

The Rail, Road and Inland Waterway Transport Block Exemption Regulation

Call for Inputs

CMA191con
11 March 2024

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Introduction and background

1. The purpose of this Call for Inputs is to seek stakeholder feedback on the Rail, Road and Inland Waterway Transport Block Exemption Regulation (RRIWTBER).¹
2. As part of the government's Smarter Regulation programme, which includes reviewing assimilated law², the Secretary of State for Business and Trade has asked the CMA to consider whether the RRIWTBER should be varied or revoked or whether it should be replaced with a new block exemption order.
3. The CMA has issued this Call for Inputs to gather evidence to inform its decision on whether to recommend that the Secretary of State for Business and Trade should vary or revoke the RRIWTBER, and, if revocation is recommended, whether to replace the RRIWTBER with a new block exemption order.

The Chapter I prohibition and exemption

4. The Competition Act 1998 (CA98) prohibits agreements between businesses that restrict competition in the UK (unless they meet the conditions for exemption in section 9(1) CA98 or are otherwise excluded).³ This is known as the Chapter I prohibition.
5. There are many situations where agreements which restrict competition can be beneficial to consumers. For this reason, the CA98 provides that agreements can be exempted from the Chapter I prohibition if they meet certain conditions relating to the benefits they produce. Broadly, the agreement must contribute to clear efficiencies. Second, consumers must receive a fair share of the resulting benefits. Third, the restrictions on competition that the agreement gives rise to must be no more than the minimum that is necessary to enable consumers to gain these benefits.

¹ Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterway which has been assimilated into UK domestic law (Council Regulation ([EC](#) 169/2009) (with certain amendments (see footnote 11 below)), an 'assimilated block exemption regulation' under section 10 CA98.

² 'Assimilated law' is domestic law which was previously retained EU law, but without the application of the EU law interpretive features applied to retained EU law by the European Union (Withdrawal) Act 2018 - namely, supremacy, general principles of EU law and rights retained under section 4 of the European Union (Withdrawal) Act 2018.

³ The Chapter I prohibition is set out at section 2 CA98.

Fourth, the agreement must not give the parties the possibility of eliminating competition in respect of a substantial part of the products concerned.⁴

6. Ordinarily, businesses who wish to enter into an anticompetitive agreement must make their own assessment of whether the agreement can be justified based on its benefits. This is referred to as 'self-assessment'.
7. In certain cases, it may be clear that all agreements in a particular category are likely to be exempt agreements. In these circumstances, a 'block exemption' may be made to automatically exempt agreements in that category provided that they satisfy the conditions set out in the block exemption.

Overview of the RRIWTBER

8. The RRIWTBER provides exemptions for two categories of agreement:
 - (a) agreements relating to technical improvements or technical cooperation in the fields of rail, road and inland waterways ('technical agreements'). The stated rationale for such agreements being exempted is that they have the potential to contribute to improving production;⁵ and
 - (b) agreements, the purpose of which is the creation and operation of groupings of small or medium-sized road or inland waterway transport undertakings ('SME groupings agreements'), whose object is the carrying on of transport operations.⁶ This includes the joint financing or acquisition

⁴ The cumulative conditions in section 9(1) CA98 that must be met in full are that the agreement:

(a) Contributes to:

- (i) improving production or distribution, or
- (ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; and

(b) does not:

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

See further the CMA's [Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements](#), paragraphs 3.47 – 3.54.

⁵ See (7) of the Introductory Text of the RRIWTBER.

