Market
Insights

"The end of the Consortia Block Exemption Regulation: what happens now?[1]"

Last October, a relevant change took place in the field of cooperation agreements, specifically in the context of the Consortia Block Exemption Regulation.

This Directive has been a fundamental piece in the regulation of agreements between companies participating in consortiums, providing a legal framework for business collaboration. However, over time, competent authorities have assessed the effectiveness and continued relevance of this regulation in the current market landscape and have taken the decision not to proceed with it. Therefore, the European Commission opted not to extend this directive after the last public consultation.The revocation of the consortia exemption raises questions about how it will affect the distribution of trade and business alliances in this important economic sphere. This regulatory change may have an unprecedented impact on the international trade landscape.

Analysis of the Fundación Valenciaport

The **EU Block Exemption Regulation** was born in response to the need to address the considerable levels of investment required by liner shipping offerors to be able to provide a regular and scheduled maritime service for non-bulk cargo, the vast majority of which is containerized, on a specific route. This is why they are usually provided by several shipping lines cooperating in "**consortium**" arrangements. In this sense, such consortia are articulated as agreements between carriers for the joint operation of services, which generally allow for **economies of scale**, as well as **better utilization** of **vessel space**.

It is worth considering the specific circumstances and particularities of the maritime sector, which makes it possible to establish a frame of reference for understanding the current situation, as well as the measures that have been adopted accordingly. In this regard, the industry is characterized by **high fixed costs** in the form of investments in vessels and nets. In addition, it is a market with **many price setters** - carriers, freight forwarders, agents, stock markets - and, as a well-functioning competitive market, it is **very sensitive** to **changes** in **supply** and **demand**.

The shipping industry is also exposed to **economic cycles**, with periods of growth followed by recession. In this regard, the various disruptive stocks that have occurred in recent years, aggravated by events such as the COVID-19 pandemic, the Ukraine War or the Red Sea Crisis and other factors, have generated **significant impacts** on the liner shipping market, as well as in other sectors. Disruption of supply chains, mobility restrictions and fluctuations in global demand have led to increased costs and changes in the industry dynamics.

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[1] Link to the article: https://www.mdst.co.uk/the-end-of-consortia-block-exemption

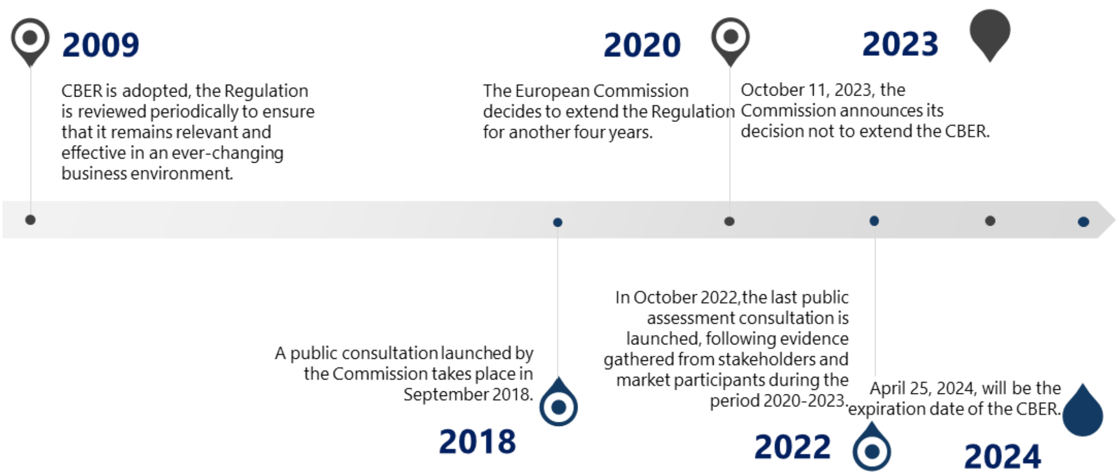
It goes without saying that market players must be able to adapt to market fluctuations and adjust their business strategies accordingly. It seems undeniable that, in order to remain competitive, carriers must ensure the highest possible efficiency in their operations to keep costs to a minimum, while maintaining the frequency and quality of their services. This is why **Vessel Sharing Agreements** (VSAs) have been beneficial to the normal functioning of world trade.

