

Coming end to European block exemption evokes mixed reaction from analysts



There will only be two global ocean shipping alliances in operation from 2025 when the 2M agreement between Maersk and MSC ends. Photo credit: MSC.

Greg Knowler, Senior Editor Europe | Oct 11, 2023, 2:09 PM EDT

The container shipping industry is still trying to assess the impact of Europe's surprise decision to end ocean carriers' exemption from competition law, with some expecting no operational impact while others warn that it will ultimately backfire on shippers.

Whatever the case, the European Commission's decision signals growing global regulatory watchfulness of alliances even as one of the three largest pacts dissolves. The 2M Alliance between Maersk and Mediterranean Shipping Co. (MSC) will end in early 2025, leaving just two global agreements, Ocean Alliance and THE Alliance.

The EC's announcement on Oct. 10 that the Consortia Block Exemption Regulation (CBER) was "no longer fit for purpose" and will not be renewed when it expires on April 25, 2024 blindsided most in the container shipping industry who were expecting a revision of the rule rather than its scrapping.

"The time of mega-alliances will come to an end," Jan Tiedemann, senior consultant at Alphaliner, said at the CrossStaff BCO conference in Antwerp at the end of September. "Regulators are having much more scrutiny of the alliances, and it will reach a point when they are simply no longer worthwhile. The alliances will not stop operating, but will rather move towards competing on a route-by-route basis through vessel sharing agreements."

Despite the attention being given to the carrier exemption regulation across the container shipping supply chain, Alphaliner believes its abolition will have little impact on the industry given the relatively modest number of what are defined as consortia still in operation. The analyst said in its latest weekly newsletter that only a handful of shipping agreements actually benefited from CBER.

"CBER's abolition might have been politically necessary, however, given its opposition by many forwarders and port operators, who are increasingly competing with the large, integrated carriers," Alphaliner said.

Ruling may 'backfire'

In its analysis of the ruling, Drewry Shipping Consultants believes the end of the block exemption was likely to backfire on shippers that have called for its abolition since the CBER came into force in 2009.

"Firstly, there was no compelling case that carriers abused market power during the pandemic," Simon Heaney, senior manager of container research at Drewry, noted in a LinkedIn post. "Such was the extraordinary impact of COVOD on supply chains that freight rates would have soared with or without the CBER.

"Secondly, the hoped-for increase in competition will be stymied by legal uncertainty and extra bureaucracy," he added. "Removing the block exemption will not bar carriers from forming alliances and vessel-sharing agreements, but they might not be willing to expose themselves to potential legal action."

Heaney said the end of the block exemption will effectively coerce lines to operate independently, with each carrier having to downsize service portfolios in terms of frequency and connectivity.

“That would reduce, not increase, competition on a port-pair basis and push up freight rates,” he wrote.

Taking notice

The ripples from Europe’s decision are being felt in the UK and Australia, two other jurisdictions where container shipping’s anti-trust exemption is under review.

Steve Parker, director-general of the British International Freight Association (BIFA), said ocean carriers have been “distorting the operations of the free market to the detriment of international trade.”

“The EC has taken a sensible decision, and the UK government should follow suit to ensure that shipping lines in the future will be subject to competition law,” Parker said in a statement. The UK’s block exemption for liner shipping also expires in April 2024.

In Australia, a decision on whether carriers will continue to enjoy immunity from antitrust regulations is expected soon. An eight-month probe into Australia’s maritime industry was launched by the Productivity Commission late last year after complaints by shippers into soaring freight rates and ancillary fees, together with years of industrial unrest among dock workers.

In the US, a House bill that would allow the Federal Maritime Commission to block an agreement immediately rather than having to seek a federal injunction was introduced in March. But the Transportation and Infrastructure subcommittee hasn’t voted on the legislation, though it has pushed other legislation seeking to amend the Ocean Shipping Reform Act of 2002 to the House floor for a final vote.

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