

# The Rail, Road and Inland Waterway Transport Block Exemption Regulation

## Update Report

10 December 2024



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## 1. Executive summary

- 1.1 On 11 March 2024, the Competition and Markets Authority (CMA) published a Call for Inputs seeking stakeholder feedback on the Rail, Road and Inland Waterways Transport Block Exemption Regulation (the 'RRIWTBER').<sup>1</sup>
- 1.2 Following this Call for Inputs and further assessment by the CMA, the CMA has concluded that the RRIWTBER should be retained for the time being, rather than being varied, revoked or replaced with a new block exemption order. The CMA plans to re-review the case for the RRIWTBER to be retained once the planned programme<sup>1</sup> of rail reform has progressed and the future shape of the industry is more clearly established.

### About this Document

- 1.3 This document has the following structure:
  - (a) Section 2 provides a high-level overview of the RRIWTBER, and its statutory history.
  - (b) Section 3 provides background on the inland transport sector in the UK.
  - (c) Section 4 summarises the feedback the CMA received in response to the Call for Inputs.
  - (d) Section 5 explains the reasons for the CMA's conclusions following the initial review of the RRIWTBER.
  - (e) Section 6 sets out our conclusions.

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<sup>1</sup> 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 12 below), an 'assimilated block exemption regulation' under section 10 CA98).

## 2. The RRIWTBER

### The Chapter I prohibition and exemption

- 2.1 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) of CA98 or are otherwise excluded).<sup>2</sup> This is known as the Chapter I prohibition.
- 2.2 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. Fourth, the agreement must not give the parties the possibility of eliminating competition in respect of a substantial part of the products or services concerned.<sup>3</sup>
- 2.3 Ordinarily, businesses that wish to enter into an agreement must make their own assessment of whether the agreement restricts competition and, if so, whether it can be justified based on its benefits. This is referred to as 'self-assessment'.
- 2.4 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 so as automatically to exempt agreements in that

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<sup>2</sup> The Chapter I prohibition is set out at section 2 CA98.

<sup>3</sup> 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.

category provided that they satisfy the conditions set out in the block exemption.

## Overview of the RRIWTBER

2.5 The RRIWTBER provides exemptions from the Chapter I prohibition 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;<sup>4</sup> 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.<sup>5</sup> This includes the 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 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.<sup>6</sup>

2.6 The RRIWTBER was first adopted in European Union (EU) law in 1968.<sup>7</sup> In its original form, it was a legislative instrument which applied bespoke competition rules to the inland transport sector, distinct from general EU competition law and the prohibitions in Article 101 and Article 102 of the Treaty on the Functioning of the European Union ('TFEU').

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<sup>4</sup> See (7) of the Introductory Text of the RRIWTBER.

<sup>5</sup> 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.
- 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.

<sup>6</sup> See (8) of the Introductory Text of the RRIWTBER.

<sup>7</sup> Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway.

- 2.7 The original RRIWTBER set out both the bespoke competition rules for the inland transport sector, and exemptions from those bespoke rules. In 2003, the EU amended the RRIWTBER to remove the parts establishing bespoke competition rules. The exemptions were reframed as exemptions from the prohibition on anticompetitive agreements in Article 101 TFEU.<sup>8</sup>
- 2.8 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 between 1968 and 2007.<sup>9</sup>
- 2.9 Before the UK’s exit from the EU, the exemptions provided by the EU RRIWTBER applied in an equivalent way to UK competition law, and so exempted agreements from the Chapter I prohibition.<sup>10</sup>
- 2.10 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.<sup>11</sup> 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. Unlike other block exemptions which have been assimilated into UK law, the RRIWTBER does not have an expiry date.

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<sup>8</sup> [Council Regulation \(EC\) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty](#)

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

<sup>10</sup> By virtue of the now repealed sections 10(1) and (2) of the CA98.

<sup>11</sup> 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.

