected by health restrictions worldwide. One effect of port and inland transportation disruptions was to cause large numbers of ships to have to wait for berths, thus reducing effective vessel capacity, even as all available ships were deployed. However, as we explain below:

- The adverse effects of the market shocks that arose due to the COVID-19 pandemic were neither exacerbated by the existence of consortia, nor would they have been dampened had consortia arrangements not been in place. These shocks were unexpected, and the capacity constraints that were experienced were the direct consequence of congestion in ports and inland, over which carriers, within or outside of consortia, have no control. Consortia members participated in adding as much capacity as was available at the time to respond to the increased demand, and absent consortia, there is no indication that individual carriers would have been in a position to increase capacity any further, especially after years of low profitability and overcapacity.
- In fact, consortia arrangements are likely to have dampened the adverse effects that arose due to the abovementioned market shocks, to the benefit of consumers. First and foremost, since consortia enables carriers to operate larger and more efficient vessels, consortia members are likely to be relatively less affected by cost increases than carriers operating individually. This stems directly from consortia's ability to achieve economies of scale that are not achievable by individual carriers. Second, because they have access to a larger pool of vessels, labour, etc., consortia services are expected to be more flexible and reactive to the disruptions than individual carriers, and as such, to be able to limit the effects of supply-chain disruptions on consumers.

A reflection on the balance between expected costs and benefits associated with not renewing the Consortia BER indicates that the risks associated with revoking the Consortia BER should not be underestimated:

- If the Consortia BER is not renewed, carriers engaged in consortia arrangements which currently benefit from the Consortia BER will need to decide whether they simply exit these agreements or whether they assess their individual agreements under Article 101(3). This can be expected to lead to significant assessment costs as indicated by respondents to the EC's previous consultation on the Consortia BER in 2018.⁴
- There is therefore a clear risk that a number of existing consortia would be dismantled (or at least that shipping lines would hesitate to enter into new consortia) thus preventing customers from enjoying the significant benefits brought by consortia agreements. Since carriers cannot downsize their vessels in the short term, it seems likely that carriers exiting consortia would reduce frequencies in order to maximise the utilisation of their vessels.

⁴ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.18-19.

- Importantly, as discussed below, one of the possible concerns associated with the Consortia BER refers to capacity restriction. However, it is unlikely that carriers would add capacity in the short run in the event that consortia arrangements are no longer exempted under the Consortia BER. This is because they would be faced with the task of operating vessels which they may well struggle to fill when operating independently. Thus, the concern that consortia are deterring firms from making capacity investments would not be addressed by not renewing the Consortia BER.
- Further, the Consortia BER does not exempt cooperation agreements covering activities which are likely to significantly restrict competition and the market share cap ensures that any exempted consortium faces sufficient external competition.
- Therefore, the expected costs of not renewing the Consortia BER would be relatively certain and likely to be passed on to consumers. By contrast, the benefits of revoking the Consortia BER, if any, would be uncertain and limited in scope.

2 Overview of the Consortia BER

The Consortia BER applies to agreements between carriers that allow the participants in such agreements to operate a joint international liner shipping service to or from one or more ports in the European Union.

In its 2016 Hapag-Lloyd/UASC decision, the EC has described consortia as follows:⁵

Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity it contributes. The allocation of container slots is usually predetermined, and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of costs between the participants in a consortium.

An overview of consortia and individual carriers active on European routes, along with their respective capacity shares are provided in Annex A, and a summary of the services offered on these trade routes is provided in Annex B.

Importantly, as indicated in the quote above, the cooperation agreements between carriers that fall under the Consortia BER are limited to certain parameters of competition. In particular:

⁵ Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, Recital 36.

- Members cooperate by contributing vessels, which are operated for the joint sailing of ships on which capacity is shared by these multiple carriers. The joint operation of services allows for economies of scale in the operation of vessels and the utilisation of port facilities, as noted by the EC: “*consortia allow carriers to rationalise services, achieve economies of scale and reduce costs*”.⁶
- All members of a consortium will offer capacity on the same service, *i.e.*, for the same route at the same time. Although they each offer services, members are not all required to operate vessels in each trade and instead rely on vessels operated by other consortium members. This enables small carriers to offer a wider range of services than they may have been able to operate independently, given that, as noted by the EC in past merger decisions, carriers require a certain minimum volume in order to be able to offer a regular service, which they are generally unlikely to achieve on a standalone basis.⁷
- While there is sharing of capacity on vessels and sailing schedules, no information is exchanged between consortia members beyond that which is required for the operation of the consortia (such as capacity, port calls and sailing schedules).⁸ In particular, costs are borne entirely by the vessel operator and no information on costs is shared amongst members.

Notably, members still compete when selling their allocated capacity on consortia vessels and set their prices independently. By contrast with mergers and joint-ventures, consortia promote competition both between consortia and within consortia:

- Since carriers are not compensated for unused slots, they have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity in the vessel;
- Members also continue to compete with each other with respect to non-price dimensions of their offerings (*e.g.*, customer services, landside services, billing accuracy);
- Price and non-price competition is confirmed by past market investigations undertaken in the context of EC merger investigations. Customers of carriers, when consulted, point out that “*there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members*” and that “*shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service*”.⁹ Customers also indicate that they generally “*invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract*”.¹⁰ Head-on competition between members of the same consortium or alliance is therefore a confirmed feature of the market.

⁶ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.20.

⁷ See for instance EC Decision M.8330 - MAERSK LINE / HSDG, recital 56 or EC Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 39: “*In order to offer liner shipping services on a given trade with a regular, usually weekly schedule, a certain minimum volume is required*”.

⁸ The vessel operator also naturally has access to data on actual volumes loaded and unloaded at each port the service calls at.

⁹ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

¹⁰ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

- Consortia members also compete by offering their own capacity through other services on certain routes, even when the consortium they are a part of is active on the same trades. This means that, in many trades, carriers operate vessels in services with capacity they share with their consortia partners, whilst also operating other services individually. This feature of consortia is acknowledged by the EC.¹¹ On such routes, these members thereby compete directly both with capacity brought to market by their competitors through services operated by consortia (including the consortium of which they are a member) as well as capacity brought to market by services operated by other individual carriers (including those who are members of the same consortia). By way of example, the table below shows the joint and individual services of the members of the 2M alliance between Maersk and MSC. For instance, on the Mediterranean to US East Coast / US Gulf / US West Coast route, 2M operates two services, with each of Maersk and MSC providing a number of vessels on these services. In addition, these two members of 2M also provide 9 services individually on this route.

Table 1: Number of services of 2M on routes where alliance members operate individual services

Route	Number of Services		
	2M	Maersk	MSC
North Europe to US East Coast / US Gulf / US West Coast	3	0	4
Mediterranean to US East Coast / US Gulf / US West Coast	2	2	7
Med / Far East - dedicated services	3	0	1*
Europe / Far East services calling en route in Middle East and South Asia	4	1	1*

Source: *Alphaliner*

Note: **services are operated with other another consortium outside of the 2M alliance*

Last, it is worth emphasising that the Consortia BER does not apply to consortium agreements that contain any type of hard-core competition law infringements, *i.e.*, consortium agreements that would result in price fixing, market sharing, or the limitation of capacity or sales. As such, and as further explained below, consortia falling under the Consortia BER involve very limited restrictions of competition.

3 Economic Assessment

3.1 Overview

A sensible economic (and legal) assessment of consortia arrangements must first be grounded in a coherent understanding as to how consortia could theoretically restrict competition, in particular in light of the conditions set out in the Consortia BER. This should then be weighed against the benefits to competition and/or enhancement of consumer outcomes achieved by consortia within the BER in order to determine which of these effects (*i.e.*, positive or negative)

¹¹ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7: "However, liner shipping companies will likely have services both within consortia (VSA, SCA) and services run without any partnership".

are likely to predominate. Importantly, such an assessment can only take place with an appreciation for the relevant economic (and legal) context of the markets in which the conduct in question takes place.

With this in mind, in this section we discuss the following, in turn:

- the nature and the extent of benefits brought about by consortia, and which would not arise absent these agreements (sub-section 3.2);
- the manner through which consortia agreements may in principle restrict competition, and how material such restrictions are likely to be given the broader market context and competitive dynamics (sub-section 3.3);
- whether or not, given market circumstances and the ambit of the Consortia BER itself, the pro-competitive benefits of currently exemptible consortia arrangements are likely to predominate such that the renewal of the Consortia BER would be justified (sub-section 3.4).

3.2 The pro-competitive benefits of consortia

Put simply, by pooling capacity, consortia agreements enable carriers to operate larger, more efficient vessels, thereby delivering cost efficiencies for customers and reducing environmental footprint of shipping, while simultaneously extending service coverage. These benefits are achieved by allowing carriers to offer service frequencies that they would be unable to provide independently.

Indeed, as recognised by the EC, liner shipping services “*require significant levels of investment and therefore are regularly provided by several shipping companies cooperating in "consortia" agreements*”, “*Consortia can lead to economies of scale and better utilisation of the space of the vessels. In principle, a fair share of the benefits resulting from these efficiencies can be passed on to users of the shipping services in terms of better coverage of ports (improvement in the frequency of sailings and port calls) and better services (improvement in scheduling, better or personalised services through the use of more modern vessels, equipment and port facilities)*.”^{12,13} It is therefore well recognised that consortia agreements give rise to various pro-competitive benefits, the most significant of which are discussed below.¹⁴

First, consortia agreements enable carriers to combine their output and rely on larger vessels than they could efficiently operate alone, which leads to increased efficiency and enables the

¹² https://ec.europa.eu/commission/presscorner/detail/es/ip_20_518

¹³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7.

¹⁴ EC Decision Case M.8330 - MAERSK LINE / HSDG, Recital 55 : “*Although the cooperation of consortium members in jointly operating container liner shipping services is likely to restrict competition, it also enables achieving certain efficiencies, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress. For customers to benefit from those efficiencies, however, sufficient competition should be maintained in the market. This condition is met, according to the Commission's Block Exemption Regulation ("BER"), where the market share of a consortium does not exceed 30% on a given trade and the consortium agreement does not include features likely to significantly restrict competition, such as the fixing of prices, the limitation of capacity, and the allocation of customers or markets.*”, emphasis added.

provision of shipping services at lower costs. This is due to well recognized economies of scale achieved through the sailing of larger vessels, as operating costs per unit decrease when larger output (*i.e.*, more cargo) is transported (since costs are allocated over a higher number of output units), and variable costs per unit transported, such as fuel or labour, decrease with the size of the vessel.

These efficiencies are well-recognized, and noted by the EC in its evaluation of the Consortia BER:¹⁵

In the Consortia BER and at the occasion of its last prolongation, the Commission considered that consortia have generally helped to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They have also helped to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity. These efficiency gains of the consortia covered by the BER were confirmed in the Public Consultation by the respondent carriers also for the period relevant for this evaluation and were not materially contested by the other stakeholders. In general, consortia allow their members to pool their vessels together and provide services or frequencies that carriers would not be able to provide on their own means. A larger pool of vessels could also allow for optimisation of the deployment of vessels to better fit size and type to the conditions of the service.

One source of cost benefit arising from operating larger vessels can be illustrated with an example: for instance, two ships of 1,000 TEU capacity would require two captains, two crews, two separate maintenance schedules and would require two distinct docking and undocking manoeuvres at each port they call at, with associated port and terminal handling costs. In contrast, a single 2,500 TEU capacity vessel would only require one captain, one crew, one maintenance schedule and would only need docking and undocking once at each port it calls at (thereby also reducing port congestion).

Further, while vessel charter rates increase with capacity, they do not do so proportionally. As shown in Table 2, a 1,000 TEU daily charter rate was 45,000\$ on the 22nd of March, while the rate for a 2,500 TEU vessel was 80,000\$: for 2.5 times the capacity, the charter rate is only 1.8 times higher. The difference is even more striking as capacity grows, with an 8,500 TEU vessel being chartered for 155,000\$ whilst a 4,000 TEU vessel costs 110,000\$. As a result, larger vessels can be chartered at lower costs, which can then be reflected into lower prices for customers.

¹⁵ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.28.

Table 2: Rates for 12-month time charters

Vessel capacity (TEU)	Daily Charter Rates, in \$/day (22 March 2022)
8,500	155,000
5,600	130,000
4,000	110,000
2,500	80,000
1,700	62,500
1,000	45,000

Source: *Alphaliner, Newsletter number 2022-12, 13/03/2022 to 22/03/2022, page 4.*
Alphaliner indicates that rates given are assessments, considering the current lack of 12-month fixtures.

Evidence of the benefits associated with operating larger vessels through consortia agreements is also provided in Table 3 below, which shows the average capacity of vessels deployed by consortia, setting apart the three main alliances (2M, Ocean Alliance and The Alliance), and compared to the average capacity of vessels sailed outside of consortia, on the same European trade routes. As can be seen from the table, on average, consortia vessels are larger than non-consortia vessels, even when the three main alliances, which operate very large ships, are not counted towards consortia vessel sizes. The difference in average size can be as large as a 1 to 3.5 ratio, such as for the Mediterranean / Far East trades (and as high as 7.5 for services on this route that are part of wider port rotation), where consortia operate vessels with a capacity of at least 8,000 TEU and up to 11,000 TEU each, and non-consortia operated vessels have a capacity of less than 3,500 TEU.

While optimal vessel sizes naturally vary across trades, consortia allow carriers to share vessels such that the most efficient vessels are employed in each particular trade. On routes where they are active, alliances can utilise even larger vessels than those used by other consortia, but the data confirms that even single trade consortia enable carriers to use larger vessels than they would be able to operate individually.

