Response to CMA Consultation on Retained Liner Shipping Consortia Block Exemption provisional decision.

Friday 15 December 2023

Summary

Logistics UK welcomes and strongly supports the provisional decision by the Competition and Markets Authority that it will not recommend replacement of the Consortia Block Exemption Regulation to the Secretary of State for Business and Trade, and it should therefore lapse on its expiry date of 25 April 2024 without replacement. We acknowledge the robust methodology, thorough analysis and scenario modelling used by the CMA in reaching this conclusion and agree the conditions to warrant a CBER do not exist, and that self-assessment is the best and most effective way for co-operations to be undertaken by shipping lines.

About Logistics UK

Logistics UK is one of the country's largest business groups, representing the entire logistics industry and supporting, shaping and standing up for safe and efficient logistics. Our membership of more than 20,000 includes global, national and regional businesses and SMEs spanning road, rail, inland waterways, sea and air as well as the buyers of freight services, such as retailers and manufacturers. As an organisation, we deliver services, representation and thought leadership, helping members and policy makers to seize new opportunities for the sector and the economy as a whole, right across the country.

What we represent

Logistics is a sector delivering an increasingly safe, sustainable and efficient system of national infrastructure – creating opportunities across the UK and linking the UK to the global trade network. Spanning land, water and air, it delivers for everyone, everywhere, every day.

- Logistics delivers big public value on small margins, ensuring the availability of the products households, businesses and public services rely on. It moves goods more than 200 billion tonne-km within the UK per year and enables the trade of more than £1 trillion of goods, while working hard to avoid adding pressure to the cost of living. This is a challenge with fuel and energy costs at a historic high and restrictions on logistics growing.

- The sector delivers smart, green, resilient growth and jobs. It contributes £163 billion to the economy each year (12% of UK non-financial GVA), employs 2.7 million people (8.2% of the UK workforce), pays £5 billion in revenue to Treasury through Vehicle Excise Duty (VED) and Fuel Duty, in addition to other taxes. It is becoming ever more innovative and integrated – within businesses and between logistics sites and transport modes. Its key hubs provide a catalyst for further growth and investment, helping places to thrive.

- Logistics delivers for the future, as an essential system for growth. It underpins the whole economy, with an economic footprint three times larger than its direct GVA contribution, with the public sector and other private sector businesses spending 15% of their total input-related spending on logistics services per year.

Consultation response

Logistics UK welcomes and supports the Competition Markets Authority's provisional decision, published on 17 November 2023 for consultation, that it will not recommend replacement of the Consortia Block Exemption Regulation to the Secretary of State for Business and Trade, and it should therefore lapse on its expiry date of 25 April 2024 without replacement.

This submission, on behalf of members, is a follow up to the consultation response submitted by Logistics UK on 23 February 2023 to the CMA's original consultation on a proposal to recommend to the then Secretary of State for Business, Energy and Industrial Strategy that the Retained CBER should be replaced with a UK CBEO. In summary, as in our response in 2022 to the consultation on the renewal of the EU Consortia Block Exemption Regulation, we set out our opposition to the renewal of the CBER, offering 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 reiterated our call for a coordinated approach between the UK and other jurisdictions worldwide given the global nature of the liner shipping industry. We therefore welcome and strongly support this provisional decision and want to acknowledge the robust methodology, thorough analysis and scenario modelling used by the CMA in reaching this conclusion. We also note that while the CMA has reached the same conclusion as the EU Commission on this matter, it has done so via its own process and reasoning.

Condition testing analysis

Logistics UK supports the evidence-based conclusion reached by the CMA that it does not have sufficient certainty that conditions warranting a Block Exemption have been met. We would also draw attention to the fact that there is no presumption in favour of consortia operation in UK transport policy and as other means, via normal competition rules, exist and can facilitate co-operation, the justification for an exceptional and sector specific block exemption does not exist.

Value of a UK Block Exemption post 25 April 2024

Logistics UK notes that despite the conclusion set out above, to ensure thoroughness in its approach the CMA carried out additional analysis of the value of a Block Exemption for liner consortia to the UK in the context of the EU's decision on 10 October 2023 not to extend its CBER.

Logistics UK concurs with the assessment that re-routing by shipping lines to avoid calling at EU or UK ports due to changes in competition law is unlikely. Many shipping lines through their group structures own and operate the port terminals that would be avoided if this were to happen. Secondly competitive pressures are likely to see services vacated by one shipping line taken up by another. Thirdly, the suggestion that shipping lines would collectively decide to avoid the UK if no CBER is in place implies a level of coordination and cooperation on limitation of capacity in the UK market that significantly exceeds that permitted by the CBER or indeed the Competition Act 1998.

The argument that a CBEO in the UK would provide the desired level of legal certainty for shipping lines participating in consortia and thereby make UK ports a preferred destination for consortia services is diminished by the fact that the majority of containers carried by such services would be ultimately destined for the EU and would therefore require transshipment to smaller 'feeder' vessels for delivery to EU ports. The costs of this would far exceed the cost of periodic self-assessment. Furthermore, UK ports do not have the capacity to handle this level of transshipment traffic, and as set out above, increasing vertical integration in the supply chain also means this would be an act of self-harm for the many shipping lines who own and operate the EU port terminals that would be avoided.

Periodic self-assessment

Logistics UK notes the argument forwarded by shipping lines that self-assessment under Section 1 of the Competition Act will create a cost burden likely to make consortia operation uneconomic. This is based on an assumption that self-assessment entails high costs when it is more likely that these costs will be periodic, finite, and reduce over time. It would be useful if the shipping industry could demonstrate how and why such costs would exceed the permanent additional overhead of restructuring its operations as they suggest would be needed in the absence of a CBEO.

The likelihood of an end to liner shipping consortia as a result of the Block Exemption lapsing is very low. It is our members view that the cost efficiencies to shipping lines of co-ordinating sailings and vessels through consortia agreements are sufficient to outweigh the additional costs of professional legal assessment of the compliance of the arrangements. It is Logistics UK's view that that the co-operations and coordination necessary to operationalise a vessel sharing agreement are standard and common to all consortia, Furthermore, the case law and legal advice

available to shipping lines to conduct self-assessments under horizontal guidelines is significantly wider than in the specialised niche of maritime block exemptions. After an initial self-assessment to establish the legality of the intended exchanges there should be little need for extensive subsequent assessment costs, unless there is a significant change in circumstance.

All shipping lines stopping at UK ports also stop at EU ports. Following the decision by the EU not to extend its CBER, self-assessment will be a requirement for these shipping lines any way. Enactment of the CMA's provisional decision creates a harmonised environment for those servicing the UK and EU.

Diversification

Logistics UK supports the CMA's conclusion that the increasing diversification by shipping lines into other parts of the logistics market means that they are becoming distinctive entities and therefore no longer qualify for treatment as a Block for competition purposes. We support the view that self-assessment is the best and most effective way for co-operations to be undertaken by these different entities which will allow the distinctive activities of each shipping line to be incorporated and reviewed.

Conclusion

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. Logistics UK therefore strongly supports the provisional decision made by the CMA**.**

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