



Mrs Ursula Von der Leyen
President of the European Commission
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

Brussels, March 26th, 2020

Dear President of the European Commission, Dear Madam,

We, CLECAT, ETA, ESC, ETF and FEPORT, on behalf of thousands of European freight forwarders, tug owners, shippers and port companies and terminals and transport workers, are mobilized to ensure the security of supplies for all EU countries and hope that we shall, all together, overcome the COVID 19 crisis

We appreciate all the energy that you and the European Commission are deploying to support companies and citizens facing the COVID 19 crisis and its devastating effects. The period is exceptional as you said and justifies that all our attention and actions benefit EU companies and citizens.

We have been very disappointed to see that the European Commission has decided to prolong the Consortia Block Exemption Regulation for liner shipping without modifications.

As you know, Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") prohibits agreements between companies that restrict competition. However, since 1995, liner shipping companies benefit from an exemption to this article. Their joint capacity management agreements are allowed under the condition that customers enjoy a fair share of the resulting benefits of those agreements.

During the review process of the Consortia BER which started at the end of 2018, our organizations as well as independent reports from the International Transport Forum have clearly demonstrated, that benefits of the Regulation for customers were not achieved and that there were even abusive behaviours from the carriers against their service providers.

We have underlined that in light of the important changes in the market (in view of consolidation, vertical integration and digitalization) over the last five year, it was important to safeguard the interests of the EU logistics and supply chains and good working conditions for their employees. We have repeatedly told the services in DG Competition that the current legal framework for liner shipping consortia has become obsolete given that most of the carriers operate in alliances and that market concentration is increasing.

In a legal analysis sent to the Directorate for Competition, we have highlighted the legal flaws and weaknesses of the Staff Working Document published in December 2019. They relate to many issues - missing data, one-sided assumptions on efficiency gains disregarding non-rate related parameters, lack of a proper definition of relevant geographic markets to assess market shares for EU and non-EU companies. Interestingly, DG Competition itself recognized in its Staff Working Document that data was missing and yet proposed to extend the BER without a single modification of the text.

To our big surprise and disappointment, none of these arguments have been considered by the Directorate for Competition and we never had the opportunity to meet Commissioner Vestager to express our members' concerns.

In its Press Release dated March 24th, 2020 announcing the prolongation of the Consortia BER, the Directorate for Competition seems to be even less demanding towards liner shipping lines. Instead of imposing that a fair share of the benefits resulting from the efficiencies deriving from Consortia agreements are actually passed to the users of the shipping services, DG Competition now considers that benefits "can" eventually be passed to customers in terms of better coverage of ports and better services. This particularly unfair for customers and seriously questions the methodology used by the Directorate for Competition.

The role of the EU supply chains has proven to be essential these last few weeks in the framework of the COVID 19 crisis. We note with regret that this role has not really valued during the review process of the Consortia BER. DG competition has rejected our repeated request as outlined in our Joint Submission that the Commission only prolongs the CBER with one year. This would have allowed a thorough, fair and more balanced review taking into account other sources of data than those provided by the representatives of the liner shipping industry.

Our letter to you is meant to alert you on upcoming negative consequences of a piece of legislation that has not been subject to a proper evaluation and which shall probably have detrimental effects on many companies and workers of the logistics and supply chains in the European Union including in the shipping sector. Our sector is now putting all its efforts into securing that supply chains in Europe are functioning well and that the free flow of goods is guaranteed.

We believe that COVID 19 constitutes a significant ordeal for the EU and strongly believe that it is critical that policy makers adopt meaningful pieces of legislation that protect the interests of a majority of EU sectors. This is not the case for the Consortia BER.

We look forward to having the opportunity to meet you or your members of cabinet to further clarify our concerns.

Sincerely yours,

Ms Lamia Kerdjoudj Belkaid



Secretary General of FEPORT

Ms Nicolette van der Jagt



Director General of CLECAT

Ms Livia Spera



Acting General Secretary of ETF

Ms Anna Maria Darmanin



Secretary General of ETA

Mr Denis Choumert



President of ESC