Table 3: Capacity range of single carrier, consortia, and alliances vessels in European trade routes

Route	Vessel size range (TEU)			Size ratio to single carrier vessels	
	Single carrier	Consortia	Alliance	Consortia	Alliance
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	3,714 – 6,387	3,959 – 5,721	-	0.6 – 1.5	-
Europe / Far East services calling en route in Middle East and South Asia	5,608 – 7,250	8,266 – 10,926	14,429 – 17,395	1.1 – 1.9	2.0 - 3.1
Europe / Middle East or South Asia - dedicated services	5,311 – 8,044	6,442 – 9,971	-	0.8 - 1.9	-
Europe / West Coast of South America	4,387 – 6,098	6,260 – 7,545	-	1.0 - 1.7	-
Intra Mediterranean	1,347 – 1,489	1,772 – 2,123	-	1.2 - 1.6	-
Med / Far East - dedicated services	3,016 – 3,524	8,266 – 10,926	13,204 – 15,539	2.3 - 3.6	3.7 - 5.2
Med / Far East services - as part of a wider port rotation	1,940 – 3,338	10,020 – 14,568	16,047 – 22,085	3.0 - 7.5	4.8 - 11.4
Mediterranean to US East Coast / US Gulf / USWC	5,174 – 8,345	4,694 – 7,320	7,129 – 9,198	0.6 - 1.4	0.9 - 1.8
North Europe / Far East	2,270 – 4,199	4,132 – 4,395	16,027 – 19,760	1.0 - 1.9	3.8 - 8.7
North Europe / Mediterranean	4,202 – 5,629	3,353 – 4,779	-	0.6 - 1.1	-
North Europe only	1,147 – 1,225	1,432 – 1,462	-	1.2 - 1.3	-
North Europe to US East Coast / US Gulf / US West Coast	2,791 – 4,430	2,259 – 2,506	6,031 – 7,052	0.5 - 0.9	1.4 - 2.5
North Europe to USNH / Canada (St Lawrence)	2,174 – 2,606	3,135 – 4,353	-	1.2 – 2.0	-
Services Europe / Canary Islands & Morocco	993 – 1,105	1,345 – 1,847	-	1.2 - 1.9	-
Services Europe / South & East Africa	4,239 – 6,604	7,548 – 9,512	-	1.1 - 2.2	-
Services Europe / West Africa	2,791 – 3,386	2,511 – 3,838	-	0.7 - 1.4	-

Source: Alphaliner 5 Sep 2022.

Note: The figures are for the routes that have at least one consortium and single carrier active. This methodology is used because the data provided only shows the TEU range (as a min and max) and the number of vessels and does not give information on the capacity per vessel. Single carriers consist of vessels that do not operate within a consortium.

Moreover, as the EC identified in its last evaluation, for technological reasons the use of larger vessels by consortia/alliances also gives rise to, *inter alia*, variable cost reductions and environmental benefits.¹⁶ Amongst the economies of scale larger vessels benefit from is fuel efficiency, which allows a larger vessel to use less fuel for each TEU than a smaller one. For instance, Notteboom and Vernimmen estimated in 2008 that a 12,000 TEU vessel uses between 29% and 42% less fuel per TEU than a 5,000 TEU ship.¹⁷ The fuel efficiency discrepancy grows with the sailing speed, with a 5,000 TEU vessel consuming approximately as much fuel a day at a 26 knots speed as a 12,000 TEU vessel at a 24 knots speed, as demonstrated in Table 4. This means that larger vessels used for consortia services can decrease the amount of fuel used while maintaining a higher speed at sea.

Table 4: Fuel costs at sea for three types of container vessels and different service speeds (USD per day) at end-July 2006 bunker prices

Speed (kn) / Vessel size (TEU)	USD per day			USD per day per TEU			Economy per TEU vs. 5,000 TEU vessel	
	5,000	8,000	12,000	5,000	8,000	12,000	8,000	12,000
14	12,200	16,000	20,700	2.4	2.0	1.7	-18%	-29%
16	16,800	21,600	27,500	3.4	2.7	2.3	-20%	-32%
18	23,100	29,000	36,500	4.6	3.6	3.0	-22%	-34%
20	31,800	39,400	48,700	6.4	4.9	4.1	-23%	-36%
22	43,700	52,200	64,400	8.7	6.5	5.4	-25%	-39%
24	59,300	69,400	83,600	11.9	8.7	7.0	-27%	-41%
26	82,800	96,100	114,700	16.6	12.0	9.6	-27%	-42%

Source: Notteboom, T.E., Vernimmen, B., *The effect of high fuel costs on liner service configuration in container shipping*, *Journal of Transportation Geography* (2008), Table 3. Computations: RBB.

This improved fuel efficiency immediately translates into a reduction in emissions of CO₂, SO₂ (Sulphur Dioxide) and NO_x (Nitrogen oxides). CO₂ emissions, in particular, are estimated to be proportional to fuel consumption.¹⁸ This would mean that a 40% fuel consumption reduction between at 12,000 TEU vessel and 5,000 TEU vessel leads to a reduction of 40% of the associated CO₂ emissions. Even accounting for the difference in sailing speed, larger vessels are estimated to emit significantly less greenhouse gas than smaller ones, as illustrated in Table 5 below.

¹⁶ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.32: "Furthermore, the carriers argue that the Consortia BER is coherent with other EU policies. For example, vessel sharing agreements have environmental benefits through reduced consumption and lower vessel emissions, and they bring technological benefits through newer, more efficient, more technically up-to-date modern ships and improved IT systems for container tracking to meet shipper demands."

¹⁷ Notteboom, T.E., Vernimmen, B., *The effect of high fuel costs on liner service configuration in container shipping*, *Journal of Transportation Geography* (2008).

¹⁸ Psarafitis, Harilaos N. and Kontovas, Christos A; *CO2 Emission Statistics for the World Commercial Fleet*, WMU *Journal of Maritime Affairs*, 2009: "CO2 emissions in our study were calculated as follows. Fuel consumption was used as the main input, as opposed to horsepower, since fuel consumption data was the main input data that was solicited and received. Then, independent of type of fuel, one multiplies total bunker consumption (in tonnes per day) by a factor of 3.17 to compute CO2 emissions (in tonnes per day)."

Table 5: Emissions statistics by vessel segment in the liner shipping industry - 2009

Vessel segment	Feeder	Feedermax	Handysize	Sub-Panamax	Panamax	Post-Panamax
TEU range	0-500	500 - 1,000	1,000 - 2,000	2,000 - 3,000	3,000 - 4,400	< 4,400
Speed (kn)	13	16.5	20	20	21	24
CO2 emissions (gr / tonne-km)	31.5	20.0	13.7	12.2	11.8	10.8

Source: Psaraftis, Harilaos N. and Kontovas, Christos A; CO2 Emission Statistics for the World Commercial Fleet, WMU Journal of Maritime Affairs, 2009; Table 2.

Second, consortia members are also able to offer a higher frequency of sailings compared to a situation where they operate their vessels individually. In particular, in order to offer a liner shipping service with a regular schedule, firms must meet a minimum demand that justifies incurring the costs of operating the service. Further, ships need to reach high capacity utilisation in order to achieve optimum cost efficiencies. Accordingly, in a consortium, the frequency of services can be increased because by jointly operating a service and pooling their cargoes vessels can be more easily and quickly filled to full capacity.

This efficiency is also identified by the EC:¹⁹

Cargo consolidation is also an important efficiency gain. For a vessel to be operated profitably it has to reach a certain level of space utilisation; a higher utilisation also means lower cost per container. A vessel may wait in a port or call at several ports until the required level of utilisation is reached. A consortium serves the customer base of all its members allowing higher utilisation of the vessels which increases profitability and reduces cost per container. Transit times are shortened because the vessels wait less time or call at fewer ports before they reach the required level of utilisation. This means that less vessels are required to provide the same frequency of service and they can be deployed on other routes or used to increase the frequency. Cargo consolidation also facilitates investment in more modern (normally larger) cost-efficient vessels because it is easier to fill and operate them profitably.

To illustrate this point, consider a consortium with two carriers A and B, where A provides 40% of the consortium capacity, and B provides 60% of the capacity. Suppose this consortium offers a weekly service on a given trade route. If A were to individually offer the consortium's services provided today at the highest possible capacity it can achieve, vessels would need to call at ports roughly every two and half weeks instead of on a weekly basis in order to be filled up. This follows from the fact that A provides roughly 40% of the TEU capacity and vessel fleet. Holding constant demand faced by carriers and capacity levels at which sailings are made, it would take two and a half times longer for A ships to be filled up to the same extent

¹⁹ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.29.

as in the consortium, which would lead to a significant reduction in the frequency of services offered to customers.

Third, consortia, enable their members to serve more ports and offer more diversified routes, all the while maintaining frequency and offering short sailing times. These effects can be illustrated by a simple example. Suppose two carriers are active on the same route from port A to point B. There are two ports, C and D, between A and B, that could be included in the service. On its own, neither carrier would have an incentive to start serving port C or port D, to the extent that it expects the demand it faces would not be sufficient to cover the cost of adding a port call. However, if they enter into a consortium, the two carriers together generate enough volume to justify calling at port C and/or port D. This is all the more likely if, through their consortium, the two carriers decrease their costs by using a larger vessel, which makes adding calls at additional ports even more worthwhile. The consortium is therefore able to better respond to customers preferences and offer them more port call alternatives and at lower cost than they could individually.

These benefits are enhanced by the establishment of alliances, which unlike consortia covering services in one trade lane, cover multiple trades, as clearly set out by the EC:²⁰

Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost-efficient way. If new larger ships are introduced in one trade, existing tonnage can be more easily and efficiently redeployed or cascaded into other trades. At the same time, the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location. Moreover, by forming alliances, carriers may be better placed to secure sufficient numbers of vessels to offer a fixed or weekly schedule on a more reliable basis for the benefit of their customers who seek not only lower costs, but also require certain frequency of services.

It must be noted that these benefits cannot be achieved through other means that would be less restrictive of competition. Simple slot sharing agreements will for instance not suffice: if the risk of unused capacity is only borne by the vessel provider, they will not find it rational to increase the size of their vessels in the hope that the capacity that they are not able to sell will be filled by competing carriers through the sale of slots. While slot sharing agreements can help carriers limit unused capacity on existing ships, this would not create an incentive to invest in larger vessels given the uncertainty associated with the practice. The same would apply for increasing frequency or adding new ports to services.

In fact, consortia are the least restrictive way these benefits could be achieved. Alternatives that would yield similar results, namely joint-ventures or mergers would, in any given context,

²⁰ Decision M. 7908 - CMA CGM / NOL, Recital 25.

soften competition to a relatively greater extent, by eliminating price and non-price competition between shipping lines participating in those ventures.

As a final remark, consortia are also likely to increase the extent of direct price competition between carriers *within* a given consortium. This is because, all else equal, by operating in a consortium, carriers are selling services on the exact same vessel, thereby limiting the scope for differentiation of shipping services (e.g., dates of sailing or ports called).

To see this, consider a situation where two carriers that are not currently in a consortium operate a single sailing per week on a particular route. In such a situation, one would expect the two carriers, if behaving in a unilaterally rational way, to schedule their sailings at different days of the week, thus limiting the extent of direct competition between them. Now assume that the two shipping companies enter into a consortium with one another, whereby each is allocated half of the capacity on each of the two sailings that take place. This means that for any customers that have a preference for a particular sailing date, they will now have a choice of two providers (instead of one pre-consortium), and such providers would be expected, all else equal, to compete more strongly on price. This is the case, in particular, since consortia members are not compensated for unused capacity on the consortia vessels, and therefore have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity.²¹

3.3 Potential anticompetitive effects of consortia

It should be emphasised that consortia agreements impact only a narrow set of parameters of competition. As discussed in Section 2, this is for the following reasons:

- Carriers continue to price and sell their consortium-operated services independently of each other.
- Consortia members also continue to compete with each other over non-price aspects of their offerings, such as customer service and the quality of the overall service offered to customers, including, for example, the quality of the inland transportation element of the service.
- Consortia members are not restricted from competing with each other by offering services independently even on trade routes in which the consortia to which they belong operate.
- Consortia members are able to make capacity adjustments in response to fluctuations in supply and demand.
- No other information is exchanged between consortia members beyond that which is required for the operation of the consortia, such as, capacity, port calls and sailing schedules. For instance, costs are borne entirely by the vessel operator and no

²¹ Although this effect is illustrated through the example of sailing times, a similar effect can also be expected to arise in respect of the ports that shipping lines call at on a given route. That is, absent consortia, shipping lines might be expected, all else being equal, to seek to differentiate from one another in terms of the ports at which they call, meaning that there is less direct price competition in respect of cargo owners that have a strong preference for a particular port than would arise under a consortium arrangement.

information on costs is shared amongst members. The vessel operator also naturally has access to data on actual volumes loaded and unloaded at each port of the service.

Combined, these factors indicate that any restrictions of competition associated with consortia agreements are likely to be limited.

That said, one can identify two ways through which consortia could, in theory, lead to a reduction in the intensity of competition, through their potential impact on capacity decisions or frequency.

First, consortia arrangements do impact capacity decision-making since carriers agree on port calls, sailing schedules and how much capacity to offer on those sailings. This, however, does not mean that capacity can be expected to be restricted as a result of the existence of consortia. In fact, the effect of consortia on overall capacity is *a priori* ambiguous and should thus be assessed using economic evidence.

On the one hand, consortia could allow members to offer capacity in trade routes where they would otherwise not have an incentive to operate independently, thus increasing overall capacity available on a particular trade. Further, consortia can also create an incentive for carriers to increase capacity on a given route. This is because, when considering whether to expand capacity on a particular route, carriers will assess whether that additional capacity would be sufficiently well utilised to be efficient and ultimately financially viable. In this context, expanding capacity is an inherently risky decision, since it depends on the ability of the carrier to attract sufficient extra demand. However, by sharing capacity with other consortia members, the risk of capacity under-utilisation is more limited.

On the other hand, consortia could in theory give members an incentive to reduce their own capacity, or alternatively limit increases in capacity, to the extent that this could allow them to obtain higher prices and possibly achieve higher profits through the limitation of supply. In particular, by pooling their services, consortia members have a strong incentive to rely on larger vessels than those they would employ when operating independently. Accordingly, consortia could, in theory, result in each individual member operating less capacity within the consortium than they would have supplied individually, thus reducing overall capacity in the trade route relative to the non-consortia scenario.

A hypothetical example helps illustrate this point. Consider a scenario where two carriers each independently sail a vessel with a capacity of 2,500 TEU weekly on a particular trade, and these two carriers form a consortium. When operating services jointly through the consortium, they could replace the two vessels they previously utilised with one larger vessel with a total capacity of 4,000 TEU. This would lead to a reduction of their joint supplied capacity of 20% compared to a situation without consortia.

However, carriers have no incentive to reduce capacity when forming a consortium to operate jointly unless they were each operating its vessels at low utilisation pre-consortia. In other words, to the extent that the two carriers were not able to fill their individual vessels at full capacity before the consortium, they would use the opportunity of joining their services to

adapt their supplied capacity to the actual demand they face. Such a reduction in capacity would therefore not translate into a restriction of services and higher prices but instead would allow carriers to operate more efficiently thus benefiting customers. Further, any concerns around capacity restriction due to consortia assumes that the market is not sufficiently competitive to ensure that such consortia members would remain effectively constrained. Put differently, carriers might only seek to restrict capacity if they expected that their reduction in supplied capacity would allow them to obtain higher prices, which does not hold in competitive markets (see Section 3.4 below for a discussion of the intensity of competition in the shipping industry).

The second concern relates to the variety of different sailings that are available to customers in aggregate, which could, in theory, be reduced by consortia. This is because, as described above, carriers are likely to differentiate their sailings when they operate independently (e.g., by calling at different ports, operating different schedules), as differentiation allows them to soften price competition. By contrast, when joining consortia, shipping lines jointly establish the consortium's schedule and ports of call. These decisions are negotiated and can deviate from the choice of one particular member pre-consortia.