⁶ The reference to 'SME' is found in the heading of Article 3. Article 3 itself explains that the relevant thresholds are in relation to carrying capacity. Specifically, the total carrying capacity of a such a grouping must not exceed a fixed maximum, and the individual capacity of undertakings belonging to the grouping must not exceed certain limits so fixed as to ensure that no one undertaking can hold a dominant position within the grouping. Those carrying capacity limits are:

1. The grouping's total carrying capacity must not exceed:
 - a) 10 000 metric tons in the case of road transport;
 - b) 500 000 metric tons in the case of transport by inland waterway.

of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of such a grouping. The stated rationale for such agreements being exempted is to foster an improvement to the structure of the road and inland waterway sectors which have been considered to be too dispersed.⁷

9. The RRIWTBER was first adopted in European Union (EU) law in 1968.⁸ The RRIWTBER was adopted in its present form in 2009 as part of a process of ‘codification’ in the interests of clarity given that it had been substantially amended several times.⁹
10. Before the UK's exit from the EU, agreements covered by the EU RRIWTBER (or which would be covered but for the fact they did not produce an effect on trade between EU Member States), would be exempt from the Chapter I prohibition.¹⁰ At the end of the transition period on 31 December 2020, the RRIWTBER was retained into UK law under the EU Withdrawal Act 2018, subject to certain amendments.¹¹ Under the Retained EU Law (Revocation and Reform) Act 2023, legislation which was previously ‘Retained EU Law’ – such as the RRIWTBER – became ‘Assimilated Law’ on 1 January 2024.¹²

This Call for Inputs

11. The CMA's review will assess whether the RRIWTBER is fit for purpose, taking into account any specific features of the UK economy and the interests of UK businesses and consumers. Stakeholders are encouraged to provide feedback in response to the questions set out in this Call for Inputs with a specific focus on the operation and application of the RRIWTBER in the UK.

2. The individual capacity of each undertaking belonging to a grouping must not exceed:

- a) 1 000 metric tons in the case of road transport or
- b) 50 000 metric tons in the case of transport by inland waterway.

⁷ See (8) of the Introductory Text of the RRIWTBER.

⁸ Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway.

⁹ See [Council Regulation \(EC\) No 169/2009 of 26 February 2009 applying rules of competition to transport by rail, road and inland waterway](#).

¹⁰ By virtue of the now repealed sections 10(1) and (2) of the CA98

¹¹ Amendments were made by [the Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#). The key amendments were to remove the power for the European Commission to propose a change to the list of technical agreements; removal of the provision providing that parties to agreements with effects which are incompatible with the EU equivalent of section 9 CA98 could be required to make such effects cease; and the replacement of references to EU legislation with references to relevant provisions of CA98.

¹² See also footnote 2 above.

12. This Call for Inputs is structured into the following sections:
 - (a) Industries affected, general awareness and future developments (page 8);
 - (b) Article 2 of the RRIWTBER – technical agreements (pages 10 to 13); and
 - (c) Article 3 of the RRIWTBER – exemption for groups of small and medium-sized undertakings (pages 14 to 17). Please note that as this exemption applies to road and inland waterway but not to rail, these questions are particularly relevant to businesses and advisers or other third parties in those two first sectors.
13. Each section includes a brief introduction to the rationale for our questions and then the questions that we would particularly welcome responses to.
14. Appendix A also includes information on how the CMA may use information provided to it during the course of this project.

Industries affected, general awareness and future developments

We would like to get a sense of the industries and size of businesses affected by the RRIWTBER as well as the extent of any impact that might arise from its variation/revocation or replacement. To that end, we have included some general questions below that we would ask all respondents to this Call for Inputs to complete.

1. Please confirm which of the following industries you operate in, and whether you provide passenger or freight services, or both. Alternatively, if you are responding as an adviser or other third party, please confirm which of the following industries you have a particular interest in or experience of and in each case whether passenger or freight services are particularly relevant.
 - (a) Rail transport;
 - (b) Road transport;
 - (c) Inland waterways;
 - (d) Services ancillary to transport;
 - (d) Other industries. Please indicate which industry or industries.
2. For each industry listed in Question 1, please provide an indication of whether you are a small (not more than 50 employees), or medium (not more than 250 employees) or large (250+ employees) business (and if the latter, give a broad indication of the number of employees you employ).¹³ Please also indicate if any of the other criteria for defining a small-sized company or medium-sized company in the Companies Act 2006 are met.¹⁴
3. If you provide road freight services or inland waterway freight services, please indicate if your total carrying capacity is 1,000 metric tons or below (road transport) or 50,000 metric tons or below (transport by inland waterway).

