

Response to the CMA's Retained Liner Shipping Consortia Block Exemption Regulation Consultation.

Date 22 February 2023

About Logistics UK

Logistics UK is one of Britain's largest business groups and the only one providing a voice for the entirety of the UK's logistics sector. Our role, on behalf of over 20,000 members, is to enhance the safety, efficiency and sustainability of freight movement throughout the supply chain, across all transport modes. Logistics UK members operate over 200,000 goods vehicles - almost half the UK fleet - and some one million liveried vans. In addition, they consign over 90 per cent of the freight moved by rail and over 70 per cent of sea and air freight.

Summary response:

In 2022, Logistics UK responded to the consultation on the renewal of the EU Consortia Block Exemption Regulation. In that submission on behalf of our members, we opposed the renewal of the EU CBER, offered constructive alternative solutions to retain the benefits of vessel sharing agreements and maintain competitive advantage while avoiding distortions of competition between ports and minimising the risk of abuse and anticompetitive behaviours. We also called for a coordinated approach between the UK and other jurisdictions worldwide given the global nature of the liner shipping industry. This remains the position of Logistics UK. UK trade is best facilitated by solutions that find the right balance between the needs of, and benefits to, Shipping Lines and exporters and importers shipping goods.

Q1: Do you agree with the CMA's proposed recommendation to make a block exemption order to replace the retained CBER?

Logistics UK does not agree with the CMA's proposed recommendation to make a block exemption order to replace the retained CBER. We remain consistent in our position that constructive alternative policy solutions better strike the balance between the needs of, and benefits to, Shipping Lines and shippers exporting and importing goods in a way that can retain the benefits of vessel sharing agreements and maintain competitive advantage while avoiding distortions of competition and minimising the risk of abuse and anticompetitive behaviours. To this end we propose the following policy alternatives:

- Replacing the Block Exemption with "Permission to operate" vessel sharing agreements.
- Clearly defining what information can be shared by consortia members.
- Introducing safeguards around the use of information in vertically integrated groups.
- Obligation for shipping lines to designate a board member as a "Protected Information Officer".
- Applying these rules to any shipping line taking part in a consortium (no threshold).

Q2: 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 (e.g., time spent with consultants).

Individual members have advised they will be responding to this impact question from their business perspective.

Q3: Please describe the business channels through which the retained CBER currently affects UK consumers. How would UK consumers be affected if the retained CBER were allowed to expire?

In our engagement with members on this issue several described their experiences, operating under the current CBER, of:

- A lack of differentiation in service
- Coordinated imposition of surcharges to cover unexpected costs
- Rapid withdrawal of revision of services at short notice
- Lack of consultation or feedback on service changes or performance

They highlighted the impact of this on UK consumers and expressed the view that the expiry of the retained CBER would assist in improving the situation when it comes to the costs, delays, product loss and wastage arising from the above experiences.

Q 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.

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, the scope should not be expanded.

Q 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.

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, we propose that the CMA specify permitted data elements in guidance.

Q 6: Does Article 3(4)(a) on '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.

Logistics UK considers the term 'use of a computerised data exchange system' to be outdated and too open ended in nature. Since its introduction, there has been significant technological and digital advancement. We are also conscious of the recent development of harmonized protocols for information exchange between Shipping Lines by the Digital Container Shipping Association. Logistics UK is of the view that Article 3(4)(a) should be more narrowly defined and modernised with protections in place for the owners of data.

Q 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

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, it should not be modified to broaden the scope of exemptions.

Q 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?

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, all the current hardcore restrictions in the retained CBER should be retained in a CBEO.

Q 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?

Individual members have advised they will be responding to this impact question from their business perspective.

Q 10: How would retaining the current hardcore restrictions in the proposed CBEO impact consumers? a) Significant positive impact, b) Moderate positive impact, c) Negligible impact, d) Moderate negative impact, e) Significant negative impact

In our engagement with members on this issue there was a strong view that if the proposed CBEO is to be introduced, consumers are afforded better protection by retaining all the current hardcore restrictions. Significant concern was expressed about the potential negative impact on consumers from any possible dilution of the current hardcore restrictions which could lead to increased shipping costs, reduced availability of service and loss of protection against anti-competitive behaviour.

Q 11: Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed CBEO? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed CBEO?

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives and rules which apply to any shipping line taking part in a consortium, with no threshold therefore applied.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, there should be no increase in the current market share threshold.

Q 12: Separate to the 30% threshold, do the other conditions relating to market share set out in Article 5 remain appropriate and useful? If not, which aspects need modification? Are there any other changes that you consider should be made?

The challenge at the core of this issue is the difficulty faced by regulators in trying to assess market shares from publicly available data. This needs to be addressed. In our engagement with members on this issue several expressed concern that when other volumes are included, a number of consortia potentially operate above the 30% threshold.

Q 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold were increased? a) Significant positive impact b) Moderate positive impact c) Negligible impact d) Moderate negative impact e) Significant negative impact

Individual members have advised they will be responding to this impact question from their business perspective.

Q14: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold were decreased? f) Significant positive impact g) Moderate positive impact h) Negligible impact i) Moderate negative impact J) Significant negative impact

Individual members have advised they will be responding to this impact question from their business perspective.

Q 15: Do you agree with the CMA's recommendation that the current provisions of Article 6 of the retained CBER be maintained in any future CBEO? If not, what are the reasons & evidence that would warrant a change?

Logistics UK's position, as set out above, is that the CBER should not be retained and should be replaced by constructive policy alternatives.

If, however, following this consultation, the recommendation to the Secretary of State is to retain this Block Exemption, and that recommendation is accepted, members expressed no preference for a change in the current provisions of Article 6 in a future CBEO.

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

Logistics UK is opposed to the possibility of a CBEO without a fixed expiry date. If a CBEO is to be introduced, the standard practice of a Review every 5 years should be applied.

If a decision is taken following this consultation exercise to legislate for a CBEO without an expiry date, clear hardcore triggers must be included for immediate investigation by the CMA. We suggest the following triggers for consideration:

- Changes in spot rates, outside the defined range of expected values
- Changes in deployed capacity, relative to measured demand for services
- Decline in service predictability, below minimum acceptable thresholds

Q 17: What would be the likely impact on your business's operations/those you represent if any CBEO was not to include a fixed expiry date? a) Significant positive impact b) Moderate positive impact c) Negligible impact d) Moderate negative impact e) Significant negative impact

Individual members have advised they will be responding to this impact question from their business perspective.

Q 18: Provide an explanation highlighting your reasoning for the answer above

Individual members have advised they will be responding to this question from their business perspective.

Q 19: The CMA invites views on the above proposed recommendations in respect of the other provisions in any CBEO.

Logistics UK welcomes the proposal by the CMA to impose a new obligation for Shipping Lines to provide information on consortia agreements entered into, for investigation and enforcement purposes.

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