This can be illustrated through the following hypothetical example. Suppose three carriers offer three different sailings on the same trade, on Mondays, Wednesdays and Fridays respectively, each with a capacity of 2,500 TEU. When they form a consortium, they can invest in larger ships in order to operate more efficiently and achieve costs savings. Suppose they agree to sail two 4,000 TEU vessels on Mondays and Fridays. For most customers, this change is pro-competitive: increased capacity, more efficient sailing, and head-on competition between homogeneous offerings from the three carriers is bound to decrease prices. Moreover, customers of a given carrier now have access to two different sailings rather than just one. By contrast, customers who had a strong preference for sailing on Wednesdays are negatively affected by the reduction in the variety of offerings from the consortium. That said, they would nevertheless benefit from lower prices that would result not only from the recognised efficiencies that consortia enable carriers to achieve but also, as described in Section 3.2 above, from the increase in direct competition between members, as well as access to two different sailings from the same carrier instead of one.

Again, this concern assumes that competition is not sufficiently effective such that the services offered by consortia members are not degraded by the decreasing variety of joint services relative to those operated individually (in particular since consortia agreements do not prevent shipping lines from continuing to operate services independently).

3.4 Pro-competitive effects of consortia are likely to predominate, in particular under the Consortia BER

From the outset, it is important to stress that the Consortia BER only exempts specific types of cooperation between liner shipping operators and is therefore not a *carte blanche* for cooperation agreements between carriers. In particular:

- The Consortia BER does not exempt cooperation agreements covering activities which are likely to significantly restrict competition, namely price fixing, limitation of capacity and sales (other than capacity adjustments in response to fluctuations in supply and demand) and the allocation of customer or markets.
- In addition, consortia agreements only benefit from the Consortia BER where consortia members have a combined market share below 30%.²² Any adverse competitive effects associated with consortia agreements are naturally limited by this market share cap, which ensures that any exempted consortium faces sufficient external competition.

These criteria (as well as the other conditions in Article 6 of the BER) undoubtedly limit the extent to which consortia agreements exempted by the Consortia BER can lead to anti-competitive effects. As such, there are good *a priori* reasons to expect pro-competitive effects to outweigh any restriction of competition, as indeed confirmed by the EC's previous renewals of the Consortia BER and the existence of similar exemptions in other jurisdictions. Consortia are expected to be beneficial as long as the liner shipping market remains sufficiently competitive, which is the conclusion the EC reached following its 2018-2019 evaluation of the Consortia BER.²³ The same conclusion should be reached today, since competition has remained intense between carriers. In this regard, we note the following.

First, concentration remains limited in the liner shipping industry, both overall, and on a trade-by-trade basis. As illustrated in Figure 1 below, there are no carriers with a capacity share above 20%, only three carriers with capacity shares higher than 10%, and only seven with capacity shares above 5% globally. The largest carrier holds a 18.6% capacity share worldwide, and the top 5 carriers account for approximately 60% of the world fleet capacity, while it is necessary to aggregate the 9 largest carriers worldwide to reach a cumulative capacity share above 80%, with the top 10 only holding 82.2% of the global capacity. The remaining 17.8% of worldwide capacity is distributed amongst over 300 different carriers. All these statistics indicate a relatively low level of concentration, which is confirmed by a global Herfindahl-Hirschman Index (HHI) below 1,000, as it was at the time of the latest evaluation following the wave of consolidation of 2016-2017 in the sector.²⁴

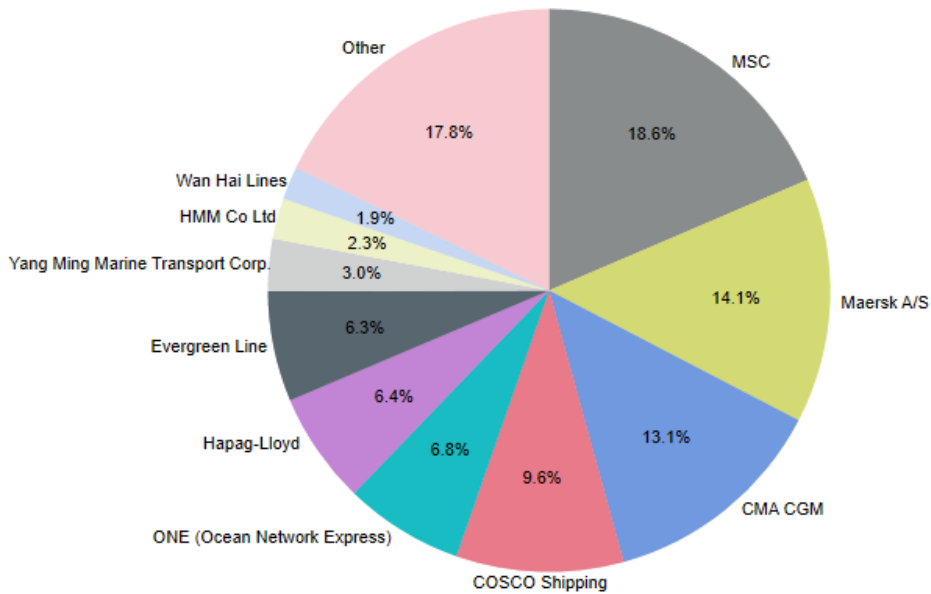
²² Subject to Article 5(3) of the Consortia BER. COMMISSION REGULATION (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).

²³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.10-11: "*When adopted in 2009 the Consortia BER was based on and conditioned by the existence of efficiency gains and benefits to consumers, without providing any quantitative benchmarks for those two elements. However, the Consortia BER contains safeguards (some of them quantitative) for sufficient competitive pressure (both inside and outside of a consortium) in order to ensure that a fair share of the benefits resulting from consortia will be passed on to consumers. In accordance with the above, the Commission has applied the same methodology in its reviews of Consortia BER: assessing the continuous existence of efficiencies and their pass-on (absence of deterioration), rather than assessing their benchmark values. Similarly, in its last review of the Consortia BER the Commission reaffirmed that the efficiency gains and benefits, established at the adoption of that regulation, were still present at the time. The same approach and point of comparison is applied in this evaluation, where the Commission looks at what has happened or changed in the market since 2014 and assesses whether these developments raise any concern that a fair share of efficiency gains or pass-on of benefits to consumers would not materialise any more.*"

"In evaluating whether the Consortia BER is still relevant it is examined whether consortia can still be considered economically efficient cooperation that also benefits consumers. Here the point of comparison for the evaluation is the state of the industry in year 2014 (just before the current intervention), when the Commission after examination considered consortia to be economically efficient cooperation that also benefits consumers. The evaluation relies on available data to track developments, in particular since 2014 to this day"

²⁴ The acquisition of CSCL by COSCO (2016); the acquisition of APL-NOL by CMA CGM (2016); the acquisition of the United Arab Shipping Company (UASC) by Hapag Lloyd (2016); the market exit of Hanjin Shipping as a result of its

Figure 1: Global capacity shares of the top 10 carriers - 2022



Source: Alphaliner, Services database 5 Sep 2022.

Note: COSCO Shipping and OOCL have merged on 24 July 2018 although they operate as a different brand, we have considered OOCL as a part of COSCO Shipping.

Maersk and Hamburg Süd have merged on 28 April 2017 although they operate as a different brand, we have considered Hamburg Süd as a part of Maersk.

Concentration has remained stable since the last Consortia BER renewal in 2020 (based on evidence provided in 2018). As illustrated in Table 6 below, the cumulative share of global capacity held by the three larger carriers has remained similar, decreasing slightly from 63.3% to 62.3%. Likewise, the capacity share held by the ten larger carriers remained similar, increasing slightly from 81.6% to 82.2%. Interestingly, positions appear to be quite dynamic in the market, with capacity shares and ranking changing significantly between 2018 and 2022: MSC and Maersk exchanged their first and second ranks, with shares increasing and decreasing by over 3.5 percentage point each. Evergreen retains its 7th position but has closed the gap with ONE and Hapag-Lloyd. In the same period, Wan Hai almost doubled its market share, and COSCO dropped below the 10% capacity share mark. The dynamism of capacity shares demonstrates the high degree of competition between carriers.

bankruptcy (2016); the acquisition of Hamburg Süd by Maersk (2017); the formation of the ONE joint venture combining the containerised services of NYK, MOL and K Line (2017); and the acquisition of OOCL by COSCO (2017).

Table 6: Global capacity shares of top 10 carriers - 2018 and 2022 comparison

Carrier	Market share			Rank		
	2022	2018	Change	2022	2018	Change
MSC	18.6%	14.5%	+4.1 pp	1	2	-1
Maersk A/S	14.1%	17.7%	-3.6 pp	2	1	1
CMA CGM	13.1%	11.6%	+1.5 pp	3	4	-1
COSCO Shipping	9.6%	12.4%	-2.8 pp	4	3	1
ONE (Ocean Network Express)	6.9%	6.7%	+0.2 pp	5	6	-1
Hapag-Lloyd	6.4%	7.1%	-0.7 pp	6	5	1
Evergreen Line	6.3%	5.2%	+1.1 pp	7	7	=
Yang Ming Marine Transport Corp.	3.0%	2.8%	+0.2 pp	8	8	=
HMM Co Ltd	2.4%	1.8%	+0.6 pp	9	9	=
Wan Hai Lines	1.9%	1.1%	+0.8 pp	10	12	-2
ZIM	1.7%	1.5%	+0.2 pp	11	11	=
PIL	1.3%	1.8%	-0.5 pp	12	9	3
TOP 5	62.3%	63.3%	-1.0 pp			
TOP 10	82.2%	81.6%	+0.6 pp			

Source: *Alphaliner 5 Sep 2022 and Oct 2018 shares from 19 Dec 2018 RBB report.*

The limited concentration is also clear on a trade-by-trade basis. Drewry computes HHI for some European trades as shown in Table 7 below. Concentration levels are generally moderate (below 2,500).

Table 7: HHI in the main European trades – April 2022

Route	HHI
Europe-ECSA NB	3,046
Europe - South Asia WB	2,265
Europe-MidE EB	2,106
Asia-Med WB	1,599
North Europe-North America WB	1,921
Asia-North Europe WB	1,303

Source: *Drewry Maritime Research*

Furthermore, and as pointed out above, the shipping industry is characterised by ongoing entry. For instance, as set out in Table 8 below, intra-Asian carriers have entered the

transpacific and Asia-Europe trades in the last couple of years, and can price aggressively.²⁵ By way of example, Tailwind Shipping Lines is one of the 6 recent entrants in European routes. Owned by Lidl Stiftung & Co. KG (known for its discount supermarket Lidl), this shipping line has entered the market with three chartered vessels and one acquired ship on a China – Europe route.

Table 8: New entry in 2021 and 2022

Entrant	Entry date	Trade route
RifLine	2021	Asia - Europe
EShipping Gateway	2021	Asia - Europe
Fields	2021	Intra Europe
Tailwind Shipping Lines	2022	China - Europe
Allseas Shipping Company	2022	China - North Europe
Ellerman City Liners	2022	China - UK
Carrier 53'	2022	China - US

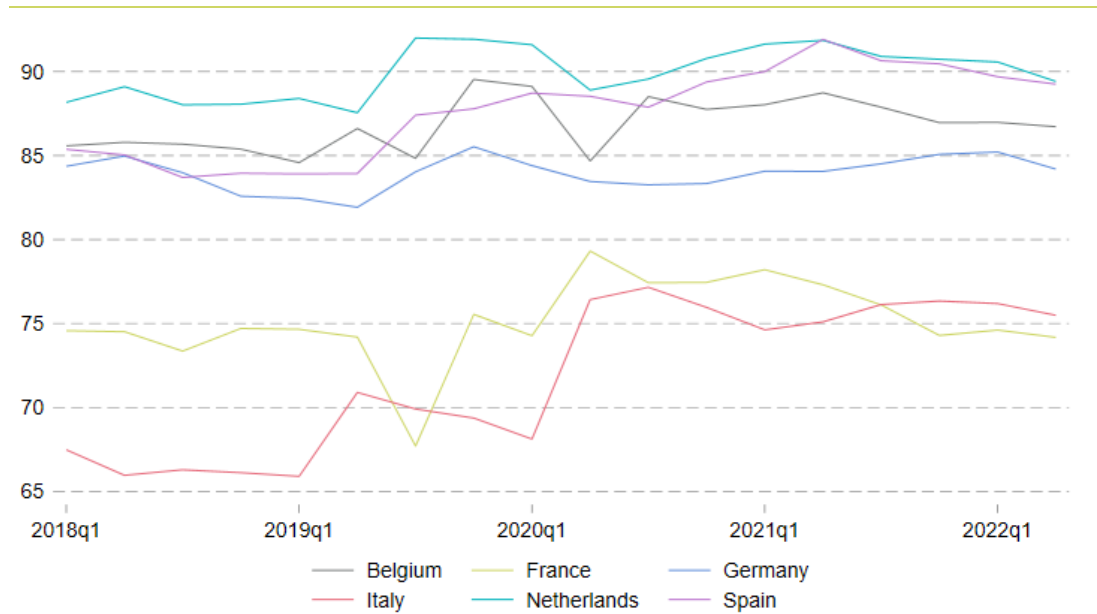
Source: *Alphaliner news*, 10 Aug 2022
Alphaliner news, 22 Jun 2022
Alphaliner news, 8 Apr 2022
Alphaliner news, 2 Feb 2022
Alphaliner news, 8 Sep 2021
Alphaliner news, 16 Aug 2021

Moreover, the evolution of UNCTAD’s Liner Shipping Connectivity Index (“LSCI”) shows that the integration of European countries in international shipping networks continues to improve over time: it implies that the number of carriers, vessels, services and/or the capacity deployed has increased over time, accommodating an increase in service quality and growth of TEUs shipped to and from these European countries.²⁶ This is illustrated below for the EU countries with the six highest LCSI (Belgium, France, Germany, Italy, the Netherlands and Spain) for which connectivity index was stable or increasing. This conclusion holds true for other EU countries, as shown in Figure 11 and Figure 12 in Annex C.

²⁵ <https://loydslist.maritimeintelligence.informa.com/LL1141962/Transpacific-bet-pays-off-for-smaller-container-lines>; <https://loydslist.maritimeintelligence.informa.com/LL1142031/Carrier-price-competition-intensifies-on-transpacific-trade>; <https://loydslist.maritimeintelligence.informa.com/LL1141272/Fast-growing-upstart-carriers-exposed-to-spot-rate-volatility>

²⁶ The LSCI is computed based on of six components, relating to (i) the number of ship calls; (ii) the capacity deployed; (iii) the number of regular services; (iv) the number of carriers offering services in the country; (v) the size of the largest vessel calling at a port of the country; and (vi) the number of different countries directly connected to the relevant country. This index is set to 100 for the maximum score obtained in 2006Q1, namely that of China.