This intention led to the Consortia Block Exemption Regulation in 2009, allowing consortia to avoid the prohibition of ***Article 101(1)*** of the "Treaty on the Functioning of the European Union" (TFEU), which prohibits agreements between enterprises that restrict competition. However, according to ***Article 101(3)*** TFEU, it is established that agreements may be considered compatible with the single market if they contribute to **improve** the **production or distribution** of products, **promote technical or economic progress**, and allow **consumers** to **participate** equitably in the resulting **benefits**, **without eliminating competition**.

On the other hand, the **requirements** establish that consortia may **not** include significant restrictions, such as **price fixing**, **capacity or sales limitations**, with the exception of adjustments for fluctuations in supply and demand, **and** the **allocation** of **markets or customers**. In addition, the **market share** of consortia is **limited** to **30%**. It is also specified that **members** have the **right** to **withdraw**, with a maximum **notice period** of **6 months**, **or 12 months** in the case of highly integrated consortia. These conditions are intended to ensure that customers receive a equitable proportion of the resulting benefits. They also promote competition and provide greater clarity and legal certainty for companies in the sector.

Throughout its existence, the CBER has been the object of **periodic revisions** that have influenced its regulatory evolution. The analysis of its timeline (Figure 1) reveals a series of adjustments over the years, evidencing the adaptability of the regulation to the changing market dynamics and the needs of the European Union.

Figure 1. CBER evolution



Source: Own elaboration based on information obtained from European Commission reports through its website (Competition Policy, Competition Legislation and Cartels section)

An assessment consultation of the Directive was launched in the period from September to December 2018, it showed that, despite market developments (further consolidation, concentration, technological change, increase in vessel size), the **Consortia Block Exemption Regulation** remained **fit** for purpose and **fulfilled** its **objectives**. Furthermore, the consortia agreements continued to comply with the conditions set out in the Article 101(3) TFEU. The Commission concluded that the regulation generated efficiencies for carriers by allowing them to better utilize vessel capacity and offer more connections. In this way, these efficiencies resulted in lower prices and better quality of service for consumers. In addition, the evaluation showed that, in recent years, both costs to carriers and prices to customers per twenty-foot equivalent unit (TEU) decreased by approximately 30% and the quality of service remained stable.

Years later, in October 2022, the last public evaluation consultation launched exposed a **scarce** or limited **level** of **efficiency** and **effectiveness** of the **CBER** during the **2020-2023** period. Furthermore, during the evaluation period, it was noted that this Regulation no longer allowed small operators to cooperate with each other and offer alternative services in competition with large operators. Therefore, the Commission's final decision was not to extend the Consortia Block Exemption Regulation as it no longer fulfilled its purpose.

On its part, the Commission claims that the expiration of the CBER does not mean that consortia are banned in the EU. It only means that from now on they will be subject to EU antitrust rules that apply to all economic sectors. With this, carriers should self-assess compliance with Article 101 TFEU using the guidance provided in the Horizontal Guidelines and the Specialization Block Exemption Regulation, which apply to all economic sectors. The assessment has shown that these guidelines are suitable for the assessment of consortia competence, as they take better account of certain specific features of the liner shipping sector.

Among the main players affected by the decision on the termination of the **Consortia Block Exemption Regulation** are the **shipping lines** (large and small), **carriers**, **shippers** and **NVOCC**[2]/forwarders. It is important to point out that currently the **top 10 shipping lines** in the **world** account for a **market share** of **84%** and are currently grouped into **three major alliances**, covering the main corridors, Asia - Europe - Asia and Asia - North America - Asia, these are the **2M**, **The Ocean Alliance** and **The Alliance** (Table 1).