¹³ If you are an adviser, please provide information in response to Questions 2 to 4 about the businesses you typically advise.

¹⁴ The Companies Act 2006 (and any future amendments): companies qualifying as small-sized under section 382 of the Companies Act 2006 (currently turnover not exceeding £10.2 million and balance sheet total not more than £5.1 million) and companies qualifying as medium-sized under section 465 of the Companies Act 2006 (currently turnover not more than £36 million and balance sheet total not more than £18 million).

4. If you are part of a grouping of operators, please indicate if your grouping's total carrying capacity is 10,000 metric tons or less (road transport) or 500,000 metric tons or less (transport by inland waterway).
5. We are interested in understanding general industry awareness of the RRIWTBER. Please indicate if you were aware of the RRIWTBER prior to this Call for Inputs.
6. Please identify any future developments which you consider might be relevant to the need for/ suitability of the RRIWTBER.

Article 2 of the RRIWTBER: Technical agreements

Article 2 of the RRIWTBER provides an exemption for agreements, the object and effect of which is to apply technical improvements or to achieve technical cooperation by means of:

- (a) the standardisation of equipment, transport supplies, vehicles or fixed installations;*
- (b) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;*
- (c) the organisation and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations, including special competitive rates;*
- (d) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;*
- (e) the coordination of transport timetables for connecting routes;*
- (f) the grouping of single consignments;*
- (g) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.*

The purpose of the questions below is to gather evidence on the justification for the exemption under Article 2 RRIWTBER, the scope for potential improvements and the impact of any changes.

Technical agreements: Prevalence and usage

7. Are you aware of businesses which have entered into technical agreements falling within the scope of Article 2 of the RRIWTBER? If so, please identify which of categories (a) – (g) they fall into, and please provide examples.

8. Please provide any observations you have on the size and type of business that, in your experience, typically enters into such agreements.

Technical agreements: Benefits and impacts on competition

9. What are the main effects of technical agreements covered by Article 2 of the RRIWTBER on competition (if any). To what extent do these agreements restrict competition? Please provide examples.
10. What are the main benefits for consumers (if any) of technical agreements covered by Article 2 of the RRIWTBER? Please provide examples.
11. If you consider that these technical agreements restrict competition, to what extent do any benefits identified in response to Question 10 compensate consumers for any such restriction of competition?

Technical agreements: The benefits of a block exemption over self-assessment

12. Are you aware of businesses having relied on the exemption in Article 2 of the RRIWTBER, when entering into technical agreements?
13. If not, is this because:
- a. Businesses are not aware of the RRIWTBER?
 - b. Businesses are satisfied that technical agreements do not raise competition law concerns without needing to refer to the RRIWTBER?
Is this for example, because:
 - i. they are relying on other competition law guidance or block exemptions (e.g. the Public Transport Ticketing Scheme Block Exemption)¹⁵; or
 - ii. they do not consider that their agreements raise competition concerns?

14. In the absence of the RRIWTBER, operators would need to self-assess their compliance with competition law under the ordinary competition law provisions, for any agreements currently covered by Article 2 of the RRIWTBER:

- a. To what extent would operators be discouraged from entering into technical agreements in the absence of the exemption in Article 2 of

¹⁵ The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (S.I. 2001/319).

the RRIWTBER? Please provide examples and reasons for your answer.

- b. Please provide estimates for any additional costs an operator would incur, in the absence of a RRIWTBER, to carry out the relevant competition law self-assessment for agreements which currently benefit from exemption under Article 2. If it is not possible to provide a quantified estimate of additional costs, please estimate the cost in terms of time and/or estimate the increased complexity of carrying out the relevant competition law self-assessment (including, for example, whether external advice might be needed).

