

Competition and Markets Authority Review of the Liner Shipping Consortia Block Exemption Regulation

1. Introduction

The UK Chamber of Shipping is the trade association for the UK shipping industry. We have over 200 members and associate members, which range from shipowners, ship managers, law firms with maritime expertise, insurers, classification societies, to others providing maritime services to the shipping industry.

The focus of the UK Chamber of Shipping's response is on whether the EU-retained Liner Shipping Consortia Block Exemption Regulation (CBER), which regards the **exemption of certain co-operation agreements** within the **liner shipping sector**, meets its intended purpose. Notwithstanding that these co-operation agreements must meet specific criteria set under the CBER, it is acknowledged that the CBER does not allow price fixing practices, the limitation of sales or capacity between businesses, or market/customer allocation agreements. Indeed, consortia are purely operational agreements that allow the coordination of sailing timetables and port calls.

The specific criteria that must be met makes reference to the agreement needing to contribute to improving the production or distribution of goods, or promote technical or economic progress, whilst allowing consumers a fair share of the resulting benefit.

In this paper, the UK Chamber of Shipping will respond to the Competition & Markets Authority (CMA) consultation document issued on 19 January 2023. It should be acknowledged that the World Shipping Council (WSC), the International Chamber of Shipping (ICS) and the Asian Shipowners' Association (ASA) have previously co-sponsored a paper calling for the renewal of the CBER, and have provided supporting data for the conclusions reached.

2. UK Context

The UK shipping sector, which is an integral part of the global shipping industry, competes with shipping companies and maritime service providers overseas. The UK tonnage tax regime was introduced in 2000 to arrest the decline of the UK shipping industry, and which was successful at the time. This has previously had knock-on effects for the maritime business services sector, and also resulted in the increase of UK/EEA nationals resident in the UK entering the shipping industry. Within this context, it must therefore be recognised that the UK needs to have a fit-for-purpose competition regime which complements and is aligned with other regimes which facilitate the continued inclusion of the UK's major ports in global supply chains and international liner services.

3. Commercial Justification

As well as resolving the issue of legal uncertainty, the retained CBER minimises the risk incurred by businesses and ensures that compliance standards are met. The data that was provided in the co-sponsored WSC, ICS and ASA paper indicates that the CBER is a tool that has worked satisfactorily and has benefitted consumers where resource sharing means port coverage is improved and service frequencies are higher.

4. Environmental & Other Benefits

Due to vessel sharing agreements and slot charter agreements, it must be recognised that the retained CBER offers clear environmental benefits and reduces costs for users through economies of scale. In this sense, consortia provide economic viability, allow more efficiently-sized vessels to be utilized and more ports to be serviced on a more stable basis this improving efficiency, reducing costs and reducing greenhouse gas emissions. However, given that the combined market share of consortium members cannot exceed 30%, and hardcore restrictions are excluded from the benefit of the CBER, the market remains competitive.

5. Consultation Questions and UK Chamber Answers

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a block exemption order to replace the retained CBER?

Ans: The Chamber would support the CMA's decision to recommend the replacement of the retained CBER with a 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 (e.g. time spent with consultants).

Ans: In the event the exemption was allowed to expire the resulting dislocation of international liner services to the UK would be immediate and have profound economic impacts for the national economy and national resilience. It would adversely affect all industry sectors which rely on global supply chains. The retained CBER currently provides legal certainty by using precise industry terminology and delivers ongoing operational efficiencies for the benefit of operators, their customers and UK consumers. In-house legal advisors and operational personnel understand how the CBER applies in practice without the widespread need to consult external advisors which carries additional cost. Given the international nature of shipping, the expiry of the CBER without suitable replacement would also signal to other jurisdictions with similar legal regimes, such as Singapore, Malaysia, Australia and New Zealand, that the activities of consortia do not bring about benefits to stakeholders operating at all levels of the maritime transportation supply chain.

Question 3: 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?