Figure 2: Evolution of Liner Shipping Connectivity Index from Q1 2018 to Q2 2022 – EU countries with the top 6 highest LSCI



Source: UNCTAD

Further evidence of shipping lines competing effectively is shown in the table below, which lists a number of trade routes in which services were improved in 2021 and 2022, either in terms of extra vessels or additional port calls being added, from both alliance vessels (from ONE or 2M) and individual operators (from OOCL and MSC for instance). Evergreen and Italia Marittima have for instance improved their Intra-Mediterranean and Black Sea services by introducing a weekly shuttle between Greece and Israel as the “Israeli Express Service (ILX)”. They have also improved the Intra-Mediterranean service by creating a weekly connection between Italy-Croatia-Malta through a slot agreement with CMA CGM’s “Adrinaf” service. Evergreen has also separately expanded its existing Greece-Turkey service to Georgia in the Black Sea.

Table 9: New and improved trade routes opened in 2021 and 2022

Carrier	Service	Ships deployed
OOCL, COSCO	Mediterranean – West Africa	7 x 4,050 – 5,900
Ocean Network Express (ONE), CMA CGM	North Europe – East Mediterranean*	1 x 4,253
Evergreen / Italia Marittima	Intra Mediterranean and Black Sea*	1 x 1,145 – 1,164
MSC	Baltic – North Europe – USEC	6 x 4,250 – 6,700
2M	North Europe – USEC*	6 x 7,150 – 8,800
CMA CGM, Hapag-Lloyd	India / Pakistan / USEC*	8 x 3,000 – 6,000
IAL, RCL, PIL and CULines	China - India - Straits - Vietnam service	6 x 7,150 – 8,800
Wan Hai Lines	South China – Vietnam – Eastern India	4 x 1,400 – 1,700
Wan Hai Lines	China – Middle East	6 x 2,800 – 4,300

Source: *Alphaliner newsletter, 2022 Issue 12, pages 11, 13, 15*
Alphaliner newsletter, 2021, Issue 38, page 1
Alphaliner news, 4 Oct 2021
Alphaliner news, 12 Jan 2021
Alphaliner news, 8 Jul 2020
 * Improved routes

In sum, moderate levels of concentration, entry of new shipping lines and services improvements provided both by consortia and individual carriers all indicate that competition remains effective, thus further confirming that the pro-competitive benefits of consortia are likely to outweigh any possible anti-competitive effects.

4 Analysis of Recent Global Developments

4.1 Overview

The global COVID-19 pandemic and subsequent world events have given rise to a series of significant shocks to the liner shipping industry, on both the supply-side and the demand-side. Such shocks, in turn, have corresponded with significant logistical delays and rising prices, and while these effects have subsided somewhat in recent months, they are yet to return to pre-pandemic levels.

However, as we explain below, these adverse outcomes neither arose because of, nor were exacerbated by, the existence of consortia, let alone the Consortia BER. Instead, they were ultimately a product of the impact that the abovementioned shocks had on the balance of supply and demand, and would thus have arisen irrespective of the presence or absence (or extent) of consortia arrangements. In fact, there is good reason to believe that consortia arrangements may have helped to dampen the effects of some of the negative shocks experienced.

In the remainder of this section, we first provide more details regarding the shocks experienced by the liner shipping industry over the period (sub-section 4.2). We then examine the role of consortia in this context and assess whether they can have been expected to exacerbate (or cause) the shocks that were experienced, or whether in fact they may have mitigated the effects of certain of these shocks (sub-section 4.3).

4.2 Market shocks experienced due to the COVID-19 pandemic and subsequently

Since 2020, the liner shipping industry has been significantly affected by a host of market shocks. These shocks include both demand-side and supply-side shocks that arose during and due to the COVID-19 pandemic, as well as further shocks that arose due to subsequent world events. In this sub-section we briefly discuss the shocks experienced in more detail.

4.2.1 Supply-side shocks arising during the COVID-19 pandemic

The liner shipping industry experienced a range of supply-side shocks during the COVID-19 pandemic, all ultimately stemming from the resulting (i) labour shortages, (ii) shutdowns/lockdowns and/or (iii) other operational restrictions imposed by governments.

In this regard, it is important to appreciate that supply in the shipping industry is not simply a function of the amount of capacity that shipping lines employ on any given route, but it is also determined by how quickly a vessel that is ready to load/unload its cargo can do so within a port. Major disruptions to the port system due to the pandemic therefore gave rise to a significant negative shock to supply in the shipping industry.

Most obviously, certain ports were closed or required to operate at reduced capacity due to restrictions for periods of time during the pandemic. For example, in some cases port terminals were closed due to COVID-19 outbreaks – e.g., in May 2021 and August 2021, respectively, container terminals in two of China’s largest ports, Shenzhen and Ningbo-Zhoushan, closed container terminals when workers tested positive for COVID.²⁷

In other cases, even where terminals remained open there were also times when restrictions were put in place that significantly affected throughput. For example, in response to the closure of one of the container terminals in Ningbo-Zhoushan, authorities diverted vessels to other terminals in the same port, but at the same time imposed restrictions limiting the number of workers and the amount of cargo coming into the port.²⁸

However, even when ports were operating, they were often subject to significant staff shortages. Just one example is that in the beginning of 2021, around 800 dockworkers in Los Angeles and Long Beach had tested positive for COVID-19 over a short period of time. As a consequence (and also due to high levels of demand – see sub-section 4.2.2 below), container ships scheduled to dock at these ports had to wait an average of more than 7 days in March

²⁷ <https://www.ndtv.com/world-news/coronavirus-china-partly-closes-worlds-third-busiest-cargo-port-over-covid-19-case-2508701>, <https://www.ft.com/content/c3c55dca-2ee7-488a-ad68-9286822b881c>

²⁸ <https://www.automotivelogistics.media/ports-and-processors/covid-outbreaks-causing-congestion-at-ports-in-china/42196.article>

2021 (where they would have docked and been offloaded immediately in normal circumstances).²⁹ By the same token, when the Yantian port partially reopened after a coronavirus outbreak, the waiting time was over two weeks for vessels at this port.³⁰

In addition to labour shortages within ports, land-side services were also facing significant labour shortages, especially in the truck-driving industry.³¹ The absence of sufficient trucks/drivers to move containers inland resulted in further port congestion, and hence further delays.³² Moreover, it appears that these shortages are ongoing and are considered likely to persist.³³

The ultimate impact of the above was that the capacity of shipping lines was effectively reduced substantially. This is reflected in Figure 3 below, which is extracted from a report by Sea Intelligence reflecting the estimated proportion of total shipping fleet capacity that is “absorbed” (i.e., effectively removed from the market) due to port delays.

The figure, which covers the period April 2011 to April 2022, indicates that pre-pandemic the extent of fleet absorption was in the region of 2%-4%. However, this rose sharply and continually during the COVID-19 pandemic, to around 14% in early 2022 (and as of April 2022 stood at around 9%). Sea Intelligence anticipates that fleet absorption will return to pre-pandemic levels only by April 2023.³⁴

²⁹ <https://www.theguardian.com/us-news/2021/mar/11/la-ports-stalled-ships-stressed-crews-covid-buying-boom>

³⁰ <https://www.twill.net/knowledge-hub/logistic-news/yantian-port-global-supply-chains-effects/>

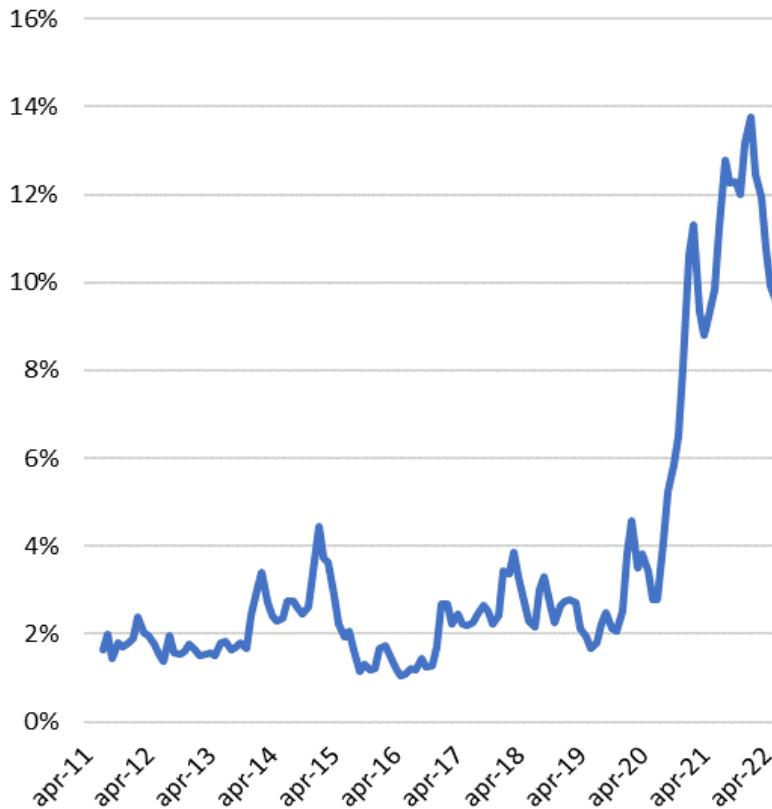
³¹ See for instance <https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-11635950481>, <https://market-insights.upply.com/en/the-truck-driver-shortage-has-got-worse-in-2022>, <https://www.iru.org/news-resources/newsroom/driver-shortages-surge-expected-jump-40-2022-new-iru-survey>.

³² <https://maritime-executive.com/article/uk-s-trucker-shortage-begins-to-impact-ports-gas-stations-and-grocers>, https://www.foresion.net/edit/download_file.html?file_id=10&site_id=134391

³³ <https://www.forbes.com/sites/pamdanziger/2021/10/15/unclogging-the-ports-will-not-fix--the-supply-chains-even-bigger-trucking-crisis/?sh=249457b6124f>

³⁴ Sea Intelligence, 28 Aug 2022, issue 579, pages 4 and 7.

Figure 3: Absorption of global fleet due to delays, April 2011 to April 2022



Source: Sea Intelligence, 28 Aug 2022, issue 579, page 4.

Another major disruption to the shipping industry was a lack of available shipping containers. This was due, in particular, to the fact that delays and labour shortages had resulted in containers being effectively “in the wrong place at the wrong time”, significantly increasing the amount of time that containers spent on any single leg of a journey (when they should have rotated to another leg). Most significantly, empty containers were delayed when leaving Europe and North America due to labour shortages, tightened borders and restrictive port clearance procedures, whilst products awaited to be loaded in containers in Asian factories.³⁵

Importantly, although lockdowns are no longer being imposed in most countries, and economies have now reopened, it appears that a number of effects have persisted. For example, consumer demand remains strong (see also sub-section 4.2.2 below), requiring the transportation of high volumes of containers between ports.³⁶ By the same token, it appears that labour shortages have persisted across the supply chain, and in some respects are even

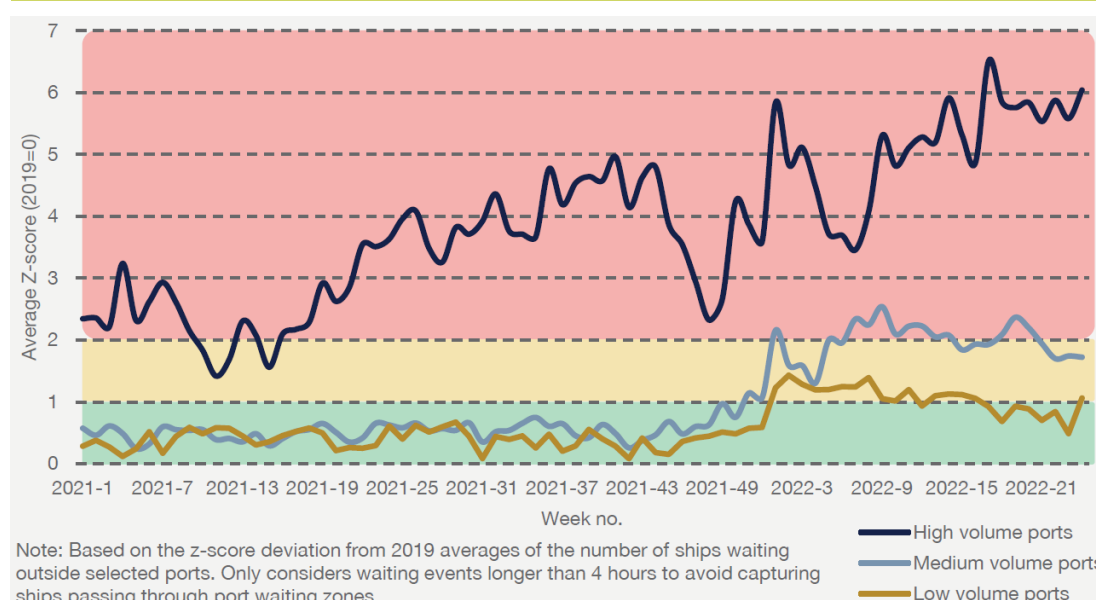
³⁵ See for instance <https://www.entrepreneur.com/en-in/news-and-trends/the-domino-effect-of-container-shortage/429154>, <https://www.hillebrandgori.com/media/publication/where-are-all-the-containers-the-global-shortage-explained>, <https://www.ship-technology.com/analysis/global-shipping-container-shortage-the-story-so-far/>, <https://www.container-xchange.com/blog/container-shortage/>, <https://www.ft.com/content/40f667ce-b979-4171-9cd1-b935d06728c4> or <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>.

³⁶ <https://www2.deloitte.com/us/en/insights/economy/us-consumer-spending-after-covid.html>

more acute than they were in 2020 and 2021 as a consequence of labour leaving the industry.³⁷

There also continue to be high levels of port congestion. Drewry’s “Container Forecaster Supply-Demand Balance” 2022Q2 issue states that “*there is no sign the port bottlenecks are going away*”, with surveyed actors not expecting any easing of congestion prior to 2023. As illustrated by the Figure 4 reproduced below, the available data do not reveal any kind of reduction in the number of vessels waiting outside major ports. The figure shows that the average z-score (which represents the number of ships waiting to berth, normalised at 0 for 2019), fluctuated between 1.5 and 5 in 2021, but was generally above 5 between March and May 2022.

Figure 4: Drewry Port Congestion Z-score Indicator (number of ships waiting)



Source: Drewry Maritime Research, 2Q 2022 Container Forecaster Supply-Demand Balance.

