



CMA PUBLISHES FINAL DECISION NOT TO REPLACE THE ASSIMILATED LINER CONSORTIA BLOCK EXEMPTION REGULATION

On 9 February 2024, the UK Competition and Markets Authority (the CMA) published its final decision not to recommend to the Secretary of State the replacement of the assimilated Liner Shipping Consortia Block Exemption Regulation (the Assimilated CBER¹), which will expire on 25 April 2024.²

¹ Under the Retained EU Law (Revocation and Reform) Act 2023, 'retained EU law' became 'assimilated law' on 1 January 2024.

² CMA. *UK competition law: Liner Shipping Consortia Block Exemption – Final report* (the **Final Decision**), available at: [Final decision](https://publishing.service.gov.uk) (publishing.service.gov.uk).

The CMA and European Commission (the **Commission**) carried out separate reviews of the CBER. The CMA's initial proposed recommendation was to replace the Assimilated CBER with a Liner Shipping Consortia Block Exemption Order (**UK CBEO**) when the Assimilated CBER expires on 25 April 2024.³ The Commission announced on 10 October 2023 that it had decided not to extend the CBER.⁴ Following this, the CMA published its provisional decision for consultation on 17 November 2023. Its provisional decision was to recommend that the Secretary of State does not replace the Assimilated CBER with a UK CBEO.⁵

We published briefings on the CMA's initial **proposed recommendation** and its **provisional decision**, as well as on the **Commission's decision** not to extend the CBER.

Feedback on the CMA's provisional decision

The CMA received responses to the consultation on its provisional decision from:

1. British International Freight Association (**BIFA**);
2. Global Shippers Forum (**GSF**);
3. International Federation of Freight Forwarders Association (**FIATA**);
4. Logistics UK;
5. members of THE Alliance⁶;
6. an anonymous freight forwarder; and
7. a joint response by the UK Chamber of Shipping, World Shipping Council (**WSC**), International Chamber of Shipping (**ICS**), and the Asian Shipowners' Association (**ASA**) (the **Associations**).

Support for the CMA's provisional decision

Logistics UK, BIFA, GSF, FIATA and the freight forwarder supported the CMA's provisional decision not to recommend the replacement of the Assimilated CBER with a UK CBEO. BIFA, GSF and Logistics UK agreed with the CMA's view that there is insufficient certainty on the benefits of consortia to warrant a block exemption.⁷

Logistics UK, FIATA and BIFA argued that broader market developments mean that it is more appropriate to evaluate consortia on a case-by-case basis rather than providing for an automatic exemption. Market developments include the diversification of liners into other parts of the logistics market.⁸

Furthermore, GSF and Logistics UK contended that the costs of self-assessment for liners will not be overly burdensome because *"the cost efficiencies to shipping liners of cooperation through consortia are sufficiently large to outweigh the costs of self-assessment under competition law"*.⁹

Disagreement with the CMA's provisional decision

The Associations and members of THE Alliance disagreed with the CMA's provisional decision not to recommend the replacement of the Assimilated CBER with a UK CBEO. They submitted that there is a lack of clear evidence to cast doubt on the benefits of consortia and that the CMA had failed to appreciate the value of a UK CBEO, even in circumstances where there is no block exemption in the EU.¹⁰

The Associations also argued that the CMA had applied an impossibly high standard of 'sufficient certainty' that consortia will produce efficiencies outweighing their potential impact on competition.¹¹

The CMA's final decision

The CMA's final decision adopts the same framework as its provisional decision. The CMA stated that in order for it to recommend the replacement of the Assimilated CBER with a UK CBEO, two broad conditions should be met.¹² First, there must be sufficient certainty that consortia agreements are likely to meet the conditions of the exemption in Section 9 of the Competition Act 1998 (**CA 98**) (**Condition 1**). The CMA stated that, given that the Assimilated CBER *"provides an automatic exemption from competition law for a whole category of agreements, it is appropriate for the CMA to require a degree of certainty that consortia covered by the exemption are likely to meet the criteria for Section 9 exemption"*.¹³ Secondly, there must be sufficient benefits brought by a block exemption compared to self-assessment under Section 9 CA 98 (**Condition 2**).