## 3. Inland transport in the UK

### Rail

- 3.1 The organisation of Great Britain's railways today reflects the structures created by the Railways Act 1993 (which were amended and expanded in the Railways Act 2005). These were based on the principle of the separation of track and train to promote competition.
- 3.2 Most rail infrastructure is publicly owned and operated by Network Rail. Network Rail's role is safely and efficiently to operate, maintain and improve Great Britain's railways. This includes leading the process with train operators to develop the national rail timetable and allocate access to the rail network. The network is operated and maintained through funding from access charges (levied on passenger and freight operators), commercial income and a network grant provided to Network Rail.
- 3.3 The majority of passenger train services on the rail network of Great Britain are provided by privately-owned train operating companies (TOCs) under contracts let by the Department for Transport and the Scottish and Welsh governments. They are licensed to operate by the Office of Rail and Road (ORR). ORR, as independent regulator, approves the contracts that TOCs hold with Network Rail and ensures that the rail market is competitive and fair. Currently, some passenger rail operations in England, Scotland and Wales are operated directly by government-owned bodies as Operator of Last Resort. A small number of passenger services are also provided by independent Open Access Operators. In Northern Ireland, the Travelink Group (Travelink) performs a similar function to Network Rail although it also provides most of the train and bus services and is the main provider of public transport in Northern Ireland. Translink consists of a Public Non-Financial Corporation, the Northern Ireland Transport Holding Company (NITHC) which owns and controls seven private limited subsidiary companies which cover different aspects of passenger rail and bus travel in Northern Ireland. ORR is the economic regulator for Travelink while the Department for Infrastructure (DFI) is responsible for safety issues and issuing licences.

### Rail freight

- 3.4 Freight Operating Companies (FOCs) operate commercially to provide rail freight services to customers and are licensed by ORR. There are three main



privately run FOCs operating in Great Britain,<sup>12</sup> with a number of smaller independent operators. Unlike most passenger train operators, FOCs do not operate under government franchises and are independent, commercial businesses. However, ORR regulates FOCs' compliance with their licence conditions and is the final arbiter for any disputes that may arise regarding access to the network.

3.5 In 2022, 16 billion tonne-kilometres<sup>13</sup> of domestic freight were moved in the UK by rail, compared to 175 by roads and 25 by water (this is not limited to movements by inland waterways, but includes domestic movements of goods by sea – see paragraphs 3.11 to 3.13 below).<sup>14</sup> There are two major types of rail freight:

- (a) **Intermodal freight** is freight that is shifted using more than one mode of transport. This usually means goods are carried in standardised containers which can be transported by sea, rail and/or road. In the UK, one in four sea containers arriving or departing from a port is carried by rail, and 70% of UK rail freight begins or ends in a port.<sup>15</sup>
- (b) **Bulk freight** includes products such as oil, petroleum, coal, grain, gravel, sand and biomass which are carried 'loose' in specially-designed wagons.

3.6 Both bulk and intermodal goods are often carried directly into and out of customer sites, ports and warehouses. However, the industry is also reliant on a network of depots, terminals and interchanges where goods can be loaded and unloaded before being taken on to their final destination, which are often operated by third parties.

According to the last 'Network Statement from Translink, there are no freight operators in Northern Ireland.<sup>16</sup>

### ***Rail reform***

3.7 The government announced in the King's Speech in July 2024 that it plans to bring passenger services back into public ownership and establish Great British Railways (GBR), which would bring together *'the management of the network and the delivery of passenger services into a single public body [...]*

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<sup>12</sup> DB Cargo UK, Freightliner and GB Railfreight. See [Freight rail usage and performance, January to March 2024](#), Figure 5.2.

<sup>13</sup> Tonne-kilometres is calculated by multiplying the weight of goods carried by the distance hauled and so is a measure of the total freight activity, accounting for both the distance travelled and the weight of goods carried.

<sup>14</sup> Department for Transport, [Transport Statistics Great Britain: 2022 Freight](#).

<sup>15</sup> [Rail Freight, Rail Freight Group](#).

<sup>16</sup> Translink Network Statement (2025), para 2.2.2

*This new body will act as a “directing mind”, with a relentless focus on delivering for passengers and freight customer’.*<sup>17</sup>

- 3.8 The government has said that freight and open access services will continue to be run privately. The CMA considers the impact of rail reform on the RRIWTBER more substantively in section 5.