Furthermore, there continue to be direct effects arising from the COVID-19 pandemic. For example, the city of Shanghai was under lockdown between the 1st of April 2022 until the 1st of June 2022. Although the port remained opened, it was running at very limited capacity.³⁸ This naturally created significant congestion, not only at neighbouring ports, which had to accommodate the diverted ships and goods, but also delayed the entry into service of newbuilt container ships under construction in shipbuilding centres on Changxing Island and Pudong, which were also located inside the lockdown zone.³⁹

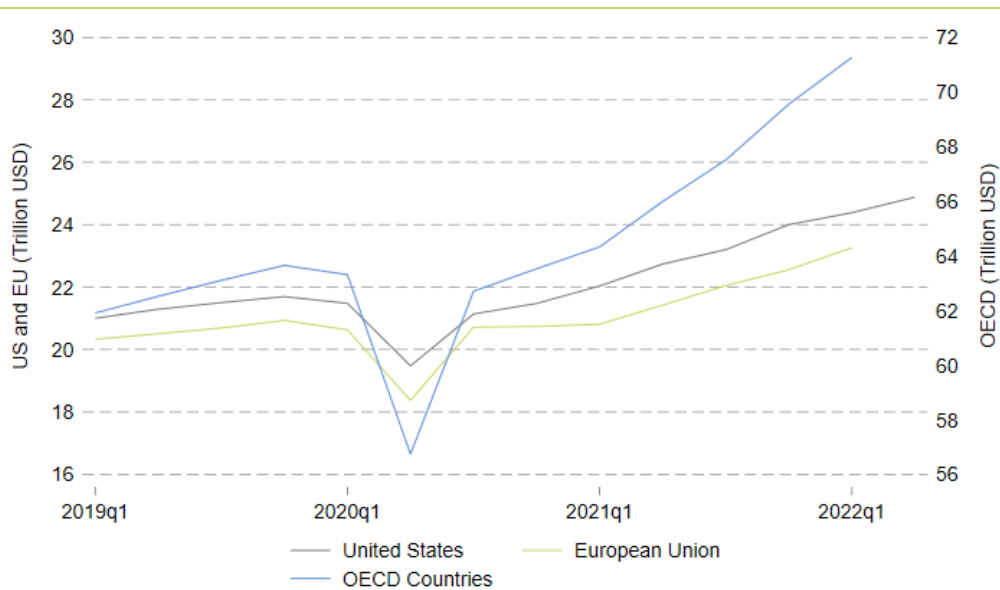
³⁷ <https://www.inboundlogistics.com/articles/what-does-the-labor-shortage-mean-for-your-supply-chain/>, <https://www.instituteforgovernment.org.uk/publication/supply-chains/causes>, <https://www.forbes.com/sites/jackkelly/2022/01/12/there-is-a-massive-trucker-shortage-causing-supply-chain-disruptions-and-high-inflation/?sh=6e4c320b5ec4>, <https://gcaptain.com/covid-19s-impact-on-seafarer-populations-will-be-felt-for-years-to-come/>, <https://ifa-forwarding.net/blog/sea-freight-in-europe/shortage-of-seafarers-onboard-merchant-vessels-by-2026/>,
³⁸ <https://theconversation.com/shanghai-worlds-biggest-port-is-returning-to-normal-but-supply-chains-will-get-worse-before-they-get-better-182720>
³⁹ <https://www.maritimgateway.com/shanghai-back-into-lockdown/>

4.2.2 Demand-side shocks arising during the COVID-19 pandemic

In addition to the supply-side, the COVID-19 pandemic had a significant effect on the demand for shipping liner services. This stems from the fact that ultimately demand for shipping liner services is derived from the demand for goods (as opposed to services).

On the demand side, the COVID-19 pandemic had two main effects – initially a substantial decline in demand, and then subsequently a substantial and persistent increase in demand.⁴⁰ This is evident from Figure 5 below.

Figure 5: Gross Domestic Product – Expenditure approach from Q1 2019 to Q2 2020



Source: OECD - National accounts data, gross domestic product expenditure approach. Data can be found here: <https://stats.oecd.org/>

As regards the first of these two effects, namely the substantial reduction in demand at the beginning of the pandemic, this appears to have been due to the various lockdowns and other restrictions imposed at this time. These measures effectively prevented or deterred consumers from purchasing goods, while broader uncertainties led to consumers purchasing less (and saving more).⁴¹ This gave rise to a substantial reduction in the demand for logistics services to transport goods from their point of production to their point of consumption. The same also applied to certain intermediate goods, as COVID-19 restrictions caused many producers to temporarily close or scale back their operations, thus reducing the demand for the transportation of the inputs that they require.

Consumer demand then surged sharply during the second half of 2020, and appears to have remained persistently high in excess of pre-pandemic levels. This surge in demand appears to have arisen due to the impact of extended lockdowns and other restrictions on consumer behaviour. Specifically, such measures appear to have led to consumer spend being diverted away from services (including hospitality and leisure, which were shut down for extended

⁴⁰ <https://porteconomicsmanagement.org/pemp/contents/part9/ports-and-pandemic/>
⁴¹ https://www.ecb.europa.eu/pub/economic-bulletin/focus/2021/html/ecb.ebbox202105_04~d8787003f8.en.html,
https://www.banque-france.fr/sites/default/files/billet_206_ve_finale.pdf.

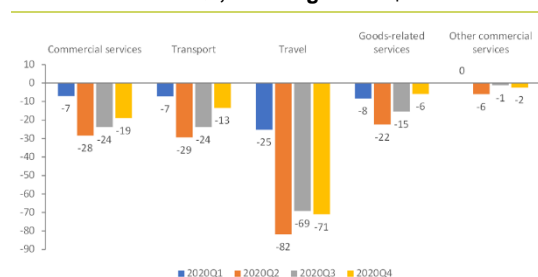
periods) to spending on manufactured goods. Government stimulus packages also appear to have contributed to this increase in demand.^{42,43} This shift from services to goods is evident from Figure 6 and Figure 7 below, which present year-on-year global growth figures (in value terms) for good and services, respectively.

Figure 6: Year-on-year growth in world manufactured goods trade, 2020Q3-2020Q4, % change in US\$ values



Source: WTO data, available here: https://www.wto.org/english/news_e/pres21_e/pr876_e.htm

Figure 7: Year-on-year growth in world commercial services trade, 2020Q1-2020Q4, % change in US\$ values



Source: WTO data, available here: https://www.wto.org/english/news_e/pres21_e/pr876_e.htm

This is also acknowledged by the World Trade Organisation, which has stated that:⁴⁴

“Lockdowns and travel restrictions caused consumers to shift spending away from non-traded services and towards goods. Innovation and adaptation by businesses and households kept economic activity from falling even more. Manufacturing supply chains were able to resume operations, and many people shifted to working remotely, generating income and demand”.

Moreover, many of those goods for which demand increased substantially, such as toys, games and sports equipment, textiles, electronics and computer equipment (see Figure 6) are generally produced in Asia and thus had to be shipped to the US and Europe.

Importantly, neither of the above developments (*i.e.*, the sharp reduction in demand or the subsequent recovery and expansion in demand) were expected. It is therefore difficult to see how their effects could have been mitigated by supply-side responses, given that they coincided with the supply-side shocks described in sub-section 4.2.1 above. Indeed, such a global event was the first of its kind in the last century, and even when it occurred, economic

⁴² See for instance <https://www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663/>

⁴³ See for instance <https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021?leadSource=verify%20wall>: “When the first lockdowns hit in March 2020, most observers expected the shipping industry would be decimated. But an unexpectedly sharp rebound in demand followed the initial worries of a lasting plunge. The Chinese and American economies began reopening and government stimulus payments began flowing, juicing consumer demand for goods such as exercise bikes and home-office desks. By the third quarter of 2021, world trade in goods hit a record \$5.6 trillion and was on pace for an equally solid number in the final three months of the year.”

⁴⁴ See for instance https://www.wto.org/english/news_e/pres21_e/pr876_e.htm.

forecasts of likely effects differed markedly.⁴⁵ In fact, the rate at which demand recovered appears to have been in excess of even the most optimistic scenarios.⁴⁶

Moreover, the scope for supply-side responses to surging demand would have in any event been extremely limited given the supply-side issues that were experienced at the same time (as discussed in sub-section 4.2.1 above), as well as broader capacity constraints such as port space and a restrictions affecting labour.⁴⁷ Indeed, evidence that the available capacity was deployed is provided by the very low number of idle vessels, as discussed further below.

4.2.3 Shocks experienced subsequently due to world events

In addition to the pandemic, and the broader shortage of labour in the industry, other recent developments have created additional shocks which have negatively impacted liner shipping.

First, Russia's invasion of Ukraine in early 2022 created additional disruption to the shipping industry. In particular, sailing was limited in the Black Sea, which has made detours necessary, leading to longer routes and, consequently, reduced frequency.⁴⁸ In addition, Ukrainian and Russian ports, affected by either the war or the economic sanctions, have been removed from trading routes.⁴⁹ This also resulted in some containers being trapped in Ukrainian and Russian ports.⁵⁰ Further, given that Russian and Ukrainian seafarers are estimated to account for almost 15% of the shipping industry workforce, it can be expected to further exacerbate staff shortages.⁵¹

Second, as a consequence of the conflict and the economic sanctions imposed on Russia, the price of energy has increased substantially. This is evidenced from the Figure 8 below, which shows the prices of VLSFO (Very Low Sulphur Fuel Oil) and HSFO (High Sulphur Fuel Oil (as well as the price spread across these products), over the period October 2019 to May 2022. The figure shows that the prices for both types of fuel doubled from around 500 and 400 dollars per ton in early 2021 to over twice that amount in May 2022.

⁴⁵ <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

⁴⁶ See for instance https://www.wto.org/english/news_e/pres21_e/pr876_e.htm, Box 1.

⁴⁷ <https://www.theguardian.com/us-news/2021/mar/11/la-ports-stalled-ships-stressed-crews-covid-buying-boom>

⁴⁸ https://unctad.org/system/files/official-document/osginf2022d2_en.pdf, <https://www.developmentaid.org/news-stream/post/142729/how-does-the-russian-invasion-of-ukraine-change-shipping-and-freight-rates>

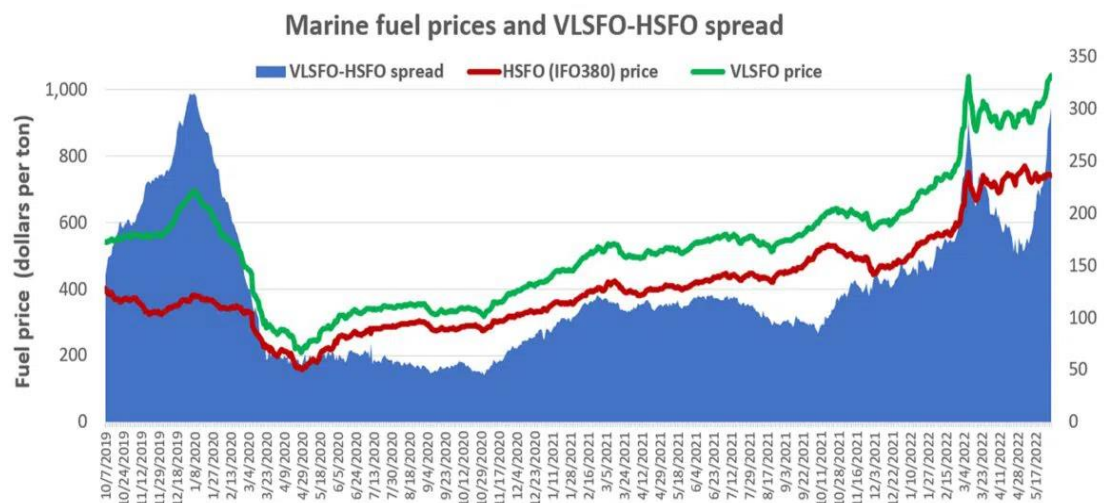
⁴⁹ <https://www.imo.org/en/MediaCentre/HotTopics/Pages/MaritimeSecurityandSafetyintheBlackSeaandSeaofAzov.aspx>,

<https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/shipping-safety-22-ukraine-war.html>

⁵⁰ <https://www.logisticsinsider.in/paralyzed-container-shipping-many-ramifications-of-ukraine-russia-war/>

⁵¹ <https://www.ics-shipping.org/press-release/supply-chain-issues-will-be-compounded-by-lack-of-ukrainian-and-russian-seafarers-says-global-body-representing-international-shipping/>, <https://www.ft.com/content/2793b46d-35ab-416b-802f-30d1cd40a08d>

Figure 8: Marine fuel prices, October 2019 to May 2022



Source: American Shipper based on data from Ship & Bunker. Obtained at <https://www.freightwaves.com/news/ship-fuel-enters-uncharted-territory-as-prices-hit-new-wartime-peak>.

Note: Price is average at top 20 bunker ports.

This has evidently amounted to a significant cost shock for carriers. However, rising energy prices have also contributed to an inflationary environment more broadly, placing upwards pressure on wages and other running costs. This comes in addition to industry-specific wage inflation due to the persistent labour shortages described above.⁵²

Third, inflationary/wage pressures have led to strike action within ports.⁵³ This has inevitably resulted in disruptions to the supply chain and an effective reduction in the capacity available. For example, in August 2020, the eight-day dockers' strike at the Port of Felixstowe, which handles almost half of the containers for the UK, delayed the handling of almost 5 billion euros worth of product.⁵⁴ Strikes (which started in September 2022) are also expected to continue at the Port of Liverpool.⁵⁵

4.3 The role of consortia during the COVID-19 pandemic

In this sub-section, we discuss the role of consortia during the COVID-19 pandemic. First, we explain the linkages between the market shocks discussed above and the observed trends in freight rates and service quality (sub-section 4.3.1). We then discuss the impact of consortia in this context, and explain that consortia are highly unlikely to have exacerbated the impact of these shocks on market outcomes (sub-section 4.3.2).

⁵² <https://maritime-executive.com/article/seafarers-to-receive-4-5-pay-increase-under-itf-employer-agreement>, <https://www.hellenicshippingnews.com/owners-urged-to-fast-track-job-offers-as-wages-rise/>, https://finance.yahoo.com/news/companies-showing-shipping-workers-perks-193317657.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnVnbS8&guce_referrer_sig=AQAAAHxWkGCX7OtPulmurmB8TbbCnW4i94cQWxpAfaAG9pFW3RgF822j5m6eRxKPuJT_jdpHNySBSsHdDM-yBHx5WCejuEAONojEPOA9EFzfPniFAT67ff_foimU54UI4CM1arUJt9gdZq0B00nxcvnpMEIKbM3EE3qL2YWUeofdY

⁵³ <https://www.porttechnology.org/news/northern-european-ports-on-alert-as-german-dockworker-strike-to-go-ahead/>, <https://www.hellenicshippingnews.com/dockworker-strikes-at-northern-european-ports-add-to-supply-chain-disruption/>, <https://www.politico.eu/article/port-strikes-put-uk-supply-chains-under-fresh-pressure/>.

