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**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)**  
(Text with EEA relevance)  
(OJ L 256, 29.9.2009, p. 31)

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► <b><u>M2</u></b>	Commission Regulation (EU) No 2020/436 of 24 March 2020	L 90	1	25.3.2020

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## CHAPTER I

## SCOPE AND DEFINITIONS

*Article 1***Scope**

This Regulation shall apply to consortia only in so far as they provide international liner shipping services from or to one or more Community ports.

*Article 2***Definitions**

For the purposes of this Regulation the following definitions shall apply:

1. 'consortium' means an agreement or a set of interrelated agreements between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo relating to one or more trades, the object of which is to bring about cooperation in the joint operation of a maritime transport service, and which improves the service that would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial arrangements;
2. 'liner shipping' means the transport of goods on a regular basis on a particular route or routes between ports and in accordance with timetables and sailing dates advertised in advance and available, even on an occasional basis, to any transport user against payment;
3. 'transport user' means any undertaking (such as shipper, consignee or forwarder) which has entered into, or intends to enter into, a contractual agreement with a consortium member for the shipment of goods;
4. 'commencement of the service' means the date on which the first vessel sails on the service.

**▼B**CHAPTER II  
EXEMPTIONS*Article 3***Exempted agreements**

Pursuant to Article 81(3) of the Treaty and subject to the conditions laid down in this Regulation, it is hereby declared that Article 81(1) of the Treaty shall not apply to the following activities of a consortium:

1. the joint operation of liner shipping services including any of the following activities:
  - (a) the coordination and/or joint fixing of sailing timetables and the determination of ports of call;
  - (b) the exchange, sale or cross-chartering of space or slots on vessels;
  - (c) the pooling of vessels and/or port installations;
  - (d) the use of one or more joint operations offices;
  - (e) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;
2. capacity adjustments in response to fluctuations in supply and demand;
3. the joint operation or use of port terminals and related services (such as lighterage or stevedoring services);
4. any other activity ancillary to those referred to in points 1, 2 and 3 which is necessary for their implementation, such as:
  - (a) the use of a computerised data exchange system;
  - (b) an obligation on members of a consortium to use in the relevant market or markets vessels allocated to the consortium and to refrain from chartering space on vessels belonging to third parties;
  - (c) an obligation on members of a consortium not to assign or charter space to other vessel-operating carriers in the relevant market or markets except with the prior consent of the other members of the consortium.

**▼B***Article 4***Hardcore restrictions**

The exemption provided for in Article 3 shall not apply to a consortium which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, has as its object:

1. the fixing of prices when selling liner shipping services to third parties;
2. the limitation of capacity or sales except for the capacity adjustments referred to in Article 3(2);
3. the allocation of markets or customers.

## CHAPTER III

**CONDITIONS FOR EXEMPTION***Article 5***Conditions relating to market share**

1. In order for a consortium to qualify for the exemption provided for in Article 3, the combined market share of the consortium members in the relevant market upon which the consortium operates shall not exceed 30 % calculated by reference to the total volume of goods carried in freight tonnes or 20-foot equivalent units.

2. For the purpose of establishing the market share of a consortium member the total volumes of goods carried by it in the relevant market shall be taken into account irrespective of whether those volumes are carried:

- (a) within the consortium in question;
- (b) within another consortium to which the member is a party; or
- (c) outside a consortium on the member's own or on third party vessels.

3. The exemption provided for in Article 3 shall continue to apply if the market share referred to in paragraph 1 of this Article is exceeded during any period of two consecutive calendar years by not more than one tenth.

4. Where one of the limits specified in paragraphs 1 and 3 of this Article is exceeded, the exemption provided for in Article 3 shall continue to apply for a period of six months following the end of the calendar year during which it was exceeded. That period shall be extended to 12 months if the excess is due to the withdrawal from the market of a carrier which is not a member of the consortium.

**▼ B***Article 6***Other conditions**

In order to qualify for the exemption provided for in Article 3, the consortium must give members the right to withdraw without financial or other penalty such as, in particular, an obligation to cease all transport activity in the relevant market or markets in question, whether or not coupled with the condition that such activity may be resumed after a certain period has elapsed. That right shall be subject to a maximum period of notice of six months. The consortium may, however, stipulate that such notice can only be given after an initial period of a maximum of 24 months starting from the date of entry into force of the agreement or, if later, from the commencement of the service.

In the case of a highly integrated consortium the maximum period of notice may be extended to 12 months and the consortium may stipulate that such notice can only be given after an initial period of a maximum of 36 months starting from the date of entry into force of the agreement or, if later, from the commencement of the service.

## CHAPTER IV

**FINAL PROVISIONS***Article 7***Entry into force**

This Regulation shall enter into force on 26 April 2010.

**▼ M2**

It shall apply until 25 April 2024.

**▼ B**

This Regulation shall be binding in its entirety and directly applicable in all Member States.