Technical agreements: The clarity of Article 2

15. Are you aware of or have you experienced any difficulties in applying the criteria of Article 2 of the RRIWTBER? To what extent does this vary across modes of transport?

16. In relation to the terms included in Article 2 of the RRIWTBER:

- (a) Are these sufficiently clear to allow you to identify the categories of agreement that can benefit from the RRIWTBER? If not, please explain your answer.
- (b) In Article 2(1)(g) there is an additional requirement, specifically the agreement must not lay down rules regarding transport rates and conditions. Is this sufficiently clear? If not, please explain your position.

Technical agreements: The scope of the exemption under Article 2

17. Are there any additional types of agreement which are aimed at technical improvements or cooperation in the transport sector that are not already included in the scope of Article 2, and which would be likely to meet the requirements for exemption from the Chapter I prohibition under section 9 CA98? If so, would it be beneficial to amend Article 2 of the RRIWTBER to include these agreements?

18. Conversely, are there specific agreements currently exempted by Article 2 which you consider should not benefit from a block exemption? If so, please explain why.

19. Should there be any further limitations imposed in relation to technical agreements benefitting from exemption under Article 2? For instance, a market share threshold or some other threshold indicating size or market position of the parties to the agreement, above which the exemption would not be available.

Technical agreements: The impact of any proposed changes

20. If you have proposed changes to the exemption provided by Article 2, please explain the impact any changes would have on your business, and explain if that impact would be *negligible*, *moderate* or *significant*?

Article 3 of the RRIWTBER: Exemption for SME groupings agreements

Article 3 RRIWTBER provides an exemption from the Chapter I prohibition for agreements providing for the creation and operation of groupings of smaller businesses in the road and inland waterway sectors.

Where businesses have formed a grouping, the exemption can apply to their joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the grouping.

The availability of the exemption is limited to groupings whose carrying capacity does not exceed:

- a) 10,000 metric tons in the case of road transport;*
- b) 500,000 metric tons in the case of transport by inland waterway.*

In addition, the individual capacity of each undertaking belonging to a grouping shall not exceed:

- a) 1,000 metric tons in the case of road transport or*
- b) 50,000 metric tons in the case of transport by inland waterway.*

The purpose of the questions below is to gather evidence on the justification providing the exemption under Article 3 RRIWTBER, the scope for potential improvements and the impact of any changes.

Groupings of SMEs: Prevalence and usage

21. Are you aware of businesses which have entered into agreements that are covered by Article 3 of the RRIWTBER? If so, please identify which type of agreement they are, and please provide examples.
22. Please provide any observations you have on the size and type of business that, in your experience, typically enters into such agreements. When making

observations on the size of the businesses, please do so by reference to the measures concerning size in Questions 2-4, if possible.¹⁶

23. Would the businesses referred to in Question 21 above typically have their own carrying capacity and/or hire or have sub-contracted carrying capacity?

Groupings of SMEs: Benefits and impacts on competition

24. What are the main effects of agreements covered by Article 3 of the RRIWTBER on competition (if any). To what extent do these agreements restrict competition? Please provide examples.
25. What are the main benefits for consumers (if any) of agreements covered by Article 3 of the RRIWTBER? Please provide examples.
26. If you consider that agreements covered by Article 3 of the RRIWTBER restrict competition, to what extent do any benefits identified in response to Question 25 compensate consumers for any such restriction of competition?

Groupings of SMEs: The benefits of a block exemption over self-assessment

27. Are you aware of businesses having relied on the exemption in Article 3 of the RRIWTBER, when entering into transport groupings?
28. If not, is this because:
- a. Businesses are not aware of the RRIWTBER?
 - b. Business are satisfied that agreements to enter into transport groupings do not raise competition law concerns without needing to refer to the RRIWTBER? Is this for example, because:
 - iii. they are relying on other competition law guidance or block exemptions; or
 - iv. they do not consider that their agreements raise competition concerns.
29. In the absence of the RRWTBER, operators would need to self-assess their compliance with competition law under the ordinary competition law

¹⁶ If you are an adviser, please provide this information about the businesses you typically advise.

provisions, for any agreements currently covered by Article 3 of the RRIWTBER.