⁵⁴ <https://www.bbc.com/news/uk-england-suffolk-62685885>, <https://www.cnbc.com/2022/08/23/4point7-billion-in-trade-delayed-in-eight-day-strike-at-felixstowe.html>, <https://www.seatrade-maritime.com/containers/european-ports-feel-strain-after-felixstowe-strike>

⁵⁵ <https://www.reuters.com/world/uk/hundreds-liverpool-port-workers-strike-over-pay-sept-19-2022-09-02/>, <https://www.reuters.com/world/uk/liverpool-port-workers-plan-further-strike-over-pay-union-2022-09-29/>

4.3.1 The impact of interactions between demand and supply on outcomes

In any market, an increase in demand or a decrease in supply will lead to higher prices. That is, if demand increases and supply does not or is not able to respond, this will cause prices to rise. Equally, if supply contracts and there is not a commensurate reduction in demand, this will also cause prices to increase.

In this regard, the evidence discussed in sub-section 4.2.1 above indicates that the liner shipping industry was subject to a number of significant negative supply-shocks during the COVID-19 pandemic, as well as subsequently. In particular, these shocks effectively resulted in a reduction in capacity and/or a direct increase in carriers' costs, and can thus reasonably be expected to have driven prices upwards (as was observed).

By the same token, aside from the initial reduction in demand at the start of the COVID-19 pandemic, the demand-side shocks experienced can also be expected to have placed upwards pressure on prices. This is particularly so given the supply-side constraints described above, which can naturally be expected to have prevented a commensurate supply-side response (*i.e.*, an expansion in capacity) even if one were to assume that timely supply-side responses would have been possible (though, as we explain below, this is unlikely).

The supply-side constraints experienced would also appear likely to explain increased delays and reduced frequency and reliability. Indeed, if ports are closed or experience a shortage of labour and/or high levels of congestion, this can inevitably be expected to result in both backlogs in terms of cargo and also an inability to turn vessels around as quickly.

Overall, the elevated price levels and declines in service quality observed during the COVID-19 pandemic are thus entirely consistent with what one would expect to arise from the various supply-side and demand-side shocks that were experienced. Moreover, the fact that prices and service levels have yet to fall (revert) to pre-pandemic levels is also entirely consistent with the fact that demand continues to be elevated and there continue to be significant supply-side constraints (relative to pre-pandemic levels).

4.3.2 The impact of consortia

In order to assess the impact of consortia on the market outcomes observed during the COVID-19 pandemic and subsequently, it is important to first consider how the presence of consortia could plausibly have affected the responses of carriers to the various supply-side and demand-side shocks experienced.

If one follows this analytical framework, it is readily apparent that the role played by consortia over this period was at worst neutral, and in fact may have served to dampen the effects of some of the market shocks that occurred. That is, there is no indication that consortia/alliances' members behaved in a way that would have led to worse outcomes for customers than would have arisen in the absence of consortia that are currently exempted by the Consortia BER, and in fact the existence of such consortia may have given rise to better outcomes than would have arisen otherwise.

Starting with the potential for consortia to exacerbate the adverse effects of supply-side shocks, there are two ways in which this could theoretically have taken place, namely:

- incentivising carriers to actively restrict supply beyond those restrictions arising from the various supply-side shocks discussed above; or
- deterring carriers from expanding capacity in response to the signal of rising demand by as much as they would have done absent consortia.

In our view, both theoretical scenarios appear highly unlikely given the available evidence.

First, it is readily apparent that supply-side shocks that the liner shipping industry experienced were not the making of consortia. Indeed, factors such as port closures and delays, labour shortages in ports and in the road haulage industry, insufficient supply of containers and other frictions brought about by COVID-19 restrictions were clearly not in the control of carriers themselves.

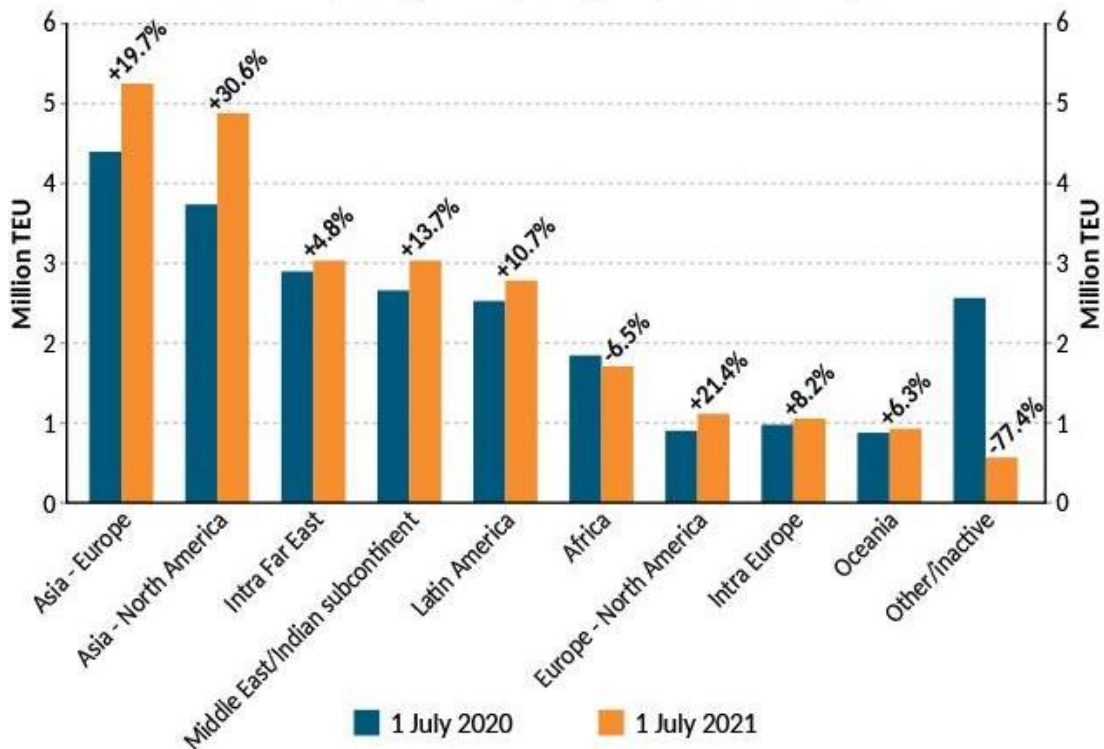
Moreover, while such bottlenecks necessarily caused significant restrictions to capacity, there is no indication in the information that we have seen that shipping lines restricted capacity further. On the contrary, it appears that carriers did seek to increase capacity as bottlenecks reduced, as shown in Figure 9 below, which presents the change in container ship capacity on major trade routes as between 1st July 2020 and 1st July 2021.

For instance, in July 2021, total capacity on the East Asia-North America route was 31% higher than the same time in 2020, while capacity on the East Asia-Europe route was 20% higher. Evidence that the available capacity was deployed is also provided by the very significant reduction in the number of idle vessels between 2020 and 2021. There is also evidence that a number of carriers (that are consortium members) started to make significant investments in new (and large) vessels during in the second half of 2020 (with such vessels expected to be delivered in 2023 and 2024).⁵⁶

This is, on its face at least, inconsistent with shipping lines actively seeking to restrict capacity.

⁵⁶ See for example, <https://container-news.com/chinese-shipyards-win-giant-container-ship-order/>, <https://maritimes.gr/en/maritimes-news/seagoing/42390-eight-more-china-s-largest-ship-finance-leasing-company-orders-bulk-carriers> and <https://container-news.com/hapag-loyd-invests-us1-billion-in-new-giant-vessels/>

Figure 9: Container ship capacity deployed on major trade routes, 1 July 2021 vs. 1 July 2020



Source: BIMCO, Alphaliner. Obtained at <https://www.bimco.org/insights-and-information/market-analysis-and-reports/20210908-container-shiping---onshore-disruption-leading-to-record-delays-and-profits>

Second, it appears highly unlikely, under any counterfactual, that carriers would have expanded capacity by a sufficiently large extent to eliminate the upwards pressure on prices arising due to the increased demand experienced during the COVID-19 pandemic. This is for two reasons, namely:

- The expansion in demand that started in the second half of 2020 was significant (demand rose to levels significantly above pre-pandemic levels) but it was unexpected and unpredictable.⁵⁷ There remains considerable uncertainty as to how demand will evolve in the near future.⁵⁸
- The nature of shipping liner operations means that it is not possible for carriers to quickly add capacity. For instance, building vessels is a lengthy process and it takes approximately two to three years to build an average size vessel, if not longer when shipyards are at capacity.⁵⁹ Moreover, securing financing from financial institutions to

⁵⁷ https://www.ecb.europa.eu/pub/economic-bulletin/focus/2020/html/ecb.ebbox202003_01~767f86ae95.en.html : "The high uncertainty surrounding the economic impact of the COVID-19 pandemic warrants an analysis based on alternative scenarios."

⁵⁸ <https://www.imf.org/-/media/Files/Publications/WEO/2022/Update/July/English/text-en.ashx>, <https://www.worldbank.org/en/news/press-release/2022/06/07/stagflation-risk-rises-amid-sharp-slowdown-in-growth-energy-markets>, <https://blogs.imf.org/2022/07/26/global-economic-growth-slows-amid-gloomy-and-more-uncertain-outlook/>.

⁵⁹ <https://www.nytimes.com/interactive/2020/06/17/business/economy/how-container-ships-are-built.html>

cover the cost of new vessels, which must be ordered in a series of at least four and can cost up to 250 million dollars each, can also take up significant time.⁶⁰

These factors combined indicate that it is highly unlikely that carriers would have been in a position to bring significant additional capacity to market in the short term in response to the increased demand that was experienced, under any scenario. Indeed, any orders placed for new vessels in late 2020 would not yet have been completed, and the associated capacity would not have yet been brought to market. By the same token, as the figure above indicates, more than 75% of idle fleet capacity as of July 2020 was eliminated by July 2021.

Moreover, there is no reason to expect that carriers would have already been planning to bring significant additional capacity to the market. Given that the COVID-19 pandemic was itself unexpected it is implausible that shipping lines would have anticipated the increase in demand that occurred, and have started ordering additional vessels ahead of time in order to incorporate it.

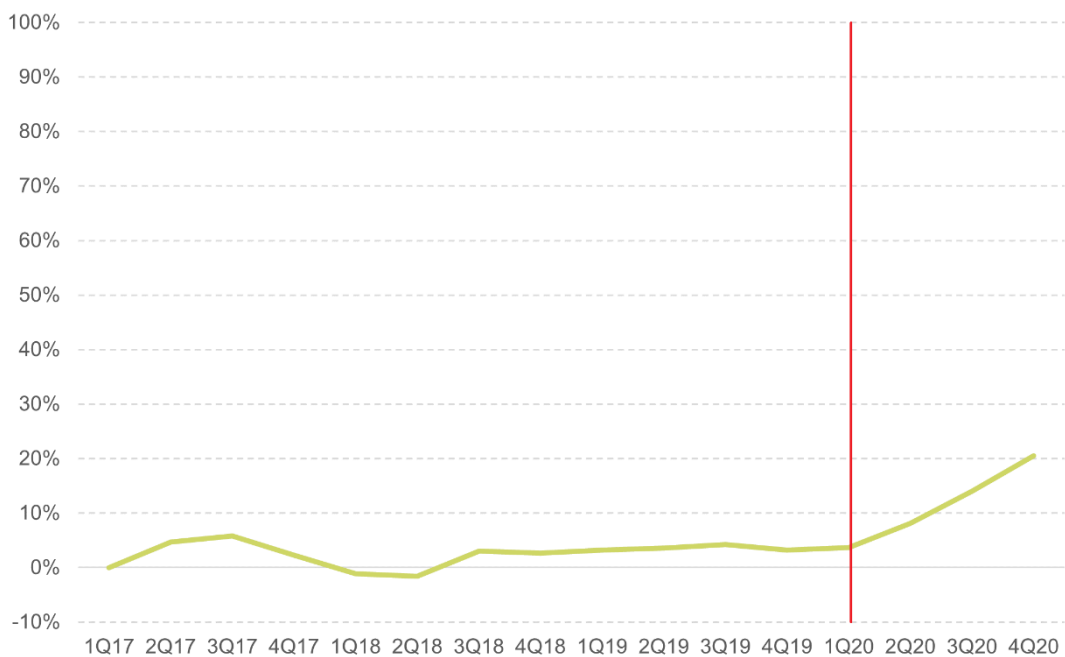
This is particularly so given that, prior to the COVID-19 pandemic, the liner shipping industry had experienced overcapacity and low margins for some time. For instance, the EC noted in the *Hapag-Lloyd/UASC* decision that “*HL submits that there is significant overcapacity in the sector globally. Several competitors responding to the Commission's market investigation also indicate that there is spare capacity in the sector.*”⁶¹

Similarly, in respect of margins, Figure 10 presents Drewry estimates of carrier EBIT (Earnings Before Interest and Taxes) margins between 2017 and 2020. The figure illustrates that prior to the COVID-19 pandemic (shown by the red vertical line) margins were always below 10%, and typically below 5% (and in some instances negative). In such a context, it is difficult to see what incentives shipping carriers would have had to invest in increasing capacity in the years leading up to the COVID-19 pandemic to meet the unprecedented levels of demand experienced during the pandemic.

