



CMA UK CBER Provisional Decision of 17 November 2023

Response of UK Chamber, WSC, ICS and ASA

EXECUTIVE SUMMARY

15 December 2023

1. This submission is made on behalf of the UK Chamber of Shipping (“**UK Chamber**”), the World Shipping Council (“**WSC**”), the International Chamber of Shipping (“**ICS**”) and the Asian Shipowners’ Association (“**ASA**”) (collectively, the “**Associations**”), in response to the consultation on the CMA’s provisional decision not to introduce a UK-specific block exemption for liner shipping consortia on expiry of the Retained Consortia Block Exemption Regulation (“**Retained CBER**”).¹
2. Consortia enable shipping lines to place cargo on each other’s services, creating ocean freight networks that facilitate the continued inclusion of the UK in global supply chains. The CBER provides legal certainty for those arrangements. The Associations are concerned by the reversal of the CMA’s original recommendation, which presented strong evidence in favour of replacing the Retained CBER with equivalent UK legislation. If the CMA’s current decision not to replace the CBER is confirmed and followed by the Department for Business and Trade, this will harm the international maritime sector on which the UK’s trade and economic competitiveness depend. Indeed, it would represent a missed opportunity to take advantage of the regulatory autonomy afforded by Brexit to adopt a legal framework suitably adapted to the UK trading and growth agenda.
3. The success of the UK as a trading nation is heavily reliant on shipping for almost 95% of its imports and exports in goods.² The Government forecasts that global maritime volumes will treble by 2050.

¹ CMA Provisional Decision, *Liner Shipping Consortia Block Exemption* (“**CBER Provisional Decision**”), 17 November 2023

² Value of Shipping report (<https://www.ukchamberofshipping.com/news/chamber-launches-value-shipping-report>) indicates that 95% of goods arrive in the UK via ship.

4. Almost all manufactured goods are transported in containerised liner shipping organised through vessel-sharing arrangements – otherwise known as ‘consortia’. Consortia are a win-win, transport efficiency tool for shipping companies, manufacturers and consumers. They allow liner shipping companies to rationally share space on each others’ ships and to operate joint services, generating operational, cost and climate efficiencies. Consortia achieve economies of scale by enabling liner shipping companies to offer more extensive, more frequent and more regular services than they could on their own. Customers and consumers directly benefit from this improved frequency and coverage. By participating in consortia, small and medium-sized shipping companies obtain easier market access, hence increasing competition. By consolidating the cargoes of the consortia members, consortia, deploy more efficiently sized ships, increase vessel utilisation and dramatically reduce unit costs, fuel consumption and harmful emissions per cargo unit. The use of consortia also aligns with the UK’s Net Zero Strategy as well as significantly contributing to UK investment, job creation, and trading opportunities.
5. In recognition of these benefits and the need to provide legal certainty, consortia have benefitted from an EU block exemption for the last 28 years – and in the UK under the Retained Consortia Block Exemption Regulation since Brexit. The CBER facilitates the creation and operation of efficient consortia by greatly reducing the compliance burdens and legal risks required to establish this type of beneficial cooperation. Most of the UK’s major trading partners also have some form of antitrust immunity for such arrangements because the benefits of consortia are widely recognised. But having initially concluded that the UK should retain the block exemption, the CMA has now provisionally decided to follow the European Commission’s position.
6. The CMA’s analysis and rationale for following the Commission’s lead is flawed for various reasons. It:
 - Relies on the brief and exceptional period of the global pandemic to claim that the benefits of consortia have not been proven with sufficient certainty, disregarding evidence that the price spikes during that period cannot be attributed to consortia and that in the long run consortia have had a downward effect on prices.

- Introduces an unprecedented and unwarranted ‘certainty’ requirement for assessing the benefits of consortia. It fails to balance the proven benefits of consortia against the minimal restrictions of competition which are inherent in the achievement of these benefits.
 - Lacks credible evidence for claiming a reduction of UK liner shipping connectivity. The Associations have provided ample evidence to the contrary.
 - Relies on unsupported assertions by one UK port about increased costs associated with larger vessels, which again run counter to evidence submitted by the Associations.
 - Fails to consider that the CMA may address any future concerns, by including a provision in a UK-specific CBER enabling the cancellation of the benefit of the block exemption on both a general and an individual basis.
7. It is imperative for the CMA and the UK Government to assess the UK’s specific trade requirements and not rely on the Commission’s evaluation. The UK Government should utilise its post Brexit regulatory freedoms to establish a regulatory framework which best supports the UK’s specific trade and growth agenda. Doing so will contribute now more than ever to the growth and sustainability of a liner shipping sector at the service of UK trade and consumers.
8. The Associations therefore call on the CMA to maintain its original recommendation and replace the Retained CBER with a UK equivalent prior to expiry of the Retained CBER in April 2024.

The Associations

- The UK Chamber of Shipping is the trade association for the UK shipping industry, with members ranging from shipowners, managers, ship operators, law firms with maritime expertise, insurers, classification societies, to others providing maritime services to the shipping industry.³ These members span across a broad and diverse range of sectors which provide passenger services, marine construction and engineering, dredging, towage and marine transportation services to many parts of the UK and the wider global economy.
- WSC is a trade association representing the global liner shipping industry.⁴ Its members operate 90% of global liner shipping capacity and transport approximately 60% of the value of global seaborne trade.
- ICS is the global trade association for shipowners and operators, representing the world's national shipowner associations and over 80 % of the world merchant fleet.⁵
- The ASA consists of six ordinary members from the shipowners' associations of Asia Pacific nations: Australia, China, Hong Kong, Japan, Korea, and the Federation of ASEAN Shipowners' Associations ("FASA").⁶ ASA's membership is estimated to control about 50% of the world merchant fleet.⁷

³ For more information about UK Chamber, please visit: <https://www.ukchamberofshipping.com/>.

⁴ For more information about WSC, please visit <https://www.worldshipping.org/>

⁵ For more information about ICS, please visit <https://www.ics-shipping.org/>

⁶ FASA represents shipowners of Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. For more information about FASA, please visit <https://www.fasa.org.sg/>

⁷ For more information about ASA, please visit <https://asianshipowners.org/index.php>