RESPONSE TO THE EUROPEAN COMMISSION’S PUBLIC CONSULTATION ON PROLONGATION OF THE SPECIAL COMPETITION REGIME FOR LINER SHIPPING CONSORTIA

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INTRODUCTION

Freshfields Bruckhaus Deringer LLP welcomes the opportunity to respond to the European Commission’s public consultation on a proposed five year extension of the term of the maritime consortia block exemption, which allows shipping lines to enter into cooperation for the purpose of providing joint maritime cargo transport services ("the Consortia Block Exemption").

The comments contained in this paper are those of Freshfields Bruckhaus Deringer LLP and do not necessarily represent the views of any of our individual clients or of individual partners of Freshfields Bruckhaus Deringer LLP.

BENEFITS OF THE CONSORTIA BLOCK EXEMPTION

We very much welcome the proposed extension for another five years of the Consortia Block Exemption. We believe that the Consortia Block Exemption benefits both the shipping industry and its customers and is an important element in facilitating efficient international trade. There has been a long-standing Consortia Block Exemption for liner consortia which has generally been viewed as working well and contributing to a degree of legal certainty for the industry. The legal and policy rationale underlying the Consortia Block Exemption has not changed. Liner consortia are essentially pro-competitive. They improve efficiency, productivity and quality in the liner shipping market, essentially as a result of the rationalisation and economies of scale resulting in a wider range of services at a lower cost for the customers of their member shipping companies.

Liner shipping consortia allow their members to rationalise their activities and achieve economies of scale. Resources are thereby used more efficiently: for example, capacity can be pooled, so that space on container ships can be shared, and larger ships can be used if customer demands for particular routes/loops or dates can be aggregated. Port facilities can also be shared. Long-term management of fleet capacity, including the use of more modern and efficient ships, is also facilitated by the pooling of resources. Users of shipping services benefit from these economies of scale and rationalisation measures as there is a consequent improvement in productivity and service quality, meaning that a wider range of scheduled maritime services can be provided at lower prices than would otherwise be possible. In addition, shipping companies acting through consortia can provide services together that they could not viably do alone, for example covering more routes/loops,
including lesser-used ones, and offering greater choice of sailing dates, ports called at, prices and related services to suit the differing needs of various types of shippers. Price and capacity volatility is also reduced, providing a more predictable and reliable offering for customers.

Recent developments, and in particular the increasing use of significantly larger ships and increased fuel prices, combined with fairly flat pricing over recent years, means that consortia and the efficiencies they bring about are even more necessary than they were last time the Consortia Block Exemption was renewed. These developments and their impact have been explored in detail in industry submissions already made to the Commission.¹

The Consortia Block Exemption is essential in achieving the benefits described above, since it provides the legal certainty necessary to allow investment in these joint activities. It is therefore key in maintaining a healthy competitive market, because in the absence of the possibility to have legal certainty for such cooperation, operators might not feel confident in entering into consortia. In this case, only the largest market players might be able to operate sustainably on an independent basis, given the significant capital investments inherent in activity on this market, and the unpredictable economic environment. This could lead to a severe reduction in competitiveness in the services offered to customers to or from Europe.

**ADDITIONAL COMMENTS**

Extension of the Consortia Block Exemption is justified not only by the benefits described above, but also by events in recent years which have even further increased competition in the market. Competition has in fact increased in recent years, not least following the abolition in 2010 of exemption for liner conferences, and the tightening of the terms of the Consortia Block Exemption, for example through the introduction of the aggregation rule applicable to market share thresholds, and reduction of the threshold itself. When taken together with the fact that global trade has seen a recent period of contraction and increased capacity, liner shipping now requires the legal certainty of the Consortia Block Exemption even more than in the past.

Finally, extension of the Consortia Block Exemption in its current form for a further five years has the significant advantage of minimising compliance costs for the industry. Current market conditions mean that it is more important than ever that the industry has a clear and stable legal framework in which to operate. The Consortia Block Exemption in its current form has been in force only since 2010, at which time it was amended in a number of respects in comparison to the exemption in force prior

to that time. An extension for a further five years will allow parties concerned to plan and operate on the basis of rules with which they have now become familiar.

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