⁶⁰ <https://www.offshore-energy.biz/seaspan-closes-838m-financing-for-8-new-containerships/> , <https://www.tradewindnews.com/containerships/-1bn-japanese-newbuilding-deal-pushes-ultra-large-container-ship-prices-to-record-high/2-1-1233126>

⁶¹ EC Decision M.8120 – HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 119 “*HL submits that there is significant overcapacity in the sector globally. Several competitors responding to the Commission's market investigation also indicate that there is spare capacity in the sector.*”

Figure 10: Estimated carrier industry EBIT margins



Source: Drewry Maritime Research, Q2 2022

It is also worth remembering that the incentives of carriers to invest in expanding capacity will logically be dampened if supply-side bottlenecks would in any event prevent them from effectively deploying that capacity. As explained by the CEO of Sea-Intelligence in 2021, *“Building more vessels will not materially solve the problem – partly because vessels ordered today mainly get delivered in late 2023 and in 2024, and partly because injecting more vessels will compound the bottleneck problems in ports, effectively increasing the delay time.”*⁶²

This appears to reflect a general sentiment amongst industry analysts, who consider that it is not vessels and their carrying capacity that have led to the current imbalance of demand and supply, but rather the handling ability of ports.⁶³

In addition to being unlikely to have exacerbated the supply-side shocks experienced by the industry, one would expect consortia to dampen, to at least some extent, the effects of some of the supply-side shocks experienced in the market. This is because, as explained in sub-section 3.2, consortia benefit from some efficiencies that are likely to have improved their

⁶² <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>

⁶³ <https://www.marinelink.com/news/container-shipping-record-delays-record-490495>: “Even with these extra ships, carriers are struggling to meet their scheduled departures, which leads to cancellations of sailings or port calls because the supply is not there rather than due to a lack in demand. However, adding capacity on already congested trade lanes does little to solve the fundamental problems. The limiting factor is not capacity on board ships, but rather how many containers the ports and hinterland connections can manage, as well as storage space in temporary container yards and final destinations. Adding more ships means more revenue for carriers, but also longer waiting times outside ports and increasing capacity issues on the smaller trades where the added ships are taken from. This is clear in Africa, where capacity has fallen by 6.5% year-on-year. The large year-on-year increases in capacity can also be contributed to the sharp reduction in the idle fleet compared to July 2020.” And <https://www.seatrade-maritime.com/containers/solution-container-sectors-delays-lies-landside-not-more-ships>: “Container lines are ordering significant new capacity but this will not arrive till 2023 and 2024, however, even if the vessels did arrive earlier the analyst said it would not solve the problem as the additional tonnage would just get caught up in supply chain bottlenecks on the landside.” See also <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>.

ability to cope with the disruptions faced by the industry. This flows primarily from one of the key motivations for consortia, namely the ability to use larger vessels than carriers could use individually. As explained above, larger vessels benefit from economies of scale and therefore have lower costs per unit of volume. This can be expected to have had a dampening effect on the impact of cost shocks on pricing, as the cost increase per unit is lower for large consortia vessels than for smaller individually operated vessels.

Last, as explained in sub-section 3.2, consortia enable carriers to operate with increased frequency than carriers could afford individually. This means, as a matter of logic, that carriers have greater flexibility to plan around / reallocate cargo in response to vessel-specific issues that may have arisen during the pandemic, such as COVID-19 breaking out amongst the crew of a particular vessel. This can in turn be expected to amount to a relative benefit to cargo owners who would face lesser delays than would have been the case otherwise.

Annex

A. Market shares – Capacity

The tables below provide an overview of the cooperation agreements in place on the major trade lanes as of 5 September 2022, based on the information available from Alphaliner.

The Alphaliner database provides detailed information at the level of individual services provided by carriers. The database indicates which services are operated jointly, i.e., through vessel sharing agreements (“VSAs”) and in which services slot agreements are in place. The following should be noted regarding these tables:

- Alphaliner updates the service offering of carriers on a continuous basis to account *inter alia* for seasonality in demand and the resulting adjustments in the service offering of the carriers. In addition, lighter less-structural, forms of cooperation, such as slot charter agreements, can be introduced or terminated at short term. The overview presented is hence a snap-shot picture that evolves over time.
- On Alphaliner’s services database, some services appear under multiple trade routes. For example, services operating on *Europe / Far East services calling en route in Middle East and South Asia* are included in the Middle East and South Asia trade although the service can also cover Far East. Such a service would therefore be included in both the Europe – Middle East and South Asia and the Europe – Far East table in the below. The geographic scope of the table is hence relatively broad and may include services that may not compete with each other directly. The tables do not therefore represent relevant markets for the purposes of a competition law assessment.
- Likewise, the shares presented in the tables should not be considered shares on relevant markets; these are simply the capacity shares at service level calculated with reference to the total capacity represented in the table.
- Weekly capacity data is not available for all services and hence not for all cooperation agreements.
- For completeness, the tables include a row indicating “single carrier services”, this combines the services and associated weekly capacity for those services offered by a single carrier.
- Finally, some firms which have merged are still operating in their own name and not all changes resulting from mergers and acquisitions are (yet) reflected in Alphaliner. For example, whilst OOCL has merged with COSCO, OOCL still operates as a separate brand in the market. Similarly, Hamburg Süd is mentioned as an independent line in the overview tables whilst it has been acquired by Maersk. We have manually adjusted these two instances; OOCL has been replaced as COSCO Shipping and Hamburg Süd has been replaced as Maersk to count as one carrier. No further adjustments have been made to the data, consequently smaller carriers involved in recent mergers and acquisitions may appear as separate carriers.

Notwithstanding these caveats, the summary overview below presents a good picture of cooperation within the industry that the Consortia BER seeks to cover and facilitate.

Table 10: Europe - Australasia and Oceania

Carriers	Average weekly TEU	Share of weekly TEU
MSC / CMA CGM	9,258	79.7%
CMA CGM / Marfret; Slotter: ANL	2,361	20.3%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Europe / ANZ + Oceania

Table 11: Europe - Far East

Carriers	Average weekly TEU	Share of weekly TEU
2M agreement	161,888	34.1%
OCEAN Alliance	151,900	32.0%
THE Alliance	107,817	22.7%
Single carrier services	23,976	5.1%
MSC / CMA CGM	9,258	2.0%
THE Alliance; Slotter: COSCO Shipping / Evergreen Line / CMA CGM / OOCL	8,503	1.8%
OCEAN Alliance; Slotter: Turkon Line	7,896	1.7%
China United Lines / TS Lines	2,165	0.5%
Kalypso; Slotter: Kaiso Line	681	0.1%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Med / Far East - dedicated services
Med / Far East services - as part of a wider port rotation
North Europe / Far East

Table 12: Europe - Latin America and Caribbeans

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	30,335	29.8%
CMA CGM / Hapag-Lloyd / COSCO; Slotlers: OOCL / Maersk / Hamburg Süd	10,853	10.7%
Maersk / Hamburg Süd; Slotlers: Hamburg Süd / CMA CGM / COSCO Shipping	10,589	10.4%
Maersk / Hamburg Süd / CMA CGM; Slotlers: Hamburg Süd	9,194	9.0%
MSC / Hapag-Lloyd; Slotlers: Zim	8,795	8.6%
Hapag-Lloyd / MSC	8,314	8.2%
CMA CGM / Marfret; Slotlers: COSCO Shipping	6,260	6.1%
Maersk; Slotlers: Hamburg Süd / MSC / Sealand Americas	4,500	4.4%
CMA CGM; Slotlers: Marfret / Maersk	3,683	3.6%
Maersk / Hamburg Süd; Slotlers: Hamburg Süd / Sealand Americas	3,075	3.0%
Maersk / Hamburg Süd; Slotlers: MSC / Hamburg Süd / Sealand Americas	2,640	2.6%
CMA CGM / Marfret	2,198	2.2%
Great White Fleet; Slotlers: Chiquita	1,361	1.3%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Europe / Caribbeans & North Coast of South America (incl. Guyanas)
Europe / East Coast of South America

Table 13: Europe - Middle East and South Asia

Carriers	Average weekly TEU	Share of weekly TEU
OCEAN Alliance	98,887	27.9%
2M agreement	74,845	21.1%
THE Alliance	47,295	13.3%
Single carrier services	45,690	12.9%
CMA CGM / COSCO / Hapag-Lloyd; Slotlers: OOCL	16,667	4.7%
ONE (Ocean Network Express) / Hapag-Lloyd / CMA CGM / OOCL; Slotlers: COSCO Shipping	9,574	2.7%
MSC / CMA CGM	9,258	2.6%
Hapag-Lloyd / ONE; Slotlers: Arkas Line / EMES / CMA CGM / COSCO Shipping / OOCL	8,786	2.5%
CMA CGM / COSCO; Slotlers: Hapag-Lloyd / ONE (Ocean Network Express)	8,517	2.4%
OCEAN Alliance; Slotlers: Turkon Line	7,896	2.2%
MSC; Slotlers: Shipping Corp. of India (SCI)	7,757	2.2%
MSC / Shg Corp. of India	7,665	2.2%
Maersk; Slotlers: APL	6,554	1.8%
Hapag-Lloyd / COSCO / OOCL / ONE / Yang Ming	5,554	1.6%

Source: Alphaliner Services Database, 5 Sep 2022.
 Coverage: Europe / Far East services calling en route in Middle East and South Asia
 Europe / Middle East or South Asia - dedicated services

Table 14: Europe - North Atlantic

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	132,585	47.4%
2M agreement	29,169	10.4%
ONE (Ocean Network Express) / Hapag-Lloyd / CMA CGM / OOCL; Slotlers: COSCO Shipping	9,574	3.4%
OCEAN Alliance / THE Alliance / Zim; Slotlers: Zim	8,544	3.1%
THE Alliance; Slotlers: ACL	8,003	2.9%
2M agreement; Slotlers: Hamburg Süd	7,715	2.8%
THE Alliance; Slotlers: APL	7,323	2.6%
Maersk; Slotlers: APL	6,554	2.3%
OCEAN Alliance	6,537	2.3%

Carriers	Average weekly TEU	Share of weekly TEU
CMA CGM / Marfret; Slotter: COSCO Shipping	6,260	2.2%
Hapag-Lloyd; Slotter: Zim	4,881	1.7%
Hapag-Lloyd / Arkas; Slotter: ONE (Ocean Network Express)	4,569	1.6%
Maersk; Slotter: Hamburg Süd / MSC / Sealand Americas	4,500	1.6%
Hapag-Lloyd / OOCL; Slotter: COSCO Shipping	4,312	1.5%
Zim; Slotter: Hapag-Lloyd	4,251	1.5%
THE Alliance; Slotter: CMA CGM	4,027	1.4%
Hapag-Lloyd / CMA CGM	3,512	1.3%
Hapag-Lloyd / CMA CGM / Arkas; Slotter: ONE (Ocean Network Express)	3,335	1.2%
MSC / Hapag-Lloyd / OOCL; Slotter: COSCO Shipping	3,227	1.2%
Hapag-Lloyd; Slotter: Maersk / CMA CGM	3,181	1.1%
Maersk / CMA CGM	3,142	1.1%
CMA CGM / Marguisa; Slotter: Naviera DAL (Direct Africa Line) / Container H Lines (CHL)	2,812	1.0%
Hapag-Lloyd / ZIM	2,436	0.9%
CMA CGM / Marfret; Slotter: ANL	2,361	0.8%
Turkon Line / Hapag-Lloyd; Slotter: X-Press Feeders Group	2,034	0.7%
COSCO / OOCL / ONE	1,808	0.6%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	0.6%
GS Lines; Slotter: Maersk	1,009	0.4%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Mediterranean to US East Coast / US Gulf / USWC
Mediterranean to USNH / Canada (St Lawrence)
North Europe to US East Coast / US Gulf / US West Coast
North Europe to USNH / Canada (St Lawrence)
Services Europe / West Africa

Table 15: Europe - South Africa and East Africa

Carriers	Average weekly TEU	Share of weekly TEU
MSC; Slotter: Stinnes Linien	10,126	34.8%
MSC / CMA CGM	9,258	31.8%
Maersk / ONE / Hapag-Lloyd; Slotter: Deutsche-Afrika Linien (DAL)	6,912	23.8%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	6.2%
Single carrier services	996	3.4%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Services Europe / South & East Africa

Table 16: Europe - West Africa

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	55,869	65.4%
Hapag-Lloyd / Arkas; Slotter: ONE (Ocean Network Express)	4,569	5.3%
Hapag-Lloyd / CMA CGM	3,512	4.1%
Hapag-Lloyd / CMA CGM / Arkas; Slotter: ONE (Ocean Network Express)	3,335	3.9%
CMA CGM / Marguisa; Slotter: Naviera DAL (Direct Africa Line) / Container H Lines (CHL)	2,812	3.3%
D'Amico Dry Maroc; Slotter: Maersk	2,061	2.4%
Arkas / EMES / Sealand Europe & Med; Slotter: Marguisa / Unimed Feeder Services (UFS) / Sealand Europe & Med	1,940	2.3%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	2.1%
WEC Lines; Slotter: MSC	1,710	2.0%
CMA CGM / CoMaNav; Slotter: CoMaNav	1,118	1.3%
Boluda Lines; Slotter: CMA CGM	1,060	1.2%
GS Lines; Slotter: Maersk	1,009	1.2%
Arkas Spain / Nisa Maritima	946	1.1%
Containerships; Slotter: Deutsche-Afrika Linien (DAL)	925	1.1%
X-Press Feeders; Slotter: Maersk / Sealand Europe & Med / Marguisa	877	1.0%
Boluda Lines; Slotter: CMA CGM / Containerships / Arkas Line / EMES	803	0.9%
X-Press Feeders; Slotter: Zim / Hapag-Lloyd / CMA CGM / Marguisa / Arkas Line / EMES / Unimed Feeder Services (UFS)	751	0.9%
Boluda Lines; Slotter: Arkas Line / EMES	337	0.4%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Services Europe / Canary Islands & Morocco
Services Europe / West Africa

Table 17: Intra Europe

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	132,406	42.5%
Sealand Europe & Med; Slotters: Maersk	22,807	7.3%
Sealand E&M (Maersk) / Diamond Line (COSCO) / Hapag-Lloyd; Slotters: OOCL / Turkon Line / Borchard Lines / Maersk	8,043	2.6%
WEC Lines; Slotters: MSC	5,087	1.6%
MSC; Slotters: Zim	4,763	1.5%
MSC; Slotters: Sealand Europe & Med	4,483	1.4%
Arkas / EMES	4,377	1.4%
Zim; Slotters: Hapag-Lloyd	4,251	1.4%
CMA CGM; Slotters: Unimed Feeder Services (UFS)	4,209	1.4%
COSCO / OOCL / Yang Ming; Slotters: Borchard Lines / Diamond Line	4,096	1.3%
CMA CGM / ONE	3,645	1.2%
Containerships; Slotters: CMA CGM	3,207	1.0%
CMA CGM; Slotters: ONE (Ocean Network Express) / Unimed Feeder Services (UFS) / Metz Container Line	3,104	1.0%
Sealand Europe & Med; Slotters: Hamburg Süd / Maersk	3,055	1.0%
CMA CGM / COSCO; Slotters: X-Press Feeders Group / Maersk / Sealand Europe & Med / Metz Container Line / Diamond Line / Unimed Feeder Services (UFS) / OOCL	2,812	0.9%
Arkas / Hapag-Lloyd; Slotters: CMA CGM	2,737	0.9%
CMA CGM / COSCO / Evergreen (Italia Marittima); Slotters: X-Press Feeders Group / Diamond Line / Arkas Line / EMES / Hapag-Lloyd / Italia Marittima SpA / Tarros / Unimed Feeder Services (UFS)	2,567	0.8%
Arkas / EMES / Sealand Europe & Med; Slotters: Marguisa / CMA CGM	2,558	0.8%
Arkas / EMES / Sealand Europe & Med / CMA CGM; Slotters: Marguisa / Hapag-Lloyd / Zim / Turkon Line / Maersk	2,472	0.8%
T.O. Delta SpA; Slotters: Sealand Europe & Med / Maersk	2,178	0.7%
CMA CGM; Slotters: X-Press Feeders Group	2,056	0.7%
Arkas / EMES; Slotters: Sealand Europe & Med / Hapag-Lloyd / CMA CGM / Zim / Maersk	2,023	0.6%
Turkon / Admiral Container Lines; Slotters: Carmel Shipping	1,878	0.6%
MSC; Slotters: WEC Lines	1,876	0.6%
Arkas / EMES / Turkon Line; Slotters: Zim / Tarros / CMA CGM / Admiral Container Lines	1,860	0.6%