On Condition 1, the CMA concluded that, based on the evidence it had received, it *"no longer has sufficient certainty that consortia covered by the Assimilated CBER will produce efficiencies which outweigh their potential impact on competition"*.¹⁴ The following are examples of evidence received by the CMA:

- **Price** - The price of liner shipping services, and profits for liners, increased significantly during the Covid-19 pandemic. Stakeholders representing the users of liners' services argued that the increases in prices and profits demonstrate that the Assimilated CBER had failed to distribute benefits to customers fairly. However, stakeholders representing liners contended that the price increases were due to other factors, including reductions in liner capacity due to delays at ports and increased fuel costs.¹⁵

³ [CBER proposed recommendation consultation document \(publishing.service.gov.uk\)](#)

⁴ [Antitrust \(europa.eu\)](#)

⁵ [Liner_Shipping_Consortia_Block_Exemption_provisional_decision_PDFA.pdf \(publishing.service.gov.uk\)](#)

⁶ The members of THE Alliance are Hapag-Lloyd, HMM Company Limited, Ocean Network Express, and Yang Ming Marine Transport Corporation.

⁷ CMA's Final Decision, page 8.

⁸ CMA's Final Decision, page 8.

⁹ CMA's Final Decision, page 8.

¹⁰ CMA's Final Decision, page 9.

¹¹ CMA's Final Decision, page 9.

¹² CMA's Final Decision, page 23.

¹³ CMA's Final Decision, page 25.

¹⁴ CMA's Final Decision, page 37.

¹⁵ CMA's Final Decision, pages 29 – 30.

“Liners should now assess whether all their cooperation agreements with other liners are compatible with competition law”

- **Frequency of services and range of port calls** – Stakeholders representing liners’ customers submitted that liner consortia have resulted in reduced sailing schedules and fewer direct connections between ports. Conversely, the Associations argued that the reduced sailing schedules and direct connections were due to the Covid-19 pandemic.¹⁶
- **Concentration** – Concentration has increased significantly in the global liner shipping industry. This has resulted in “an increased likelihood that separate horizontal cooperation agreements may involve participants that are common to multiple agreements”.¹⁷

On Condition 2, the CMA concluded that “creating a new UK CBEO as a sector-specific block exemption would give rise to insufficient benefits compared to a scenario where the consortia agreements that might be exempt under a UK CBEO are assessed according to the ordinary provisions of competition law”.¹⁸ In reaching this conclusion, the CMA had regard to the following factors:

- **Self-assessment** - Many liners that operate as part of consortia are already required to self-assess because they exceed the 30% market share threshold. The CMA considered that the lapse of the Assimilated CBER would be unlikely to result in

liners ceasing participation to a significant extent in consortia. In addition, the CMA stated that a multi-trade consortium may benefit from exemption under the Assimilated CBER where the combined market share of the participating liners does not exceed 30% in each of the markets in which the consortium operates. Stakeholders representing liners had disagreed with the CMA’s approach. They had argued that if the combined market share of members of a multi-trade consortium does not exceed 30% in an individual market, then the consortium may benefit from the block exemption in that particular market.¹⁹

- **EU competition law** – The CMA stated that all consortia currently serving UK ports also call at ports within the EU as part of the same service. If the UK replaced the Assimilated CBER with a UK CBEO in circumstances where the EU will let the CBER expire, liners operating services calling at both UK ports and EU ports would benefit from automatic exemption under UK competition law, but would need to self-assess under EU competition law. The CMA considered that it is “unlikely that the presence of a UK CBEO in the absence of an EU CBER would result in routes being redesigned so that they called exclusively at UK ports”.²⁰

Next steps

Liners should now assess whether all their cooperation agreements with other liners are compatible with competition law. Lawyers and competition economists should be asked to provide assistance where appropriate. The CMA will expect liners which cooperate to have conducted a self-assessment analysing the compatibility of any applicable arrangement with competition law and to retain this on file in case of an investigation. Failure to have a robust self-assessment in place could impact adversely on a liner’s defence in any investigation.

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¹⁶ CMA’s Final Decision, page 32.

¹⁷ CMA’s Final Decision, page 36.

¹⁸ CMA’s Final Decision, pages 46 – 47.

¹⁹ CMA’s Final decision, page 40.

²⁰ CMA’s Final Decision, page 44.

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