Ans: Should the retained CBER be allowed to expire, carriers may become reluctant to enter into new operational agreements so as to save compliance costs and may even withdraw from existing consortia that operate to and from the UK. This would mean that the frequency of services and the number of ports served would be reduced. UK consumers would lose much needed choice and flexibility when arranging transportation of cargo as well as the benefit of lower costs. In the context of a potential recession, this would be particularly detrimental to UK consumers and the UK economy.

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.

Ans: The Chamber does not consider the scope of the retained CBER to require modification or updating since the replacement reference to ports in the United Kingdom. For the reasons outlined throughout, we consider the retained CBER to be fit for purpose otherwise.

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.

Ans: The Chamber does not consider the definitions to require modification as there is no need to; the understanding of each definition has not changed.

Question 6: Does Article 3(4)(a) on the 'use of a computerized data exchange system' require updating?

If so, how could further clarity be offered? Please provide the evidence and reasoning behind your answer.

Ans: The Chamber does not consider the definition to require updating as the phrase still accurately reflects what is currently used in the market. There is a danger of being overly prescriptive which could cause confusion and lead to unintended consequences such as excluding that which is intended to be included. There is also a need to be technologically neutral for the purposes of future proofing.

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.

Ans: The Chamber does not consider that Article 3 requires modification.

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?

Ans: It is well understood within the industry the reasoning behind having the current hardcore restrictions. The Chamber would not seek to amend this when the reasoning remains sound and important for the preservation of competition.

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.

Ans: The Chamber considers that the retention of the current hardcore restrictions would have a negligible impact as businesses would be able to continue trading as they have been. Consumers, however, would continue to be able to benefit as the market would remain competitive.

Question 10: How would retaining the current hardcore restrictions in the proposed CBEO impact consumers?

Ans: a) Significant positive impact.

Question 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?

Ans: The Chamber would support the CMA's proposed recommendation to retain the current market share threshold in the proposed CBEO.

Question 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?

Ans: The Chamber would consider the other conditions as outlined in Article 5 to remain appropriate and useful.

Question 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was increased?

Ans: If the market share threshold were to be increased, this would have a significant positive impact on the operations of the liners that the Chamber represents by increasing the scope of consortia that the CBEO would apply to. This would further reduce compliance costs, administrative burden and increase operational flexibility.

Question 14: What would be the likely impact on your business's operations or the operations of those

you represent if the market share threshold was decreased?

Ans: If the market share threshold were to be decreased, this would have a significant negative impact on the operations of the liners that the Chamber represents. The members of existing consortia with a higher market share would be forced to terminate their participation or conduct a self-assessment with the need to employ external consultants. For smaller carriers that can only operate on a small number of routes by themselves, the cost of conducting a self-assessment would be disproportionately burdensome and could act as a barrier to benefiting from the economies of scale provided by utilizing larger carriers services.

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

Ans: The Chamber would agree with the CMA's proposed recommendation that the current provisions of Article 6 of the retained CBER be maintained in any future CBEO.

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

Ans: The UK Chamber considers that a CBEO without a fixed expiry date would provide legal certainty for those who have entered into or are considering entering into a consortia agreement whilst allowing the flexibility to review when it is considered fit. Understanding that there is a statutory requirement to carry out and publish a post-implementation review of any block exemption order within five years of it coming into force, and every five years thereafter, the Chamber recognises that post-pandemic market trends are still uncertain, and time is needed for the market to stabilise for a proper assessment.

Question 17: What would be the likely impact on your business's operations or the operations of those you represent if any CBEO was not to include a fixed expiry date?

Ans: b) Moderate positive impact.

Question 18: Please provide a short explanation highlighting your reasoning for your answer above.

Ans: Please see the response provided to question 16.

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

Ans: The Chamber does not have any particular comments with respect to this question.

It should be noted that this paper is substantially similar as the consultation response co-sponsored by WSC, ICS and ASA to which our members also contributed to. The Chamber would therefore also support the recommendations made in that paper.