[2] As defined by the Federal Maritime Commission (FMC), the term NOVCC stands for "Non-Vessel-Operating Common Carrier" and refers to a common carrier that provides ocean transportation, issues its own bill of lading or equivalent document, but does not operate the vessels by which such ocean transportation is provided.

Table 1. Market share of the three major alliances for FE-EU-FE and FE-NAM-FE routes

	FAR EAST- EUROPA-FAR EAST	FAR EAST – NORTH AMERICA-FAR EAST	NAVIERAS
2M	35,65%	26,14%	
The Ocean Alliance	33,94%	35,52%	
The Alliance	25,24%	27,44%	
Resto de navieras	5,17%	10,90%	

Source: Own elaboration based on data obtained by Alphaliner (2024)

The first repercussions on shipping lines have become evident with the announcement of the **termination** of the **2M** alliance at the end of 2024, communicated by its members. In this regard, both **Maersk** and **Hapag Lloyd** have recently announced the creation of a collaborative operating agreement called "***Gemini Cooperation***", scheduled to begin in February 2025. This agreement will cover **7 routes** and offer **26 main services**, with a focus on **12 key ports**, including **10 owned** and/or controlled **terminals**, as well as **Singapore** and **Cartagena**. The agreement will establish a robust network supported by **32** dedicated **shuttles** to and from these key hubs, ensuring efficient connections to several major ports. The fleet of this new partnership will consist of approximately **290** modern and efficient **vessels**, with a total capacity of **3.4 million TEUs**, many of which will be equipped to adopt **cleaner fuels**.

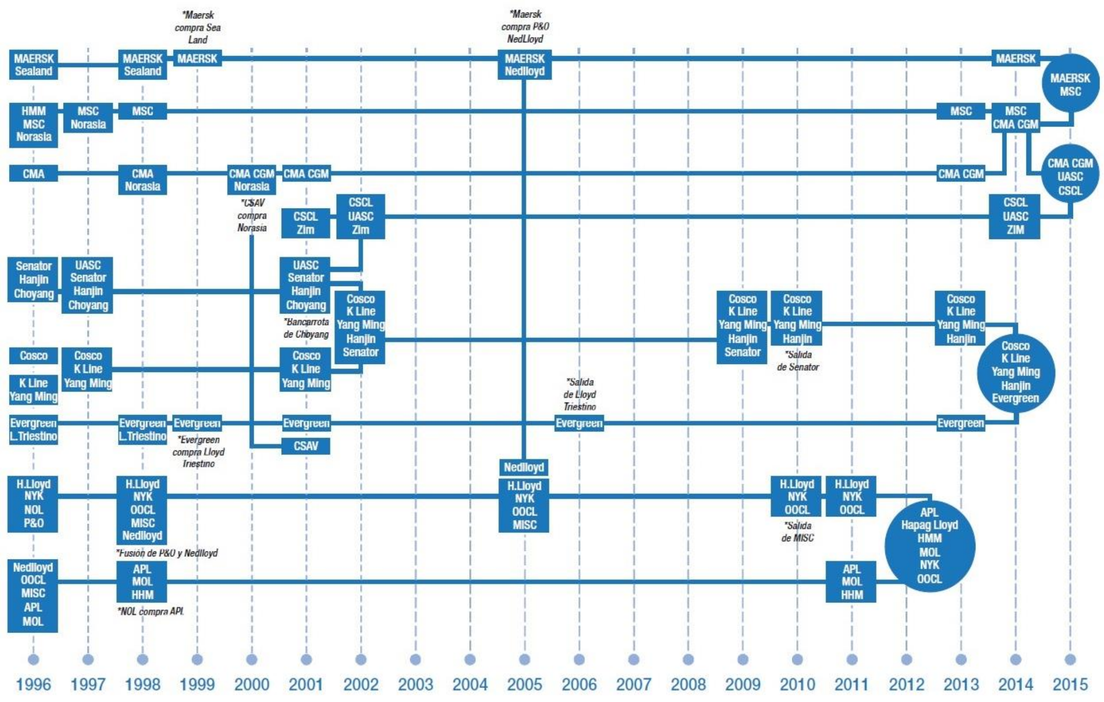
There is no doubt that this development indicates a **strategic adjustment** of **shipping lines** to cope with changes in the operational and logistical environment of maritime transport. Similarly, **The Ocean Alliance** has also expressed its commitment to **maintain its partnership** until 2027, thereby signaling the strength of the cooperation between China and France. Meanwhile, anticipated moves are on the horizon within **The Alliance**, where Hapag Lloyd, a prominent partner, has plans to leave this partnership to join Maersk, as detailed above. Attention now turns to the **future steps** of **ONE**, **Yang Ming** and **HMM**, and it is expected to observe whether **MSC**, which has experienced steady growth, will opt to operate independently without alliances beyond one-off deals, as in the case of its **collaboration** with **ZIM**.