Carriers	Average weekly TEU	Share of weekly TEU
COSCO; Slotter: OOCL / Diamond Line / Yang Ming Marine Transport Corp.	1,791	0.6%
Hapag-Lloyd; Slotter: ONE (Ocean Network Express) / Unimed Feeder Services (UFS)	1,732	0.6%
Unimed (UFS) (Unifeeder); Slotter: X-Press Feeders Group / Sealand Europe & Med / Metz Container Line / Maersk	1,730	0.6%
Unifeeder; Slotter: COSCO Shipping / OOCL	1,718	0.6%
Samskip; Slotter: UniFeeder / BG Freight	1,612	0.5%
CMA CGM; Slotter: Evergreen Line / Italia Marittima SpA / X-Press Feeders Group	1,611	0.5%
Arkas / EMES; Slotter: Sealand Europe & Med / CMA CGM / Hapag-Lloyd / Zim / Turkon Line	1,604	0.5%
X-Press Feeders; Slotter: Evergreen Line / OOCL / CMA CGM	1,600	0.5%
X-Press Feeders; Slotter: Sealand Europe & Med / Maersk	1,597	0.5%
Unifeeder; Slotter: OOCL / Sealand Europe & Med / Hapag-Lloyd / CMA CGM	1,578	0.5%
Evergreen / Arkas; Slotter: Sealand Europe & Med / Maersk / Zim / Hapag-Lloyd / Unimed Feeder Services (UFS)	1,531	0.5%
Tarros / Arkas / EMES; Slotter: Maersk / Sealand Europe & Med / Turkon Line	1,529	0.5%
CNAN / Arkas; Slotter: Tarros / Linea Messina / Arkas Line / EMES	1,528	0.5%
COSCO; Slotter: OOCL / X-Press Feeders Group / Yang Ming Marine Transport Corp.	1,496	0.5%
Evergreen (Italia Marittima); Slotter: Unimed Feeder Services (UFS)	1,471	0.5%
Unifeeder; Slotter: ONE (Ocean Network Express) / Sealand Europe & Med	1,467	0.5%
Arkas / EMES; Slotter: Evergreen Line / Italia Marittima SpA / Zim	1,445	0.5%
Hapag-Lloyd; Slotter: ONE (Ocean Network Express)	1,440	0.5%
COSCO; Slotter: UniFeeder / CMA CGM	1,436	0.5%
Unifeeder; Slotter: Samskip / CMA CGM / Sealand Europe & Med / Hapag-Lloyd / Diamond Line / Evergreen Line / COSCO Shipping / OOCL	1,421	0.5%
OOCL; Slotter: Evergreen Line / Yang Ming Marine Transport Corp. / X-Press Feeders Group / Diamond Line / COSCO Shipping	1,421	0.5%
Sealand Europe & Med; Slotter: Maersk / Metz Container Line / Hamburg Süd	1,368	0.4%
COSCO; Slotter: Metz Container Line / CMA CGM / Unimed Feeder Services (UFS)	1,349	0.4%
Yang Ming / COSCO; Slotter: Diamond Line / COSCO Shipping	1,296	0.4%

Carriers	Average weekly TEU	Share of weekly TEU
COSCO; Slotlers: OOCL / Yang Ming Marine Transport Corp.	1,296	0.4%
Arkas / EMES; Slotlers: Evergreen Line / Italia Marittima SpA / CMA CGM / Zim	1,164	0.4%
Unimed (UFS) (Unifeeder); Slotlers: Sealand Europe & Med	1,145	0.4%
Unimed (UFS) (Unifeeder); Slotlers: Evergreen Line / Italia Marittima SpA	1,145	0.4%
Metz Container Line; Slotlers: COSCO Shipping / X-Press Feeders Group / Unimed Feeder Services (UFS) / CMA CGM	1,128	0.4%
Tarros / Arkas / EMES / CMA CGM; Slotlers: X-Press Feeders Group / Brintermed / Linea Messina	1,111	0.4%
CNAN / Arkas; Slotlers: Arkas Line / EMES	1,081	0.3%
Unifeeder; Slotlers: Hapag-Lloyd / Sealand Europe & Med / CMA CGM / OOCL / Evergreen Line	1,052	0.3%
X-Press Feeders; Slotlers: Mann Lines / ONE (Ocean Network Express) / Samskip	1,036	0.3%
Unifeeder; Slotlers: CMA CGM / COSCO Shipping / OOCL	1,036	0.3%
BG Freight French Service; Slotlers: Maersk / Sealand Europe & Med / CMA CGM	1,036	0.3%
BG Freight; Slotlers: Eucon / Maersk / Sealand Europe & Med	1,036	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / COSCO Shipping / OOCL / CMA CGM	1,030	0.3%
Unifeeder; Slotlers: OOCL / COSCO Shipping	1,025	0.3%
Unifeeder; Slotlers: Containerships / Hapag-Lloyd	1,025	0.3%
Unifeeder; Slotlers: Hapag-Lloyd / OOCL / CMA CGM	1,024	0.3%
Zim / COSCO; Slotlers: Diamond Line	998	0.3%
X-Press Feeders; Slotlers: Containerships / Yang Ming Marine Transport Corp. / ONE (Ocean Network Express) / Samskip	992	0.3%
A&A Shipping & Logistics; Slotlers: HMM Co Ltd / Hapag-Lloyd	977	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / Sealand Europe & Med / CMA CGM	949	0.3%
COSCO; Slotlers: X-Press Feeders Group / Evergreen Line / OOCL / CMA CGM	925	0.3%
Containerships; Slotlers: UniFeeder	907	0.3%
BG Freight; Slotlers: CMA CGM / Containerships / Maersk / Sealand Europe & Med	903	0.3%
Unifeeder; Slotlers: Containerships / CMA CGM	889	0.3%
Borchard / Gracechurch	868	0.3%

Carriers	Average weekly TEU	Share of weekly TEU
Containerships; Slotlers: Samskip / CMA CGM	862	0.3%
X-Press Feeders; Slotlers: Maersk / Sealand Europe & Med	862	0.3%
Samskip; Slotlers: SCS Multiport	835	0.3%
BG Freight; Slotlers: UniFeeder / Sealand Europe & Med / Maersk / CMA CGM	822	0.3%
X-Press Feeders; Slotlers: COSCO Shipping / OOCL / ONE (Ocean Network Express)	822	0.3%
Unimed (UFS) (Unifeeder); Slotlers: Metz Container Line / X-Press Feeders Group / CMA CGM / Hapag-Lloyd	819	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / CMA CGM	809	0.3%
JSV Logistic / CMA CGM; Slotlers: Marguisa	808	0.3%
Samskip; Slotlers: UniFeeder	803	0.3%
X-Press Feeders; Slotlers: OOCL / Diamond Line / COSCO Shipping / Evergreen Line / CMA CGM	800	0.3%
COSCO (Diamond Line); Slotlers: OOCL	716	0.2%
X-Press Feeders; Slotlers: Unimed Feeder Services (UFS) / Maersk / Sealand Europe & Med	700	0.2%
Blue Ice Lines Co Ltd; Slotlers: Zim	698	0.2%
Unifeeder; Slotlers: Sealand Europe & Med / CMA CGM	660	0.2%
X-Press Feeders; Slotlers: OOCL / COSCO Shipping	607	0.2%
BG Freight; Slotlers: CMA CGM / Sealand Europe & Med / Eucon	602	0.2%
Unifeeder; Slotlers: ACL	508	0.2%
X-Press Feeders; Slotlers: Sealand Europe & Med / CMA CGM	508	0.2%
Mann Lines; Slotlers: X-Press Feeders Group	508	0.2%
X-Press Feeders; Slotlers: Evergreen Line / Italia Marittima SpA / Zim / Maersk / Sealand Europe & Med / CMA CGM / COSCO Shipping	485	0.2%
Maersk; Slotlers: Sealand Europe & Med	431	0.1%
Milaha; Slotlers: Hapag-Lloyd	411	0.1%
Metz Container Line; Slotlers: Unimed Feeder Services (UFS) / CMA CGM	394	0.1%
White Line; Slotlers: Admiral Container Lines / Marguisa / X-Press Feeders Group	384	0.1%

Carriers	Average weekly TEU	Share of weekly TEU
X-Press Feeders; Slotter: Hapag-Lloyd / Sealand Europe & Med / Maersk	289	0.1%
Kalypso; Slotter: Kaiso Line	245	0.1%

Source: *Alphaliner Services Database, 5 Sep 2022.*

Coverage: *Intra Mediterranean
North Europe / Mediterranean
North Europe only*

B. Summary of services

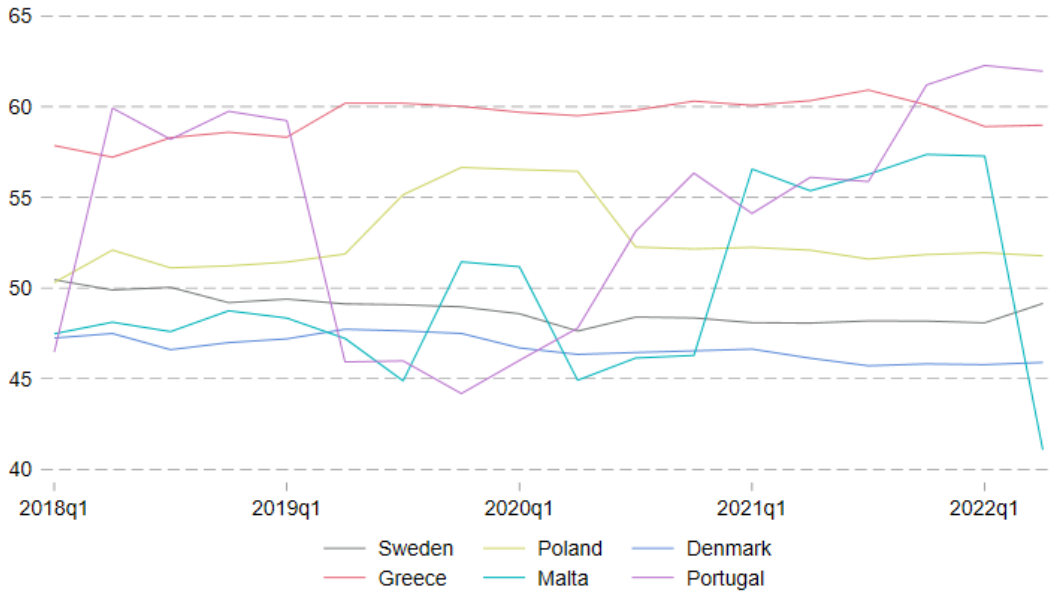
Table 18: Number of services on European trade routes

Trade route	Number of services offered by consortia carriers	Number of services offered by individual carriers
Europe / ANZ + Oceania	2	
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	5	9
Europe / East Coast of South America	5	
Europe / Far East services calling en route in Middle East and South Asia	17	1
Europe / Middle East or South Asia - dedicated services	7	12
Europe / West Coast of South America	2	4
Intra Mediterranean	24	127
Med / Far East - dedicated services	11	4
Med / Far East services - as part of a wider port rotation	10	2
Mediterranean to US East Coast / US Gulf / USWC	9	11
Mediterranean to USNH / Canada (St Lawrence)		5
North Europe / Far East	20	4
North Europe / Mediterranean	4	8
North Europe only	3	100
North Europe to US East Coast / US Gulf / US West Coast	10	6
North Europe to USNH / Canada (St Lawrence)	3	2
Services Europe / Canary Islands & Morocco	3	18
Services Europe / South & East Africa	2	4
Services Europe / West Africa	6	25
Total	143	342

Source: Alphaliner, Services database 5 Sep 2022.

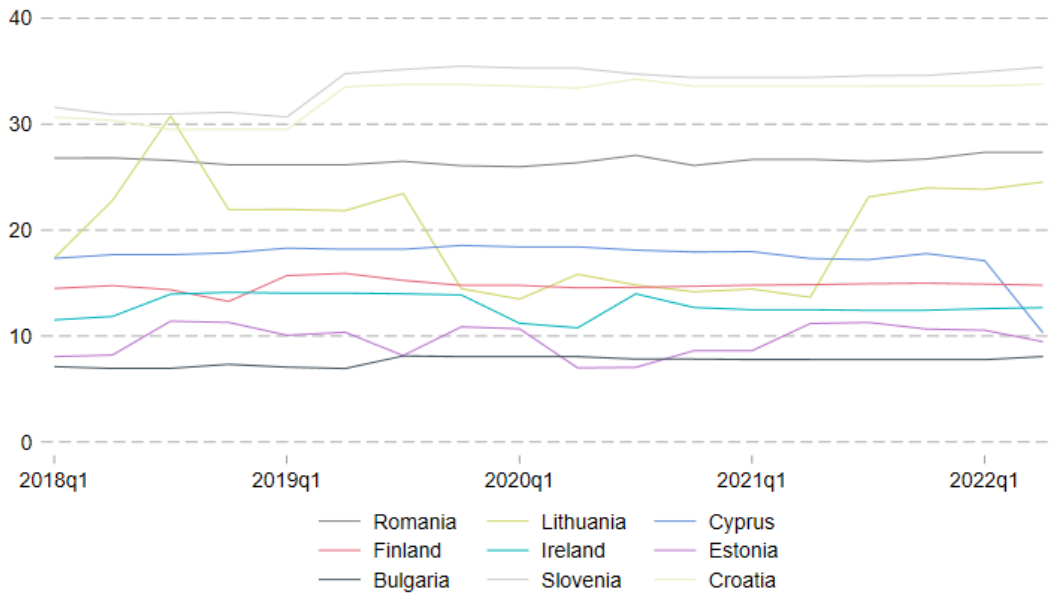
C. Liner Shipping Connectivity Index of remaining European countries

Figure 11: Evolution of LSCI from Q1 2018 to Q2 2022 – EU countries with the top 7 to 12th highest LSCI



Source: UNCTAD

Figure 12: Evolution of LSCI from Q1 2018 to Q2 2022 – EU countries with the top 13 to 21st highest LSCI



Source: UNCTAD