

Liner Shipping Consortia Block Exemption Regulation Consultation
Competition & Markets Authority

By email: cberreview@cma.gov.uk

23 February 2023

Dear Sir/madam

UK competition law: Liner Shipping Consortia Block Exemption Regulation Consultation

Please find below a response on behalf of Hutchison Ports.

Hutchison Ports is the port and related services division of CK Hutchison Holdings Limited, one of the largest inward investors in the United Kingdom. It operates the world's leading port network with operations in 51 ports spanning 25 countries throughout Asia, the Middle East, Africa, Europe, the Americas and Australasia.

In the UK, Hutchison Ports owns and operates the Port of Felixstowe, Harwich International Port and London Thamesport.

The Port of Felixstowe is the largest container port in the UK handling nearly 4 million TEU of container traffic per year, almost 40% of all containers handled in UK ports. In addition, the port handles over 250,000 ro/ro freight movements each year and has the country's largest intermodal rail freight facility.

Harwich International Port is a leading ro/ro, passenger and offshore wind support port. London Thamesport handles containers, general and project cargoes and is situated on the Isle of Grain in Kent.

A large majority of the port traffic handled by Hutchison Ports is handled on behalf of shipping lines that are subject to the Liner Shipping Consortia Block Exemption Regulation (CBER).

We have addressed below only those questions for which we have substantive comments or experience to help inform the decision on whether to make a Consortia Block Exemption Order.

Question 2: *Relative to current arrangements, if the retained CBER were allowed to expire, how would the absence of legal certainty and clarity affect your business or those that you represent? Please describe the scale of any legal or expert advice needed (eg time spent with consultants).*

The expiry of the CBER would have very little effect on our business. The reasons for this are:

- Recent changes within the shipping industry have reduced the number of carriers that will be covered by the CBER. For others, particularly those that operate as basic vessel sharing arrangements rather than fully-integrated consortia, the CBER is less relevant than it has previously been.
- The loss of the CBER does not preclude the use of consortia, alliances or vessel sharing agreements by vessel operators
- The trend towards increasing numbers of ever larger vessels, which has been facilitated to some extent by the CBER, has put more pressure on port operations. Port operations have a high degree of fixed costs but an uneven pattern of demand. When there are no ships in port the operator still has to bear a high proportion of normal operating costs. As ships have increased in size so has the scale of port equipment and the level of port resource required to work the largest vessels. However, the total number of ship calls has decreased. This has resulted in greater peaks and troughs of demand and pushed up the unit cost of port operations.
- Operational challenges have been further exacerbated by the emergence of a greater number of load-only or discharge-only calls facilitated by consortia. These are also a function of the greater use of ultra-large vessels and require a greater level of container storage space to be available to cater for the higher peaks of import and export traffic at different times.
- The growth in ship size has, in part at least, been fuelled by consolidation. Consolidation has also resulted in fewer buyers of port services, each of which wields greater market power. As a result, it is increasingly challenging for port operators to recover the increased costs imposed by the need to accommodate larger vessels.

Question 4: *Does the scope of the retained CBER, set out in Article 1, require modification or updating? Please provide the evidence and reasoning behind your answer.*

No.

Question 5: *Do any of the definitions set out in Article 2 of the retained CBER require modification? Please provide the evidence and reasoning behind your answer.*

Yes. The definition of 'consortium' includes, inter alia, agreements that "*rationalise ... operations by means of technical, operational and/or commercial arrangements*". More clarity is needed on the rationale for, and definition of, 'commercial arrangements'. We note, for example, that US anti-trust law in this area only allows joint purchasing by consortia members with the agreement of the counterparty. A similar safeguard should be included if the inclusion of commercial arrangements is to be retained.

Question 6: *Does Article 3(4)(a) on the ‘use of a computerised data exchange system’ require updating? If so, how could further clarity be offered? Please provide the evidence and reasoning behind your answer.*

The exchange of data by computer or any other means should be restricted to that necessary to operate the vessel sharing arrangements.

Question 7: *Do any other aspects of the exempted agreements set out in Article 3 of the retained CBER require updating? If so, which aspects need modification? Please provide the evidence and reasoning behind your answer.*

Yes. As per the answer to Question 5 above, Article 3.3 on the joint use of port terminals and related services needs to be amended to prohibit joint-purchasing of port services by consortia members.

Article 3(2) allows “capacity adjustments in response to fluctuations in supply and demand”. The original intention of this clause was to provide stability and certainty over the provision of shipping capacity for the benefit of shippers. Blank sailings are disruptive for port operators, port service providers, logistics providers and consumers. If the CBER is to be retained greater control and monitoring is needed to ensure that capacity adjustments are only allowed where they provide market-level benefits.

Question 8: *Do you agree with the CMA’s recommendation to retain the current hardcore restrictions in the retained CBER in any CBEO? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?*

Yes, we agree with the CMA’s recommendation to retain the current hardcore restrictions in the CBER in any CBEO.

Question 9: *Would retaining the current hardcore restrictions in any future CBEO present any possible issues for your business or those that you represent? Please provide the evidence and reasoning behind your answer, such as the expected costs or benefits that would accompany the current hardcore restrictions being retained in any future CBEO.*

No. See above.

Question 16: *The CMA invites views from interested stakeholders on the possibility of a CBEO without a fixed expiry date.*

If an Order is made, we would be content with one without a fixed expiry date. Given the global nature of the industry, we believe flexibility to review the order at any time that market circumstances or the wider international regulatory landscape require would be preferable.

We welcome the opportunity to comment on the retention or otherwise of the CBER.

If it is retained, Restrictions should apply to the joint purchasing of port and terminal services and electronic (or any other form of) data sharing so that only data sharing that is necessary to operate the vessel sharing arrangements is allowed. These changes to the UK regime can be done in a way that does not make the UK unattractive as a port of call for globally operated vessels.

Yours faithfully

[✂]

Paul Davey
Head of Corporate Affairs