It is worth mentioning that **cooperation between shipping lines** has been a **constant** in the **historical evolution** of **maritime transportation**, standing out as a strategy that seeks to optimize operational efficiency and face the challenges of the sector, which dates back approximately **150 years** and since its first signs, shipping lines have recognized the need to collaborate to overcome obstacles such as route expansion, fleet management and maximization of resources.

The first **Maritime Conference** was established in 1863 between Liverpool and New York and by the eighties of the twentieth century, there were already more than 360 existing conferences. These were used by companies as ways to protect themselves through unified action and, their main purpose was to set uniform rates and conditions of carriage, rationalize routes and in some cases adopt agreements on cargo distribution, freight sharing or apportionment of profits. Their main objective was to avoid ruinous competition between companies operating in the same international traffic.

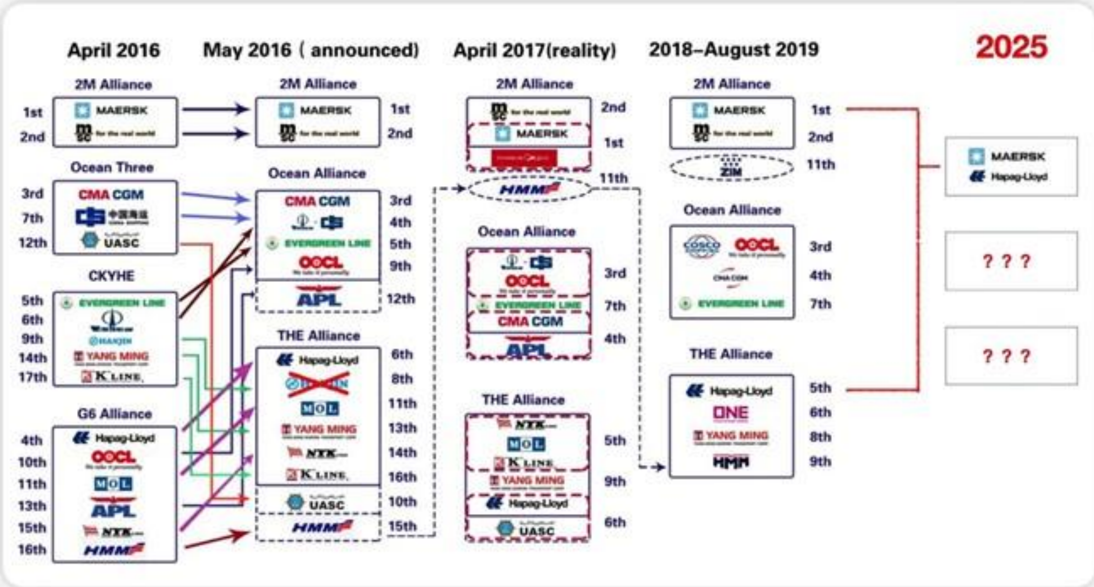
On October 18, 2008, the "liner conferences" came to an end in the European Union (EU). In search of greater transparency and the enforcement of the principles of free competition on the seas, the EU implemented measures that affect shipping companies located inside and outside the old continent. This step was catalogued as one of the most important changes in the history of maritime trade. **Nowadays**, cooperation among shipping lines is manifested through **global alliances** that redefine the industry. The main strategic alliances, such as those formed by the major shipping lines, have transformed the dynamics of maritime transport by providing economies of scale, improving vessel utilization, and optimizing service networks. With this, it is worth noting how shipping alliances have evolved from 1996 to the present, leading to strategic connections and important changes in the maritime industry during this period (Illustration 1 and 2).