## Road

- 3.9 The vast majority of freight in the UK is transported on roads by heavy goods vehicles (HGVs). There are more than 50,000 enterprises operating in the sector in the UK, and more than 500,000 licensed HGVs.<sup>18</sup> In contrast to rail freight, intermodal freight accounted for only 8% of goods lifted by domestic road freight in 2022.<sup>19</sup>
- 3.10 Roads are also used for passenger travel by bus and coach. The number of local bus passenger journeys in Great Britain was 3.7 billion in the year ending March 2023, and there were 30,154 buses used by local operators in England.<sup>20</sup> However, the distance travelled on buses and coaches has been in long-term decline since 1960.<sup>21</sup>

## Inland waterways

- 3.11 Freight can also be transported along the UK’s inland waterways, such as rivers or canals. As stated at paragraph 3.5 above, more domestic freight in the UK is moved by water than by rail. However, the majority of goods moved by water in the UK are moved either:
- (a) **Coastwise:** traffic carried around the coast from one UK port to another, including domestic ferry services; or
  - (b) **One-Port:** traffic to and from offshore locations such as oil rigs and sea dredging.
- 3.12 The amount of freight transported on the UK’s inland waterways is much more limited, with the inland waterways freight sector consisting of a number of small operators with few employees. Inland waterways traffic accounts for

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<sup>17</sup> [The King's Speech 2024](#).

<sup>18</sup> Department for Transport, [Overview of the road freight sector: 2023](#).

<sup>19</sup> Department for Transport, [Transport Statistics Great Britain: 2022 Freight](#). Of these intermodal road freight journeys, 76% of goods lifted were carried on journeys that began or ended at a shipping dock, 22% on journeys that began or ended at a rail siding or terminal, and the remaining 3% at airports.

<sup>20</sup> Department for Transport, [Annual bus statistics](#).

<sup>21</sup> Department for Transport, [Transport Statistics Great Britain: 2021](#).

only 6% of domestic waterborne freight traffic measured by goods moved, meaning that less than 1% of domestic freight in the UK is transported via inland waterways (less than 2 billion tonne-kilometres yearly).<sup>22</sup> This is in contrast to other European countries such as Germany and the Netherlands, which have a more developed inland waterways freight sector with more than 40 billion tonne-kilometres of freight moved by inland waterways on a yearly basis.<sup>23</sup>

- 3.13 The main form of passenger transport on inland waterways in the UK is via river ferries. In 2023, there were 17.3 million passengers on river ferries, with the majority on journeys made along the River Thames.<sup>24</sup>

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<sup>22</sup> Department for Transport, [Port freight annual statistics 2022: Domestic information and domestic waterborne freight](#).

<sup>23</sup> Central Commission for the Navigation of the Rhine (CCNR), [Market Observation Annual Report 2023](#), Chapter 2, Freight Transport on Inland Waterways.

<sup>24</sup> Department for Transport, [Sea passenger statistics: Domestic sea passengers 2023](#).

## 4. Consultation responses and feedback

4.1 As noted at paragraph 1.1 above, the CMA issued a Call for Inputs in March 2024 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.

### Summary of feedback received

4.2 The CMA received 5 responses to the Call for Inputs:

*Table 1: Respondents to the CMA's March 2024 Call for Inputs*

<b>Respondent</b>	<b>Description</b>
<b>Freightliner</b>	A rail freight business
<b>Logistics UK</b>	A trade association representing businesses engaged in logistics
<b>Rail Freight Group</b>	A trade association for rail freight
<b>Rail Partners</b>	A trade body which advocates on behalf of private passenger and freight operators, and also provides member services to public and private passenger operators to improve efficiency and performance
<b>Transport Focus</b>	The consumer watchdog for rail users

4.3 All of the responses to the Call for Inputs related to the rail sector.<sup>25</sup> The CMA received no responses to the Call for Inputs relating to either road transport or inland waterways transport.

4.4 Other than Rail Partners, all of the respondents indicated that there was a lack of awareness of the RRIWTBER within the rail industry. However, all of the respondents were in favour of the continuation of a block exemption to

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<sup>25</sup> While the response from Logistics UK referred in general to “the supply chain”, it was only in relation to the rail industry that co-operation was expressly mentioned.

support collaboration in the rail sector. Respondents have cited the following examples of collaboration as potentially being covered by the RRIWTBER:

- (a) Collaboration on timetabling to enable optimal use of network capacity;<sup>26</sup>
- (b) Agreements to allow a FOC to use a locomotive or wagons owned by another FOC to fulfil a customer requirement, or to allow a customers' goods to be conveyed on another FOC's train;<sup>27</sup>
- (c) The sharing of facilities and cooperation at terminals where multiple FOCs operate;<sup>28</sup>
- (d) Cooperation to facilitate technical solutions to ensure systems work across locomotives (such as signalling), exchange expertise, and facilitate standardisation;<sup>29</sup>
- (e) Secondments within ownership groupings and between operators.<sup>30</sup>

4.5 Following the Call for Inputs, the CMA conducted further engagement with rail industry stakeholders to develop its understanding of existing cooperation in the rail sector and the case for a block exemption. We refer in further detail to the feedback received below.

## Cooperation in the rail sector

### *Timetabling*

4.6 Network Rail as the network operator leads on the development of the national rail timetable and allocates access to the rail network and network paths as part of a transparent and consultative process with train operators (both passenger and freight).<sup>31</sup> Train operators give Network Rail advance notice of any significant changes they wish to make to their timetable before they formally submit ('bid') their new timetable. Network Rail then develops the new national timetable from these bids, checking for conflicts between different operators, and ensuring that trains can be run safely. During the operation of the timetable, Network Rail works closely with train operators to

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<sup>26</sup> All respondents.

<sup>27</sup> Response from the Rail Freight Group.

<sup>28</sup> Response from Rail Partners.

<sup>29</sup> Responses from Rail Partners, Rail Freight Group and Transport Focus.

<sup>30</sup> Response from Rail Partners.

<sup>31</sup> The description of the timetabling process in this paragraph is based on: Network Rail, [How rail timetabling works](#).

accommodate changes to the timetable, such as increasing services ahead of a sporting event or allowing for emergency engineering works to take place.

- 4.7 Whilst the process is formally run by Network Rail, multiple stakeholders have suggested that train operators of all types sometimes engage with each other informally before submitting proposals to Network Rail. This can be for reasons of efficiency and to optimise the use of network capacity,<sup>32</sup> to ensure that there is good interconnectivity between passenger services,<sup>33</sup> or to manage network capacity issues during periods of disruption.<sup>34</sup> For example, if one FOC wanted to add an ad-hoc service by using the unused path of another FOC which had been allocated that path by Network Rail, it may informally engage the other FOC to check the availability of the path prior to submitting a request to Network Rail.<sup>35</sup>
- 4.8 Another area in which stakeholders said cooperation related to timetabling is necessary is for network-to-network connections. Whilst the vast majority of the rail network in Great Britain is operated by Network Rail, there are limited situations where networks overlap with each other and flows between them need to be managed in a seamless way and timetables need to be coordinated, for example between the main Network Rail network and the High Speed 1 line.<sup>36</sup>
- 4.9 Representatives of train operators suggested that this cooperation leads to optimal usage of the network and especially supports the growth of the rail freight industry by enabling the maximum number of trains to be pathed across the multiple FOCs.<sup>37</sup> This is especially important for rail freight where the timetable is much more dynamic compared to the passenger timetable, which is more rigid and fixed. It has also been suggested that for timetabling purposes it is important for Open Access Operators to be able to cooperate with the TOC over whose area they run services.<sup>38</sup>
- 4.10 Stakeholders have suggested that it would be very difficult for Network Rail to manage the timetable alone without cooperation between operators.<sup>39</sup> This is because Network Rail does not have the capacity or the detailed knowledge and expertise to engage in the dynamic assessment needed to work out whether an operator can use a particular path at a particular time. Indeed, this

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<sup>32</sup> Responses from Freightliner, Logistics UK, Rail Freight Group, Rail Partners.

<sup>33</sup> Response from Rail Partners.

<sup>34</sup> Response from Rail Freight Group.

<sup>35</sup> CMA meeting with Rail Partners, 9 May 2024.

<sup>36</sup> CMA meeting with Burges Salmon, 5 September 2024.

<sup>37</sup> Responses from Freightliner, Logistics UK, Rail Freight Group, Rail Partners.

<sup>38</sup> CMA meeting with Burges Salmon, 11 June 2024.

