

ECSA contribution to the European Commission consultation on a New Competition Tool

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Final

The European Community Shipowners' Associations (ECSA) is the voice of the European shipping industry. Founded in 1965, ECSA promotes the interests of 20 member associations of the EU, the U.K. and Norway. ECSA strives for a regulatory environment that fosters the international competitiveness of European shipping.

ECSA welcomes the European Commission closely reflecting on how it can best ensure that the EU's competition policy best fits the modern economy.

Understanding the New Competition Tool is considered as a non-sector specific tool, ECSA would like to underline the following:

1. ECSA warns against the European Commission drawing overarching conclusions regarding structural competition problems without a solid basis. The shipping industry is a truly global industry. It encompasses a variety of segments, very different but all characterized by a highly competitive environment. Overall, ECSA is of the opinion that the EU shipping sector does not face unfair competition in the internal market that in principle cannot be addressed effectively or timely by the current EU competition toolbox (or other legislative frameworks).¹
2. Being a global industry with integrated networks where any action is likely to affect and implicate several jurisdictions' legal systems, the shipping industry needs competition policies that seek to create a global level playing field, respect the fine balance in a highly competitive environment and that are sufficiently coherent, transparent and responsive to changing global market conditions, without undue complexity and legal uncertainty.

¹ This was only very recently recognised after a lengthy and solid assessment by the European Commission for one of the shipping sector's segments when the European Commission took the decision to extend the Block Exemption Regulation for Liner Consortia for another 4 years - Commission Regulation (EU) 2020/436 of 24 March 2020 amending Regulation (EC) No 906/2009 as regards its period of application (Text with EEA relevance) C/2020/1734





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3. In the light of the EU competition policy's role model for third countries, any new competition tool that lacks very clear and stringent criteria on how and why it will apply, risks to add to regulatory uncertainty for shipping companies acting at the global level. Even more so given the fact that geopolitical tensions have increased protectionist behaviour by States, including through 'selective' interpretations under competition policy.
4. Before the sector is made subject to a new, additional tool, much more evidence and consultation is needed. In the absence of this being provided in the current IA, **the shipping industry, including related digital products, must remain outside of the scope of any NCT.**

In this context, ECSA underlines:

- It is important to ensure that the adoption and/or extension of any legislative framework is necessary and proportionate;
- An in-depth study of the necessity of the NCT seems to be lacking, both having regard to existing legal frameworks and whether there are actual industry structural competition problems that cannot be addressed under the current framework;
- Certainty and predictability in laws must be guaranteed. There is a strong need for clarity on the risk of breaches of rules and appropriate checks and balances must be in place, so as to ensure protection of the rule of law. The EU competition regime must continue to stand for transparency, predictability and due process.

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