Illustration 1. History of shipping alliances on Asia-Europe container shipping routes from 1996 to 2015



Source: Anave Report (2015) based on data obtained by Alphaliner and Transport XXI

Figure 2. History of shipping alliances from 2016 to the present.



Source: Sohu (2023)

These developments suggest that shipping lines, in general, consider **collaboration strategic** in order to optimize costs and jointly achieve a range of services that, individually, would be more challenging. In this sense, the end of consortia in the European Union does not seem to have a considerable impact on their operations, as they maintain an intrinsic commitment to respect the established rules, recognizing the importance of competition not only in the European Union, but also in the United States.

Other shipping lines play a **crucial role** in the industry, particularly **outside** the **main corridors**. In these, occasional agreements with the major shipping lines offer them strategic opportunities, but outside these main corridors, they are forced to look for their own market niches. Competing directly with the leading shipping lines, especially in major corridors, is considered a strategy with limited prospects for success. Therefore, **differentiation** and the **identification** of specific **niches** become key elements for the survival and success of these shipping lines (in a highly competitive environment).

Regarding shippers, a segmentation can be made into two categories: **large shippers** belonging to sectors such as automotive, retail, chemical industry, food, household appliances, etc., which have the capacity to negotiate directly with shipping lines, and **medium or small sized shippers**, with less negotiating capacity. From the perspective of the first group, it should be noted that many of these companies have undergone mergers to face the challenges of globalization, so it is likely that this group does not show opposition to consortiums. In addition, when observing the **strategies** of the **large shipping lines**, which have associated maritime terminals, investments in Logistics Activity Zones (ZAL), railroads and a strengthening of the logistics operator function, they **offer** a **range of services and guarantees** that are **highly valued** by this **type** of **shipper**. These services include:

- A **solid and regular network** of maritime services on the main routes.
- **Door-to-door solutions**.

- Guaranteed port operations and **intermodal** solutions.
- The **use** of **less polluting fuels**, contributing to improve the carbon footprint of shipments.
- Highly **advanced technological solutions**.

These offerings provide **large shippers** with a range of **benefits** that go beyond simple freight transportation, including **integrated and sustainable services** that align with their business needs and concerns. Finally, as for **medium and small shippers**, this customer segment relies heavily on the logistics solutions offered by **NOVCCs** and **Freight Forwarders**, as their bargaining power, due to the volume of cargo they bring, makes it difficult for them to negotiate directly with the shipping lines. This sector, supported by associations and freight forwarders, has been an important force in the struggle to put an end to the consortia.

Overall, the expiration of the CBER marks a significant change in the regulation of consortia agreements. This step raises **questions** about how the dynamics in the industry will develop and how companies will adapt to this new legal framework. The future appears to be full of both **challenges** and **opportunities**, and it will be crucial for organizations to **adjust** their **collaboration strategies** to **comply** with **current regulations** while seeking new ways to **innovate** and **compete** in the marketplace.