- a. To what extent would operators be discouraged from entering into groupings in the absence of the exemption in Article 3 of the RRIWTBER? Please provide examples and reasons for your answer.
- b. Please provide estimates for any additional costs an operator would incur, in the absence of a RRIWTBER, to carry out the relevant competition law self-assessment for agreements which currently benefit from exemption under Article 3. If it is not possible to provide a quantified estimate of additional costs, please estimate the cost in terms of time and/or estimate the increased complexity of carrying out the relevant competition law self-assessment (including, for example, whether external advice might be needed).

Groupings of SMEs: The clarity of Article 3 of the RRIWTBER

30. Are you aware of or have you experienced any difficulties in applying the criteria of Article 3 of the RRIWTBER? To what extent does this vary across the two modes of transport?
31. In relation to the terms included in Article 3 of the RRIWTBER, are these sufficiently clear to allow you to identify the categories of agreement that can benefit from this exemption in the RRIWTBER? If not, please explain your answer.

Groupings of SMEs: The scope of the exemption under Article 3 of the RRIWTBER

32. Are there any additional types of agreement which enable the grouping of smaller transport operators that are not already included in the scope of Article 3, and which would be likely to meet the requirements for exemption from the Chapter I prohibition under section 9 CA98? If so, would it be beneficial to amend Article 3 of the RRIWTBER to include these agreements?
33. In relation to the carrying capacity thresholds under Article 3 of the RRIWTBER, from your experience, do these thresholds allow the formation and operation of most groupings that would be likely to benefit from an individual exemption to be block exempted? Please indicate if this is also the case if sub-contracted and/or hired carrying capacity is included. If the

thresholds do not allow the formation and operation of most groupings that would be likely to benefit from an individual exemption to be block exempted, please provide examples and indicate any alternative threshold which would, in your view, achieve this aim.

34. Are there specific agreements currently exempted by Article 3 which you consider should not benefit from a block exemption? If so, please explain why.
35. Should there be any further limitations on when the exemption should be available for transport groupings currently benefitting from exemption under Article 3?

Groupings of SMEs: The impact of any proposed changes

36. If you have proposed changes to the exemption provided by Article 3, please explain the impact any changes would have on your business, and explain if that impact would be *negligible*, *moderate* or *significant*?

Appendix A: Use of information provided to the CMA

1. This Appendix sets out how the CMA may use information provided to it during the course of this project.

Why is the CMA asking for information?

2. The information you provide will help us to inform the CMA's review of the RRIWTBER.

Compliance with government consultation principles

3. In preparing this consultation document, the CMA has taken into account the published government consultation principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

4. In accordance with our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive. When submitting your response please also let us know if you wish to remain anonymous.
5. The responses to the present Call for Inputs may also be shared with the Department for Business and Trade and other relevant government departments in order to facilitate consideration of the CMA's recommendation.
6. Any personal data you provide to the CMA will be handled in accordance with our obligations under the UK General Data Protection Regulation and the Data Protection Act 2018 and other law designed to protect sensitive information. Our [personal information charter](#) set out the standards you can expect from us when we collect, use, or share personal data and provides details of your rights in relation to that personal data and how to contact us.
7. 'Personal data' is information that relates to an identified or identifiable living individual. We are processing this personal data for the purposes of our work.

This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take CFI responses into account and to ensure that we properly consult on matters relevant to the advice requested by the Secretary of State before it is finalised.

8. We may only publish or share with others information that you provide to us in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable: (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or (b) any commercial information which, if published or shared, we think might significantly harm the legitimate business interests of the undertaking to which it relates. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
9. Please note that information provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.