<sup>39</sup> CMA meeting with Rail Partners, 9 May 2024, CMA meeting with Burges Salmon, 11 June 2024.

view is supported by Network Rail itself, which suggested that informal timetabling cooperation between operators is necessary for the functioning of the rail network.<sup>40</sup>

- 4.11 Stakeholders, including train operators and Network Rail, have suggested that timetabling cooperation is a particularly necessary feature of the rail sector because operators depend on shared assets such as the shared track, depots, stations, sidings etc.
- 4.12 It has been suggested that significant consumer benefits arise from this timetabling cooperation:
- (a) Informal engagement between operators helps to improve the efficiency of the timetabling process, reducing the burden, complexity and cost of the process for Network Rail. This therefore supports Network Rail in improving service quality and reduces the cost of administering the network, which benefits customers and the public due to Network Rail being subsidised through government grants.<sup>41</sup>
- 4.13 By optimising the use of network capacity, timetabling cooperation allows more freight services to be run and supports the growth of the rail freight sector. For example, the short-term sharing of paths between FOCs means that more freight services can run than would otherwise be the case, which benefits freight customers.<sup>42</sup> Growing rail freight reduces congestion on the strategic road network and promotes sustainability, as rail freight is the least carbon emitting land transport mode and its utility is actively supporting efforts by supply chains to decarbonise by 2050.<sup>43</sup>
- (a) Cooperation which takes place during periods of disruption to produce a manageable timetable and optimise capacity ensures that an appropriate service quality is provided for the customers of all operators, whether freight or passenger.<sup>44</sup>
  - (b) Cooperation between passenger operators to establish interconnectivity of trains and shorter connection times allows customers to benefit from shorter overall journey times.<sup>45</sup>

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<sup>40</sup> CMA meeting with Network Rail, 3 June 2024.

<sup>41</sup> Response from Freightliner.

<sup>42</sup> Responses from Freightliner, Logistics UK, Rail Freight Group, Rail Partners.

<sup>43</sup> Response from Freightliner.

<sup>44</sup> Response from Rail Freight Group, CMA meeting with Network Rail, 3 June 2024.

<sup>45</sup> Response from Rail Partners, CMA meeting with Rail Partners, 9 May 2024.

## ***Freight cooperation***

- 4.14 Outside of timetabling, other forms of cooperation were identified by representatives of the rail freight industry as important. It was suggested that, during periods of disruption or high demand for example, arrangements may be made on a short-term, ad-hoc basis by a FOC to allow a customers' goods to be conveyed on another FOC's train, or to allow a FOC to use a locomotive or wagons owned by another FOC to fulfil a customer requirement.<sup>46</sup> This could have a consumer benefit if it allows customers' goods to be moved more efficiently and allows FOCs to respond more flexibly to customer requests, increasing productivity and reducing costs to freight customers providing it does not lead to anti-competitive outcomes.
- 4.15 Different stakeholders suggested that the sharing of assets and cooperation at terminals is vitally important to enable multiple FOCs to operate and ensure that their different operations run smoothly.<sup>47</sup> Again, a consumer benefit could arise due to the greater efficiency of freight operations which results, thus supporting greater productivity and reduced costs, providing, again, that it does not lead to anti-competitive outcomes.
- 4.16 One stakeholder suggested an example where two FOCs had been able to pool staff and assets to a certain extent to support geographical expansion of operations which otherwise would have been prohibitively expensive. It was suggested that without the comfort of a block exemption, the operators in question would have been more averse to cooperating and the process of self-assessment may have prevented the cooperation from taking place, damaging the growth of the rail freight industry and harming customers.<sup>48</sup>

## ***Other cooperation***

- 4.17 It was suggested that some types of train operators also cooperate to facilitate technical solutions to ensure systems work across locomotives, exchange expertise, and facilitate standardisation, often through the Rail Delivery Group.<sup>49</sup> One example given was cooperation to facilitate the installation of common digital signalling systems across locomotives.<sup>50</sup> This cooperation enables assets such as locomotives to be transferable between different train operators to support the delivery of passenger and freight services, helping to

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<sup>46</sup> Response from Rail Freight Group.

<sup>47</sup> CMA meeting with Network Rail, 3 June 2024, CMA meeting with Burges Salmon, 11 June 2024.

<sup>48</sup> CMA meeting with Burges Salmon, 11 June 2024.

<sup>49</sup> Response from Rail Partners.

<sup>50</sup> Response from Rail Freight Group.



reduce industry costs, reduce complexity, and enhance health and safety standards.

- 4.18 Another area of collaboration which was highlighted was in relation to people matters. It was suggested that the RRIWTBER helps to support the transfer of staff between different train operating companies, often within the same owning group but also between train operators and the wider industry such as the GBR Transition Team, which it was said benefits rail customers by building the competency of staff and supporting their development, helping them to provide a better service to customers.<sup>51</sup>

### **Cooperation in the road and inland waterways sectors**

- 4.19 The CMA received no written responses to the Call for Inputs relating to either road transport or inland waterways transport and is not aware of cooperation reliant upon the RRIWTBER.

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<sup>51</sup> Response from Rail Partners.

## 5. Analysis

- 5.1 As stated at paragraph 4.4 above, the responses to the Call for Inputs suggest that there is a lack of awareness of the RRIWTBER. Furthermore, stakeholders have referred to only a few examples of the RRIWTBER being applied between undertakings in the rail sector and no examples of its application in relation to road and inland waterway transport.
- 5.2 At the same time, stakeholders said that RRIWTBER was useful for the rail industry, and made clear that they would prefer it to continue. It is difficult to reconcile the low industry awareness of the RRIWTBER with the stakeholder feedback that it is useful and should be retained.
- 5.3 However, even if businesses have not been consciously relying on the RRIWTBER, some of the horizontal cooperation described to the CMA has the potential to raise competition concerns and also has the potential to generate benefits. Revocation of the RRIWTBER may trigger a reappraisal of this existing cooperation, and give rise to the kinds of compliance concerns which a block exemption is intended to address. Without the RRIWTBER, respondents indicated that operators may need to take a more cautious approach to cooperation.<sup>52</sup>
- 5.4 The RRIWTBER continuing in force also appears to create little risk. The RRIWTBER has been in place for a long time. No respondents to the Call for Inputs raised concerns that it was too 'permissive', providing the benefit of exemption to agreements which would not satisfy the test for individual exemption.
- 5.5 The CMA has also taken into account the expected developments of the rail industry in considering the case for retaining the RRIWTBER, or either revoking it or replacing it with a new block exemption. As set out at paragraph 3.7 above, the organisation of Great Britain's railways is likely to undergo significant reform in the coming years with the creation of GBR and the return of passenger services to public ownership under the GBR umbrella. It is likely that rail reform will change the nature of cooperation within the industry, and therefore both the application of competition law and the need (if any) for maintaining a block exemption to generate efficiencies by providing greater certainty on the application of competition law, and if so the scope of any such block exemption.

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<sup>52</sup> Responses from Freightliner, Logistics UK, Rail Freight Group, Rail Partners.

## ***Conclusion***

- 5.6 The CMA considers that now would not be the right time to attempt to vary or replace the RRIWTBER whilst the rail industry is in a state of flux, and the future shape of the industry has not been clearly established. It would not make sense to undertake a full review and make a final recommendation regarding the RRIWTBER when such an assessment could quickly become obsolete and have to be reconducted once the industry had been reformed.
- 5.7 The CMA also considers that there are risks in revoking the RRIWTBER during this interim period, when it has been in place for several decades and when stakeholders have spoken positively about its usefulness. With the RRIWTBER potentially supporting existing cooperation in the rail sector and rail reform objectives during the transition period, the CMA considers that the RRIWTBER should be left in place until the structure and regulation of the industry is more settled and the role of a block exemption in the sector can be re-examined.
- 5.8 Finally, given the lack of evidence that the RRIWTBER encourages beneficial cooperation in the inland waterways or road transport sector, the CMA considered whether to recommend limiting the scope of the exemption to the rail sector. However, given the resources which would be needed to make an interim amendment of this kind, the CMA concluded that it would be preferable and more efficient for any such changes to be considered at the same time as the RRIWTBER is reviewed following the period of rail reform.

## **6. The CMA's conclusions**

- 6.1 For the reasons set out above, the CMA concludes that the RRIWTBER should be retained, and not varied or revoked or replaced with a new block exemption order for the time being.
- 6.2 However, the CMA plans to revisit whether the RRIWTBER should be revoked, varied, or whether an entirely new block exemption is needed in due course, once there is greater clarity as to the nature of cooperation that will take place once the rail sector has been reformed.